

LAND EXCHANGE AND DEVELOPMENT AGREEMENT

This **Land Exchange and Development Agreement** (“Agreement”) is entered into 2 April 2024, by and among the City of Republic, Missouri, a municipal corporation and Charter City located in Greene County, Missouri, being duly organized and existing under the laws of the State of Missouri (“City”), the Greene County Reorganized School District No. 3, a public school district and political subdivision of the State of Missouri, also known as the Republic School District (“District”), and Drury Properties, Inc., a Missouri corporation (“Drury”). City, District, and Drury may be referred to together as “the Parties.”

WITNESSETH:

WHEREAS, Drury currently owns the improved real property located at 5905 U.S. Hwy 60 near the intersection of existing Farm Road 107 and U.S. Highway 60 in Republic, Missouri, as shown on **Exhibit A** hereto (the “Drury Property I”); and

WHEREAS, Drury currently owns the improved real property located at 5745 U.S. Highway 60 in Republic, Missouri, as shown on **Exhibit B** hereto (the “Drury Property II”); and

WHEREAS, District currently owns the unimproved real property adjacent to and north of the Drury Property I (the “District Property”) and District is planning for construction of a new school building on the District Property; and

WHEREAS, The Missouri Highways and Transportation Commission (“MHTC”) owns and maintains U.S. Highway 60 as a limited access highway, and as a cooperative endeavor with City, District and Drury, MHTC has acknowledged a need for a break in access in U.S. Highway 60 for a realigned Farm Road 107 on U.S. Highway 60; and

WHEREAS, in order to ensure safe and adequate access to the new school, once constructed, certain infrastructure and other improvements must be made to various areas surrounding the Drury Property I, including portions of the Drury Property I itself; and

WHEREAS, among those necessary improvements is the realignment of existing Farm Road 107 and the construction of a new intersection at the realigned Farm Road 107 and U.S. Highway 60, which will require right-of-way access to a portion of the Drury Property I; and

WHEREAS, the District has agreed to convey to Drury approximately 0.86 acres (37,735 square feet) of land located immediately to the north of the Drury Property I, as described on **Exhibit C**), in exchange for Drury conveying to the City a portion of the Drury Property I consisting of approximately 0.6 acres, as described on **Exhibit D**; and

WHEREAS, in exchange for good and valuable consideration, the sufficiency of which is acknowledged by the Parties, upon completion of the transfer of the aforementioned 0.86 acres of property from District to Drury, Drury will transfer the aforementioned 0.6 acres of property to the City, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, conditions, and agreements set forth herein, the Parties mutually acknowledge and agree as follows:

1. **Consideration and Terms.** In exchange for Drury’s transfer to City of the fee simple interest in the approximately 0.6 acres of real property described on Exhibit D by the deed the form of which is attached as **Exhibit E** (the “Drury Deed”), and in exchange for District’s transfer to Drury of the 0.86 acres of real property described on Exhibit C by the deed the form of which is attached as **Exhibit F** (the “District Deed”), each such exhibit expressly incorporated as though fully set forth at length in this Agreement, the Parties agree to the following terms:

- a) Construction of the new/realigned Farm Road 107 may commence upon recordation of the District Deed, or, alternatively, upon recordation of the of the Drury Deed.
- b) The Parties agree that the current access to U.S. Highway 60 from the Drury Property I will remain intact and unencumbered until such time as the alternate access points outlined in this Agreement are constructed. Further, access to the improvements currently located at the Drury Property I, including the building and parking spaces/areas, will remain intact and unencumbered until such time as the alternate access points are provided. Until that time, access to the building located at the Drury Property I will be unimpeded, as will all parking spaces, including those existing parking areas to the south and east of the building.
- c) To the extent fencing on the Property must be removed or altered in connection with construction of the new/realigned Farm Road 107, Drury, at the cost and expense of City, shall be entitled to replacement/repair of such fencing in an agreeable configuration, for the purpose of securing the business that currently operates from the building on the Drury Property I.
- d) The Parties recognize that Drury shall have the right to immediate use of the property deeded to Drury by District, upon completion of such transfer.
- e) Access points:
 - i. Drury shall have full ingress to and egress from the Drury Property I along the newly constructed/realigned Farm Road 107, at 300 feet from the centerline of U.S. Highway 60. Drury recognizes and acknowledges that MHTC intends to construct a fully signalized intersection at U.S. Highway 60 and the newly constructed/realigned Farm Road 107 during the year 2027, at which time Drury’s access may become inherently or in fact restricted to right in, right out access, which shall not in any way constitute a breach of this Agreement.
 - ii. Drury shall have secondary full access in an agreeable location to the north of the Drury Property I to service the Drury Property I from the portion of Farm Road 107 that is being constructed. The construction of such secondary full access will be at no cost or expense to Drury, but shall rather be fully paid for by City. The

rights of Drury granted under this provision may, at Drury's option, be recorded in the form of a memorandum set forth as Exhibit G.

