

DEVELOPER AGREEMENT

THIS DEVELOPER AGREEMENT (“Agreement”) is entered into this ____ day of June, 2022, by and between the City of Republic Missouri (“City”), Iron Grain District, LLC and Magers Republic No. 3C, LLC (collectively, “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 with a principal office address of 2776 S. Campbell Avenue, Springfield, Missouri 65807-3506, in good standing and licensed to do business in the State of Missouri, including Greene County, Missouri; and

WHEREAS, Developer is currently the owner of real property located in the City of Republic, Missouri, the legal description for which is included on **Exhibit A** attached and incorporated by reference into this Agreement, (“Property”), and desires to install on the Property a mixed-use commercial development to include retail, restaurant, and lodging facilities; and

WHEREAS, the Parties mutually recognize the opportunity for the above-described development on the Property to facilitate future growth in and around the City of Republic; and

WHEREAS, in order for Developer to fully develop the Property to accommodate the above referenced commercial development, certain public improvements need to be constructed on and throughout 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 City has the resources reasonably necessary and available; and

WHEREAS, the purpose of this Agreement is to memorialize the Parties’ respective responsibilities for public improvements on the Property in order to help facilitate the Developer’s development of the Property as specified in this Agreement.

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. **Scope of Work Under this Agreement:** In exchange for Developer’s promises herein, City agrees that it shall perform the following work under this Agreement:
 - a. **Water Public Improvements:**

- i. City shall plan, coordinate, and install the water main line (the “Water Main Line”) that will enable City to provide potable water service to the Property having sufficient capacity to meet the anticipated demand projected for the improvement known as “Phase 1 Building,” located on that particular part of the Property described in the Legal Description, attached hereto and labeled Exhibit A1-A2. Installation of the Water Main Line is herein referred to as the “Work” and/or “Water Public Improvements.”
- ii. Installation of the Water Main Line shall include the looping of any other or additional water system(s), as deemed necessary by City.
- iii. The Water Main Line shall be located within the utility easements granted by Developer pursuant to the Easement Section in this Agreement, so long as such location is consistent with the final civil plans. To the extent the final civil plans indicate the Water Main Line must be installed outside the utility easements area granted by Developer, such easements shall be amended to ensure the area fully encompasses the location of the Water Main Line.
- iv. All specifications for the Water Main Line shall be established, determined and documented in the Final Plans.

b. Site Preparation; Engineering Plans:

- i. Developer shall be responsible for clearing and otherwise preparing the site/location for installation of the Water Main Line within sixty (60) days from approval and execution of this Agreement by City.
- ii. Developer shall be responsible for obtaining and providing to City as-built drawings of the Main Water Line in accordance with all infrastructure requirements (“Engineering Plans”).
- iii. Developer shall provide the Engineering Plans to City within sixty (60) days from execution of this Agreement, after which time City will have twenty (20) days to review the Engineering Plans and respond to Developer with any suggestions, changes or questions. Once all suggestions, questions and/or changes have been fully addressed and agreed upon by the Parties, and the City has determined it will provide its approval, the Engineering Plans shall be deemed the “Final Plans.” (The Final Plans are expressly incorporated herein by reference and labeled Exhibit B).
- iv. If Developer fails to provide the Engineering Plans to City within sixty (60) days from execution of this Agreement, the City may elect to terminate this Agreement without any liability on the party of City. In the event City elects to terminate this Agreement due to Developer’s failure to comply with the deadline set forth in this section, the City shall provide written notice to Developer of such termination setting forth the basis for the same.
- v. City is not obligated to begin the Work, or any aspect of the Work, unless and until Developer has provided the Engineering Plans,

which shall be a condition precedent to the City's obligations to perform any aspect of the Work.

