

Bill No. 13797

Ordinance No. 24-034

Sponsor: Vince Ratchford

AN ORDINANCE AUTHORIZING THE "LOTS B AND C ACCESS AND INFRASTRUCTURE EASEMENT AGREEMENT" BY AND BETWEEN THE CITY OF ST. CHARLES, MISSOURI AND RIVERPOINTE MASTER DEVELOPER, LLC.

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

SECTION 1. The Mayor and City Clerk are hereby authorized and directed to execute the Lots B and C Access and Infrastructure Easement Agreement (the "Easement Agreement") between the City of St. Charles, Missouri and Riverpointe Master Developer, LLC, and perform all acts necessary to carry out the intent of this ordinance.

SECTION 2. The Easement Agreement shall be substantially the same in form and content as attached hereto and identified as Exhibit 1.

SECTION 3. 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
Vince Ratchford, Presiding Officer

3-20-24

Date Approved by Mayor

Daniel J. Borgmeyer
Daniel J. Borgmeyer, Mayor

Approved as to Form:

Holly Magdysen
Assistant City Attorney

for Michael P. Cullen, City Attorney

2/23/2024
Date



Attest:

Kimberly Hudson
City Clerk

CERTIFICATE OF DIRECTOR OF FINANCE

I certify that there is a balance otherwise unencumbered to the credit of the appropriation to which this contract is chargeable, and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet this obligation.

Jeff Olom
Director of Finance

2-26-24
Date

Notice of Signature Request

Attention: Brad Temme

Date Sent: March 22, 2024

Department: Administration

Return By: ASAP

File Number: ORD 24-034

Company/Organization: Riverview Master Developer, LLC

Topic: See attached

Original Contracts are attached which requires the signature of one or more individuals. Please acquire the necessary signatures, date and return one original marked "City Copy" to the City Clerk's Office. Thank you.

AFTER RECORDING, PLEASE RETURN TO:

Title of Document: ORD 24-034
Lots B and C Access and Infrastructure Easement Agreement

Date of Document: March 20, 2024

Grantor(s): CITY OF ST. CHARLES, MISSOURI,
a constitutional charter city and political
subdivision of the State of Missouri

Grantee(s): RIVERPOINTE MASTER DEVELOPER, LLC,
a Missouri limited liability company

Grantee(s) Mailing Address: c/o Clayco, Inc.
2199 Innerbelt Business Center Drive
St. Louis, Missouri 3114
Attn: Chris McKee

Legal Description: See Exhibit A and Exhibit B

Reference Book and Page(s): N/A

LOTS B AND C ACCESS AND INFRASTRUCTURE EASEMENT AGREEMENT

ORD 24-034
THIS LOTS B AND C ACCESS AND INFRASTRUCTURE EASEMENT AGREEMENT (this "*Agreement*") is made this 20th day of March, 2021 by CITY OF ST. CHARLES, MISSOURI, a constitutional charter city and political subdivision of the State of Missouri ("*Grantor*"), and RIVERPOINTE MASTER DEVELOPER, LLC, a Missouri limited liability company ("*Grantee*"). Grantor and Grantee are sometimes referred to herein individually as a "*Party*" and collectively as the "*Parties*."

RECITALS:

A. Grantor is the owner of certain real property located in the City of St. Charles, County of St. Charles, State of Missouri, which real property is more particularly described on Exhibit A attached hereto (the "*Grantor Property*").

B. Grantee is the owner of certain real property located in the City of St. Charles, County of St. Charles, State of Missouri, which real property is immediately adjacent to the Grantor Property and is more particularly described on Exhibit B attached hereto (the "*Grantee Property*", and, together with the Grantor Property, the "*Property*"). Grantee intends to develop the Property into a mixed-used development, consisting of commercial and residential uses (the "*Project*"), the effect of which will be to directly impact and generate the need for on-site improvements to serve the Project and Property, as more particularly described on Exhibit C attached hereto, as such plans may be amended or revised from time-to-time (the "*Shared Development Infrastructure*").

C. In furtherance of the Project, Grantee desires to obtain an access and infrastructure easement in, to, through, over, under, upon and across the Grantor Property to construct and install the Shared Development Infrastructure and to access and develop the Grantee Property (the "*Sitework*").

