

DEVELOPER AGREEMENT

THIS DEVELOPER AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2020, by and between the City of Republic Missouri (“City”), Rankin Development, LLC (“Rankin”), and Drury University (“Drury”). Collectively, City, Rankin, and Drury 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, Rankin is a Missouri Limited Liability Company, and

WHEREAS, Drury is a Missouri University, and

WHEREAS, Drury is currently the owner of real property in the City of Republic commonly referred to as the Garton Business Park, legally described in Exhibit A attached hereto and incorporated by reference into this Agreement, (“Property”), and is in the process of developing an industrial area on the Property in order to facilitate new commercial development, and

WHEREAS, the City has previously participated in the development of the Property which was memorialized in the First Development Agreement (“First Agreement”) which was entered into on or about May 25, 2019, in Ordinance 17-22 and attached hereto and incorporated by reference into this Agreement as Exhibit B, and

WHEREAS, the Parties have recognized the opportunity for additional development on the Property to facility future growth for the City, and

WHEREAS, in order for Rankin and Drury to fully develop the Property, certain public improvements need to be constructed on the Property, and

WHEREAS, City recognizes the need to encourage development in the City of Republic and desires to participate and facilitate the development of Property to the extent the City has available resources, and

WHEREAS, the purpose of this Agreement is to memorialize Phase 2 of the Garton Business Park including the looping of the water main and road improvements as will be defined in the Final Plans.

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

1. Ability to Contract: Rankin and Drury warranty they have the ownership interest in the Property required to enter into this Agreement and fulfill the terms contained herein.

2. Public Improvements:

- a. Work under this Agreement: In exchange for Rankin's and Drury's promises herein, the City agrees that it shall provide for, arrange, construct, complete, plan, or coordinate the public improvements ("Public Improvements") as described in this Agreement.
- b. Construction Period and Cost Estimates: The Parties agree that the City's construction of the Public Improvements cannot be determined until completed engineering plans are delivered to City. Drury agrees to provide complete signed and sealed engineering drawings to City within 30 days after the execution of this Agreement. City shall then have 10 business days to review the completed engineering drawings and respond to Drury with any questions, suggestions, and/or changes. Once all the questions, suggestions and/or changes have been fully addressed and agreed upon by the Parties ("Final Plans"), a time-line as to the completion of this Agreement ("Construction Period"), along with an estimate of the construction costs for the Public Improvements ("Estimated Costs"), shall be set by a written amendment to this Agreement signed by the Parties ("Amendment"). If this written Amendment to this Agreement defining the Construction Period and containing the Estimated Costs is not entered into by the Parties within 180 days after the execution of the Agreement, this Agreement shall terminate without liability on any Party. Any Estimated Costs provided by City to Rankin and Drury shall not be binding on the Parties. The actual costs incurred by City in Paragraph 3 shall be the amount Rankin and Drury will reimburse to City under this Agreement. Nothing contained herein shall be construed to restrict the City's right to construct the Public Improvements at any time prior to the expiration of the Construction Period or continue constructing the Public Improvements after the Construction Period so long as the City is making substantial and continuing progress toward completion of the Public Improvements. Further, the Construction Period shall be extended as necessary to accommodate delayed progress of the Public Improvements due to changes in work, any act or omissions of Rankin or Drury or its employees, agents, or representatives that are contrary to this Agreement or any other cause that is not reasonably foreseen or beyond the control of City, its subcontractors, or suppliers including, but not limited to acts of God, acts of another government authority, natural or manmade disaster, delay in the transportation or shortages of materials or equipment, abnormal weather conditions or labor disputes.
- c. Road Improvements: On or before the expiration of the Construction Period, the City hereby agrees to make roadway improvements and related infrastructure improvements to the Property according to the Final Plans ("Road Improvements"). All Road Improvements will be located on the Property. The City hereby represents and warrants that it has the power and authority to make the Road Improvements.