- vi. Engineering Plans are subject to rejection, revision and/or modification by the City as the City deems reasonably necessary in its sole discretion, so long as such discretion is exercised in good faith. Engineering Plans must be approved by the City.
- c. **Construction Period:** City shall complete the Work on or before December 31, 2022 ("Construction Period"); provided, however, if Developer fails to timely clear/prepare the site for installation of the Water Main Line or fails to timely provide City with Engineering Plans in accord with its obligations under Paragraph 2(b) and City elects not to terminate the Agreement due to the default(s), then the Construction Period shall be extended to allow the City the time reasonably necessary to complete the Work as determined by the City in its reasonable discretion, provided, however, that the Construction Period shall not be extended beyond March 31, 2023. The Construction Period may otherwise only be modified by agreement of the Parties set forth in a written amendment to this Agreement.
 - d. **Cost Estimate(s):** Developer has agreed to provide the materials and/or supplies for the Work to be performed; however, should Developer elect not to provide the materials and/or supplies for City to perform the Work, Developer shall promptly notify the City of the same, but in no event later than thirty (30) days following execution of this Agreement. In the event Developer timely provides City with such notice, within thirty (30) days of receiving such notice from Developer, City will submit request(s) for proposal(s) to obtain cost estimates for materials and/or supplies it will require in order to perform the Work, unless such materials and/or supplies can be accommodated by City's Approved Bulk Bid Supplier, in which event City has the right to elect to forego the competitive bidding process for those materials and/or supplies and obtain said materials and/or supplies from the Approved Bulk Bid Supplier. The bidding process employed by City shall be done in accord with the terms set forth below in Paragraph 3(b)(viii).
 - i. Upon receipt of applicable cost estimates for completion of the Work, City will provide Developer with a total cost estimate representing the total amount to be expended in performing and completing the Work, which will be subsequently added to this Agreement by way of formal amendment, such amendment to be executed no later than 180 days following execution of this Agreement.
 - ii. Any estimated costs provided by City to Developer shall not be binding on the Parties.
 - iii. The actual costs incurred by City as set forth below in Paragraph 3 shall be the amount Developer will reimburse to City under this Agreement.

- iv. Nothing contained herein shall be construed to restrict City's right to construct the Water Public Improvements at any time prior to the expiration of the Construction Period or continue constructing the Water Public Improvements after the Construction Period so long as City is making substantial and continuing progress toward completion of the Water Public Improvements. Further, the Construction Period shall be extended as necessary to accommodate delayed progress of the Water 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, provided, however, the Construction Period shall not be extended beyond March 31, 2023.
- e. **Site Access:** While Work is being performed under this Agreement, Developer and/or its authorized representative(s) shall have access to the worksite for the purpose of examining and/or inspecting the Work being performed, so long as such examination and/or inspection does not unreasonably interfere with or otherwise delay City in discharging its obligation to install the Water Main Line. Developer shall provide sufficient competent and qualified personnel to visit and inspect the worksite and Work. City, including its workers, subcontractors, suppliers, and authorized representatives, shall have access to the worksite at all times while the Work is being performed or otherwise ongoing under this Agreement.

3. Costs of the Water Public Improvements, Billing and Bid Process:

- a. **Engineering Plans Costs:** Developer shall be responsible for all costs incurred and/or expended in connection with obtaining, creating, revising or submitting the Engineering Plans.
- b. **Water Public Improvements Costs:**
 - i. City will initially pay the costs for the Water Public Improvements subject to this Agreement.
 - ii. Although City will initially pay the costs for the Water Public Improvements subject to this Agreement, Developer agrees to reimburse City for its actual costs of the Water Public Improvements as outlined in this Agreement; except to the extent those costs are incurred for labor of City employees or use equipment owned by City, neither of which are required to be reimbursed by Developer.
 - iii. The Parties agree the costs to be reimbursed to the City under this Agreement include the following ("Reimbursable Costs"):

