

## **DEVELOPER AGREEMENT**

**THIS DEVELOPER AGREEMENT** (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Republic Missouri (“City”) and White Shirts, L.L.C. (“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 or has a valid contract to purchase real property in the City of Republic located at 1355 E US Highway 60 (PARID: 1716300016), legally described in Exhibit A attached hereto and incorporated by reference into this Agreement, (“Property”), and is in the process of developing a new commercial retail area on the Property in order to facilitate new retail development, and

**WHEREAS**, the Parties have recognized the opportunity for development on the Property to facilitate future growth in the City, and

**WHEREAS**, in order for Developer 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 the Parties respective responsibilities for public improvements on the Property in order to develop the Property as will be defined in the Final Plans.

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

1. Ability to Contract: Developer 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 Developer’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. Developer 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 the Developer 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 Developer shall not be binding on the Parties. The actual costs incurred by City in Paragraph 3 shall be the amount Developer 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 Developer 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 a 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 and as part of the Public Improvements, 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 Public Improvements: 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 Developer 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. The City and Developer 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 Public Improvements: If determined by the Parties after the Final Plans are received and provided for in the Amendment, the Parties shall work together in the installation planning and coordination of a sanitary sewer system for the Property which sanitary sewer system shall be determined in the Final Plans. The sanitary sewer system on the Property shall be located within utility easements granted by Developer pursuant to the Easement Section in this Agreement. Said sanitary sewer system shall be installed concurrently with the construction of the Road Improvements and the City agrees to provide said sanitary sewer system to the Property no later than the expiration of the Construction Period. The City and Developer shall work together to plan and coordinate the installation of such sanitary sewer system infrastructure, including, without limitation, determining the location(s) on the Property that future users shall tap into said sanitary sewer system.
- iii. Storm Water Public Improvements: If determined by the Parties after the Final Plans are received and provided for in the Amendment, the Parties shall work together in the installation planning and coordination of 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 Developer pursuant to the Easement Section in this Agreement. Said storm water system 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. The City and Developer 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 Developer 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: The Parties shall work together in the installation planning and coordination with the appropriate gas utility service provider for all necessary gas lines, systems, and facilities to provide gas to the Property with sufficient capacity to provide gas for customary uses permitted under the current Property zoning classification. The Parties shall work together with the gas 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 gas utility lines. Installation of the gas infrastructure shall be done by the appropriate gas utility service provider. The Parties agree that neither City nor Developer can cause the appropriate gas utility service provider to install or provide said utility services. The Parties agree that gas 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.
- 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 Developer 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. Other Public Improvements: On or before the expiration of the Construction Period, the City hereby agrees to assist Developer in making other Public Improvements on the Property. The other Public Improvements contemplated by this Agreement are to assist, as the City has the ability at its own determination, with the demolition of the existing structures on the Property (“Other Public Improvements”). Other Public Improvements can be added by the Parties with the consent of all the Parties in the Amendment after the Final Plans are received.
  - f. 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.
  - g. Site Access: Developer and its representatives shall have access at all times to the worksite 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 worksite.
3. Costs of the Public Improvements:
- a. Engineering Plans: Developer shall be responsible for all costs for the engineering plans and/or construction drawings for the Public Improvements subject to this Agreement. 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.
  - b. Road Improvements: City will initially pay the cost of the Road Improvements subject to this Agreement. Although City will initially pay for the Road Improvements under this Agreement, Developer agrees to reimburse City for its actual costs of the Road Improvements as outlined in this Agreement. The Parties agrees the actual costs to be reimbursed to City by Developer for the Road Improvements shall include the actual costs incurred by the City for the material expenses of the Road Improvements and the actual expenses incurred by the City for the labor of non-City employees including contractors and subcontractors, non-

City owned equipment and non-City owned tool rental, 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.

c. Utility Public Improvements:

- i. Water Public Improvements: City will initially pay the cost of the Water Improvements subject to this Agreement. Although City will initially pay for the Water Improvements under this Agreement, Developer agrees to reimburse City for its actual costs of the Water Improvements as outlined in this Agreement. The Parties agrees the actual costs to be reimbursed to City by Developer for the Water Improvements shall include the actual costs incurred by the City for the material expenses of the Water Improvements and the actual expenses incurred by the City for the labor of non-City employees including contractors and subcontractors, non-City equipment and non-City owned tool rental, 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 Water pursuant to this Agreement.
- ii. Sanitary Sewer Public Improvements: As Sanitary Sewer Improvements needs cannot be determined until the Final Plans are received, any costs related to the Sanitary Sewer Improvements shall be determined in the Amendment.
- iii. Storm Water Public Improvements: As Storm Water Improvements needs cannot be determined until the Final Plans are received, any costs related to the Storm Water Improvements shall be determined in the Amendment.
- iv. Electrical, Gas, Telecommunication: All costs related to Electrical, Gas, and Telecommunication for the Property shall be the responsibility of the Developer.