- d. Utilities: On or before the expiration of the Construction Period and as part of the Public Improvements, the City hereby agrees to assist in the planning, coordination, or installation of the following utility improvements ("Utility Improvements"):
- i. Water. City shall plan, coordinate, and install all necessary water lines, systems and facilities for the City to provide potable water service to the Property having sufficient capacity to meet the anticipated demand for uses permitted under the then current Property zoning classification including the looping of any water system as deemed necessary by the City. The water main shall be determined in the Final Plans. The water main on the Property shall be located within the utility easements granted by Rankin and/or Drury pursuant to the Easement Section in this Agreement. Said water main shall be installed concurrently with the construction of the Road Improvements and the City agrees to provide said water service to the Property no later than the expiration of the Construction Period. Rankin, Drury, and the City shall work together to plan and coordinate the installation of such water service infrastructure, including, without limitation, determining the location(s) on the Property that future users shall tap into said water main.
 - ii. Sanitary Sewer: Not Applicable.
 - iii. Storm Water System: City shall plan, coordinate and install a storm water system for the Property consisting of curb and gutter, and the installation of storm water pipe under the Road Improvements which storm water system shall be determined in the Final Plans. The storm water system on the Property shall be located within utility easements granted by Rankin and/or Drury pursuant to the Easement Section in this Agreement. In accordance with the Final Plans and the Addendum, a storm water pipe will be installed by City during the Construction Period on the north side of the right-of-way along Highway 160 to the now existing pond on the Adams property. Said storm water system and pipe shall be installed concurrently with the construction of the Road Improvements and the City agrees to provide said storm water system to the Property no later than the expiration of the Construction Period. Rankin, Drury, and the City shall work together to plan and coordinate the installation of such storm water system infrastructure, including, without limitation, determining the location(s) on the Property that future users shall tap into said storm water system.
 - iv. Electricity: The Parties shall work together in the installation planning and coordination with the appropriate electric utility service provider for all necessary electrical lines, systems and facilities to provide electrical power to the Property with sufficient capacity to provide power for customary uses permitted under the current Property zoning classification. The Parties shall work together with the electric utility service provider in the planning and

coordination of the installation of such utility service infrastructure, including, without limitation, determining appropriate location(s) on the Property that future users may tap into said electric utility lines. Installation of the electric infrastructure shall be done by the appropriate electric utility service provider. The Parties agree that neither City nor Rankin nor Drury can cause the appropriate electric utility service provider to install or provide said utility services. The Parties agree that electric utility services may not be completed on or before the expiration of the Construction Period and the same shall not be a default by the City under this Agreement.

- v. Gas: Not Applicable.
- vi. Telecommunication: The Parties shall work together in the installation planning and coordination with the appropriate telecommunication service provider for all necessary telecommunication systems and facilities to provide telecommunication service to the Property with sufficient capacity to provide telecommunications for customary uses permitted under the current Property zoning classification. The Parties shall work together with the telecommunication utility service provider in the planning and coordination of the installation of such utility service infrastructure, including, without limitation, determining appropriate location(s) on the Property that future users may tap into said telecommunication lines. Installation of the telecommunication infrastructure shall be done by the appropriate telecommunication utility service provider. The Parties agree that neither City nor Rankin nor Drury can cause the appropriate telecommunication utility service provider to install or provide said utility services. The Parties agree that telecommunication services may not be completed on or before the expiration of the Construction Period and the same shall not be a default by the City under this Agreement.
- e. Work Performed: City will be the sole judge of the work needed to be performed to complete this Agreement, including but not limited to, the work to be performed, the contractors or subcontractors hired to do the work, the engineer hired, the construction methods used, the location of the work, equipment used, the quality of the work, and the selection of the materials and supplies to be used.
- f. Site Access: Rankin and Drury, and its representatives shall have access at all times to the work site and shall provide sufficient competent personnel to visit and inspect the work site during the course of this Agreement to determine the work and manner of it being performed. City, its workers, subcontractors, suppliers and representatives shall have access at all times to the work site.

