

**INFRASTRUCTURE DEVELOPER AGREEMENT**

**THIS DEVELOPER AGREEMENT** (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Republic Missouri (“City”) and Stone Creek Development LLC (“Developer”). City and Developer are referred to together herein 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, in good standing and licensed to do business in the State of Missouri, including Greene County, Missouri; and

**WHEREAS**, Developer desires to construct a phased multi-use development (“the Development” and/or “Stone Creek Falls”) on real property consisting of approximately 92.85 acres located within City of Republic, Missouri, the legal description for which is included on **Exhibit A**, attached and incorporated by reference into this Agreement (“the Property”); and

**WHEREAS**, in Ordinance 21-54, passed by the Republic City Council on August 3, 2021, the Property was rezoned from Agricultural (AG) and General Commercial (C-2) to Planned Development District (PDD); and

**WHEREAS**, in accord with the approved Development Plan, attached and incorporated by reference into this Agreement and labeled **Exhibit B**, the first phase of the Development includes six (6) Multi-Family Lots, five (5) Commercial Lots, and Stone Creek Drive (which extends from the northern boundary line of the Property toward the southern boundary line of the Property but does not extend into any connection with U.S. Highway 60) (collectively, “Phase 1 Development”); and

**WHEREAS**, Developer has a desire to construct four (4) apartment buildings (consisting of no more than one hundred and twenty (120) total dwelling units) on Lot 8 (consisting of 5.0 acres), and four (4) apartment buildings (consisting of no more than one hundred and twenty (120) total dwelling units) on Lot 10 (consisting of 5.02 acres) (collectively, “the Apartment Buildings”), prior to the construction of a signalized intersection at the required juncture of existing U.S. Highway 60 and as-planned Stone Creek Drive (“the Signalized Intersection”) and a future City street connection (“Future City Street”), and prior to the approval of the Final Plat for Phase 1 Development; and

**WHEREAS**, it has been determined and agreed upon by the Parties that the Signalized Intersection and Future City Street shall be constructed and approved by the City and Missouri Department of Transportation within nine (9) months from the date of execution of this Agreement and prior to approval of the Phase 1 Development Final Plat; and

**WHEREAS**, Developer has requested that City issue eight (8) At-Risk Commercial Building Permits (the “Eight At-Risk Building Permits”) for construction of the Apartment Buildings and City has agreed to issue the same upon satisfactory completion of the building permit review process mandated by applicable City Code and expressly conditioned upon and 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 Parties 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.
  
2. **Timeline and Terms of Construction:**
  - a. Developer acknowledges and agrees that construction of all infrastructure for the Phase 1 Development, including all utility, stormwater, and road improvements, as shown on the Approved Development Plan, City's Major Thoroughfare Plan and all other Adopted Master Plans of City, and otherwise required under applicable City Ordinance(s), Rule(s) and Regulation(s), must be completed by Developer before City will issue or approve any final plat, unless otherwise expressly modified by way of agreement of all Parties, in writing, and documented 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. Developer agrees and acknowledges that engineering and construction of the right-in right-out at River Run and U.S. Highway 60 ("RIRO"), must be completed and approved by City and Missouri Department of Transportation ("MoDOT") prior to City's issuance of the Eight At-Risk Building Permits.
  - c. Developer acknowledges and agrees that all utilities and other associated construction for the Phase 1 Development, with the exception of the Signalized Intersection and future City street connection, must be installed, completed, and approved by City prior to City's issuance of the Eight At-Risk Commercial Building Permits.
  - d. Developer acknowledges and agrees that the use of the RIRO, by Developer or any persons or entities acting on behalf or at the direction of Developer, shall be strictly limited to construction traffic only until such time as City has approved of the Phase 1 Development Final Plat. Until approval of the Phase 1 Development Final Plat, City accepts no ownership, responsibility or claim over the RIRO, and shall not be liable for any damages, injuries, or other claims resulting from the unauthorized use of the RIRO in violation of the terms of this paragraph. At the discretion of City's BUILDS Department, City expressly reserves the right to require the closure of the RIRO in order to enforce the provisions of this paragraph.
  - e. Upon Developer's satisfactory completion of the building review process mandated by applicable City Code, City agrees to issue to Developer the Eight At-Risk Building Permits for construction of the Apartment Buildings **prior** to the construction of the Signalized Intersection and approval of the Phase 1 Development Final Plat. Developer understands and acknowledges that City will neither approve nor issue any other or additional building permits, at-risk or otherwise, or certificates of occupancy for the Apartment Buildings, until such time as Developer has obtained City's approval of the Phase 1 Development Final Plat.
  - f. Developer acknowledges and agrees that all areas of construction within the Phase 1 Development, except those covered by the Eight At-Risk Commercial Building

