

Bill No. 13795

Ordinance No. 24-032

Sponsor: Vince Ratchford

AN ORDINANCE AUTHORIZING A SECOND AMENDMENT TO PURCHASE AGREEMENT (PHASE 3) BY AND BETWEEN THE CITY OF ST. CHARLES, MISSOURI, AS SELLER, AND RIVERPOINTE MASTER DEVELOPER, LLC, AS PURCHASER, WITH RESPECT TO THE ADDITION OF CERTAIN NEWLY ACQUIRED CITY PROPERTY TO PHASE 3 OF THE RIVERPOINTE PROJECT AND UPDATES TO CERTAIN PROVISIONS OF THE AGREEMENT.

Whereas, the City of St. Charles, Missouri (the "City") entered into a Purchase Agreement with CRG Acquisition, LLC ("CRG"), dated as of July 27, 2021 (the "Original Agreement"), with respect to CRG's purchase of certain real property consisting of approximately 14.62 acres in Phase 3 of the Riverpointe project (the "Property"); and

Whereas, the City Council, on November 3, 2021, enacted Ordinance Number 21-179 which authorized the Agreement; and

Whereas, the City Council, on November 9, 2021, enacted Ordinance Number 21-195 which authorized the First Amendment to the Agreement (the Original Agreement and the First Amendment, collectively, the "Agreement"); and

Whereas, CRG assigned the Agreement to Riverpointe Master Developer, LLC ("RMD"), by a certain Assignment and Assumption of Purchase Agreement dated July 9, 2022; and

Whereas, the City and RMD desire to amend the Agreement to add certain newly acquired City property to the Phase 3 purchase sale agreement, with a resulting adjustment to the purchase price, and to further amend the Agreement as otherwise provided in the Second Amendment.

Be It Ordained by the Council of the City of St. Charles, Missouri, as Follows:

SECTION 1. The Second Amendment to Purchase Agreement (Phase 3) between the City of St. Charles, Missouri and Riverpointe Master Developer, LLC, in substantially the same in form and content as attached hereto and identified as Exhibit 1, is approved. The Mayor and City Clerk are authorized to execute the Second Amendment and perform all acts necessary to carry out the intent of this ordinance.

SECTION 2. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

March 19, 2024

Date Passed



Vince Ratchford, Presiding Officer

Bill No. 13795

3-20-24

Date Approved by Mayor

Daniel J. Borgmeyer
Daniel J. Borgmeyer, Mayor

Approved as to Form:

Attest:

Holly Magdrian
Assistant City Attorney 2/23/2024

Kimberly Holson
City Clerk

for

Michael P. Cullen, City Attorney

Date

City Clerk



CERTIFICATE OF DIRECTOR OF FINANCE

I certify that the expenditure contemplated by this document is within the purpose of the appropriation and the work program contemplated thereby, and that there is a sufficient unencumbered balance in the appropriation account and in the proper fund to pay the obligation.

Jeff Olson 2-26-24
Director of Finance Date

SECOND AMENDMENT TO PURCHASE AGREEMENT (PHASE 3)

THIS SECOND AMENDMENT TO PURCHASE AGREEMENT (this "Amendment"), dated as of March 20, 2024, (the "Effective Date") is made and entered into by and between RIVERPOINTE MASTER DEVELOPER, LLC, a Missouri limited liability company ("Purchaser"), and CITY OF ST. CHARLES, MISSOURI, a constitutional charter city and political subdivision of the State of Missouri ("Seller"). The following recitals form the basis of this Amendment and are made a material part hereof:

A. CRG ACQUISITION, LLC, a Missouri limited liability company ("Original Purchaser"), and Seller entered into that certain Purchase Agreement dated as of July 27, 2021, as amended by that First Amendment to Purchase Agreement (Phase 3) dated December 14, 2021, and as assigned by Original Purchaser to Purchaser by that certain Assignment and Assumption of Purchase Agreement dated July 9, 2022 (collectively, as amended and assigned, the "Agreement"), with respect to certain real property consisting of approximately 14.62 acres located in St. Charles, Missouri as further described in the Agreement (the "Property").