- d. Other Public Improvements: City will initially pay the cost of the Other Public Improvements subject to this Agreement. Although City will initially pay for the Other Public Improvements under this Agreement, Developer agrees to reimburse City for its actual costs of the Other Public Improvements as outlined in this Agreement. The Parties agrees the actual costs to be reimbursed to City by Developer for the Other Public Improvements shall include the actual costs incurred by the City for the material expenses of the Other Public Improvements and the actual expenses incurred by the City for the labor of City employees including contractors and subcontractors, City and non-City owned equipment and tool rental costs, 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 Other Public Improvements pursuant to this Agreement.

- e. Invoicing: City will invoice Developer once materials have been purchased and/or work has started under this Agreement on or about the 15<sup>th</sup> day of every month for the actual costs incurred by City for expenses allowed under this Agreement. Developer 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 Developer at the same time Developer pays City in accordance with the above. If Developer does not pay any invoice from City to Developer in accordance with the above, City has the right to stop all work under this Agreement. Developer will be allowed to keep a twenty percent retainage on all materials billed by City to Developer. Said retainage will be noted by City in invoices sent to Developer and tracked by City. Said retainage will be completely payable by Developer to City after the Public Improvements are installed by City and after invoiced by City and payable under this Paragraph.
- f. City Administrative Personnel: City will not invoice or attempt to collect any payment from Developer 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 Developer under this Agreement for labor costs of the City Attorney unless allowed under Paragraph 12.
- g. Purchasing Policy: 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. Developer 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 Developer, it 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 Developer provides 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.
- h. Funds Deposits: Developer agrees that any funds remitted to City under this Agreement may be commingled by the City with other funds deposited by the City from other sources. Further, any funds remitted by the Developer will gain no interest, and the City shall determine where said funds are to be deposited.

4. Prior Agreement: Unless specifically set forth herein, this Agreement shall not be construed to relieve any Party of any obligations of the Parties under any prior written Agreements entered by and between the Parties.
5. Ownership in Work: Developer will have and will gain no ownership or other interest in Public Improvements in this Agreement.
6. 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. 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 Developer to extend the Public Improvements to adjoining properties in the future. Should any easements and/or rights-of-way under this Agreement not be in use and no longer necessary for the Parties to complete the planned development contemplated by this Agreement, the City agrees to take all steps necessary to vacate said easements and/or rights-of-way within 90 days of being notified by the 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.
7. 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.
8. 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.
9. Default by Developer and Termination: If through any cause, Developer shall fail to fulfill in timely and proper manner their obligations under this Agreement, become insolvent, or if they 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 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 City elects to terminate under this provision, Developer shall be responsible to City for all of City's actual costs in the Public Improvements allowed in this Agreement up to and including the date of termination.



10. 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 violates 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 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 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 City's actual costs in the Public Improvements allowed in this Agreement 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.
11. 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.
12. 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.
13. 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 the Property, and Developer agrees 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.
14. 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.
15. 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.
16. 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.

17. Headings: The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.
18. Whereas Clauses: The “Whereas” clauses stated above are incorporated herein by reference.
19. Assignment: This Agreement may not be assigned by any Party without the prior written consent of the other Parties.
20. 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.
21. 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.
22. Contingent Upon Funds and Approval: 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.
23. Supplemental Agreements/Additional Action: The Parties agree to cooperate fully, to execute any supplemental agreements, and to take all additional actions that may be reasonably necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.
24. Waiver: The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.
25. Contract Documents: The Agreement shall consist of the following:
  - a. This Agreement;
  - b. Exhibit A – Legal description;
  - c. Any properly executed amendments.
26. 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 Developer:         White Shirts, L.L.C.  
                              Attn: Andy Kuntz  
                              211 E. Water Street  
                              Springfield, MO 65806

**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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White Shirts, L.L.C.

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

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

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

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**CITY OF REPUBLIC**

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David Cameron, City Administrator

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Attest: Laura Burbridge, City Clerk

**Approved as to Form:**

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Scott Ison, City Attorney

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