

Sponsor: Vince Ratchford

AN ORDINANCE AUTHORIZING A THIRD AMENDMENT TO PURCHASE AGREEMENT (PHASE 1) BY AND BETWEEN THE CITY OF ST. CHARLES, MISSOURI, AS SELLER, AND RIVERPOINTE MASTER DEVELOPER, LLC, AS PURCHASER, WITH RESPECT TO LOTS B AND C IN PHASE 1 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 18.427 acres in Phase 1 of the Riverpointe project (the "Property"); and

Whereas, the City Council, on November 3, 2021, enacted Ordinance Number 21-178 which authorized the Agreement; and

Whereas, the City Council, on November 9, 2021, enacted Ordinance Number 21-194 which authorized the First Amendment to the Agreement; and

Whereas, the City Council, on March 8, 2022, enacted Ordinance Number 22-040 which authorized the Second Amendment to the Agreement (the Original Agreement, the First Amendment, and the Second 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 March 10, 2022; and

Whereas, the City and RMD desire to amend the Agreement to allow RMD to close on the sale and purchase of Lots B and C of the Riverpointe Project as provided in the Third Amendment, and to further amend the Agreement as otherwise provided in the Third Amendment.

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

SECTION 1. The Third Amendment to Purchase Agreement (Phase 1) 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 Third 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.

Bill No. 13796

March 19, 2024

Date Passed

Vince Ratchford

Vince Ratchford, Presiding Officer

3-20-24

Date Approved by Mayor

Daniel J. Borgmeyer

Daniel J. Borgmeyer, Mayor

Approved as to Form:

Holly Magarian
Assistant City Attorney 2/23/2024

for Michael P. Cullen, City Attorney Date

Attest:

Kimberly Spencer

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.

Gene O'Connell

Director of Finance

2-26-24

Date

THIRD AMENDMENT TO PURCHASE AGREEMENT (PHASE I)

THIS THIRD AMENDMENT TO PURCHASE AGREEMENT (this "Amendment"), dated as of the date of the last party's execution hereof, is made and entered into by and between RIVERPOINTE MASTER DEVELOPER, LLC, a Missouri limited liability company, as successor-in-interest to CRG Acquisition, LLC ("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. Purchaser (as successor in interest to CRG Acquisition, LLC ("CRG")) and Seller are parties to that certain Purchase Agreement dated as of July 27, 2021 (the "Original Agreement"), as amended by that certain First Amendment to Purchase Agreement (Phase 1) dated December 14, 2021 (the "First Amendment"), as further amended by that certain Second Amendment to Purchase Agreement (Phase 1) dated March 8, 2022 (the "Second Amendment", along with the Original Agreement and the First Amendment, collectively, the "Agreement"), and as assigned by CRG to Purchaser by that certain Assignment and Assumption of Purchase Agreement dated March 10, 2022, with respect to certain real property consisting of approximately 18.427 acres located in St. Charles, Missouri as further described in the Agreement (the "Property").

B. Purchaser and Seller desire to amend the Agreement to provide Purchaser with the ability to acquire a portion of the Property prior to acquiring the entire Property and as otherwise 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. Closing Date for Lots B and C. Notwithstanding anything to the contrary set forth in the Agreement, Seller hereby acknowledges and agrees that Purchaser, at its election, shall have the right to acquire the portion of the Property legally described on Exhibit A-1 attached hereto ("Lots B and C") prior to the Closing for the rest of the Property. If Purchaser elects to close on Lots B and C prior to the rest of the Property, the Closing for Lots B and C ("Lots B and C Closing") shall be on or before thirty (30) days after Purchaser's receipt of, and satisfaction with, in its sole reasonable discretion, all "Lots B and C Permits and Approvals" (the "Lots B and C Closing Date"); provided that if the Lots B and C Closing has not occurred by June 30, 2024, Purchaser's right to acquire Lots B and C prior to the Closing for the rest of the Property shall expire and be of no further force or effect. Notwithstanding any provision of the Agreement to the contrary, the Lots B and C Closing Date cannot be extended for any reason beyond June 30, 2024, without the approval by the City Council in its sole and absolute discretion. For purposes of this Section, "Lots B and C Permits and Approvals" shall mean all approvals needed for the following: (i) all zoning and rezoning applications filed with the Seller related to Lots B and C; and (ii) all site plan and Final Plat approvals submitted to and approved by the Seller related to the commercial development contemplated to be constructed on Lots B and C. Notwithstanding anything to the contrary set forth in this Amendment or the Agreement, Purchaser's election to acquire Lots B and C, or Purchaser's receipt of all Lots B and C Permits and Approvals shall not be construed as a waiver of any kind of Purchaser's rights under the Agreement related to the Due Diligence Period or Purchaser's inspection rights for the remainder of the Property.
2. Purchase Price for Lots B and C.