Permits for the Apartment Buildings, must be seeded and strawed, prior to City's issuance of any other additional building permits, at-risk or otherwise.

- g. Developer acknowledges and agrees that construction of the Signalized Intersection and Future City Street must be completed within nine (9) months from the date of execution of this Agreement. Failure to comply with this time frame will result in the forfeiture of all funds submitted by Developer to City for bonding/security purposes under this Agreement, as further detailed herein below, which will then be utilized by the City as a contribution to the MM Highway Realignment and Expansion project(s), reference Project Number J8S036(A-E).
- h. Developer acknowledges and agrees that it may not transfer its interest in any one or more of the lots in the approved Development Plan, whether such transfer be by way of assignment, sale, donation, dedication, gift, or otherwise, until Developer has obtained approval of the Phase 1 Development Final Plat, unless such sale or transfer is expressly agreed to by the Parties, in writing, and incorporated into this Agreement as a properly executed Addendum. In the absence of any such Addendum, Developer acknowledges that any sale or transfer of any one or more of the lots in the approved Development Plan prior to Developer's satisfactory completion of its obligations under this Agreement and City's approval of the Phase 1 Development Final Plat shall constitute a material breach of this Agreement that may result in and cause damage to City.
- i. Developer acknowledges and agrees that City's agreement to issue the Eight At-Risk Building Permits under this Agreement does not in any way affect, modify or otherwise relieve Developer of its duties and obligations under this Agreement to construct Phase 1 Development to completion. The Developer is required to complete the infrastructure and construction of Phase 1 Development regardless of the terms or conditions pertaining to City's issuance of the Eight At-Risk Building Permits included under this Agreement.
- j. Nothing in this Agreement shall be construed or interpreted as requiring City to construct or pay for any of the engineering or construction of Developer and/or covered under this Agreement and/or any other infrastructure or construction being performed on Phase 1 of the Development.

**3. Bonding Requirements for Signalized Intersection and Future City Street:** Developer is required to provide security ("Security") to City to ensure timely, satisfactory completion of the Signalized Intersection in exchange for City's agreement to issue the Eight At-Risk Commercial Building Permits in advance thereof, under the following terms:

- a. Developer will pay to City a single, non-refundable, lump sum payment of Nine Hundred Seventy Seven Thousand Seven Hundred Ninety Six Dollars and Zero Cents (\$977,796.00) ("Bonding Requirement"), which represents the reasonable estimate of the total cost to engineer to construct the Signalized Intersection and Future City Street including consideration of prevailing wages plus an industry-standard 20% contingency.

- b. Payment of the Bonding Requirement in full is an express condition of and prerequisite to City's issuance of the Eight At-Risk Commercial Building Permits, any other additional building permits, certificates of occupancy, or approval of the Phase 1 Development Final Plat.
  - c. In the event Developer fails to complete construction of the Signalized Intersection and Future City Street within the time frame specified in this Agreement, City will issue a Stop Work Order for all construction activities and revoke all associated permits issued by the City and/or the City's BUILDS Department, effectively ceasing Developer's continuance of any work on the projects under this Agreement. In such event, the full amount of the Bonding Security submitted by Developer to City will be forfeited to City, and subsequently utilized by City as a contribution toward the MM Highway Realignment and Expansion project(s) [reference Project Number J8S036(A-E)].
4. **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.
5. **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.
6. **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.
7. **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-year period referenced in paragraph 2(i) of this Agreement.

