

INTRODUCED: June 14, 2021

AN ORDINANCE No. 2021-163

To provide for the granting by the City of Richmond to the person, firm or corporation to be ascertained in the manner prescribed by law of the easement, franchise, right and privilege to use a portion of certain property located at 201 Hioaks Road for the construction, operation, and maintenance of certain access and utility facilities in accordance with a certain Deed of Easements; and to declare that a public necessity exists for and authorize the acquisition of a public access easement over and across a portion of certain property located at 6850 Atmore Drive in accordance with such Deed of Easements.

Patrons – Mayor Stoney and Mr. Jones

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JUN 28 2021 AT 6 P.M.

WHEREAS, following the introduction of this ordinance, the City Clerk has caused to be advertised, once a week for two successive weeks in a newspaper of general circulation published in the city of Richmond, a descriptive notice of the Deed of Easements attached to this ordinance, which notice:

1. included a statement that a copy of the full text of the ordinance is on file in the office of the City Clerk;

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: JUN 28 2021 REJECTED: _____ STRICKEN: _____

2. invited bids for the franchise, privilege, lease or right offered to be granted in and by this ordinance, which bids were to be:
 - a. delivered in writing to the presiding officer of the Council of the City of Richmond at its regular meeting to be held on June 28, 2021, at 6:00 p.m., in open session;
 - b. presented by the presiding officer to the Council; and
 - c. then dealt with and acted upon in the mode prescribed by law;
3. required that all bids for the franchise, rights and privileges hereby offered to be granted shall be submitted in writing as required by law; and
4. reserved the Council's right to reject any and all bids; and

WHEREAS, the deadline for the receipt of bids has passed, all bids have been received, and the Council is prepared to act in accordance with sections 15.2-2102 or 15.2-2103, or both, of the Code of Virginia (1950), as amended;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That there shall be granted in the manner prescribed Article VII, Section 9 of the Constitution of Virginia and Title 15.2, Chapter 21, Article 1, §§ 15.2-2100—15.2-2108.1:1 of the Code of Virginia (1950), as amended, an easement upon, over, under, and across a portion of the property located at 201 Hioaks Road and identified as Tax Parcel No. C005-0879/024 in the 2021 records of the City Assessor for the construction, operation, and maintenance of certain access and utility facilities thereon as described and under the conditions set forth in the Deed of Easements, a copy of which is attached to and incorporated into this ordinance, to the following grantee:

_____.

§ 2. That a public necessity exists for the acquisition of an easement for ingress and egress over and across a portion of the property located at 6850 Atmore Drive and identified as Tax Parcel No. C005-0879/022 in the 2021 records of the City Assessor to be used by the general public during daytime hours consistent with City park properties as described in and in accordance with the Deed of Easements identified in section 1 of this ordinance.

§ 3. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute the Deed of Easements between the City of Richmond as grantor and the grantee identified in section 1 of this ordinance to grant an easement to certain real property located at 201 Hioaks Road for the construction, operation, and maintenance of certain access and utility facilities by such grantee and acquire the easement described in section 2 of this ordinance, provided that:

(a) The Deed of Easements has first been approved as to form by the City Attorney and is substantially in the form of the document attached to this ordinance;

(b) The grantee identified in section 1 of this ordinance has first executed a bond, with good and sufficient security, in favor of the City of Richmond, Virginia, in the amount of \$120,000.00 and conditioned upon the construction, operation, and maintenance of the access and utility facilities as provided for in the granted easement, franchise, right and privilege, with such bond in a form acceptable to the Chief Administrative Officer and approved as to form by the City Attorney;

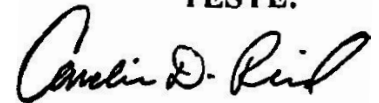
(c) The grantee identified in section 1 of this ordinance has first paid all costs incurred in connection with the advertisement of this ordinance, in accordance with section 15.2-2101 of the Code of Virginia (1950), as amended; and

(d) The grantee identified in section 1 of this ordinance has first presented the City Attorney with satisfactory evidence that the grantee owns fee simple title to the property located at 6850 Atmore Drive and identified as Tax Parcel No. C005-0879/022 in the 2021 records of the City Assessor and has the legal authority to grant the interests in real estate required to be granted to the City and otherwise perform the obligations set forth in the Deed of Easements.

§ 4. This ordinance shall be in force and effect upon adoption.

