#### INFRASTRUCTURE DEVELOPMENT AGREEMENT

THIS INFRASTRUCTURE DEVELOPER AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_\_, 2020, by and between the City of Republic Missouri ("City") and Turner Residential Holding, LLC, ("Developer"). Collectively, City and Turner are referred to as the "Parties" in this Agreement.

### WITNESSETH:

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

WHEREAS, Developer is a Missouri Limited Liability Company, and

WHEREAS, Developer is currently the owner of real property in the City of Republic commonly located at the at 7012 West Farm Road 170 and comprising approximately 48.5 acres, legally described in Exhibit A attached hereto and incorporated by reference into this Agreement, ("Property), and is in the process of developing a residential subdivision on the Property, and

WHEREAS, in Ordinance 18-31, passed by Council on June 26, 2018, Developer's Property was rezoned from Agricultural (AG) to High Density Single Family Residential (R1-H); and

WHEREAS, in Resolution 19-R-10, passed by Council on April 16, 2019, Developer's Preliminary Plat for the Property known as the A'Vila Residential Subdivision (A'Vila)<sup>1</sup> consisting of approximately 139 lots was approved; and

WHEREAS, Developer has indicated its desire to phase the development of A'Vila by submitting Phase 1 of A'Vila to the City which consists of approximately 27 lots, described in Exhibit B attached hereto and incorporated by reference into this Agreement; and

WHEREAS, as indicated by the Preliminary Plat for A'Vila, and required under City Ordinances and the Transportation Plan, certain improvements must be completed upon the Property; and

WHEREAS, Developer has requested the City defer the required infrastructure construction by Developer of Talavera Avenue and a 10" water main extension along the northern property line adjacent to West Farm Road 170 from the western to the eastern boundary of the Property during Phase 1 of A'Vila, described in Exhibit C attached hereto and incorporated by reference into this Agreement ("Deferred Infrastructure"); and

<sup>&</sup>lt;sup>1</sup> The Developer has indicated its intention to rename the subdivision from A'Vila to Oak Hills. For continuity with prior Ordinances and Resolutions, this Agreement will continue to use the name A'Vila for the subdivision.

**WHEREAS**, the City has agreed to allow Developer to defer the above-mentioned Talavera Avenue and 10" water line infrastructure construction during Phase 1 of Avila subject to the terms contained in this Agreement and approval by Council.

**NOW, THEREFORE,** in consideration of the covenants and agreements hereinafter set forth, the City and Developer agree as follows:

- 1. <u>Ability to Contract:</u> Developer warranties that it has the ownership interest in the Property required to enter into this Agreement and fulfill the terms contained herein.
- 2. Infrastructure:
  - a. Developer agrees all required infrastructure for the Property as required under City Ordinances, Rules and Regulations, the Transportation Plan, and shown the Preliminary Plat must be completed before any final plat is issued by the City unless modified by this Agreement or any subsequent Agreement.
  - b. City agrees to defer, during Phase 1 only of A'Vila, the requirement for Developer to construct the infrastructure of Talavera Avenue and a 10" water main extension along the northern property line adjacent to West Farm Road 170 from the western to the eastern boundary of the Property, described in Exhibit C subject to the terms of this Agreement.
  - c. Developer agrees this deferral of infrastructure in Paragraph 2(b) is only a deferral and not a waiver of the construction during Phase 1 subject to this Agreement. All required infrastructure of A'Vila still must be completed by Developer for A'Vila.
  - d. Nothing in this Agreement shall be construed as requiring the City to construct or pay for any of the Delayed Infrastructure or any infrastructure on the Property.
  - e. With the understanding between the Parties the infrastructure in Paragraph 2(b) is just a deferral of Developer's requirement to construct the Delayed Infrastructure during Phase 1 of A'Vila, the Parties agree the proportional share of the cost of the Deferred Infrastructure in Paragraph 2(b) shall be determined and as follows:
    - The A'Vila subdivision, as shown on the Preliminary Plat, will consist of 139 lots. Phase 1 of A'Vila, as shown in Exhibit B, will consist of 27 lots. Therefore, the proportional share of lots in Phase 1 will be 19.4% of the total lots of A'Vila as contained in the Preliminary Plat.
    - ii. Based upon data currently available and the estimated cost to construct the improvements at the time this Agreement is executed for the construction of Talavera Avenue adjacent to the east property line, running from northern to southern property lines is \$602,062.23. Therefore, 19.4% of this deferred infrastructure would be \$116,800.70.
    - iii. Based upon data currently available and the estimated cost to construct the improvements at the time this Agreement is executed for the construction of the 10" water main extension along northern property line/adjacent to West Farm Road 170 ROW, from western to eastern boundary of Property

is \$87,000.00. Therefore, 19.4% of this deferred infrastructure would be \$16,878.00.