B. Purchaser and Seller desire to amend the Agreement as set forth below.

C. All capitalized terms not otherwise defined herein, shall have the same meaning as set forth in the Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. 404 Permit Cost Allocation. The parties hereby acknowledge and agree that Seller has agreed to pursue and obtain receipt of the Army Corps of Engineer 404 permit necessary for Purchaser's intended development of the Property (the "404 Permit"), and the total cost of work and related activities necessary for obtaining the Army Corps of Engineer 404 permit ("Total 404 Cost") for (a) the Property and (b) the real property consisting of approximately 18.427 acres that is the subject of that certain Purchase Agreement dated July 27, 2021 between Seller and Purchaser's predecessor-in-interest ("Phase 1 Property") (as amended, the "Phase 1 PSA") is estimated to be Four Million One Hundred Four Thousand Five Hundred Twenty and 00/Dollars (\$4,104,520.00) (subject to adjustment based upon the final amount of the Total 404 Cost, as evidenced by reasonable supporting documentation evidencing same) and shall be added to the applicable Purchase Price as follows:

- (i) 40% of the Total 404 Cost, which as of the Effective Date is estimated to be \$1,641,808.00, shall be allocated to the portion of the Phase 1 Property ("Phase 1 Property 404 Cost"), and shall be payable as part of the Purchase Price as set forth in the Phase 1 PSA.
- (ii) 60% of the Total 404 Cost, which as of the Effective Date is estimated to be \$2,462,712.00, shall be allocated to the Property ("Property 404 Cost") and payable at Closing, which Property 404 Cost shall be further allocated, if necessary, to the constituent parts of the Property by square footage (i.e., if a portion of the Property is 20% of the total square footage of the Property, 20% of the Property 404 Cost would be allocated to that portion), which lots are depicted on Exhibit G-1

attached hereto and incorporated herein, and which respective square footages (and the allocable Property 404 Cost estimated as of the Effective Date) are reflected on **Exhibit G-2** attached hereto and incorporated herein. In the event that Purchaser shall close on any lots comprising the Property prior to the entirety of the Property and pay the applicable Property 404 Cost attributable to the square footages of such portion of the Property, then the total Property 404 Cost payable upon the Closing of the remainder of the Property shall be reduced by such amount.

2. Purchase Price. Section 3 of the Agreement and Section 4 of the First Amendment are hereby deleted in their entirety and replaced with the following:

“3. Purchase Price. The Purchase Price for the Property (the “Purchase Price”) shall be equal to the aggregate of the following, subject to adjustments as provided for herein:

- (i) The cost attributable to Seller’s acquisition of the Property, in the amount of Three Million Seventy-Six Thousand Seventy-Two and 00/100 Dollars (\$3,076,072.00) (the “Land Costs”);
- (ii) The final applicable Property 404 Cost, which as of the Effective Date is estimated to be in the amount of \$2,462,712.00;
- (iii) Seller’s actual out-of-pocket expenses to complete certain development work as set forth on **Exhibit B**, attached hereto and incorporated herein (“Seller’s Work”) (less any External Funding, as defined in Section 5.1, received by the Seller to offset such costs), which amount is expected to be, and which amount shall not exceed, Seven Hundred Twenty Seven Thousand One Hundred Seventy and 87/100 Dollars (\$727,170.87), also as detailed on **Exhibit B** attached hereto to this Amendment (the “Pre-Development Costs”). At least ten (10) days prior to Closing, Seller shall provide to Purchaser invoices, checks, or other written documentation evidencing the actual Pre-Development Costs incurred by Seller in connection with Seller’s Work, along with a certification substantially in the form attached hereto as **Exhibit F**. The Parties acknowledge that as of the date of this Agreement, all of the Seller’s Work has been fully and satisfactorily completed.

The Parties acknowledge that, no additional Pre-Development Work (as defined below) is in progress or will occur without Purchaser’s written approval; and

- (iv) the Haselhorst Expenses (as defined below).

The Purchase Price shall be payable as follows:

3.1 An initial earnest deposit of One Hundred Thousand and No/100 Dollars (\$100,000.00) (the “Initial Earnest Deposit”), by cash, cashier’s check or wire transfer, to be deposited into escrow with the Title Company within ten (10) Business Days after the Contract Date to be held for the mutual benefit of the parties hereto in an interest bearing account at a bank whose accounts are federally insured (said Initial Earnest Deposit, together with any additional earnest deposits, and together with any and all interest paid on such deposits, (collectively, the “Earnest Deposit”). If this Agreement fails to Close by the Outside Closing Date (as defined below), the Title Company shall, without the need for further consent or approval of Seller excepting providing written notification to Seller, refund the entire Earnest Deposit to Purchaser and neither party shall have any further rights or obligations hereunder, except for any obligations which expressly survive such termination under this Agreement. In the event that Purchaser elects in writing pursuant to **Section 5** hereof to proceed to Closing, Purchaser shall deposit an additional One Hundred Thousand and No/100 Dollars (\$100,000.00) with the Title Company, at which point, the Earnest Deposit shall become non-refundable to Purchaser (but applicable to the Purchase Price), except in the event of a Seller default.