A TRUE COPY:

TESTE:

A handwritten signature in black ink, appearing to read "Camille D. Reed". The signature is written in a cursive, flowing style.

City Clerk



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O&R REQUEST

DATE: May 17, 2021

EDITION 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: Lincoln Saunders, Acting Chief Administrative Officer *ACS for Lincoln Saunders*

THROUGH: Robert C. Steidel, Deputy Chief Administrative Officer – Operations

THROUGH: Reggie Gordon, Deputy Chief Administrative Officer – Human Services

THROUGH: Alfred Scott, Interim Director of Public Utilities *AS*

THROUGH: Christopher Frelke, Director of Parks, Recreation and Community Facilities *CF*

FROM: Rosemary H. Green, Deputy Department Director, Senior – Public Utilities
Ryan Rinn, Business Services Manager – Parks, Recreation and Community Facilities *RHG 05-18-21*
RR 5-11-21

RE: Deed of Easements between the City and Urbana at Hioaks, LP granting Urbana at Hioaks an Access and Utilities Easement and granting the City a Pedestrian Easement

ORD. OR RES. No. _____

PURPOSE: To authorize the City's Acting Chief Administrative Officer to sign a deed of easements granting a 40-year Access and Utilities Easement to Urbana at Hioaks, LP on city property and accepting a Pedestrian Easement on Urbana at Hioaks property, 6850 Atmore Drive.

REASON: The City wishes to establish a pedestrian trail along the western edge of the property owned by Urbana at Hioaks to allow for connectivity between residents who live east of Hioaks Road to Powhite Park and other recreation areas north of Jahnke Road, including Powhite Park. Urbana at Hioaks wishes to provide pedestrian and vehicular ingress and egress between the Urbana at Hioaks property and Hioaks Road and construct and operate stormwater management utility facilities to support their development.

RECOMMENDATION: It is recommended that Richmond City Council adopt an ordinance authorizing the Acting Chief Administrative Officer to sign the deed of easements.

BACKGROUND: Urbana of Hioaks is a multi-family, residential planned community that per the applicant will be constructed through affordable housing financing. The developer has planned for the main entrance to the development to be from Hioaks Road. To achieve this, the developer is requesting the City grant an access and utilities easement. In exchange, the City will obtain a pedestrian trail that links residents who live east of Hioaks Drive with green space amenities north of Jahnke Road. Powhite Park has been a long existing public greenspace. The City's Hioaks property was designated a public greenspace by Ordinance 2020-219. And the trail to be granted via the Pedestrian Easement was identified as a future trail in the Trails and Greenways section of the James River Park System Master Plan adopted in October 2019.

FISCAL IMPACT / COST: None.

FISCAL IMPLICATIONS: None.

BUDGET AMENDMENT NECESSARY: None.

REVENUE TO CITY: None.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: June 14, 2021

CITY COUNCIL PUBLIC HEARING DATE: June 28, 2021

REQUESTED AGENDA: Consent.

RECOMMENDED COUNCIL COMMITTEE: Planning Commission

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: Budget and Finance.

AFFECTED AGENCIES: Department of Public Utilities, Department of Parks, Recreation & Community Facilities.

RELATIONSHIP TO EXISTING ORD. OR RES.: None.

REQUIRED CHANGES TO WORK PROGRAM(S): None.

ATTACHMENTS: Deed of Easements

STAFF: Rosemary H. Green, DPU; Ryan Rinn, DPR&CF

Tax Map Numbers: C0050879022 and C0050879024

DEED OF EASEMENTS

(Access and Utility Easement and Pedestrian Access Easement)

THIS DEED OF EASEMENTS (this "Deed") is made as of _____, 2021 (the "Effective Date"), by and between **CITY OF RICHMOND, VIRGINIA**, a municipal corporation organized under the laws of the Commonwealth of Virginia ("City"), and _____, a _____ ("KCG Parcel Owner"). City and KCG Parcel Owner shall each be indexed as grantor and grantee.

EXEMPTION FROM TAXES

This conveyance is exempt from Recordation Taxes pursuant to Section 58.1-811(A)(3) and 58.1-811(C)(4) of the Code of Virginia (1950) as amended.

WITNESSETH:

WHEREAS, City is the owner of certain property located in the City of Richmond, Virginia designated as Tax Parcel No. C0050879024 (the "City Parcel"), identified as "City Parcel" on that certain plat entitled "Access Easement Exhibit, Urbana at Hioaks, 6850 Atmore Drive, Richmond, VA" and dated April 8, 2021, a copy of which is attached hereto as Exhibit A (the "Plat").