- (i) The purchase price to be paid by Purchaser for Lots B and C, subject to adjustment as set forth in the Agreement, is estimated on the Effective Date to be \$4,351,907.70 (the "Lots B and C Purchase Price"), which Lot B and C Purchase Price is the aggregate of (i) the final cost attributable to the land in the amount of \$2,328,481.07; (ii) the amount attributable to Seller's Work for Lots B and C, which is estimated as of the Effective Date to be \$1,657,318.35; and (iii) the final amount of the 404 Cost (as defined below) attributable to Lots B and C, which as of the Effective Date is estimated to equal \$366,108.28, subject to adjustment as provided below. The Lots B and C Purchase Price shall be paid on the Lots B and C Closing Date, subject to the adjustments and terms set forth in the Agreement and below in this Amendment. Notwithstanding the foregoing, in the event that the final 404 Cost (as evidenced by reasonable supporting documentation evidencing the cost of same) is less than originally estimated, such that the estimated 404 Cost attributed to Lots B and C and paid at the Closing on Lots B & C shall represent an overpayment by Purchaser, then the parties shall true up such overpayment upon the Closing on the remainder of the Property or upon the termination of the Agreement (in which event Seller shall reimburse Purchaser for such overpayment upon termination of the Agreement).
 - (ii) Purchaser has the option to reduce the Lots B and C Purchase Price on a dollar-for-dollar basis by the amount of Fifteen Thousand Three Hundred Twenty-Five and 00/100 Dollars (\$15,325.00), which represents the actual costs incurred in connection with Purchaser undertaking a portion of Seller's Work related to the site development of Lot 1 (as defined in the First Amendment) (the "CNP Lot Credit");
 - (iii) If Purchaser elects to proceed to Closing on the remaining Property (in accordance with the terms of the Agreement and this Amendment) the Lots B and C Purchase Price paid by Purchaser as set forth herein shall reduce the Purchase Price at the Closing for the remaining Property on a dollar-for-dollar basis.
3. Purchaser Credit. Purchaser shall receive a credit against the Purchase Price of the remaining Property in the amount of the following (the "Purchaser Credit"):
 - (i) if not used on the Lots B and C Closing Date, if any, the amount of the CNP Lot Credit that remains unused or unallocated; plus
 - (ii) any amount of Rent (as defined in that certain Temporary Parking Lot Lease dated August 16, 2023 between Purchaser and Seller ("Temporary Parking Lot Lease") that was paid by Purchaser to Seller that was not credited against the Option Purchase Price (as defined in the Temporary Parking Lot Lease) as part of the closing contemplated therein, if any. This shall include any Rent paid by Purchaser to Seller for the time period after the Lots B and C Closing Date and prior to the Closing Date.
4. Purchase Price for the Property. All of Section 3 of the Agreement (as amended by the First Amendment) that is above the sentence therein that begins "Seller shall be obligated" is hereby deleted in its 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 in the Agreement (provided, however, that if the Lots B and C Closing occurs prior to Closing for the remaining Property, the following shall be reduced by the Lots B and C Purchase Price):