3.2 The balance of the Purchase Price, by wire transfer to the Title Company, in escrow, on the Closing Date and then by wire transfer from the Title Company to Seller, subject to the adjustments provided in this Agreement at Closing.

3. Additional Property. The real property depicted and described on Exhibit A-1 attached hereto (“Haselhorst Property”) is hereby added to the definition of the Property set forth in Exhibit A of the Agreement and, together with the Property described in Exhibit A to the Agreement shall constitute the “Property” as of the Effective Date. Purchaser hereby acknowledges that Seller incurred costs related to the Haselhorst Property in the amount of Four Hundred Forty-Eight Thousand Seven Hundred Sixty-Eight Dollars and zero cents (\$448,768.00) (“Haselhorst Expenses”), which Purchaser will reimburse to Seller via a dollar for dollar increase in the Purchase Price, as provided in Section 2 above, which shall constitute the purchase price attributable to the Haselhorst Property.
4. Section 5.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

“5.2. As of the date of this Amendment, Seller has confirmed to Purchaser the External Funding that Seller is entitled to make available to Purchaser for Purchaser’s completion of the Project on both the Property pursuant to the Agreement and the Phase 1 Property pursuant to the Phase 1 PSA is, collectively in the aggregate, as follows: (i) \$7,000,000.00 from the St. Charles County Road Board Fund for transportation infrastructure (of which (A) \$1,407,929.27 has been spent by Seller to date and is therefore unavailable, and (B) \$5,592,070.73 remains available and is hereby allocated for use by Purchaser; (ii) \$5,000,000.00 from the Governor’s Cost Share Program (2020) (of which (A) \$2,288,985.80 has been spent by Seller to date and is therefore unavailable, and (B) \$2,324,270.00 has been allocated to Purchaser; and (C) \$386,744.20 remains available and is hereby allocated for use by Purchaser; (iii) \$2,500,000 from the American Rescue Plan Act/House Bill 3020 Funding Agreement Fiscal Year 2023, of which (A) \$0 has been spent by Seller to date; and (B) \$2,500,000 remains available and is hereby allocated for use by Purchaser; and (iv) \$2,500,000 from the Governor’s Cost Share Program (2023), of which (A) \$0

has been spent by Seller to date, and (B) \$2,500,000 remains available and is hereby allocated for use by Purchaser (collectively, the "External Funding")."

Notwithstanding anything contained in this Agreement or the Phase 1 PSA to the contrary, the parties acknowledge and agree that the External Funding set forth in this Section 5.2 represents the External Funding that shall be made available for costs incurred by Purchaser in connection with the Project to be constructed on any portion of the Property or the Phase 1 Property and shall not require that such External Funds be separately allocated as between the Property and the Phase 1 Property, subject to the terms and conditions outlined in the funding agreements with the County Road Board, and State of Missouri.

5. Contract Date. Notwithstanding anything to the contrary set forth in the Agreement, the parties hereto acknowledge and agree that the Contract Date is July 27, 2021.
6. Termination: Notwithstanding anything to the contrary set forth in the Agreement, commencing on the date that is forty-eight (48) months following the Effective Date of this Amendment, Seller shall have the right to send written notice to Purchaser that, in the event Purchaser does not close on the Property within sixty (60) days of Purchaser's receipt of such notice (the "Outside Closing Date"), Seller may elect to terminate the Agreement upon the expiration of such sixty (60) day period, in its sole discretion. For the avoidance of doubt, and notwithstanding anything contained in the Agreement, in the event of a termination of the Agreement pursuant to the terms of this Section, Seller shall not otherwise be released from its obligations under the Agreement, including, without limitation, its reimbursement obligations under the Agreement or any cost reimbursement agreements entered into between the parties or its affiliates.
7. Cooperation; Further Assurances. Seller hereby agrees to perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments, and assurances as may reasonably be required to effectuate the purposes and to carry out the terms of this Amendment.
8. Additional Provisions. Except for the amendments contained herein, all of the provisions of the Agreement shall remain unmodified and in full force and effect, and the same are hereby ratified and affirmed in all respects. Purchaser and Seller each hereby acknowledge that this Amendment may be executed in counterparts or by electronic signatures, exchanged by facsimile transmission or email and that copies of each party's respective signature(s) shall be binding as if the same were an original signature. This Amendment shall be binding upon and inure to the benefit of the respective successors and permitted assigns and, as applicable, the heirs and legal representatives of the parties hereto. The Agreement, as hereby amended, constitutes the entire understanding and agreement between the parties and may not be amended, supplemented, or modified except by a writing executed by both of the parties.