3. Costs of the Public Improvements:

- a. Payments:

- i. Drury shall be responsible for all costs for the engineering plans and/or construction drawings for the Public Improvements in this Agreement. Once Drury receives the final invoice from their engineer for the water improvements under this Agreement, it shall submit to the City the final invoice along with any additional documentation required by the City as necessary to comply with all applicable local, state, and federal laws. Within 60 days after receiving the final invoice and any additional documentation, the City will reimburse Drury for one-half of the engineering costs of the water line up to a maximum of \$_____. Any engineering plans and/or construction drawings are subject to rejection, revision, or approval by City as reasonably necessary, in the City's opinion, to complete the Public Improvements in this Agreement.
- ii. City will initially pay for the cost of the Road, Water, and Storm Water Improvements, subject to this Agreement. Although City will initially pay for the Public Improvements under this Agreement, Drury agrees to reimburse City for its actual costs of the Public Improvements to the road as outlined in this Agreement. Drury agrees to reimburse City for its actual costs for materials for the Public Improvements to the Water and Storm Water Improvements.
- iii. City will invoice Drury once materials have been purchased and/or work has started under this Agreement on or about the 15th day of every month for the actual costs incurred by City for the materials expense for the Water and Storm Water Public Improvements and the actual costs incurred by the City for the Public Improvements to the Road including, but not limited to materials, labor of non-City employees (labor of City Employees shall be reimbursed by Drury to City under Paragraph 3(a)(iv)) but including contractor and subcontractors, equipment and tool rental, water, utilities, transportation, taxes, local, state, and federal public works laws and regulations and all other services and facilities necessary for the execution and completion of the Public Improvements to the Road pursuant to this Agreement. Drury shall have twenty days following receipt of any such invoice to obtain the reasonable approval of such invoice from its engineer, and twenty days thereafter to pay the City such approved invoice. Lien waivers executed by any non-City payee shall be delivered to Drury at the same time Drury pays City in accordance with the above. If Drury does not pay any invoice from City to Drury in accordance with the above, City has the right to stop all work under this Agreement. Drury will be allowed to keep a twenty percent retainage on all material billed by City to Drury. Said retainage will be noted by City in invoices sent to Drury and tracked by City. Said retainage will be completely payable by Drury to City after the

Public Improvements are installed by City and after invoiced by City and payable under this Paragraph.

- iv. City agrees to defer collecting from Drury any remaining cost incurred by the City for the Public Improvements, including but not limited to, labor costs for City employees directly related to the Public Improvements and the reasonable cost of the use of City-owned equipment directly related to the Public Improvements until any future lots on the Property are sold. Should lots 4 or 5 be sold and the proceeds used as the basis for the contingency under Paragraph 5, that lot sale shall not be used as a trigger for reimbursement under this Paragraph 3(a)(iv). Should any of these future lots on the Property be transferred, leased or otherwise developed for use without a cash transaction taking place at fair market value of the land, then the provision for reimbursement shall be triggered by such use of the property and based upon a determination of the fair market value of the property. Additionally, if lots and/or land abutting the cul de sac should be sold, transferred, leased or otherwise developed for use then the provision for reimbursement shall be triggered by such use of the cul de sac property based upon the fair market value of the land being put to use. Should the fair market value not be sufficient to reimburse the City, then the next transaction involving the sale, transfer, lease or other development of the land for use, such action shall then result in payment to the City until the City is fully reimbursed. Should Drury default under this Agreement, the full cost of the Public Improvements, including but not limited to, labor costs for City employees directly related to the Public Improvements and the reasonable cost of the use of City owned equipment directly related to the Public Improvements will become payable by Drury to City
- v. City will not invoice or attempt to collect any payment from Drury or Rankin under this Agreement for the labor costs of City's administrative personnel which include the City Administrator, Public Works Director, human resource personnel or finance personnel. Further City agrees not to bill Rankin or Drury under this Agreement for labor costs of the City Attorney unless allowed under Paragraph 14.
- vi. City will use the current Purchasing Policy approved by the City Council and associated Administrative Policies in order to facilitate request for proposals, request for qualifications, request for bids, or written quotes to determine the lowest price qualified provider of materials and/or services. City will abide by all local, state, and federal laws and regulations including those regarding public works projects. Rankin and Drury will be provided by City with all bids and/or quotes once they are opened in accordance with applicable law. Once the bids and/or quotes are provided to Rankin and

Drury, they will have three business days to provide City in writing with any legally justifiable reason why the lowest bidder pursuant to the current Purchasing Policy approved by the City Council or associated Administrative Policies would not be acceptable. If Rankin and Drury provide City with a legally justifiable reason in writing why the lowest bidder is not the most responsible or responsive bidder, City will move to the next lowest responsible bidder as determined by the Parties.

