

## INFRASTRUCTURE DEVELOPER AGREEMENT

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

### **WITNESSETH:**

**WHEREAS**, Developer is currently the owner of approximately 48.5 acres of real property located at/near 7012 West Farm Road 170 in Republic, Missouri, more specifically identified in the legal description attached hereto and labeled **Exhibit A** (the “Property”); and

**WHEREAS**, Developer is in the process of developing a residential subdivision on the Property; and

**WHEREAS**, on June 26, 2018, via Ordinance 18-31, the City Council approved of amendment to the Zoning Code and Official Zoning Map by re-zoning the Property from Agricultural (AG) to High Density Single Family Residential (R1-H); and

**WHEREAS**, on April 16, 2019, via Resolution 19-R-10, the City Council approved of Developer’s Preliminary Plat for the residential subdivision on the Property, then known as the A’Vila Residential Subdivision (“A’Vila”)<sup>1</sup>, consisting of approximately 139 lots; and

**WHEREAS**, on January 19, 2022, via Ordinance 22-27, the City Council approved of Developer’s Final Plat for Phase 1 of the residential subdivision on the Property, then known as the Oak Hills Residential Subdivision (“Oak Hills”), consisting of 27 lots; and

**WHEREAS**, Developer has indicated its desire to continue development of Oak Hills by submitting the Preliminary Plat for Phase 3 of Oak Hills (“Phase 3 Preliminary Plat”) to the City, which consists of approximately 19 lots, further described in **Exhibit B**, attached hereto and expressly incorporated by reference; and

**WHEREAS**, as required by the Phase 3 Preliminary Plat, applicable City Ordinances and the City’s adopted Transportation Plan, certain public improvements must be completed upon the Property; and

**WHEREAS**, Developer has requested the City defer certain infrastructure required to be constructed by Developer during construction of Oak Hills, Phase 3; and

**WHEREAS**, the City has agreed to defer the requested infrastructure during construction of Phase 3 of Oak Hills, subject to the terms contained in this Agreement and approval by City Council.

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

**1. Ability to Contract:** Developer warrants that it has full ownership interest in the Property such that Developer has the legal authority and ability to enter into this Agreement and fulfill the terms contained herein.

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

**2. Infrastructure:**

- a. Developer acknowledges and agrees that construction of all required infrastructure for the Property, including all utility, stormwater, and road improvements, as shown on the Preliminary Plat, the City's adopted Transportation Plan and all other Adopted Master Plans of City, and as otherwise required under applicable City Ordinance(s), Rule(s) and Regulation(s), must be completed by Developer before City will issue or approve the final plat, unless otherwise expressly modified by way of this Agreement or subsequent, written agreement of all Parties, adopted by way of addendum to this Agreement. City accepts no ownership, liability, responsibility or otherwise for the installed utilities or infrastructure covered by this section.
- b. City agrees to defer, during Phase 3 only of Oak Hills, the requirement for Developer to construct the infrastructure of the following ("Deferred Infrastructure"):
  1. One thousand three hundred twenty-eight linear feet (1,328 LF) along Samuel Sturgis Avenue (referred to as Leon Avenue in the Infrastructure Development Agreement for Oak Hills, Phase 1; dated May 5, 2021); and
  2. 10" water main extension along the northern boundary line of the Property adjacent to West Farm Road 170, extending from the intersection of Farm Road 170 and Lyon Avenue to the eastern boundary line of the Property, more specifically described in **Exhibit B**.
- c. Developer acknowledges that construction of the Deferred Infrastructure is merely being deferred during construction of Phase 3 and that all required infrastructure of Oak Hills must still be completed by Developer in accord with the terms and provisions of the approved plans for Oak Hills. Nothing in this Agreement shall be construed as a waiver of the requirement that Developer complete construction of the Deferred Infrastructure.
- d. Nothing in this Agreement shall be construed as requiring the City to construct or pay for any of the Deferred Infrastructure or any other infrastructure on the Property.
- e. The Parties agree that the cost of the Deferred Infrastructure shall be calculated and determined based on a proportionate percentage of the total lots in Oak Hills using costs estimated based upon data available at the time this Agreement is executed, as follows:
  1. Per the Preliminary Plat, of the one hundred thirty-five (135) total lots in Oak Hills, twenty-seven (27) lots comprise Oak Hills Phase 1, the equivalent of 20% of the total lots in Oak Hills; and 19 lots comprise Oak Hills Phase 3, the equivalent of 14.07% of the total lots in Oak Hills.
  2. The combined proportional share of lots in Phase 1 and Phase 3 of Oak Hills equals 34.07% of the total lots of Oak Hills.
  3. Based upon relevant data available at the time of execution of this Agreement, the total estimated cost to construct the Deferred Infrastructure is \$802,957.34.
  4. The proportionate share of Phase 1 and Phase 3 (34.07%) of the Deferred Infrastructure total estimated cost equals would be \$273,567.57 (\$243,205.15 of which accounts for Samuel Sturgis Avenue and \$30,362.42 of which accounts for the water main extension).
  5. The Parties agree the costs shown in this section are merely estimates based upon the relevant data available at the time this Agreement is executed, and such estimates are neither intended to be nor shall be binding upon either party to pay the amounts shown herein; but rather, the actual costs of the Deferred