[Signatures appear on next page.]

SIGNATURE PAGE FOR
SECOND AMENDMENT TO PURCHASE AGREEMENT

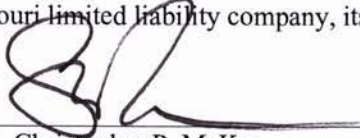
IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date set forth above.

PURCHASER:

RIVERPOINTE MASTER DEVELOPER, LLC,
a Missouri limited liability company

By: CRG – Riverpointe, LLC,
a Missouri limited liability company, its Manager

By: CRG Services Management, LLC,
a Missouri limited liability company, its Manager

By: 
Name: Christopher P. McKee
Title: President

SELLER:

CITY OF ST. CHARLES, MISSOURI,
a constitutional charter city and political subdivision of the State of Missouri

By: _____

Name: _____

Title: _____

Date of Execution: _____

Attest:

City Clerk

SIGNATURE PAGE FOR
SECOND AMENDMENT TO PURCHASE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date set forth above.

PURCHASER:

RIVERPOINTE MASTER DEVELOPER, LLC,
a Missouri limited liability company

By: CRG – Riverpointe, LLC,
a Missouri limited liability company, its Manager

By: CRG Services Management, LLC,
a Missouri limited liability company, its Manager

By: _____
Name: Jennifer E. Nichols
Title: Secretary

SELLER:

CITY OF ST. CHARLES, MISSOURI,
a constitutional charter city and political subdivision of the State of Missouri

By: _____

Name: **Daniel J. Borgmeyer**

Title: **Mayor**

Date of Execution: 3-10-24

Attest: _____
City Clerk



EXHIBIT A-1

HASELHORST PROPERTY LEGAL DESCRIPTION

[See Attached]

