

INTRODUCED BY: Councilmember Steve McMahon

DATE: May 11, 2020

BILL NO. 9405

ORDINANCE NO. 7126

AN ORDINANCE APPROVING A FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT IN CONNECTION WITH THE OLIVE BOULEVARD COMMERCIAL CORRIDOR AND RESIDENTIAL CONSERVATION REDEVELOPMENT PLAN.

WHEREAS, the City and U. City, L.L.C. and U. City TIF Corporation (collectively, the “Developer”) entered into a Redevelopment Agreement dated June 13, 2019 (the “Redevelopment Agreement”) relating to the redevelopment of Redevelopment Project Area 1 as described in the Olive Boulevard Commercial Corridor and Residential Conservation Redevelopment Plan; and

WHEREAS, the parties desire to amend the Redevelopment Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF UNIVERSITY CITY, MISSOURI, AS FOLLOWS:

Section 1. The City Council finds and determines that it is necessary and desirable to enter into the First Amendment to Redevelopment Agreement (the “First Amendment”) between the City and the Developer in substantially the form of **Exhibit A** attached hereto. The City Manager is hereby authorized and directed to execute the First Amendment on behalf of the City. The City Clerk is hereby authorized and directed to attest to the First Amendment and to affix the seal of the City thereto. The First Amendment is hereby approved in substantially the form attached to this Ordinance, with such changes therein as shall be approved by the officers of the City executing the same.

Section 2. The officers, agents and employees of the City are hereby authorized and directed to execute all documents and take such steps as they deem necessary and advisable to carry out and perform the purpose of this Ordinance.

Section 3. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED and ADOPTED THIS 26th DAY OF MAY 2020.



[Handwritten signature]

MAYOR

(Seal)

ATTEST:

[Handwritten signature: LaRette Greese]

CITY CLERK

CERTIFIED TO BE CORRECT AS TO FORM:

[Handwritten signature: John J. Mulgany]

CITY ATTORNEY

EXHIBIT A

FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT

[On file in the City Clerk's Office]

FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT

This First Amendment to Redevelopment Agreement ("*Amendment*") is made this 29 day of June, 2020, by and between the CITY OF UNIVERSITY CITY, MISSOURI ("*City*"), an incorporated political subdivision of the State of Missouri, and U. CITY, L.L.C., a Missouri limited liability company, and U. CITY TIF CORPORATION, a Missouri corporation (collectively, "*Developer*").

WHEREAS, unless otherwise defined herein, any capitalized term in this Amendment shall have the meaning ascribed to such term in the Agreement (as defined below); and

WHEREAS, the City and the Developer are parties to that certain Redevelopment Agreement ("*Agreement*"), by and between the City and Developer, dated as of June 13, 2019, which contemplates the redevelopment of the Property in accordance with the Agreement and Redevelopment Plan, as approved and authorized by the City pursuant to Ordinance Nos. 7104, 7105 and 7108; and

WHEREAS, Developer and the City have agreed to amend the Agreement as provided in this Amendment.

NOW, THEREFORE, in consideration of the above premises and of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

1. Section 1.1 of the Agreement is hereby amended by deleting the definition of "Initial Work" therein and inserting the following in lieu thereof:

"Initial Work" means (a) with respect to the North Phase, (1) acquiring 16 acres of Property for the North Phase Anchor site and (2) Developer's sale or lease to the end-user or tenant of the North Phase Anchor site, as shown on the Concept Site Plan (i.e., an end-user or tenant that will occupy at least 140,000 square feet), and (b) with respect to the South Phase, (1) acquiring 10 acres of Property for the South Phase and (2) undertaking all Work required to complete the construction of (i) at least 30,000 square feet of residential/commercial space in the South Phase (including retail/commercial space to be constructed by or on behalf of end-users pursuant to an executed sale contract or an executed ground lease), and (ii) a senior living facility of not less than 60,000 square feet, or a hotel of not less than 60 rooms, or such other commercial construction of not less than 50,000 square feet (in addition to the residential/commercial space required under (i) above) as approved by the City Manager in his reasonable discretion.

2. Section 2.2(b) of the Agreement is hereby amended by inserting the following after the first sentence thereof:

"Upon execution of this Amendment, and without limiting the Developer's existing obligations under Section 2.2(b), the Developer agrees to advance to the City the sum of \$100,000 to pay or reimburse the City for the payment of costs associated with the negotiation and administration of the Agreement (including this Amendment)."

3. The third sentence of Section 3.1(b) of the Agreement is hereby deleted in its entirety and is hereby replaced with the following:

“Failure to acquire title or valid enforceable options to acquire title to the property or request that the City initiate condemnation proceedings for the property within the North Phase Anchor site on or before January 5, 2021, will result in the automatic termination of this Agreement; provided, however, the City Council may, in its sole discretion, extend such date by resolution. Failure to acquire title or valid enforceable options to acquire title to the property within the remainder of the North Phase and the South Phase or request that the City initiate condemnation proceedings for such property on or before December 31, 2021, will result in the automatic termination of this Agreement with respect to the remainder of the North Phase and/or the South Phase, as applicable; provided, however, the City Council may, in its sole discretion, extend such date by resolution.”

