

## DEFERRED INFRASTRUCTURE DEVELOPER AGREEMENT

**THIS DEVELOPER AGREEMENT** (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Republic Missouri (“City”) and Bester Properties, LLC (“Developer”). City and Developer are referred to together herein as the “Parties.”

### WITNESSETH:

**WHEREAS**, the City is a municipal corporation and Charter City located in Greene County, Missouri; and

**WHEREAS**, Developer is a Missouri Limited Liability Company, in good standing and registered with the Missouri Secretary of State to do business in the State of Missouri, including Greene County, Missouri; and

**WHEREAS**, Developer is currently the owner and/or developer of real property consisting of approximately 48 acres located near the 1300 block of North Main Street in the City of Republic, Missouri, the legal description of which is attached and incorporated by reference into this Agreement (*Legal Description of Property, Exhibit A*) (“the Property”); and

**WHEREAS**, Developer is in the process of constructing a phased residential Development (“the Development”) on the Property; and

**WHEREAS**, on or about October 26, 2021, the Republic City Council approved of the Preliminary Plat for Phase 2 of the Development (*Preliminary Plat, Phase II, Exhibit B*, attached hereto and incorporated by reference into this Agreement), via Resolution 21-R-49; and

**WHEREAS**, Developer is currently constructing what is referred to in the Preliminary Plat as Emerald Valley Phase II A (“Phase IIA”) of the Development and wishes to defer construction of approximately 1,593 Linear Feet of sidewalk required under the Preliminary Plat (“Deferred Sidewalk Infrastructure” and/or “Deferred Infrastructure”) for a specified period of time; and

**WHEREAS**, Developer has requested the City defer construction of the Deferred Sidewalk Infrastructure until such time as the twenty-five (25) lots identified via notations shown on the Phasing Plan, attached hereto and incorporated by reference into this Agreement (*Notated Phasing Plan, Exhibit C*), are constructed to completion (hereinafter known as “Harper Ridge Phase 1”); and

**WHEREAS**, the City has agreed to defer construction of the Deferred Sidewalk Infrastructure during construction of Harper Ridge Phase 1 and until such time as construction of Harper Ridge Phase 1 is completed, subject to the terms contained in this Agreement and approval by City Council.

**NOW, THEREFORE**, in consideration of the covenants and agreements hereinafter set forth, the City and Developer (together, “the Parties”) agree as follows:

1. **Ability to Contract:** Developer warrants that it has full ownership interest in the Property such that Developer has the legal authority and ability to enter into this Agreement and fulfill the terms contained herein.
2. **Deferred Sidewalk Infrastructure:**
  - a. Developer acknowledges and agrees that construction of all required infrastructure for Phase IIA and for Harper Ridge Phase 1, and for all other subsequent phases of the Development, including all utility, stormwater, and road improvements for the same,

as shown on the Preliminary Plat, the Phasing Plan, the City's Major Thoroughfare Plan and all other Adopted Master Plans of the City, and as otherwise required under applicable City Ordinance(s), Rule(s) and Regulation(s), must be completed by Developer before the final plat of Phase IIA and/or Harper Ridge Phase 1, and the final plat(s) of all other subsequent phases of the Development, will be issued by the City, **unless** expressly deferred or otherwise modified by way of this Agreement or by way of other written agreement of the Parties duly executed as an addendum or amendment to this Agreement.

- b. The City agrees to defer, **only** during construction of Harper Ridge Phase 1, and until such time as Harper Ridge Phase 1 construction has been completed, Developer's construction of the Deferred Sidewalk Infrastructure, which includes 1,593 Linear Feet of sidewalk at 5 foot width, as more fully identified on **Exhibit C**. The City's deferral only extends to those improvements identified herein as the Deferred Sidewalk Infrastructure (and alternatively, the Deferred Infrastructure), and shall not extend to any additional work, construction, or improvements required under the Preliminary Plat, Phasing Plan, and any other approved applicable plans.
- c. Developer expressly acknowledges and agrees that:
  - i. Nothing in this Agreement shall be construed as a waiver of the requirement that Developer complete construction of the Deferred Sidewalk Infrastructure, which is merely being deferred under this Agreement.
  - ii. This Agreement does not in any way affect, modify or otherwise relieve Developer of its duties and obligations to complete all required infrastructure of the Development in accord with the terms and provisions of the approved plans for the Development.
  - iii. Developer is required to complete the infrastructure and construction of Phase II and Harper Ridge Phase 1 of the Development regardless of the terms or conditions of this Agreement pertaining to the Deferred Sidewalk Infrastructure.
  - iv. Developer may not transfer its interest in any one or more of the lots in any phase or sub-phase of the Development subsequent to Harper Ridge Phase 1, whether such transfer be by way of assignment, sale, donation, dedication, gift, or otherwise, without first completing the engineering and construction of the Deferred Sidewalk Infrastructure, unless such sale or transfer is expressly agreed to by the Parties, in writing, and incorporated into this Agreement as a properly executed Amendment or Addendum. In the absence of any such Amendment or Addendum, Developer acknowledges that any sale or transfer of a single lot in any phase or sub-phase of the Development subsequent to Harper Ridge Phase 1 of the Development prior to Developer's completion of the engineering and construction of the Deferred Sidewalk Infrastructure is a material breach of this Agreement.
  - v. With the exception of final platting for Harper Ridge Phase 1, which will be eligible for approval of final plat upon completion of the twenty-five lots in Harper Ridge Phase 1 and prior to completion of the Deferred Sidewalk Infrastructure, the City will not approve a final plat for any phase or sub-phase of the Development until such time as Developer has completed construction of Deferred Sidewalk Infrastructure.