D. Grantor is willing to grant the easements to Grantee under the terms and conditions specified in this Agreement.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

1. Grant of Access and Infrastructure Construction Easement. Grantor hereby grants to Grantee, its contractors, subcontractors, permittees, licensee, agents, successors and assigns a non-exclusive access and infrastructure easement (the "*Easement*") in, to, through, over, under, upon and across the Grantor Property, any real property owned by Grantor (or any property to which Grantor has legal rights) outside of and adjacent to the Grantor Property: (i) for vehicular and pedestrian ingress and egress, including construction vehicles; (ii) for the right to mark the location of the Easement with markers set in the ground; (iii) to install the Shared Development Infrastructure; (iv) to conduct the Sitework and to develop the Grantee Property; and (v) to do all other things reasonably necessary to complete the Sitework, permanently install the Shared Development Infrastructure and to develop the Grantee Property, including, but not limited to, sod/landscaping/irrigation removal, surface grading and regrading, excavation and installation of

materials, utility work and the transport and storage of construction materials, equipment and vehicles. Following installation of the Shared Development Infrastructure shall be dedicated as public infrastructure to the Grantor. Upon Grantor's acceptance thereof, Grantee shall have no obligation to maintain the Shared Infrastructure Work.

2. Non-Exclusive; Reservation of Use by Grantor. Grantor shall retain the full use and enjoyment of the Grantor Property, to the extent such use does not interfere with any of Grantee's activities with respect to the Sitework and the development of the Grantee Property (as Grantee shall determine in its reasonable discretion). The Easement granted herein is non-exclusive and subject to all former grants, easements, and title burdens of record, including, without limitation, the reservation of any access and utility easements as shown on any plats.

3. Term. The Easement shall commence on the date of recording of this Agreement and shall terminate on the earlier of: (i) the date of completion of the Shared Development Infrastructure and the conveyance or dedication of such infrastructure to the Grantor and the Grantor's acceptance thereof; (ii) provided that all Shared Development Infrastructure has been conveyed or dedicated to the Grantor pursuant to this Agreement and the Grantor has accepted the same, the date of the issuance of an occupancy permit for the Grantee Property; or (iii) two (2) years from the date of commencement of the Easement, unless otherwise agreed to in writing by the Parties (the "*Easement Term*"). After the expiration of the Easement Term, the parties hereto shall, upon receipt of written request from either party, execute and record against the Property a termination of this easement, in form and substance reasonably approved by the parties hereto.

4. Indemnification. Grantee shall indemnify, defend, and hold harmless the Grantor and its elected officials, officers, directors, members, partners, employees and agents (the "Grantor Parties") from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, accountants, and other professional and all court and other dispute resolution costs) to the extent arising from any act, omission, or negligence of Grantee, subcontractors, or its or their agents or employees in the performance of the Sitework and/or their failure to comply with the terms and conditions of this Agreement, except to the extent caused by any omission or negligence of the Grantor Parties. The foregoing provision shall not be deemed to be released, waived, or modified in any respect by any reason of any surety or insurance provided by Grantee, and this provision shall survive termination of this Agreement.

5. Insurance. Before any work on any real estate owned by the Grantor is started, Grantee shall deliver to the Grantor certificates of insurance and insurance policy endorsements (and other evidence of insurance which the Grantor or any additional insured may reasonably request, including any insurance policies to which such certificates of insurance or policy endorsements relate) for each insurance policy that Grantee is required to purchase and maintain in accordance herewith.

a. Requirements. Grantee, its subcontractors, consultants, and other persons or entities performing or furnishing any portion of the work shall purchase and maintain such insurance as is appropriate for the work being performed and as will provide protection from claims set forth below which may arise out of or result from such party's performance

of the work, whether it be performed by Grantee, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform any of the work, or by anyone for whose acts any of them may be liable:

- i. claims under workers' compensation, disability benefits or other similar employee benefit acts;
 - ii. claims for damages because of bodily injury, occupational sickness or disease, or death of the insured's employees;
 - iii. claims for damages because of bodily injury, sickness or disease, or death of any person other than the insured's employees;
 - iv. claims for damages which are sustained:
 - I. by any person as a result of an offense directly or indirectly related to the employment of such person by the insured, or
 - II. by any other person for any other reason.
 - v. claims for damages, other than to the work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom, including explosion, collapse, and underground coverages;
 - vi. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;
 - vii. claims for damages relating to Grantee's obligations pursuant to this Agreement;
 - viii. claims for damages to property written as Builder's Risk Insurance; and
 - ix. claims for damages resulting from the release of hazardous waste due to the CRG's operations.
- b. The policies of insurance required pursuant to this Section shall:
- i. with respect to insurance required by paragraphs a.iii, iv, v, vi and vii of this section, be written on an occurrence basis, include as additional insureds the Grantor, and any other person or entity required by the Grantor, all of whom shall be listed as additional insureds, and include coverage for the respective elected officials, officers, directors, members, partners, employee, agents, consultants, and subcontractors or each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary and non-contributory coverage for all claims covered thereby;
 - ii. include at least the specific coverages and be written for not less than the liability as follows or required by law, whichever is greater:
 - I. Workers' Compensation, and related coverages under paragraphs B.1 and B.2 of this Article in accordance with federal law and the laws of the State of Missouri:
 - i. State: Statutory limit