- iii. Drury and City acknowledge that both access points referenced above will be constructed to the new right-of-way line from the roadway, and further that if additional grading is needed beyond those right-of-way lines to service the Drury Property I, such work shall be provided in conjunction with the project.
- iv. Drury acknowledges that MHTC intends to provide access to the Drury Property II at the nearest lane of U.S. Highway 60 (to be a shared access with the property located at 5731 U.S. Highway 60) (the "Drury Property II Access"). City and District will cooperate with Drury to ensure MHTC provides such access. The Drury Property II Access will be located at or near the existing access located at the eastern property line of Drury Property II. Drury acknowledges that a traffic study may be required at or prior to the time of development of the Drury Property II, depending upon the use(s) and development plan of the Drury Property II. City and District will cooperate with Drury to obtain MHTC's acknowledgement that the results of such traffic study will require an expansion of the current access to U.S. Highway 60 at the property located at 5731 U.S. Highway 60. The rights of Drury granted under this provision may, at Drury's option, be recorded in the form of a memorandum set forth as Exhibit G.
- v. At no cost to Drury, an additional access to the Drury Property II shall be provided along a future backage road extension of Farm Road 107, in conjunction with development of the Drury Property II, 5731 U.S. Highway 60, or the development of the City-owned parcel located to the north, provided that funds for such access are available to City and approved by the City Council. The access referenced in this sub-paragraph is expressly contingent upon availability of funds and approval by City Council of the specified uses for those funds. The rights of Drury granted under this provision may, at Drury's option, be recorded in the form of a memorandum set forth as Exhibit G.
- f) The City agrees to install (1) a waterline extension along the northern property line to the northwest corner of the Drury Property I with a flush hydrant for future development; (2) a flush hydrant on the existing main located along the eastern property line of the Drury Property I; and (3) a fiber optics cable along the northern property line to the northwest corner of the Drury Property I. The Parties acknowledge and agree that this work is considered ancillary to the road construction referenced herein and District's installation of waterline and fiber optics to service the new school building on the District Property.

- g) It is understood and agreed by the Parties that City's agreements contained herein regarding infrastructure and other improvements to various areas surrounding the Drury Property I to provide access to the District Property serves as consideration for District's transfer of the portion of the District Property described in Exhibit C to Drury. The Parties further understand and agree that if Drury transferred the real property described in Exhibit D to District, that District would then immediately transfer the same to City as consideration for City's agreements contained herein, and that the direct transfer to City from Drury is being done as a matter of convenience for the Parties.
- h) Closing of the transfers (the "Closing") under the Drury Deed and the District Deed will be completed at Hogan Land Title (1605 E Sunshine, Springfield, MO 65804), on or about 1 May 2024; *provided, however*, the Parties acknowledge and agree that as a condition precedent to any Party's obligation to commence and complete the Closing, MHTC and the Parties shall have executed a memorandum of understanding setting forth the Parties' and MHTC's understandings as to the matters concerning MHTC described in this Agreement. Each of Drury and City shall be responsible for their own costs of inspection, title review, recording, legal expenses and any other cost associated with the transfer of the respective real property.

2. **Terms of Real Property Transfer.** The following terms shall govern the transfers under the Drury Deed and the City Deed:

- a) The real property described in Exhibits C and D are being conveyed and accepted "as is" without any warranty as to title or condition.
- b) Drury represents and warrants that it is the fee simple owner of the approximately 0.6 acres of real property described on Exhibit D and has the full capacity, right, power, and authority to transfer the same to City.
- c) District represents and warrants that it is the fee simple owner of the 0.86 acres of real property described on Exhibit C and has the full capacity, right, power, and authority to transfer the same to Drury.
- d) District and Drury each represent that:
 - i. It has not, and will not prior to the Closing, encumber, pledge, assign to interest in, or enter into any obligation or lease or rental agreement with respect to the real property it is transferring without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
 - ii. It has not, and will not prior to the Closing, make any alteration to the physical condition of its respective real property being transferred without the prior written consent of the other party, which consent shall not be unreasonably withheld.

- iii. All valid bills and claims for labor and services furnished to or for the benefit of the respective real property being transferred and for any period prior to the Closing shall be paid in full by the Closing.
- iv. To the best of the party's knowledge, there is no claim, suit, action, arbitration, legal, or other proceeding, or governmental investigation pending which affects its respective real property being transferred and none are threatened of which the party has knowledge or should have knowledge.
- v. The representations, warranties, covenants, and agreements contained in this Agreement shall survive Closing and the delivery of the deeds, without limitation.