- d. Nothing in this Agreement shall be construed or interpreted as requiring the City to construct or pay for any of the Deferred Sidewalk Infrastructure or for any other infrastructure or construction being performed on Phase II of the Development.
  - e. Developer acknowledges that, in exchange for the City's deferment of the Deferred Sidewalk Infrastructure, Developer is required under this Agreement to provide security ("Security") to the City in the amount of **Seventy One Thousand Seven Hundred Twenty Four Dollars and Ninety Seven Cents (\$71,724.97)**, which represents the sum total of estimated cost of the Deferred Sidewalk Infrastructure ("Deferred Infrastructure Cost"), upon execution of this Agreement. The Security shall be provided to the City via a letter of credit made payable to the City, and shall then be held by the City as security for construction of the Deferred Sidewalk Infrastructure. Developer additionally acknowledges that the City will not issue any permits for Phase II of the Development until it receives the Security from Developer in accord with the provisions of this paragraph.
  - f. The Security, together with this Agreement, duly executed by all parties hereto, represents the entire security for the Deferred Sidewalk Infrastructure.
  - g. Should Developer fail to complete construction of the Deferred Sidewalk Infrastructure in its entirety by October 25, 2025, the City shall have the right to pursue any of the following remedies, at its sole discretion and determination:
    - 1. Pursuant to a written addendum or amendment to this Agreement, duly executed by the Parties, extend the Security on a month-by-month basis, the duration of which is to be determined by the City, to allow for the completion of the Deferred Infrastructure; or
    - 2. Return the Security to the Developer. (At no time will the City return the Security to anyone other than the Developer); or
    - 3. Collect upon the full amount of the Security for use by the City. Should the City elect to collect the full amount of the Security under this subparagraph, the City shall be allowed to utilize the funds from the Security, within its sole determination and discretion to do any of the following: (1) complete the Deferred Sidewalk Infrastructure; or, alternatively, (2) apply toward other infrastructure improvements within the City; or (3) apply toward a combination of the Deferred Sidewalk Infrastructure and other infrastructure improvements within the City.
3. **Easements:** Developer agrees to execute any easements and/or rights-of-way reasonably required in order for the City to perform any work it may be obligated to perform under this Agreement and in order for the City to provide future maintenance on the Property after Developer has completed its work. Said easements will be provided by Developer to the City at no cost to the City. The Parties additionally acknowledge and agree that City may need further easements and/or rights-of-way that allow for the extension of any work performed under this Agreement. The Parties agree to negotiate in good faith to allow City to acquire such further easements as become necessary from Developer. Should any easements and/or rights-of-way under this Agreement not be in use or no longer be necessary for the Parties to complete the Development, the City agrees to take the reasonably necessary steps to vacate said easements and/or rights-of-way within ninety (90) days of being notified by Developer of its desire to vacate the easements and/or rights-

of-way executed pursuant to this Agreement. The Parties agree and understand such vacation requires multiple steps, including a public hearing, a hearing and recommendation before the City's Planning and Zoning Commission, and approval by the City Council through an Ordinance.