- ii. Applicable Federal (e.g., Longshoremen's): Statutory limit
 - iii. Employer's Liability: \$3,000,000 Each Accident
\$3,000,000 Disease per Employee
- II. Grantee's General Liability under paragraphs B.3, B.4, B.5 and B.6 of this Article which shall include completed operations and product liability coverages:
- i. General Aggregate: \$3,000,000
 - ii. Products – Completed operations Aggregate: \$3,000,000
 - iii. Personal and Advertising Injury: \$1,000,000
 - iv. Each Occurrence
(Bodily Injury and Property Damage): \$1,000,000
 - v. Excess or Umbrella Liability
 - General Aggregate: \$5,000,000
 - Each Occurrence: \$5,000,000
- III. Automobile Liability under paragraph B.6 of this Article:
- i. Bodily Injury:
 - Each Person: \$3,000,000
 - Each Accident: \$3,000,000
 - ii. Property Damage:
 - Each Accident: \$3,000,000
 - iii. Combined Single Limit of: \$3,000,000
 - iv. The policy shall include a CA 99 48 Broadened Pollution Endorsement. Grantee, if hauling contaminants or pollutants, must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall include coverage form MCS-90.
- IV. Property Liability (Builder's Risk)
- i. Amount equal to insurable value of the Contract, including all structures, materials, and equipment to be built and installed.
- V. The Contractual Liability coverage of paragraph B.7 of this Article shall cover Grantee's indemnity obligations under the Contract and provide coverage for not less than the following amounts:
- i. Bodily Injury:
 - Each Person: \$3,000,000
 - Each Accident: \$3,000,000
 - ii. Property Damage:
 - Each Accident: \$3,000,000
 - Annual Aggregate: \$3,000,000
- VI. The property insurance required by paragraph B.8 of this Article shall be written as Builder's Risk with an "All Risk" Installation Floater that shall at least include insurance for physical loss and damage to the work,

temporary buildings, falsework, and work in transit and shall insure against at least the following perils: flood, fire, lightening, extended coverage, theft, vandalism and malicious theft, earthquake, collapse, debris removal, demolition occasioned by enforcement of laws or regulations, and water damage, and be written in the completed value form. Such policy shall cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects) and materials and equipment in transit for incorporation into the work or stored at the site or at another location that was agreed to in writing by the City prior to being incorporated into the work, provided that such material and equipment have been included in an Application for Payment recommended by the Grantor. Such policy shall include the interests of the Grantor, Grantee, subcontractors, engineer's consultants, each of whom is deemed to have an insurable interest, and each shall be listed as an insured or an additional insured.

c. Grantee's Pollution Insurance coverage required by paragraph B.9 of this Section shall cover bodily injury and property damage resulting from liability arising out of pollution related exposures such as asbestos abatement, lead paint abatement, tank removal, removal of contaminated soil, etc. The insurance policy shall cover the liability of Grantee during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and/or asbestos abatement. The policy shall include coverage for on-site and off-site bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden or accidental. The policy shall also include defense and clean-up costs. The amount of coverage shall be as follows:

- i. Limit of Liability:
 - Each Occurrence: \$3,000,000
 - Aggregate: \$3,000,000

d. Each policy contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed, or renewal refused until at least thirty (30) calendar days written notice has been given to the Grantor and Grantee and to each additional insured identified in the Contract Documents to whom a certificate of insurance and/or endorsement has been issued (and the certificates of insurance furnished by Grantor pursuant to this Contract will so provide).

e. Each policy remain in effect through final payment and at all times thereafter when Grantee may be correcting, removing, or replacing any work deemed defective by the Grantor; and

include completed operations coverage:

- i. such insurance shall remain in effect for two years after final payment; and
- ii. the Grantee shall furnish the Grantor and each other additional insured, to whom a certificate of insurance has been issued, evidence satisfactory to the Grantor and any such additional insured of continuation of such insurance at final payment and one year thereafter.

f. Grantee's insurance requirements set forth in this Section 5 may be met with a combination of primary and excess policies.

6. Compliance with Laws. Grantee shall comply with all federal, state and local requirements, regulations, ordinances and laws respecting the Easement and the activities of Grantee conducted with respect thereto.

7. Binding Effect. The terms and provisions of this Agreement and the Easement shall be binding upon any successor owners or assigns of the Grantor Property, or any portion thereof. All rights granted to Grantee hereunder shall terminate upon the expiration of the Easement Term.