- (i) The cost attributable to the Seller’s acquisition of the Property, in the amount of Four Million Two Hundred Forty Four Thousand Six Hundred Thirteen and No/100 Dollars (\$4,244,613.00), reduced by (a) the Lot 1 purchase price, in the amount of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00), for a total of Three Million Four Hundred Ninety Four Thousand Six Hundred Thirteen and No/100 Dollars (\$3,494,613.00) (the “Land Costs”), (b) the overestimate of costs for Seller’s completion of the relocation of the cellular phone tower, in the amount of Three-Hundred Seventy-Two Thousand and No/100 Dollars (\$372,000.00) (the “Cell Tower Overestimate”), provided, however, any increase in the funds received by Purchaser from the Governor’s Cost Share Program (as further outlined below) can be credited towards the amount of the Cell Tower Overestimate, and (c) the Purchaser Credit;
- (ii) The final applicable Property 404 Cost Allocation as described in Section 6 of this Amendment; and
- (iii) Seller’s actual out-of-pocket expenses to complete certain development work as set forth on Exhibit B attached hereto and incorporated by this reference (“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, Four Million Six Hundred Ninety One Thousand Eight Hundred Six and 20/100 Dollars (\$4,691,806.20), also as detailed on Exhibit B 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. Notwithstanding anything to the contrary set forth herein, if Seller elects to have any portion of the work currently contemplated as Seller’s Work to be completed by, and the costs incurred by Purchaser, pursuant to the terms of a Cost Reimbursement Agreement, then in such event, such additional costs incurred by Purchaser under the Cost Reimbursement Agreement shall not be considered Pre-Development Costs under this Agreement (i.e. any costs incurred for and paid by Purchaser shall not be considered Pre-Development Costs for purposes of determining the Purchase Price).

The parties acknowledge that the Pre-Development Costs have increased since the First Amendment, and that the increase in

Pre-Development Costs is offset by the decrease in costs for Phase III pre-development activities, as outlined in the attached Exhibit B, and that aside from the cellular tower work, no other Pre-Development Work (as defined below) is in progress or will occur without Purchaser's written approval.

5. External Funding. 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 3 Property pursuant to the Phase 3 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 3 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 3 Property and shall not require that such External Funds be separately allocated as between the Property and the Phase 3 Property, subject to the terms and conditions outlined in the funding agreements with the County Road Board, and State of Missouri."

6. 404 Permit Cost Allocation. The parties hereby acknowledge and agree that the City 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 14.62 acres that is the subject of that certain Purchase Agreement dated July 27, 2021 between Seller and Purchaser's predecessor-in-interest ("Phase 3 Property") (as amended, the "Phase 3 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 is estimated as of the Effective Date to be \$1,641,808.00 (the "Property 404 Cost"), shall be allocated to the Property and payable at Closing. The 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 Lots B & C prior to the remainder of the Property and pay the applicable Property 404 Cost attributable to the square footages of Lots B & C, then the total Property 404 Cost payable upon the Closing of the remainder of the Property shall be reduced by such amount (i.e., in the event the Property 404 Cost paid by Purchaser at the Lots B & C Closing Date equals \$366,108.28, then the estimated Property 404 Cost shall be reduced to \$1,275,699.72).

- (ii) 60% of the Total 404 Cost, which as of the Effective Date is estimated to be approximately \$2,462,712.00, shall be allocated to the Phase 3 Property and shall be payable as part of the Purchase Price as set forth in the Phase 3 PSA.