Infrastructure shall be paid by the responsible party once those costs are able to be determined with exactitude.

- f. Developer agrees to secure, through either a letter of credit or other security deemed acceptable by the City and as payable to the City (“Surety”), the proportional amount(s) of the Deferred Infrastructure as set forth above in paragraph 2(e)(4)), which shall be held by the City as security for the construction of the Deferred Infrastructure. Developer agrees and acknowledges that the City will not issue any permits for Oak Hills until it receives the security from Developer as required by this paragraph.
- g. The Surety shall be valid for a minimum period of four (4) years with an additional redemption period of six (6) months for the City to initiate, if necessary, collection efforts on the Surety.
- h. Once the Deferred Infrastructure has been constructed in its entirety and to the satisfaction of the City within its sole discretion after the City has completed its inspection(s), the City shall return the Surety to Developer.
- i. Should Developer fail to complete construction of the Deferred Infrastructure in its entirety within four (4) years after the date of execution of this Agreement, the City shall have, at its sole decision, the right to pursue any of the following:
  1. Pursuant to an amended agreement, extend the Surety on a year-by-year basis to allow for the completion of the Deferred Infrastructure; or
  2. Return the Surety to the Developer. At no time will the City return the Surety to anyone other than the Developer; or
  3. 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 in order for City to perform any work it may be obligated to perform under this Agreement and in order for City to provide future maintenance on the Property after Developer has completed its work. Said easements will be provided by Developer to City at no cost to City. The Parties additionally acknowledge and agree that City may need further easements and/or rights-of-way that allow for the extension of any work performed under this Agreement. The Parties agree to negotiate in good faith to allow City to acquire such further easements as become necessary from Developer. Should any easements and/or rights-of-way under this Agreement not be in use or no longer be necessary for the Parties to complete the Development, City agrees to take the reasonably necessary steps to vacate said easements and/or rights-of-way within ninety (90) days of being notified by Developer of its desire to vacate the easements and/or rights-of-way executed pursuant to this Agreement. The Parties agree and understand such vacation requires multiple steps, including a public hearing, a hearing and recommendation before City’s Planning and Zoning Commission, and approval by City Council through an Ordinance.

**4. Conflict of Interest:** No salaried director, officer or employee of City, and no member of City Council, shall have a financial interest, direct or indirect, in this Agreement. A violation of this provision renders this Agreement null and void. Any federal regulations and applicable provisions in Section 105.450 *et seq.*, RSMo. shall not be violated.

**5. Entire Agreement:** This Agreement contains the entire Agreement between the Parties and supersedes all prior and contemporaneous written or oral agreements unless excluded herein. This Agreement may not be modified or amended other than in writing as agreed to by the Parties.

**6. Default by Developer and Termination:** If through any cause, Developer shall fail to timely and satisfactorily fulfill its obligations under this Agreement, become insolvent, or violate any of the covenants, agreements or stipulations contained in this Agreement, 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), 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, City shall have the right to immediately collect on the Surety notwithstanding and without regard for the four (4) year period referenced in paragraph 2(i) of this Agreement.