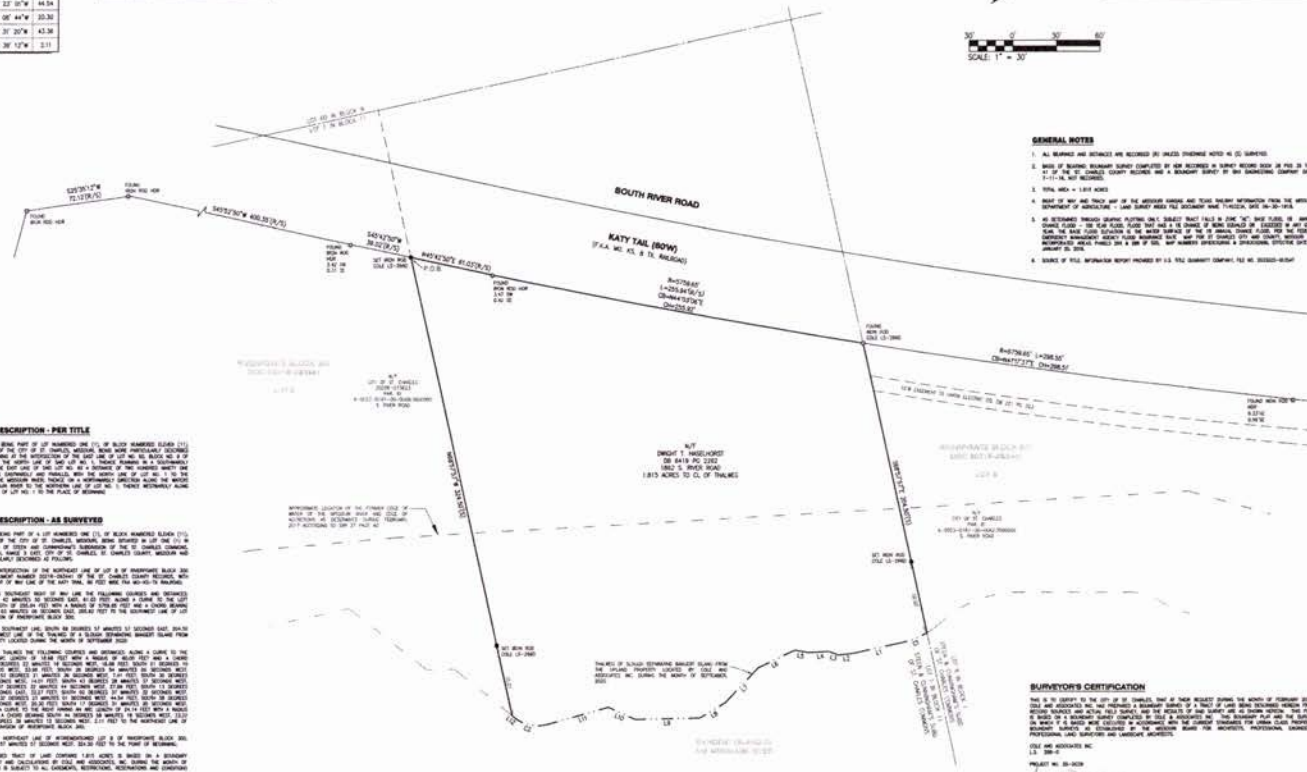
BOUNDARY SURVEY

PART OF LOT 1 IN BLOCK 11 OF
STEEN AND CUNNINGHAM'S SUBDIVISION OF
ST. CHARLES COMMONS
TOWNSHIP 48 NORTH, RANGE 5 EAST
CITY OF ST. CHARLES, ST. CHARLES COUNTY, MISSOURI

Line #	Direction	Length
11	S27° 12' 36" W	13.96
12	S28° 34' 36" W	18.23
13	S27° 21' 36" W	7.91
14	S27° 12' 36" W	14.03
15	S42° 28' 27" E	4.43
16	S27° 32' 44" W	27.88
17	S12° 45' 48" E	33.27
18	S27° 31' 32" W	25.83
19	S27° 32' 44" W	44.34
20	S28° 06' 44" W	35.30
21	S17° 30' 27" W	43.38
22	S12° 30' 12" W	3.31

Curve #	Length	Radius	Chord Direction	Chord Length
C1	18.78	80.00	S12° 22' 18" W	18.48
C2	24.14	25.00	S44° 36' 18" E	23.22

Symbol	Description
[Symbol]	SET BY SURVEYOR
[Symbol]	SET BY PROPERTY OWNER
[Symbol]	FOUND METEOR
[Symbol]	FOUND CORNER
[Symbol]	FOUND IRON PIPE
[Symbol]	FOUND IRON WIRE STRAP
[Symbol]	FOUND CONCRETE MONUMENT



- GENERAL NOTES**
- ALL BEARINGS AND DISTANCES ARE ACCORDING TO THE FOLLOWING STATEMENT: ...
 - NO ADJACENT PROPERTY OWNERS WERE NOTIFIED OF THIS SURVEY ...
 - NO ADJACENT PROPERTY OWNERS WERE NOTIFIED OF THIS SURVEY ...
 - NO ADJACENT PROPERTY OWNERS WERE NOTIFIED OF THIS SURVEY ...
 - NO ADJACENT PROPERTY OWNERS WERE NOTIFIED OF THIS SURVEY ...
 - NO ADJACENT PROPERTY OWNERS WERE NOTIFIED OF THIS SURVEY ...

PROPERTY DESCRIPTION - PER TITLE

A TRACT OF LAND BEING PART OF LOT 1 IN BLOCK 11 OF STEEN AND CUNNINGHAM'S SUBDIVISION OF ST. CHARLES COMMONS, CITY OF ST. CHARLES, MISSOURI, BEING DESCRIBED AS FOLLOWS: ...

PROPERTY DESCRIPTION - AS SURVEYED

A TRACT OF LAND BEING PART OF LOT 1 IN BLOCK 11 OF STEEN AND CUNNINGHAM'S SUBDIVISION OF ST. CHARLES COMMONS, CITY OF ST. CHARLES, MISSOURI, BEING DESCRIBED AS FOLLOWS: ...

SURVEYOR'S CERTIFICATION

I, **DAVID J. WILSON**, a duly licensed Professional Surveyor in the State of Missouri, do hereby certify that I am the Surveyor of Record for this survey, and that the same was conducted in accordance with the laws of the State of Missouri, and that the same is a true and correct representation of the actual facts as determined by me and my assistants.