7. Title Commitment and Survey. Notwithstanding anything to the contrary set forth in the Agreement, Purchaser shall have the option to order a Title Commitment for Lots B and C and a separate Title Commitment for the remaining Property, and the time frames as set forth in Section 5.6 of the Agreement, including the time frame for delivering an Objection Notice, shall be based upon the receipt of the applicable Title Commitment.
8. Purchaser's Obligation to Close on Lots B and C. Seller acknowledges that, except as otherwise set forth in this Amendment, Purchaser's obligation to complete the Closing with respect to Lots B and C is expressly subject to satisfaction of each and every contingency and obligation of Seller set forth under the Agreement, as applicable to Lots B and C, including but not limited the satisfaction of each and every condition precedent set forth under Section 9 of the Agreement.
9. Seller's Right to Sell a Portion of the Property. Prior to Closing, Seller shall have the right to sell any portion of the Property that Purchaser is not under contract to sell or not in active negotiations to sell ("Third-Party Property") to a person or entity other than Purchaser ("Third-Party Buyer") (such transaction, a "Third-Party Sale"); provided, however, that, in acknowledgment of Purchaser's interest in the overall development of the Property and its rights under the Agreement, all of the following conditions shall have been met prior to the City entering into a purchase and sale agreement with a Third-Party Buyer and/or the closing for a Third-Party Sale, as applicable:
 - (i) Notwithstanding anything contained in this Agreement to the contrary, Seller acknowledges and agrees that, as of the Effective Date, Purchaser is in active negotiations or is under contract to sell those areas labeled as B, C, G and H on **Exhibit G-1** attached hereto, and, accordingly, such portions of the Property are expressly excluded from the definition of Third-Party Property, and, accordingly, the Seller shall have no right to sell or actively market such property for sale. In the event that Purchaser shall enter into active negotiations or execute a purchase agreement to sell a portion of the Third-Party Property, Purchaser shall provide notice to Seller thereof, along with reasonable documentation evidencing the same (provided that Purchaser shall be entitled to redact any confidential economic or proprietary terms of such negotiations or executed purchase

agreement), and upon Seller's receipt of such notice and reasonable documentation, such portion of the Property shall be deemed excluded from the definition of eligible Third-Party Property.

- (ii) The Third-Party Buyer intends to submit applications for all necessary construction and related permits within one hundred eighty (180) days of the closing on the Third-Party Sale;
- (iii) At least thirty (30) days prior to closing of the Third-Party Sale, Seller shall provide to Purchaser:
 - 1. The purchase and sale agreement and any other related agreements between Seller and the Third-Party Buyer regarding the Third-Party Sale, evidencing the terms set forth in subsection (v) below.
 - 2. A thorough description of the Third-Party Buyer's intended use of the Third-Party Property, evidencing that such use does not run afoul of the provisions set forth in this Section.
 - 3. A pro forma operating statement certified by the Third-Party Buyer, detailing the revenues for the ensuing ten years that are reasonably anticipated to be generated by the Third-Party Buyer's intended use of the Third-Party Property.
 - 4. The anticipated construction start date and "opening date" for the Third-Party Buyer's use of the Third-Party Property.
- (iv) Notwithstanding anything contained herein to the contrary, Purchaser shall have the right of right of first refusal ("ROFR") with respect to any offer to purchase any Third-Party Property from Seller prior to any Third-Party Sale upon the following terms and conditions: If Seller receives an offer (the "Purchase Offer") to purchase proposed Third-Party Property from a Third-Party Buyer, Seller may not enter into any purchase and sale, or similar, agreement related to granting or conveying any interest in the Third-Party Property unless and until it has fully complied with the terms and conditions of this paragraph. Seller shall give prompt written notice (the "ROFR Notice") to Purchaser, which ROFR Notice shall specify (i) the identity of the Third-Party Buyer (ii) all material terms and conditions of such Purchase Offer, including the Purchase Price, due diligence period, closing time frame and intended use of the Property, and (iii) any other material terms related to the intended transaction.

Upon Purchaser's receipt of the ROFR Notice, Purchaser shall have the right to elect to purchase the Third-Party Property for a purchase price equal to the amount that is the lesser of (i) the purchase price set forth in the ROFR Notice, and (ii) the applicable purchase price set forth in the Agreement, with such closing occurring on the date that is the later of (i) the date set forth in the ROFR Notice, and (ii) sixty (60) days following Seller's receipt of the Election Notice (as defined below).