**7. Default by City and Termination:** If through any cause, City shall fail to fulfill its obligations under this Agreement, become insolvent, or violate any of the covenants, agreements or stipulations contained in this Agreement, Developer shall deliver written notice of the same to City, and if such failure or violation is not cured within thirty (30) days thereafter (or such longer period of time as is reasonably necessary so long as City begins to cure such failure or violation within such thirty-day period and thereafter diligently pursues the same to completion), then Developer shall thereupon have the right to terminate this Agreement by giving at least five days prior written notice of such termination, specifying the effective date thereof. If Developer elects to terminate under this provision, Developer shall be responsible to reimburse City for all actual costs City incurs in completing any remaining work required under this Agreement. Termination of this Agreement shall be Developer' 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 in the State of Missouri and thus is governed by the laws of the State of Missouri for all purposes and intents. Venue under this Agreement or any disputes that come from this Agreement shall be in the Circuit Court of Greene County, Missouri.

**9. Dispute:** In the event City is the prevailing party in any litigation arising out of or relating to this Agreement, City shall be entitled to recover from the Developer all reasonable attorneys' fees and expenses actually incurred by City in enforcing its rights under this Agreement.

**10. Liability:** Nothing in this Agreement shall be construed to create any liability on behalf of 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 that City shall not be liable for any damages caused to the Property outside of that necessary to complete the Public Improvements contemplated by this Agreement.

**11. Independent Contractor:** The Parties to this Agreement are separate and independent from each other. This Agreement shall not be construed as creating any type of joint venture or partnership between the Parties.

**12. Execution:** The Parties agree that signatures transmitted by facsimile or scanned and emailed shall have the legal effect of original signatures. In addition to facsimile or scanned and email signatures, this Agreement may be executed by the Parties in accordance with the applicable version of the Uniform Electronic Transactions Act ("UETA") and the Electronic Signatures in Global and National Commerce Act ("ESIGN"). The Parties hereto agree to conduct transactions by electronic means and hereby affirmatively consent to use electronic records to memorialize and execute this Agreement and any alterations thereto. At the request of any party, the Parties shall promptly exchange executed original counterparts of this Agreement or any amendment.

**13. Survival:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns as provided in this Agreement. The Parties acknowledge and agree that the rights and benefits afforded Developer under this Agreement shall run with the Property and shall be enforceable by and for the benefit of any and all successor owners of the Property without further consideration to or consent by 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 City and any current or future owner of the Property without recording thereof.

**14. Headings:** The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.

**15. Whereas Clauses:** The “Whereas” clauses stated above are incorporated herein by reference.

**16. Assignment:** This Agreement may not be assigned by any Party without the prior written consent of the other Parties.

**17. Sovereign Immunity:** In no event shall any language or requirement in this Agreement be construed as or constitute a waiver or limitation of City’s defenses regarding sovereign immunity, governmental immunity, or official immunity under federal or state constitutions, statutes, and/or laws.

**18. Severability Clause:** A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section, or part, of this Agreement shall not affect the validity of the remaining parts to this Agreement.

**19. Contingent Upon Funds and Approval:** This Agreement is contingent upon City having sufficient funds available to perform the Work covered by 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 the result of insufficient funds. Further, this Agreement is subject to and conditioned upon approval by ordinance by the City Council.

**20. 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.

**21. 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.

**22. Contract Documents:** The Agreement shall consist of the following:

- a. This Agreement;
- b. Exhibit A – Legal Description;
- c. Exhibit B – Approved Development Plan;
- d. Any properly executed amendments or addendums.

**23. 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 City:

To 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, Missouri 65806

**[SIGNATURES ON FOLLOWING PAGE, Page 7 of 7]**

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

**TURNER RESIDENTIAL HOLDING, LLC:**

**CITY OF REPUBLIC, MISSOURI**

**By:** \_\_\_\_\_  
(Signature)

**By:** \_\_\_\_\_  
David Cameron, City Administrator

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

**Approved as to Finance/Budget:**

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

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

**Approved as to Form:**

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