- b. Funds Deposits: Rankin and Drury agree 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 Rankin and Drury will gain no interest and the City shall determine where said funds are to be deposited.
4. First Agreement: Unless specifically set forth herein, this Agreement shall not be construed to relieve any party of any obligations of the Parties under the First Agreement entered into on or about May 25, 2019, in Ordinance 17-22.
5. Contingent Upon Sale: This Agreement is contingent upon Drury selling lot 4 or 5 in order to fund the Public Improvements contemplated in Paragraph 3(a)(iii) under this Agreement. Should lots 4 or 5 not be sold by Drury within 180 days after the execution of the Agreement or the Amendment, whichever is later, this Agreement may be terminated by any Party without liability on any Party by providing notice to any other Party as provided for in this Agreement.
6. Ownership in Work: Rankin and Drury will have and will gain no ownership or other interest in Public Improvements in this Agreement.
7. Easements: Rankin and Drury agree 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 Rankin and Drury to City at no cost and shall be made before the City commences work under this Agreement. The Parties 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. The Parties agree to negotiate in good faith to allow City to acquire further easements from Rankin and Drury to extend the Public Improvements to adjoining properties in the future.
8. Conflict of Interest: 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.
9. Entire Agreement: 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.
10. Default by Developer and Termination: If through any cause, Rankin or Drury shall fail to fulfill in timely and proper manner their obligations under this Agreement, become

insolvent, or if they shall violate any of the covenants, agreements or stipulations of this Agreement, the City shall deliver written notice of the same to Rankin and Drury 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 Rankin and Drury 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 City elects to terminate under this provision, Rankin and Drury shall be responsible to City for all of City's actual costs in the Public Improvements up to and including the date of termination.

11. Default by City and Termination: 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 Rankin and Drury shall deliver written notice of the same to City 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 City begins to cure such failure or violation within such thirty-day period and thereafter diligently pursues the same to completion), then Rankin and Drury 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 Rankin and Drury elects to terminate under this provision, Drury shall be responsible to City for all of City's actual costs in the Public Improvements up to and including the date of termination. Termination of this Agreement shall be the sole remedy for any default by City under this Agreement.
12. Jurisdiction and Venue: 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.
13. 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 all reasonable attorneys' fees and expenses incurred.
14. Liability: 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. Rankin and Drury agrees that the type of work to be performed under this Agreement will cause damage to the Property and Rankin and Drury agree 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.
15. 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.

16. 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.
17. 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 Rankin and Drury 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.
18. Headings: The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.
19. Whereas Clauses: The “Whereas” clauses stated above are incorporated herein by reference.
20. Assignment: This Agreement may not be assigned by any party without the prior written consent of the other parties.
21. Sovereign Immunity: In no event shall any language or requirement in this Agreement be construed as or constitute a waiver or limitation of City’s defenses regarding sovereign immunity, governmental immunity, or official immunity under federal or state constitutions, statutes, and/or laws.
22. 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.
23. Contingent Upon Funds and Approval: This Agreement is contingent upon the City having sufficient funds available for the subject of this Agreement. Rankin or Drury 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.
24. Contract Documents: The Agreement shall consist of the following:
 - a. This Agreement;
 - b. First Agreement;

- c. Exhibit A – Legal description;
 - d. Exhibit B – Final Plans;
 - e. Any properly executed amendments.
25. Notices: 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 when notice is received after being 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 Drury: Drury University
 Attn: Aaron Jones
 900 North Benton Avenue
 Springfield, MO 65802

To Rankin: Thomas B. Rankin, Managing Member
 Rankin Development, LLC
 2808 South Ingram Mill, A100
 Springfield MO 65804

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

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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 Drury University, 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)

Drury University

(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 Rankin Development, LLC, 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)

Rankin Development, LLC

(Signature)

(Printed Name)

(Title)

CITY OF REPUBLIC

David Cameron, City Administrator

Attest: Laura Burbridge, City Clerk

Approved as to Form:

Scott Ison, City Attorney

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