To exercise its ROFR, Purchaser must send Seller written notice of its intent to exercise the ROFR (the "Election Notice") within ten (10) days after receipt of the ROFR Notice. In the event Purchaser shall fail to timely exercise its ROFR within the foregoing time limit, Seller may enter into an agreement to sell such Third-Party Property to the Third-Party Buyer (and no other party) on the same terms and conditions as set

forth in the ROFR Notice, provided that, notwithstanding anything contained herein to the contrary, such transaction is otherwise subject in all respects to the provisions set forth in this Section 9. Any change to such terms agreed to by Seller and the Third-Party Buyer shall be deemed to be a new Purchase Offer and subject to the procedure in this paragraph and Purchaser's ROFR. Purchaser's waiver of its ROFR with respect to a particular Third-Party Buyer and a particular Purchase Offer shall be deemed a waiver only with respect to such Third-Party Buyer and such Purchase Offer, and Purchaser's ROFR shall continue in full force and effect with respect to all future Interested Parties and Purchase Offers. In the event Purchaser elects to purchase the Third-Party Property in accordance with this this paragraph ("ROFR Purchase"), Seller and Purchaser shall, within fifteen (15) days after Purchaser receives the Election Notice, enter into a written agreement memorializing the purchase of the Subject Property on the terms and conditions set forth in this Section, with such other terms and provisions as may be mutually agreed upon by Seller and Purchaser. Upon the closing for the ROFR Purchase, Seller shall deliver to Purchaser a countersigned amendment to this Agreement, reducing the Purchase Price dollar for dollar in the amount of the ROFR Purchase. The provisions of this paragraph shall inure to and be binding on the successors and assigns of each party, provided, however, following the closing on the sale of the Third-Party Property in accordance with this Section and upon expiration of the survival period for Purchaser's reversionary rights with respect to the Reacquisition Deed set forth herein, thereafter, Purchaser's ROFR rights with respect to such Property shall expire.

(v) Seller shall cause any purchase and sale agreement with a Third-Party Buyer to include the following provisions, which shall survive the closing of the Third-Party Sale and to which Purchaser shall be an express third-party beneficiary:

1. The Third-Party Buyer shall consent to the future recording against the Third-Party Property of a Declaration of Easements, Covenants and Restrictions, by Purchaser, which shall include provisions for the Property and the Third-Party Property, including reasonable restrictions on the use thereof, and will obligate the Third-Party Buyer to share in common area expenses.
2. Any zoning or other requirements of any governmental authority applicable to the Third-Party Property or the Third-Party Buyer's intended use thereof, including, without limitation, any minimum parking space requirements, shall be satisfied solely by the Third-Party Buyer without any assistance from Purchaser or any use of any portions of the Property other than the Third-Party Property, whether owned by Purchaser or another party.
3. The Third-Party Buyer's development and use of the Third-Party Property shall in no way negatively affect Purchaser's development of the Property or Purchaser's activities in the surrounding area, including, without limitation, any

entitlements, the External Funding, or any of the agreements underlying the External Funding.

4. If Seller delivers to the Third-Party Buyer a deed to the Third-Party Property without all of the conditions of this Section 9 having been satisfied or waived by Purchaser, upon thirty (30) days notice from Purchaser, the Third-Party Buyer shall execute and deliver to Seller a deed conveying the Third-Party Property back to Seller ("Reacquisition Deed") free and clear of all monetary encumbrance for the purchase price for the Third-Party Sale.
 5. If the Third-Party Buyer fails to commence construction on the Third-Party Property for the Third-Party Buyer's intended use set forth in the ROFR Notice, within one hundred eighty (180) days from the closing of the Third-Party Sale, the Third-Party Buyer shall execute and deliver a Reacquisition Deed.
 6. A requirement that the Third-Party Buyer reimburse Purchaser pursuant to Section 9(vi) hereof and that the Third-Party Buyer acknowledges Purchaser's lien rights against the Third-Party Property in the event the Third-Party Buyer shall fail in its obligations with respect thereto.
 7. It shall be a condition to the closing of the Third-Party Sale that the Third-Party Buyer shall have received the written consent of Purchaser outlined in Section 9(viii) of this Amendment.
- (vi) At the closing for the Third-Party Sale, Purchaser shall receive from the Third-Party Buyer a payment equal to the pro rata share applicable to the Third-Party Property of any amounts that Purchaser would have received as a credit from Seller pursuant to Section 2 of that certain Cost Reimbursement Agreement dated around December 14, 2021 between Seller and Purchaser's predecessor-in-interest, as may be amended, restated, or otherwise modified from time to time, and Section 2 of that certain Cost Reimbursement Agreement Pertaining to Lot A of Riverpointe Block 100 Plat Two dated March 8, 2022, as may be amended, restated, or otherwise modified from time to time (together, the "CRA Credit"). The CRA Credit shall be collected from the Third-Party Buyer as an addition to the purchase price for the Third-Party Sale. If for any reason Purchaser does not receive the CRA Credit from the Third-Party Buyer at the closing of the Third-Party Sale, Seller shall pay the CRA Credit to Purchaser upon the closing of the Third-Party Sale. In the event such CRA Credit is not reimbursed to Purchaser in connection with the Third-Party Sale, Purchaser shall have all rights and remedies at law or in equity, including the right to lien the Property.
- (vii) At the closing for the Third-Party Sale, Seller shall deliver to Purchaser a countersigned amendment to this Agreement, reducing the Purchase Price dollar for dollar in the amount of the Third-Party Property purchase price.
- (viii) Purchaser shall have consented in a signed writing to the Third-Party Sale, which consent shall not be unreasonably withheld, conditioned or delayed.