- iv. The Parties agree the above costs are just estimated to determine the proportional cost of the improvements under this Agreement and do not bind either Party to those costs for the final construction of the Deferred Infrastructure in Paragraph 2(b) or any future agreements.
- f. Developer agrees to secure through a letter of credit or other acceptable security ("Surety") as approved by the City and as payable to the City, the proportional amounts of the Deferred Infrastructure contained in Paragraph 2(d), that being \$116,800.70 for Talavera Avenue and \$16,878.00 for the water main extension to be held by the City as security for the construction of these Delayed Improvements before any permits are issued for A'Vila.
- g. The Surety shall be valid for a minimum period of four years with an additional redemption period of six months for the City to initiate, if necessary, the collection on the Surety.
- h. Once the Deferred Infrastructure secured by this Agreement are completed in their entirety as determined by the City, not just the proportional share, and accepted by the City after inspection, the Surety shall be returned to Developer.
- i. Should Developer fail to complete all the Deferred Infrastructure secured by this Agreement, not just the proportional share, within four years after the date of execution of this Agreement, the City shall have, at its sole decision the option to either:
  - i. Pursuant to an amended agreement, extend the Surety on a year-by-year basis to allow for the completion of the Deferred Infrastructure subject to this Agreement; or
  - ii. Return the Surety to the Developer. At no time will the City return the Surety to anyone other than the Developer; or
  - iii. Collect the full amount of the Surety for use by the City. Should the City elect to collect the full amount the Surety, the City shall be allowed to utilize the funds from the Surety to either complete the Deferred Infrastructure on the Property or use the funds for other infrastructure improvements in the City or a combination thereof as determined by the City.
- 3. <u>Easements:</u> Developer agrees to execute any easements and/or rights-of-way reasonably required by City in order to perform the work contemplated by this Agreement and in order for City to provide future maintenance on said work on the Property after the work is completed. Said easements will be provided by Developer to City at no cost and shall be made before the City commences work under this Agreement. City and Developer agree that City may need further easements and/or rights-of-way that allow for the extension of the Public Improvements contained in this Agreement. City and Developer agree to

negotiate in good faith to allow City to acquire further easements from Developer to extend the Public Improvements to adjoining properties in the future.

- 4. <u>Conflict of Interest:</u> No salaried 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 void. Any federal regulations and applicable provisions in Section 105.450 et seq., RSMo. shall not be violated.
- 5. <u>Entire Agreement:</u> This Agreement contains the entire agreement between the Parties and supersedes all prior and contemporaneous written or oral agreements. This Agreement may not be modified or amended other than in writing as agreed to by the Parties.
- 6. <u>Default by Developer and Termination:</u> If through any cause, the Developer shall fail to fulfill in timely and proper manner Developer's obligations under this Agreement, become insolvent, or if Developer shall violate any of the covenants, agreements or stipulations of this Agreement, the City shall deliver written notice of the same to Developer and if such failure or violation is not cured within ten 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 ten-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 City elects to terminate under this provision, the City shall have to collect on the Surety as contained in Paragraph 2(i) even if the four-years have not occurred as contained in the Paragraph.
- 7. <u>Default by City and Termination:</u> If through any cause the City shall fail to fulfill in timely and proper manner City's obligations under this Agreement, become insolvent, or if City shall violate any of the covenants, agreements or stipulations of this Agreement, the Developer shall deliver written notice of the same to City and if such failure or violation is not cured within ten days thereafter (or such longer period of time as is reasonably necessary so long as City begins to cure such failure or violation within such ten-day period and thereafter diligently pursues the same to completion), the 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 City for all of actual costs in the completion of the Delayed Improvements. Termination of this Agreement shall be the sole remedy for any default by City under this Agreement.
- 8. <u>Jurisdiction and Venue</u>: This Agreement shall be taken and deemed to have been fully executed and made by the Parties herein and governed by the laws of the State of Missouri for all purposes and intents. Venue under this Agreement or any disputes that come from it shall be in the Circuit Court of Greene County, Missouri.
- 9. <u>Dispute:</u> In the event that the City is the prevailing Party in any litigation arising out of or relating to this Agreement, the City shall be entitled to all reasonable attorneys' fees and expenses incurred.

- 10. <u>Liability</u>: Nothing in this Agreement shall be construed to create any liability 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 cause damage to Developer's 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 Infrastructure contemplated by this Agreement.
- 11. <u>Independent Contractor</u>: 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. <u>Execution</u>: 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 emailed 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 either Party, the Parties shall promptly exchange executed original counterparts of this Agreement or any amendment.
- 13. <u>Survival</u>: 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 either 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. <u>Headings</u>: The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.
- 15. <u>Whereas Clauses:</u> The "Whereas" clauses stated above are incorporated herein by reference.
- 16. <u>Assignment:</u> This Agreement may not be assigned by any Party without the prior written consent of the other Parties.
- 17. <u>Sovereign Immunity:</u> In no event shall any language or requirement in this Agreement be construed as or constitute a waiver or limitation of City's defenses with regard to sovereign immunity, governmental immunity, or official immunity under federal or state constitutions, statutes, and/or laws.