8. **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.
9. **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.
10. **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.
11. **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.
12. **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.
13. **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.

14. **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.
15. **Headings:** The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.
16. **Whereas Clauses:** The “Whereas” clauses stated above are incorporated herein by reference.
17. **Assignment:** This Agreement may not be assigned by any Party without the prior written consent of the other Parties.
18. **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.
19. **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.
20. **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.
21. **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.
22. **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.
23. **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.

**24. 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: Stone Creek Development LLC  
Attn: \_\_\_\_\_  
Need Contact

**[SIGNATURES ON FOLLOWING PAGE, Page 8 of 9]**

**[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.

**DEVELOPER, by:**

Stone Creek Development, LLC

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

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

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

**CITY OF REPUBLIC, by:**

\_\_\_\_\_  
David Cameron, City Administrator

**Approved as to Finance/Budget:**

\_\_\_\_\_  
Andrew Nelson, Deputy City Administrator

**Approved as to Form:**

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

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



## EXHIBIT A – LEGAL DESCRIPTION

A TRACT OF LAND, BEING A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 2, AND A PART OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 28 NORTH, RANGE 23 WEST, CITY OF REPUBLIC, GREENE COUNTY, MISSOURI, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 11; THENCE ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 2 NORTH  $01^{\circ}49'35''$  EAST, 46.90 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF BURLINGTON NORTHERN SANTA FE RAILROAD; THENCE ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE NORTH  $29^{\circ}30'07''$  EAST A DISTANCE OF 1,320.77 FEET; THENCE CONTINUING ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 11,559.19 FEET, A DELTA OF  $00^{\circ}39'49''$ , AN ARC LENGTH OF 133.85 FEET, AND A CHORD WHICH BEARS NORTH  $29^{\circ}10'12''$  EAST HAVING A CHORD DISTANCE OF 133.85 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 2; THENCE ALONG SAID NORTH LINE SOUTH  $89^{\circ}03'23''$  EAST, 646.94 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 2; THENCE ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 2 SOUTH  $01^{\circ}47'15''$  WEST, 1,331.77 FEET TO A POINT ON THE NORTH LINE OF SAID NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 11; THENCE SOUTH  $88^{\circ}45'55''$  EAST ALONG SAID NORTH LINE 1,320.71 FEET TO THE NORTHEAST CORNER OF SAID NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 11; THENCE SOUTH  $01^{\circ}40'20''$  WEST ALONG THE EAST LINE OF SAID NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 11 A DISTANCE OF 388.84 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF U.S. HIGHWAY 60; THENCE SOUTH  $57^{\circ}27'19''$  WEST ALONG SAID NORTH RIGHT OF WAY LINE A DISTANCE OF 1,694.96 FEET TO A POINT ON THE SOUTH LINE OF SAID NORTH HALF OF THE NORTHWEST QUARTER; THENCE NORTH  $88^{\circ}52'01''$  WEST ALONG SAID SOUTH LINE A DISTANCE OF 806.65 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF BURLINGTON NORTHERN SANTA FE RAILROAD; THENCE NORTH  $32^{\circ}25'12''$  WEST ALONG SAID EAST LINE A DISTANCE OF 780.16 FEET TO A POINT ON THE WEST LINE OF SAID NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 11; THENCE NORTH  $01^{\circ}50'57''$  EAST ALONG SAID WEST LINE A DISTANCE OF 683.29 FEET TO THE POINT OF BEGINNING, AND CONTAINING 92.85 ACRES OF LAND, MORE OR LESS, SUBJECT TO EASEMENTS AND/OR RIGHTS OF WAY.