4. **Conflict of Interest:** No salaried director, officer or employee of the City, and no member of the City Council, shall have a financial interest, direct or indirect, in this Agreement. A violation of this provision renders this Agreement null and void. Any federal regulations and applicable provisions in Section 105.450 *et seq.*, RSMo. shall not be violated.
5. **Entire Agreement:** This Agreement contains the entire Agreement between the Parties and supersedes all prior and contemporaneous written or oral agreements unless excluded herein. This Agreement may not be modified or amended other than in writing as agreed to by the Parties.
6. **Default by Developer and Termination:** If through any cause, Developer shall fail to timely and satisfactorily fulfill its obligations under this Agreement, become insolvent, or violate any of the covenants, agreements or stipulations contained in this Agreement, the City shall deliver written notice of the same to Developer and if such failure or violation is not cured within thirty days thereafter (or such longer period of time as is reasonably necessary so long as Developer begins to cure such failure or violation within such thirty-day period and thereafter diligently pursues the same to completion), the City shall thereupon have the right to terminate this Agreement by giving at least five days prior written notice of such termination, specifying the effective date thereof. If the City elects to terminate under this provision, the City shall have the right to immediately collect on the Security notwithstanding and without regard for the four-year period referenced in paragraph 2(i) of this Agreement.
7. **Default by the City and Termination:** If through any cause, the City shall fail to fulfill its obligations under this Agreement, become insolvent, or violate any of the covenants, agreements or stipulations contained in this Agreement, Developer shall deliver written notice of the same to the City, and if such failure or violation is not cured within thirty (30) days thereafter (or such longer period of time as is reasonably necessary so long as the City begins to cure such failure or violation within such thirty-day period and thereafter diligently pursues the same to completion), then Developer shall thereupon have the right to terminate this Agreement by giving at least five days prior written notice of such termination, specifying the effective date thereof. If Developer elects to terminate under this provision, Developer shall be responsible to reimburse the City for all actual costs the City incurs in completing any remaining work required under this Agreement. Termination of this Agreement shall be Developer's sole remedy for any default by the City under this Agreement.
8. **Jurisdiction and Venue:** This Agreement shall be taken and deemed to have been fully executed and made by the Parties in the State of Missouri and thus is governed by the laws of the State of Missouri for all purposes and intents. Venue under this Agreement or any disputes that come from this Agreement shall be in the Circuit Court of Greene County, Missouri.
9. **Dispute:** In the event the City is the prevailing party in any litigation arising out of or relating to this Agreement, the City shall be entitled to recover from the Developer all reasonable attorneys' fees and expenses it incurs in connection with enforcing its rights under this Agreement.

10. **Liability:** Nothing in this Agreement shall be construed to create any liability on the part of the City or on behalf of the City for any direct, special, indirect, liquidated, or consequential damages. Developer agrees that the type of work to be performed under this Agreement will inherently cause damage to the Property, and Developer agrees that the City shall not be liable for any damages caused to the Property outside of that necessary to complete the public improvements contemplated by this Agreement.
11. **Independent Contractor:** The Parties to this Agreement are separate and independent from each other. This Agreement shall not be construed as creating any type of joint venture or partnership between the Parties.
12. **Execution:** The Parties agree that signatures transmitted by facsimile or scanned and emailed shall have the legal effect of original signatures. In addition to facsimile or scanned and email signatures, this Agreement may be executed by the Parties in accordance with the applicable version of the Uniform Electronic Transactions Act (“UETA”) and the Electronic Signatures in Global and National Commerce Act (“ESIGN”). The Parties hereto agree to conduct transactions by electronic means and hereby affirmatively consent to use electronic records to memorialize and execute this Agreement and any alterations thereto. At the request of any party, the Parties shall promptly exchange executed original counterparts of this Agreement or any amendment.
13. **Survival:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns as provided in this Agreement. The Parties acknowledge and agree that the rights and benefits afforded Developer under this Agreement shall run with the Property and shall be enforceable by and for the benefit of any and all successor owners of the Property without further consideration to or consent by the City. The Parties acknowledge and agree that at the request of any Party, a memorandum of this Agreement shall be duly executed by the Parties and recorded in the real estate records of Greene County, Missouri; provided, however, this Agreement shall be binding and enforceable as between the City and any current or future owner of the Property without recording thereof.
14. **Headings:** The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.
15. **Whereas Clauses:** The “Whereas” clauses stated above are incorporated herein by reference.
16. **Assignment:** This Agreement may not be assigned by any Party without the prior written consent of the other Parties.
17. **Sovereign Immunity:** In no event shall any language or requirement in this Agreement be construed as or constitute a waiver or limitation of the City’s defenses regarding sovereign immunity, governmental immunity, or official immunity under federal or state constitutions, statutes, and/or laws.
18. **Severability Clause:** A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section, or part, of this Agreement shall not affect the validity of the remaining parts to this Agreement.



**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the day and year first above written.

**DEVELOPER, BY:**

Bester Properties, LLC

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

**CITY OF REPUBLIC, BY:**

David Cameron, City Administrator

\_\_\_\_\_  
**Approved as to Finance/Budget:**

\_\_\_\_\_  
Bob Ford, Finance Director

**Approved as to Form:**

\_\_\_\_\_  
Megan McCullough, City Attorney

**Attest:**

\_\_\_\_\_  
Laura Burbridge, City Clerk

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