8. Governing Law and Venue. The terms and provisions of this Agreement shall be construed and enforced in accordance with the laws of the State of Missouri. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in the appropriate court for St. Charles County, Missouri.

9. No Waiver. Failure by either Party, at any time, to require the performance by the other Party of any term of this Agreement, shall not in any way affect the right of such Party to enforce such terms, nor shall any waiver by either Party of any term hereof be taken or held to be a waiver of any other provision of this Agreement. No waiver of any term or provision of this Agreement shall be effective unless the same is in writing, signed by the Party making such waiver.

10. Modification. This Agreement may only be modified by written agreement of the Parties.

11. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining terms and provisions of this Agreement shall remain in full force and effect.

12. Default; Remedies. In the event of default in the performance of any of the obligations set forth in this Agreement which the defaulting Party does not cure within thirty (30) days after written notice of such default from the non-defaulting Party (or in the case of a default that would reasonably take more than thirty (30) days to cure, if the defaulting Party shall fail to undertake substantial action to cure such default within thirty (30) days after written notice thereof and thereafter diligently pursue completion of such cure), the non-defaulting Party shall have all remedies that may be available to it in law or equity.

13. Third-Party Beneficiaries. Except as expressly set forth in this Agreement, it is mutually agreed that enforcement of the terms and conditions of this Agreement shall be strictly reserved to the Parties and their respective successors and assigns, and that nothing contained in this Agreement shall give or allow any claim or right of action under this Agreement by any other person.

14. Notices. All notices must be in writing and shall be deemed given (i) when received if sent by certified U.S. Mail, return receipt requested, postage pre-paid addressed to the party being notified at the as follows; (ii) when received if sent by a reliable courier service to the party being notified at the following addresses; or (iii) when transmitted if sent by electronic mail transmission directed to the party being notified at the following electronic mail address if also sent by one of the other means.

To Grantor:

City of St. Charles, Missouri
Attn.: Director of Administration
200 North Second Street
St. Charles, Missouri 63301
Lawrence.dobrosky@stcharlescitymo.gov

With a copy to:

City of St. Charles, Missouri
Attn.: City Attorney
200 North Second Street
St. Charles, Missouri 63301
Michael.cullen@stcharlescitymo.gov

To Grantee:

Riverpointe Master Developer, LLC
c/o Clayco, Inc.
2199 Innerbelt Business Center Drive
St. Louis, Missouri 3114
Attn: Chris McKee
mckeec@realcrg.com

With a copy to:

General Counsel – Jennifer E. Nichols
c/o Clayco, Inc.
35 E. Wacker Drive, Suite 1300
Chicago, Illinois 60601
NicholsJ@realcrg.com

15. Counterparts. This Agreement may be executed in multiple counterparts, each of which when assembled to include an original signature for each Party shall constitute a complete and fully executed original. All such fully executed original counterparts shall collectively constitute a single agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day, month and year first above written.

GRANTEE:

RIVERPOINTE MASTER DEVELOPER, LLC,
a Missouri limited liability company

By: CRG – Riverpointe, LLC,
its Manager

By: CRG Services Management, LLC, its
Manager



By: _____

Name: Jennifer E. Nichols

Title: Secretary

STATE OF MISSOURI)
) ss.
_____ OF _____)

The foregoing instrument was acknowledged before me this ___ day of _____, 202_, by Jennifer E. Nichols, as Secretary of CRG Services Management, LLC, a Missouri limited liability company, as manager of CRG – Riverpointe, LLC, a Missouri limited liability company, as manager of RIVERPOINTE MASTER DEVELOPER, LLC, a Missouri limited liability company, on behalf of such company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal.

My commission expires: _____

Notary Public

Printed Name

[Signature Page to Lots B and C Access and Infrastructure Easement Agreement]

EXHIBIT A

Grantor Property

Block 200, a subdivision according to the plat thereof recorded as Document No. 2021R-093440 of the St. Charles County, Missouri Records.

EXHIBIT B

Grantee Property

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.

EXHIBIT C

Shared Development Infrastructure

RCA FORM (OFFICE USE ONLY)

Bill # 13797

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 Lots B and C Access and Infrastructure Construction Easement Agreement 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 an Easement to allow Riverpointe Master Developer to utilize Block 200 of Riverpointe for the purpose of providing a construction staging area for the construction of Lots B and C of Riverpointe Phase 1. This Easement will terminate upon earlier of acceptance of infrastructure, occupancy of the proposed Lots B and C building, or upon 2 years after commencement of the Easement.

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

Fiscal Impact: N/A

Account #: _____

Project #: _____

RCA prepared by: BWT Dept. Dir. BWT Finance Dir. Qao Dir. of Admin. U