- a. Actual costs incurred by City for the material expenses of the Water Public Improvements, and
 - b. Actual expenses and costs incurred by City for the labor of workers or entities not employed by City, specifically including but not necessarily limited to contractors and subcontractors, and
 - c. Expenses and costs incurred by City for the rental of equipment and/or tools not owned by City, and
 - d. Expenses and costs associated with utilities necessary or utilized in performing the Work, and
 - e. Expenses and costs of transportation incurred in performing the Work,
 - f. Taxes incurred in connection with performing the Work as well as all other fees and costs incurred in ensuring compliance with local, state, and federal public works laws and regulations as it pertains to performing the Work, and
 - g. Expenses and costs for all other services and facilities necessary for the execution and completion of the Work.
- iv. The parties further agree that if the City's "actual expenses and costs" to be incurred exceed the City's estimated expenses and costs, City shall notify Developer so the Parties can discuss alternatives (such alternatives shall be in accordance with all applicable City Standards and Specifications) in an effort to prevent the actual expenses and costs from exceeding the estimated expenses and costs, and/or to mitigate any such increase.
- v. Electrical, Gas, Telecommunication: All costs related to electrical, gas, and telecommunication services for/to the Property shall be the responsibility of Developer.
- vi. Invoicing: After materials have been purchased and/or the Work has commenced pursuant to this Agreement, City will invoice Developer monthly on or about the 15th day of each month for the actual costs incurred by City for the reimbursable expenses allowed under this Agreement. Developer shall have twenty (20) days following receipt of City's invoice to obtain any necessary approval(s) of such invoice, and twenty (20) days thereafter to remit payment owed to City on the invoice.
- a. Lien waivers executed by any non-City payee shall be delivered to Developer at the same time Developer pays City on the monthly invoice corresponding in accordance with the above.
 - b. If Developer does not pay within 30 days of any invoice billed by City to Developer in accordance with the above, City has the right to stop all work under this Agreement.

- c. Developer will be allowed to keep a ten percent (10%) 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 become due and owing in full to City upon completion of the Work and invoicing by City to Developer for the amounts due and owing, subject to acceptance by Developer; except, work shall be deemed acceptable if all applicable City Standards and Specifications are met.
 - vii. City Personnel Costs: City will not invoice or attempt to collect any payment or reimbursement from Developer under this Agreement for the labor costs of City's personnel, which includes the City Administrator, Public Works Director, human resources personnel, finance personnel, or the labor costs of City employees, which refers only to employees of City and does not include independent contractors or subcontractors. Further, City agrees not to bill Developer under this Agreement for labor costs incurred by the City Attorney unless otherwise allowed under Paragraph 12.
 - viii. Purchasing Policy / RFP / Bidding Process: City will use the current Purchasing Policy approved by the City Council and associated Administrative Policies 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. City shall provide to Developer 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 (3) 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.
 - ix. Funds Deposits: Developer agrees that any funds remitted to City under this Agreement may be commingled by City with other funds deposited by City from other sources. Further, any funds remitted by Developer will gain no interest, and City shall determine where said funds are to be deposited.
- 4. **Prior Agreement(s):** 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 neither has nor will gain 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 City commences work under this Agreement. The Parties acknowledge and 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, City agrees to take all steps necessary 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 the City Council through an Ordinance.
7. **Conflict of Interest:** No salaried director, officer or employee of 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 null and 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 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, 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, 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 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. **Fee-Shifting:** Upon entry of a Court order adjudging liability on the part of a party to this Agreement for gross negligence or any form of intentional misconduct in connection with that party's discharge of its obligations under this Agreement, the party found liable shall be required to pay the non-liable party its reasonable attorneys' fees and expenses incurred in connection therewith.
13. **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, provided, however, that City covenants that all work performed by City under this Agreement will be done in a workmanlike manner and in accordance with all applicable City Standards and Specifications.
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 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.
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 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.
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 A1-A2 – Legal description;
- c. Exhibit B – Final Plans;
- d. Exhibit C – Cost Estimate(s); and
- e. 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:

To City: City of Republic, Missouri
 Attn: City Administrator
 213 North Main Street
 Republic, Missouri 65738

To Developer: Iron Grain District, LLC
 Attn: Randy Magers
 2776 S. Campbell
 Springfield, MO 65807

[SIGNATURES ON FOLLOWING PAGE (Page 11 of 11)]

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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:

CITY OF REPUBLIC, by:

Iron Grain District, LLC

By: _____
Randall W. Magers
Sole Member of Magers Management
Company, LLC, the Sole Member of
Iron Grain District, LLC

David Cameron, City Administrator

Magers Republic No. 3C, LLC

Approved as to Finance and Budgetary Purposes:

By: _____
Randall W. Magers
Sole Member of Magers Management
Company, LLC, the Sole Member of
Magers Republic No. 3C, LLC

Meghin Cook, Finance Director

Approved as to Form:

Megan McCullough, City Attorney

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