WHEREAS, KCG Parcel Owner is the owner of certain property located in the City of Richmond, Virginia immediately adjacent to the City Parcel, designated as Tax Parcel No. C0050879022 and being a portion of the same real estate conveyed to GRANTOR by deed recorded in the Clerk's office of the Circuit Court of Richmond, Virginia, as Instrument No. _____, identified as "KCG Parcel" on the Plat (the "KCG Parcel").

WHEREAS, City and KCG Parcel Owner may hereinafter each be referred to as an "Owner", and collectively as the "Owners". The City Parcel and the KCG Parcel may hereinafter each be referred to as a "Parcel" and collectively as the "Parcels".

WHEREAS, City and KCG Parcel Owner desire to grant certain easements over portions of their respective Parcels for the benefit of the other Owner, and each of their respective successors, assigns and tenants, as more particularly set forth in this Deed.

AGREEMENT:

For and in consideration of the premises and other consideration the receipt and sufficiency of which is hereby acknowledged by the Owners, the Owners hereto agree as follows:

1. Access and Utility Easement.

a. Grant of Easement. City hereby conveys and grants to KCG Parcel Owner for the benefit of KCG Parcel Owner, its successors, assigns, tenants, agents and invitees, with General Warranty of Title, for the benefit of and as an appurtenance to the KCG Parcel, a non-exclusive easement to last forty (40) years for the construction, reconstruction, installation, operation, inspection, maintenance, repair, and removal of the following improvements and appurtenances (the "Improvements"): (i) a pedestrian and vehicular ingress and egress between the KCG Parcel and Hioaks Road and (ii) stormwater management utility facilities (the "Stormwater Facilities") upon, over, under and across the City Parcel, as more particularly identified on the Plat as "Access and Utility Easement" (the "Access and Utility Easement").

b. Maintenance.

i. General. KCG Parcel Owner shall be fully responsible for the construction, repair, operation, maintenance and replacement of the Improvements located within the Access and Utility Easement. KCG Parcel Owner shall perform such Improvement activities at the direction of the City's Department of Public Utilities (the "Department"), in its sole discretion, in accordance with any law, regulation, policy, procedure, or practice that is applicable to the Improvement or a similar improvement.

ii. Stormwater Utility Maintenance. The easement granted herein for the construction and maintenance of certain Stormwater Facilities and associated appurtenances within the Access and Utility Easement are subject to the following conditions:

(a) KCG Parcel Owner shall, prior to the construction of any Improvements within the Access and Utility Easement, submit to the City for its approval, a plat showing the location of one or more Stormwater Facilities on the City Parcel intended to manage the quality and quantity of stormwater runoff from the City Parcel.

(b) KCG Parcel Owner shall regularly maintain and inspect the Stormwater Facilities to ensure the Stormwater Facilities function at design capacity ("Good Working Order") throughout their expected lifespan, as determined by the Department. KCG Parcel Owner shall inspect the Stormwater Facilities at least once every three (3) years, and KCG Parcel Owner's maintenance of the Stormwater Facilities must, at minimum, be in accordance with guidance provided in the latest edition of the "Virginia Stormwater Management Handbook" and at the Virginia Stormwater BMP Clearinghouse website.

(c) KCG Parcel Owner shall to submit an inspection and maintenance report to the Department, on a form to be provided by the City, within thirty (30) days following any inspection or maintenance of the Stormwater Facilities by KCG Parcel Owner.

(d) The City shall reserve, without limitation, the right to access the Access and Utility Easement to inspect the Stormwater Facilities to ensure they are in Good Working Order. In the event the Stormwater Facilities are not in Good Working Order, the City will provide KCG Parcel Owner with written notice of corrective action needed to restore Good

Working Order ("Corrective Action Notice"). Upon failure by KCG Parcel Owner to take such corrective action within thirty (30) days following receipt of a Corrective Action Notice, the City may take whatever steps it deems necessary to restore the Stormwater Facilities to Good Working Order. KCG Parcel Owner expressly understands and agrees the City is under no obligation to maintain or repair the Stormwater Facilities, and in no event will this Deed be construed to impose any such obligation on the City.