- 18. <u>Severability Clause:</u> 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.
- 19. <u>Funds Deposit</u>: Developer agrees that any funds remitted to City under this Agreement may be comingled by the City with other funds deposited by the City from other sources. Further, any funds remitted by the District will gain no interest and the City shall determine where said funds are to be deposited.
- 20. <u>Contingent Upon Funds and Approval:</u> This Agreement is contingent upon the City having sufficient funds available for the subject of this Agreement. Developer shall have no right of action against City in the event City is unable to perform its obligations under this Agreement as a result of insufficient funds. Further, this Agreement is subject to and conditioned upon approval by ordinance by the City Council.
- 21. <u>Contract Documents:</u> The Agreement shall consist of the following:
  - a. This Agreement;
  - b. Exhibit A Legal description;
  - c. Exhibit B A'Vila Phase 1;
  - d. Exhibit C Delayed infrastructure secured.
- 22. <u>Notices:</u> Any notice, request or demand provided for in this Agreement shall be deemed to have been given when the same shall have been personally delivered to the following offices or deposited in the United States Mail, Registered or Certified, with postage thereon prepaid as follows:

to the City:	City of Republic, Missouri Attn: City Administrator 213 North Main Street Republic, Missouri 65738
to Developer:	Turner Residential Holding, LLC ATTN: Shawn Turner 328 South Ave Springfield, MO 65806

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

## **DEVELOPER/OWNER**

Turner Residential Holding, LLC

(Signature)

(Printed Name)

(Title)

STATE OF MISSOURI )

)ss. COUNTY OF

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me personally appeared \_\_\_\_\_\_ (name), to me personally known, who being duly sworn, did say that he/she is the \_\_\_\_\_\_ (title) of <u>Turner Residential Holding, LLC</u>, and that the said instrument was signed on behalf of said corporation by authority of its board of directors, and \_\_\_\_\_\_ (name) acknowledged said instrument to be the free act and deed of said corporation, and that said corporation has no corporate seal.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in \_\_\_\_\_\_, the day and year first above written.

Notary Public

Print Name

My Commission expires: \_\_\_\_\_

(Notary Seal)

## CITY OF REPUBLIC

David Cameron, City Administrator

Attest: Laura Burbridge, City Clerk

Approved as to Form:

Scott Ison, City Attorney

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## Exhibit A

# SOURCE OF DESCRIPTION: BOOK 2004 AT PAGE 057458-04. AND BOOK 2010 AT PAGE 044604-10

TRACT A:

THAT CERTAIN PARCEL OR TRACT OF LAND BEING A PART OF THE NORTHEAST QUARTER (NE1/4) IN SECTION 15, TOWNSHIP 28 NORTH, RANGE 23 WEST, IN GREENE COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AS AN EXISTING IRON PIN AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER (NE1/4) OF SAID NE1/4; THENCE N88'20'02"W, ALONG THE NORTH LINE OF SAID NE1/4 OF THE NE1/4, A DISTANCE OF 160.00 FEET TO AN IRON PIN SET AT THE NORTHWEST CORNER OF TRACT 2 AS DESCRIBED IN BOOK 2004 AT PAGE 057458-04 IN THE GREENE COUNTY RECORDER'S OFFICE; THENCE N88'20'02"W, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 920.55 FEET TO AN IRON PIN SET FOR A POINT OF BEGINNING; THENCE S01'54'17"W, A DISTANCE OF 1331.90 FEET TO AN IRON PIN SET ON THE SOUTH LINE OF SAID NE1/4 OF THE NE1/4; THENCE N88'18'57"W, ALONG SAID SOUTH LINE, A DISTANCE OF 254.05 FEET TO AN EXISTING IRON PIN AT THE SOUTHEAST CORNER OF THE NORTHWEST OUARTER (NW1/4) OF SAID NE1/4; THENCE N88'09'36"W, ALONG THE SOUTH LINE OF SAID NW1/4 OF THE NE1/4, A DISTANCE OF 1334.60 FEET TO AN EXISTING IRON PIN AT THE SOUTHWEST CORNER OF SAID NW1/4 OF THE NE1/4, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 17 IN OLDE TOWN AT THE KERR PLACE, A RECORDED SUBDIVISION IN GREENE COUNTY, MISSOURI; THENCE N01'52'42"E, ALONG THE WEST LINE OF SAID NW1/4 OF THE NE1/4, ALSO BEING THE EAST LINE OF SAID OLDE TOWN AT THE KERR PLACE, A DISTANCE OF 1327.77 FEET TO AN EXISTING IRON PIN AT THE NORTHWEST CORNER OF SAID NW1/4 OF THE NE1/4, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID OLDE TOWN AT THE KERR PLACE; THENCE S88'20'02"E, ALONG THE NORTH LINE OF SAID NW1/4 OF THE NE1/4 AND THE NORTH LINE OF SAID NE1/4 OF THE NE1/4. A DISTANCE OF 1589.28 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINS 48.5195 ACRES (MORE OR LESS) AND IS SUBJECT TO ANY EASEMENTS, RIGHTS-OF-WAY, AND RESTRICTIONS OF RECORD.