Dated this 15th day of August, 2020.

DAVID J. WILSON
Professional Surveyor
No. 12345

cole

A ST. LOUIS
CORPORATION

SURVEYING & ENGINEERING

1001 N. GARDEN ST., ST. LOUIS, MO 63102
PH: 314.241.2000 FAX: 314.241.2001
WWW.COLESURVEYING.COM

PROJECT NO. 20-0036
DATE OF PLAN OR MAP: August 17, 2020

1 of 1

EXHIBIT B

SELLER'S WORK

[The parties acknowledge and agree that this Exhibit B replaces the Exhibit B attached to the First Amendment in its entirety]

[See Attached]

EXHIBIT F

PRE-DEVELOPMENT COSTS DOCUMENTATION

[The parties acknowledge and agree that this Exhibit F replaces the Exhibit F-1 and Exhibit F attached to the First Amendment in its entirety]

TO:
CRG ACQUISITION, LLC
C/O CLAYCO, INC.
2199 INNERBELT BUSINESS CENTER DRIVE

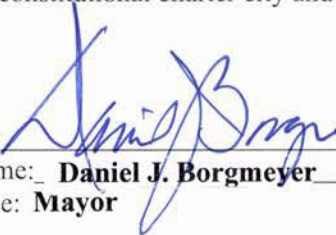
Re: RIVERPOINTE PRE-DEVELOPMENT COSTS

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Purchase Agreement by and between City of St. Charles, Missouri ("City") and CRG Acquisition, LLC ("Original Purchaser") dated as of July 27, 2021, as amended by that First Amendment to Purchase Agreement (Phase 3) dated December 14, 2021, and as assigned by Original Purchaser to Purchaser by that certain Assignment and Assumption of Purchase Agreement dated July 9, 2022 (collectively, as amended and assigned, the "Agreement"), with respect to certain real property consisting of approximately 14.62 acres located in St. Charles, Missouri as further described in the Agreement (the "Property"). In connection with said Agreement, the undersigned hereby states and certifies to CRG that:

1. Each item listed on **Schedule 1** hereto is a Pre-Development Cost and was incurred in connection with the Agreement and Seller's Work.
2. These Pre-Development Costs have been paid by the City.
3. Each item listed on **Schedule 1** has not previously been paid or reimbursed to the City, and no part thereof has been included in any other certificate previously delivered to CRG.
4. There has not been filed with or served upon the City any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the portion of Seller's Work for which this certificate relates have been issued and are in full force and effect.
6. All work related has been performed in a good and workmanlike manner and in accordance with the Agreement.

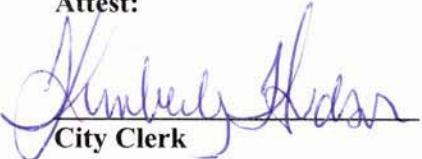
Dated this ___ day of _____, 202__.

CITY OF ST. CHARLES, MISSOURI, a constitutional charter city and political subdivision of the State of Missouri

By: 
Name: **Daniel J. Borgmeyer**
Title: **Mayor**

Acknowledged and approved this 20th day of March, 2024.

Attest:


City Clerk

PURCHASER:

By: _____
Name: _____
Title: _____



EXHIBIT G-1

DEPICTION OF PHASE 1 AND PHASE 3 LOTS

St. Charles Riverpointe
ST. CHARLES, MISSOURI

PLAN
ILLUSTRATIVE PLAN

AREA I

- BLOCK 100 - BUILDING FOOTPRINTS
- BLOCK 200 - BUILDING FOOTPRINTS
- PARKING STRUCTURE

0' MINIMUM SETBACK FOR ALL PARCELS, UNLESS OTHERWISE NOTED

AREA I

- A - RETAIL/SURFACE PARKING**
PARCEL: 2.644 ACRES
- B - HOTEL ABOVE RETAIL/SHOPS/PARKING**
PARCEL: 2.018 ACRES
- C - OFFICE ABOVE RETAIL/SHOPS/PARKING**
PARCEL: 1.596 ACRES
- D - OFFICE ABOVE SHOPS/PARKING**
PARCEL: 3.561 ACRES
- E - RESIDENTIAL ABOVE RETAIL/SHOPS/PARKING**
PARCEL: 2.275 ACRES
- F - RESIDENTIAL ABOVE RETAIL/SHOPS/PARKING**
PARCEL: 2.275 ACRES
- G - TOWNHOMES**
PARCEL: 3.175 ACRES