(e) In the event of an emergency involving the Stormwater Facilities, as determined by the Department in its sole discretion, the City will have the right, but not an obligation, to take whatever steps it deems necessary to abate the emergency condition. Before, or in place of, exercising such right, the City may instruct KCG Parcel Owner by telephone or email to abate the emergency condition within a specified period of time.

(f) In the event the City performs work or expends any funds to maintain or repair the Stormwater Facilities or to respond to an emergency related thereto, including, but not limited to, performance of labor and purchase of equipment, supplies and materials, KCG Parcel Owner agrees to reimburse the City in full within sixty (60) days after the City provides written notice KCG Parcel Owner of all compensation due. In no event will the City pay any compensation to KCG Parcel Owner relating to the City's exercise of its rights set forth in this Deed.

c. Indemnification. KCG Parcel Owner shall indemnify and defend the City and its agents, contractors, employees, officers, and volunteers from and against any and all losses, liabilities, claims, damages and expenses, including court costs and reasonable attorneys' fees, caused by, resulting from, or arising out of any claim, action, or other proceeding, including any claim, action or other proceeding initiated or maintained by any of KCG Parcel Owner's agents, contractors, employees, invitees, licensees, or volunteers, that is based on or related to (i) KCG Parcel Owner's failure to satisfy any obligation under this Deed, (ii) the use of the Access and Utility Easement by KCG Parcel Owner, its contractors, employees, invitees, officers, or volunteers, (iii) the performance of any Improvements activities on or outside of the Access and Utility Easement by KCG Parcel Owner or its agents, contractors, employees, invitees, officers, or volunteers, (iv) the presence of or by KCG Parcel Owner or its agents, contractors, employees, invitees, officers, or volunteers on or about the Access and Utility Easement, (v) the conduct or actions of KCG Parcel Owner or its agents, contractors, employees, invitees, officers, or volunteers within or outside the scope of section 1 of this Deed, or (vi) any error, omission, negligent act or intentional act of KCG Parcel Owner or its agents, contractors, employees, invitees, officers, or volunteers. This section 1(c) will survive the termination of this Deed.

d. Adjacent Land. KCG Parcel Owner will have full and free use of the Access and Utility Easement for the purposes named herein and, when reasonably necessary for such use, KCG Parcel Owner may use the land abutting the Access and Utility Easement; provided, however, that KCG Parcel Owner's exercise of its right to use such abutting land will only be to the minimum extent necessary. KCG Parcel Owner will have the right to trim, cut and remove any natural or manmade structure, improvement or obstruction in or near the Access and Utility Easement that KCG Parcel Owner deems to interfere with its exercise of the Access and

Utility Easement. KCG Parcel Owner hereby covenants with GRANTOR that upon completion by KCG Parcel Owner of activities within Access and Utility Easement or the City's abutting land, KCG Parcel Owner will restore or replace, to its immediately prior condition as far as is practicable and consistent with KCG Parcel Owner's rights herein conveyed, whatever land and the surface thereof within the City Parcel KCG Parcel Owner disturbs by performing such activities.

e. Continued Use. The City reserves the right to continue to use the Access and Utility Easement located on its respective Parcel for any purpose or use so long as such use does not materially interfere with the easement rights granted in this Deed.

f. Hazardous Materials. KCG Parcel Owner shall not produce, dispose, release, transport, treat, use or store any Hazardous Materials upon or about the City Parcel. For purposes of this Deed, "Hazardous Materials" means any and all hazardous or toxic substances, wastes or materials which, because of their quantity, concentration, or physical, chemical or infectious characteristics, may cause or pose a present or potential threat to human health or the environment when used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. "Hazardous Materials" may include, without limitation, any substance, waste or material which is or contains asbestos, polychlorinated biphenyls, urea formaldehyde, explosives, radioactive materials or petroleum.

2. Pedestrian Access Easement.

a. Grant of Easement. KCG Parcel Owner hereby conveys and grants to the City a permanent non-exclusive pedestrian-only access easement for ingress and egress to be used by the general public during daytime hours consistent with City park properties over and across those portions of the KCG Parcel identified as "Pedestrian Easement Area" on the Plat (the "Pedestrian Easement").

b. Trail Construction and Maintenance. KCG Parcel Owner shall be solely responsible for the construction, repair, operation, maintenance and replacement of an approximately 4-foot wide meandering pedestrian trail connecting the City Parcel to Atmore Drive within the Pedestrian Easement (the "Public Gravel Trail"). KCG Parcel Owner shall construct the Public Gravel Trail of gravel, crush and run or similar material as approved by the Department. KCG Parcel Owner shall maintain the Public Gravel Trail so as to allow pedestrian ingress and egress between the City Parcel and Atmore Drive.

c. Continued Use. KCG Parcel Owner reserves the right to continue to use the Pedestrian Easement located on its respective Parcel for any purpose or use so long as such use does not materially interfere with the easement rights granted in this Deed or conflict with any other instrument of record including, but not limited to, deed of easement recorded in the Clerk's office of the Circuit Court of Richmond, Virginia, as Instrument No. 07-05400.

