

INFRASTRUCTURE DEVELOPMENT AGREEMENT

THIS INFRASTRUCTURE DEVELOPER AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2021, by and between the City of Republic Missouri (“City”) and **Turner Residential Holding, LLC**, (“Developer”). City and Developer are sometimes referred to herein individually as the “Party” or collectively as the “Parties.”

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 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”)¹ consisting of approximately 139 lots was approved; and

WHEREAS, in Ordinance 20-23, passed by Council on June 2, 2020, a delayed infrastructure agreement was approved by Council, but the Parties never executed that agreement due to Developer changing the infrastructure on the Property; and

WHEREAS, in Resolution 21-R-09, passed by Council on January 19, 2021, Developer’s Preliminary Plat for the Property known as the Oak Hills Residential Subdivision (“Oak Hills”) consisting of approximately 135 lots was approved; and

WHEREAS, Developer has indicated its desire to phase the development of Oak Hills by submitting Phase 1 of Oak Hills 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 Oak Hills, and required under City Ordinances and the Transportation Plan, certain improvements must be completed upon the Property; and

¹ The Developer has renamed the subdivision from A’Vila to Oak Hills. In this Agreement, A’Vila and Oak Hills refer to the same Property.

WHEREAS, Developer has requested the City defer the required infrastructure construction by Developer of Leon Avenue and a 10” water main extension along the northern property line adjacent to West Farm Road 170 from the existing water main nearest the western boundary of the Property to the eastern boundary of the Property during Phase 1 of Oak Hills, described in Exhibit B attached hereto and incorporated by reference into this Agreement (“Deferred Infrastructure”); and

WHEREAS, the City has agreed to allow Developer to defer the above-mentioned Leon Avenue and 10” water line infrastructure construction during Phase 1 of Oak Hills 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. Ability to Contract: Developer warrants 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 or addendum.
 - b. City agrees to defer, during Phase 1 only of Oak Hills, the requirement for Developer to construct the infrastructure of Leon Avenue and a 10” water main extension along the northern property line adjacent to West Farm Road 170 from the existing water main nearest the western boundary of the Property to the eastern boundary of the Property, described in Exhibit B 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 Oak Hills still must be completed by Developer for Oak Hills.
 - 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 Oak Hills, the Parties agree to the proportional share of the cost of the Deferred Infrastructure in Paragraph 2(b) shall be determined and as follows:
 - i. The Oak Hills subdivision, as shown on the Preliminary Plat, will consist of 135 lots. Phase 1 of Oak Hills, as shown in Exhibit B, will consist of 27 lots. Therefore, the proportional share of lots in Phase 1 will be 20% of the total lots of Oak Hills 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 Leon Avenue, running from northern to southern property lines, is \$665,671.81. Therefore, 20% of this deferred infrastructure would be \$133,134.36.
- 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, 20% of this deferred infrastructure would be \$17,400.00.
- 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 \$133,134.36 for Leon Avenue and \$17,400.00 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 Oak Hills.
- 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 of 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. Easements: 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. 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.
5. 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.
6. Default by Developer and Termination: 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. 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 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. 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.
9. Dispute: 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. 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. 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. 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 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. 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 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. Headings: The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.

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 Turner Residential Holding, 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)

CITY OF REPUBLIC

David Cameron, City Administrator

Attest: Laura Burbridge, City Clerk

Approved as to Form:

Scott Ison, City Attorney

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