3. **Public Entity Immunity.** The City and District preserve all immunities, sovereign, governmental and otherwise, recognized by law. Nothing in this Agreement or any transactions under this Agreement shall be construed or deemed in any way as a waiver by the City or District of sovereign immunity or governmental immunity recognized under common law, state law, ordinances, regulations, the Missouri Constitution, or the United States Constitution, including but not limited to § 537.600 RSMo., et seq.

4. **Law and Venue.** This Agreement shall be governed by the laws of the State of Missouri. Any lawsuit, claim, or other action filed by or against one or both of the Parties to this Agreement relating in any way to the interpretation of this Agreement or to the exercise of rights and/or duties under this Agreement, shall have proper venue solely in the Circuit Court of Greene County, Missouri,

5. **Assignment.** No party may assign their rights or obligations under this Agreement without the prior written consent of the other party. Except, the right of Drury under this Agreement as recorded in the land records of Greene County shall attach to and be conveyed to any subsequent owner of the Drury Property I or Drury Property II.

6. **Severability.** A determination by a court of competent jurisdiction that any clause, sentence, paragraph, section, or part of this Agreement is unconstitutional, invalid or otherwise unenforceable shall not affect in any way the validity or enforceability of the remaining clauses, sentences, paragraphs, sections or parts of this Agreement.

7. **Entire Understanding.** This Agreement constitutes the entire agreement between the Parties hereto and there are no other understandings, written or oral, relating to the subject matter hereof, and may not be changed, modified or amended, in whole or in part, except in writing signed by the Parties.

8. **Headings.** The headings formatted in bold herein are merely for purposes of convenience and reference only, and do not constitute material terms of this Agreement.

9. **Incorporation of Whereas Clauses.** The "WHEREAS" clauses in this Agreement above are incorporated into this paragraph by reference as though fully set forth at length herein and form a material part of this Agreement.

10. **Notice.** All notices and requests required or authorized under this Agreement will be given in writing either (i) by personal delivery, or (ii) by commercial courier service, or (iii) by electronic mail in “portable document format” (“.pdf”), with delivery being completed on actual delivery occurring or delivery receipt being received by the sender, directed to the respective addresses of the Parties described below, with the date on which any such notice is received by the addressee being deemed the date of notice (and with each Party waiving any claim of failure to provide notice if provided in any other manner in the event notice is actually received):

If to City: City of Republic
Attn: Karen Haynes
204 N. Main Avenue
Republic, MO 65738
Email: khaynes@republicmo.com

If to District: Republic School District
Attn: Superintendent
636 N. Main Avenue
Republic, MO 65738
Email: Matt.Pearce@republicschools.org

If to Drury: Drury Properties, Inc.
C/O RMMC CPAs
4035 S. Fremont Avenue
Springfield, MO 65804
Email: mitch@druryproperties.com

With a copy to (such copy not to constitute notice):

Husch Blackwell LLP
Attn: Michael A. Cosby
3810 E. Sunshine, Suite 300
Springfield, MO 65809
Email: michael.cosby@huschblackwell.com

IN WITNESS WHEREOF, the Parties caused this Land Exchange and Development Agreement to be executed in their respective hand and upon their behalf.

CITY OF REPUBLIC, MISSOURI

DRURY PROPERTIES, INC.

By _____
Matthew Russell, Mayor

By: _____

Date: _____

Name: _____

ATTEST:

Title: _____

Date: _____

Laura Burbridge, City Clerk

GREENE COUNTY REORGANIZED SCHOOL DISTRICT NO. 3

Date: _____

By: _____

APPROVED AS TO FORM:

Name: _____

Megan McCullough, City Attorney

Title: _____

Date: _____

Date: _____

ATTEST:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
PROJECT LOCATION AND PROPERTY OWNERS
DRURY PROPERTY I
DISTRICT

[TO BE PROVIDED]

EXHIBIT B
PROJECT LOCATION AND PROPERTY OWNERS
DRURY PROPERTY II

[TO BE PROVIDED]

EXHIBIT C
LEGAL DESCRIPTION
0.86 ACRES FROM DISTRICT TO DRURY
[TO BE PROVIDED]

EXHIBIT D
LEGAL DESCRIPTION
0.6 ACRES FROM DRURY TO CITY
[TO BE PROVIDED]

EXHIBIT E
FORM OF DEED
0.6 ACRES FROM DRURY TO CITY
[TO BE PROVIDED]

EXHIBIT F
FROM OF DEED
0.86 ACRES FROM DISTRICT TO DRURY
[TO BE PROVIDED]

EXHIBIT G
FORM OF MEMORANDUM
DRURY'S RIGHTS
[TO BE PROVIDED]