3. Assurances. Each party hereto, together with their respective successors and assigns, shall, from time to time, execute and deliver such documents and instruments of further confirmation and assurance, in recordable form as may be reasonably requested by the other

party, together with their respective successors and assigns, to perfect, complete, and confirm the rights, conditions, covenants, obligations, and agreements created under or contained in this Deed.

4. Default and Remedy. If any party hereto, or its respective successors or assigns, defaults in the performance of the obligations under this Deed and fails to cure such default as required in this Deed, the non-defaulting party shall be entitled to pursue its remedies at law and in equity with respect to such default, including without limitation the right to recover its reasonable attorney's fees and costs incurred in connection with such default.

5. Notice. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

City: City of Richmond, Director of Public Utilities
730 East Broad Street
Richmond, Virginia 23219

with a copy to:

City of Richmond, Office of the City Attorney
900 East Broad Street, 4th Floor
Richmond, Virginia 23219

KCG Parcel Owner:

6. Entire Agreement. This Deed contains the entire agreement of the parties, and there are no other promises, conditions, understandings, or other agreements, whether oral or written, relating to the subject matter of this Deed.

7. Forum and Venue. Any and all disputes, claims and causes of action arising out of or in connection with this Deed, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia.

8. Controlling Law. This Deed shall be construed, performed, and enforced in accordance with the internal laws of the Commonwealth of Virginia.

9. Successors. This Deed shall be run with the land and be binding upon Grantor and the Grantee, together with each of their respective successors and assigns.

10. Captions and Headings. The captions and headings contained in this Deed are included herein for the convenience of reference only and shall not be construed to limit or enlarge the terms hereof or otherwise affect the meaning or interpretation of this Deed.

11. Amendment. This Deed may be amended only by instrument signed by the respective parties hereto, or their respective successors or assigns, and recorded in the Clerk's Office of the Circuit Court of the City of Richmond, Virginia.

12. Invalidation. The invalidation of any provision of this Deed by judgment, court order, legislative mandate, or a finding that such provision is illegal, invalid, or unenforceable shall in no way affect any other provision hereof and all other provisions hereof shall remain in full force and effect.

13. Waiver. Waiver by any party of a breach of any term or provision of this Deed shall not be deemed a waiver of any subsequent breach of the same or any other term or provision hereof.

City:

CITY OF RICHMOND

By: _____

Name: Lincoln Saunders

Title: Acting Chief Administrative Officer

Authorized by Ord. No. _____, adopted _____

COMMONWEALTH OF VIRGINIA

CITY OF RICHMOND, to-wit:

I, _____, Notary Public in and for the City and State aforesaid, do hereby certify that _____, whose name is signed to the foregoing deed of easement, bearing date of the _____ day of _____, 2021, personally appeared before me in my City and State aforesaid and acknowledged the same to be his/her act and deed.

Given under my hand this _____ day of _____, 2021.

Notary Public

Notary Registration Number: _____

My commission expires: _____

Approved as to Form

By:  _____

Assistant City Attorney

KCG PARCEL OWNER

By: _____

Name: _____

Title: _____

COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, to-wit:

The foregoing instrument was acknowledged before me, _____,
Notary Public, this ____ day of _____, 2021 by _____,
who has presented identification of _____. *(a United States Passport, a
certificate of United States citizenship, a certificate of naturalization, an unexpired foreign
passport, an alien registration card with photograph, a state issued driver's license or a state
issued identification card or a United States military card)*, and voluntarily acknowledged this
instrument as _____ of _____, a _____
_____.

Notary Public

Registration Number: _____

(SEAL)

My commission expires: _____

EXHIBIT A



ACCESS EASEMENT EXHIBIT
URBANA AT HIOAKS
6850 ATMORE DRIVE, RICHMOND, VA - 04/08/2021