- (ix) In the event that Seller shall default on its obligations under this Section 9, then in addition to Purchaser's remedies under the Agreement, Purchaser shall have all rights and remedies at law or in equity.

If a Third-Party Buyer delivers a Reacquisition Deed to Seller, Seller shall accept delivery of such Reacquisition Deed.

10. Recertification of Representations and Warranties. As of the date of this Amendment, each of the representations and warranties contained in the Agreement are true and accurate and there have been no material changes to said representations and warranties as of the date of this Amendment.
11. Termination Fee. Section 7 of the First Amendment is hereby deleted in its entirety.
12. 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, 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.
13. Affirmation of Completion of Seller's Work. Seller hereby represents and warrants that (a) all of Seller's Work that Seller has undertaken as of the date of this Amendment has been performed and completed in a workmanlike manner and in accordance with the plans and specifications reviewed and approved by Purchaser as detailed in the Agreement and (b) lien waivers for the applicable portions of Seller's Work have been obtained. Seller shall complete and perform any additional Seller's Work, as approved by Purchaser, in a workmanlike manner and in accordance with the plans and specifications reviewed and approved by Purchaser as detailed in the Agreement.
14. Cooperation; Further Assurances. Seller hereby agrees to cooperate with Purchaser and to make such further revisions to the Agreement as may be necessary so that the intent of this Amendment, which is to provide Purchaser with the ability to purchase and close on Lots B and C prior to Closing on the entire Property, can be effectuated. Seller hereby agrees and authorizes the Mayor to negotiate and execute all documents or amendments deemed reasonably necessary to effectuate the terms of this Amendment without any further approvals or consents required from the Seller, including, but not limited to, any waivers, consents, or acknowledgments requested by the Title Company or Purchaser.
15. 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 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
THIRD 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

Date of Execution: March 4, 2024

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
THIRD 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: _____

Title: _____

Date of Execution: _____

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: 3-20-24

Attest:


City Clerk



EXHIBIT A-1

LOTS B AND C LEGAL DESCRIPTION

LOTS B AND C OF RIVERPOINTE BLOCK 100 PLAT TWO A RESUBDIVISION OF RIVERPOINTE BLOCK 100, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 14, 2022 IN DOCUMENT NO. 2022R-003217 OF THE ST. CHARLES COUNTY, MISSOURI RECORDS, COMMONLY KNOWN AS 1450 SOUTH MAIN STREET, CITY OF ST. CHARLES, MISSOURI.

EXHIBIT B

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

[Attached]

EXHIBIT F

FORM OF CERTIFICATION

[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 1) dated December 14, 2021, as further amended by that certain Second Amendment to Purchase Agreement (Phase 1) dated March 8, 2022, and as assigned by Original Purchaser to Purchaser by that certain Assignment and Assumption of Purchase Agreement dated March 10, 2022 (collectively, as amended and assigned, the “Agreement”), with respect to certain real property consisting of approximately 18.427 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 20th day of March, 2024.