G.2 & H.2 - GREEN SPACE WITH RELOCATED KATY TRAIL

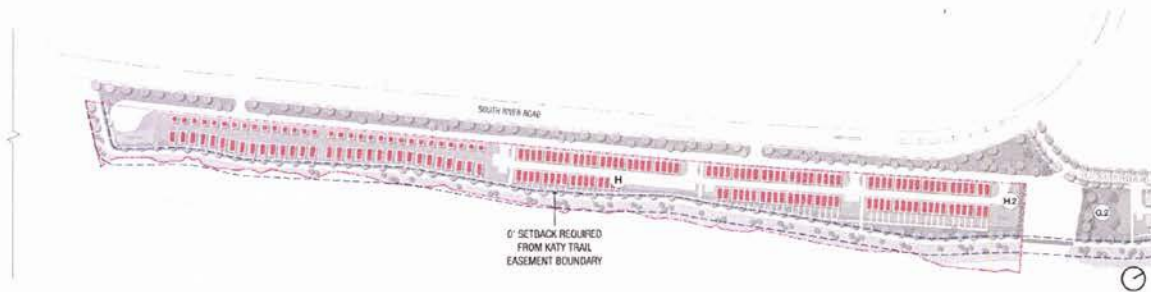
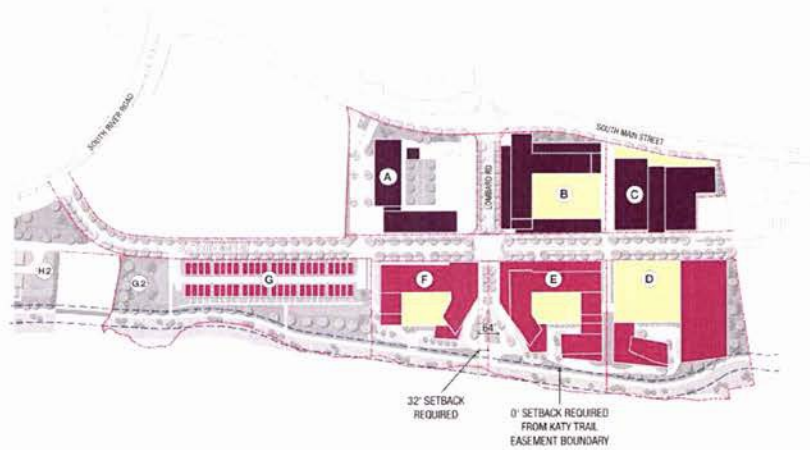


EXHIBIT G-2

Portion of the Property to be Allocated the Property 404 Cost as an Increase to the Purchase Price for that
Portion

LOTS COMPRISING PHASE 1	LOT ACREAGE	% OF TOTAL ACREAGE	PROPERTY 404 COST PER LOT
H	11.656	64%	\$1,573,931.96
I	4.767	26%	\$643,697.12
HASELHORST	1.815	10%	\$245,082.92
TOTAL	18.238	100%	\$2,462,712.00

RCA FORM (OFFICE USE ONLY)

Bill # 13795

MEETING/DATE: 3/5/2024

Regular Special Work Session

ATTACHMENT: YES NO

Report Resolution Ordinance

Request for Council Action

Ward(s): 3

Sponsor(s): Ratchford

Description:

A Second Amendment to the Purchase Sales Agreement of Phase 3 of Riverpointe with Riverpointe Master Developer.

Contract Extension/Renewal: Yes No

Information Paper Attached: Yes No

Staff Recommendation: Approve Disapprove

Board/Committee/Commission Recommendation: Approve Disapprove

Summary:

Staff has negotiated a Second Amendment to the Phase 3 purchase sales agreement with Riverpointe Master Developer, LLC. This amendment adds a newly acquired City property to the Phase 3 purchase sales agreement. The sale price for Phase 3 is revised to become actual costs up to \$6,714,722.87. Also the agreement updates provisions of the contract.

Budget Impact: (revenue generated, estimated cost, CIP item, etc.)

Fiscal Impact: \$ 6,714,722.87 N/A

Account #: 410-000-000-511-001

Project #: _____

RCA prepared by: BWT Dept. Dir. BWT Finance Dir. Jaw Dir. of Admin. ↻