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

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

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

PURCHASER:

By: _____
Name: _____
Title: _____

Attest:

Kimberly Hearn
City Clerk



EXHIBIT G-1

DEPICTION OF PHASE 1 AND PHASE 3 LOTS

St. Charles Riverpointe
ST. CHARLES, MISSOURI

PLAN
ILLUSTRATIVE PLAN

AREA III AREA I

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: 1.595 ACRES
- D - OFFICE ABOVE SHOPS/PARKING**
PARCEL: 3.551 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**

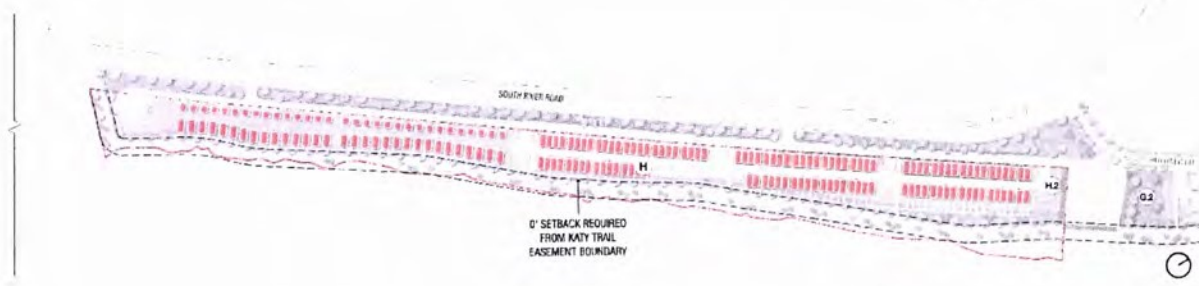
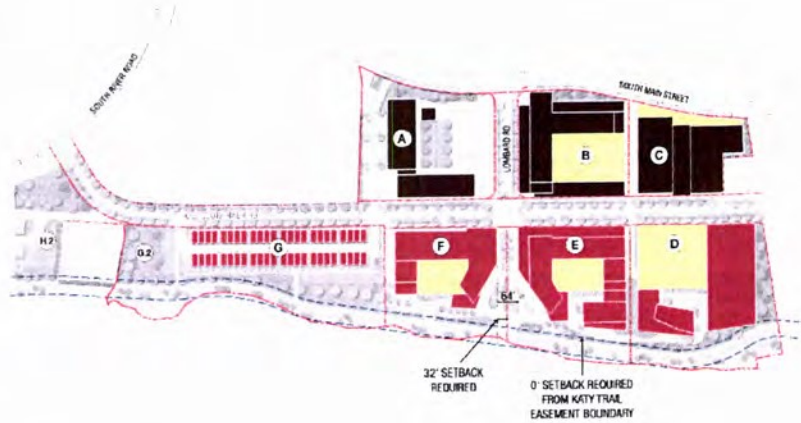


EXHIBIT G-2

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
B	2.014	12%	\$204,249.88
C	1.596	10%	\$161,858.40
D	3.561	22%	\$361,138.94
E	2.774	17%	\$281,325.31
F	2.275	14%	\$230,719.20
G	3.969	25%	\$402,516.27
TOTAL	16.189	100%	\$1,641,808.00

RCA FORM (OFFICE USE ONLY)

Bill # 13794

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 Third Amendment to the Purchase Sales Agreement of Phase 1 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 Third Amendment to the Phase 1 purchase sales agreement with Riverpointe Master Developer, LLC. This amendment allows for the Developer to close on Lots B and C of Riverpointe prior to closing on the entire Phase 1 area, and the Developer must close by June 30, 2024. The sale price for Lots B and C is \$4,351,907.70. Also the agreement updates provisions of the contract.

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

Fiscal Impact: \$ 4,351,907.70 N/A

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

Project #: _____

RCA prepared by: BWT Dept. Dir. [Signature] Finance Dir. [Signature] Dir. of Admin. [Signature]