4. Section 3.1 of the Agreement is hereby amended by adding the following:

“(g) *Development of Property Acquired by Condemnation.* Notwithstanding any provision of this Agreement to the contrary, if the property within the South Phase located at 8612 and 8630 Olive Blvd. (“*Olive Property*”) was acquired by condemnation and the RPA 2/3 Advance Amount has been paid pursuant to Section 2.3(a), the letter of credit that is provided under Section 3.1(e) shall remain outstanding in an amount equal to \$1,000,000 until the earlier of (i) Developer completes or cause the completion of 20,000 square feet of residential/commercial space (which such improvements specifically exclude any and all interior finish work and tenant improvements, but include a white box finish) on the Olive Property, and (ii) June 30, 2023, which such date shall be automatically extended to December 31, 2023 if the Developer is using reasonable efforts to complete such work. Upon completion of the improvements in accordance with (i) above (as evidenced by an architect’s certificate of substantial completion on AIA Form G-704 or the substantial equivalent thereof), the letter of credit shall immediately be released. If improvements are not completed by the deadline set forth in (ii) above, the City may draw upon the letter of credit for payment of Redevelopment Project Costs for RPA 2 (which will be in addition to the RPA 2/3 Advance Amount). Upon the earlier of (i) the Developer providing evidence to the City that the Developer or a related party has acquired the Olive Property other than through condemnation or (ii) December 1, 2023, the letter of credit shall be released if the other conditions for release of the letter of credit under Section 3.1(e) have also been satisfied. In the event the Developer requests that the City initiate condemnation on any parcel located in the South Phase other than the Olive Property, prior to consenting to such condemnation, the City may impose reasonable development requirements for such parcel, and security therefor, taking into consideration the Developer’s proposed use of such parcel.

5. Section 3.3(a) of the Agreement is hereby deleted in its entirety and is hereby replaced with the following:

“(a) The Developer shall use reasonable efforts to:

(1) acquire title or valid enforceable options to the Property within the North Phase Anchor site or request the City to initiate condemnation

proceedings for the Property within the North Phase Anchor site on or before January 5, 2021;

(2) acquire title or valid enforceable options to the Property within the remainder of the North Phase and South Phase or request the City to initiate condemnation proceedings for the Property within the remainder of the North Phase and South Phase on or before December 31, 2021;

(3) commence the construction of the RPA 1 Redevelopment Project on or before December 31, 2021;

(4) complete the Initial Work (as evidenced by the City's acceptance or deemed acceptance of a Certificate of Substantial Completion for the Initial Work) for the North Phase no later than December 31, 2022;

(5) acquire title to the remainder of the Property within the North Phase and the South Phase by June 30, 2022; and

(6) complete the Initial Work (as evidenced by the City's acceptance or deemed acceptance of a Certificate of Substantial Completion for the Initial Work) for the South Phase no later than June 30, 2023.

For the purposes of clause (3), commencement of construction will be deemed to have occurred when (A) the Developer provides to the City an executed contract for the demolition of the existing structures in the North Phase Anchor site and the necessary site work to prepare the North Phase Anchor site for construction of the North Phase Anchor site portion of the RPA 1 Redevelopment Project and (B) the on-site work under such contract begins."

6. Section 5.1(c)(1) of the Agreement is hereby deleted in its entirety and is hereby replaced with the following:

"(1) the Developer has acquired, or simultaneously with the issuance of the TIF Notes will acquire, at least 16 acres of Property in the North Phase Anchor site;"

7. Section 5.1(c)(2) of the Agreement is hereby deleted in its entirety and is hereby replaced with the following:

"(2) evidence that the Developer has closed or, simultaneously with the issuance of the TIF Notes, will close, on the private financing for the Initial Work with respect to the North Phase Anchor site, which includes not less than a 10% equity investment in the form of cash or cash equivalent;"

8. Section 5.1(d) of the Agreement is hereby deleted in its entirety and is hereby replaced with the following:

"(d) *Holdback*. Except as otherwise set forth below, the principal amount of the TIF Notes shall not be endorsed above \$55,500,000 plus Issuance Costs until:

(1) the Developer has acquired, or simultaneously with the issuance of the TIF Notes will acquire, at least 10 acres of Property in the South Phase;

(2) the Developer has closed or, simultaneously with the issuance of the additional TIF Notes, will close, on the private financing for the construction of at least 30,000 square feet of residential/commercial space in the South Phase; and

(3) either (i) the Developer has closed or, simultaneously with the issuance of the additional TIF Notes, will close, on the private financing for the construction of a senior living facility of not less than 60,000 square feet or such other commercial construction of at least 50,000 square feet (in addition to the residential/commercial space required under (d)(2) above) as approved by the City Manager in his reasonable discretion, or (ii) the Developer provides evidence to the reasonable satisfaction of the City Attorney or special counsel retained by the City that the Developer has entered into a lease agreement or sale contract pursuant to which the Developer or a third party is obligated to commence construction of a hotel of not less than 60 rooms within 12 months after the TIF Notes are endorsed above \$55,500,000 plus Issuance Costs.

Notwithstanding anything contained herein to the contrary, if the Developer has satisfied the conditions set forth in Section 5.1(c), the principal amount of the TIF Notes will be endorsed by the RPA 2/3 Advance Amount (to a maximum of \$58,500,000 plus Issuance Costs) once the Developer pays, or causes to be paid, the RPA 2/3 Advance Amount pursuant to Section 2.3(a), even if the conditions set forth in Sections 5.1(d)(1), (2) and (3) above have not occurred.”

9. Section 7.2 of the Agreement is hereby amended by adding the following:

“(c) Notwithstanding any provision of this Agreement, including Section 7.7, to the contrary, if this Agreement has not been otherwise terminated as provided herein:

(i) the City may terminate this Agreement in its entirety if the Developer does not acquire title to the Property within the North Phase Anchor site by December 31, 2021;

(ii) the City may terminate the Developer’s rights under this Agreement with respect to any property within the North Phase or the South Phase that the Developer does not acquire on or before December 31, 2022;

(iii) the City may terminate this Agreement in its entirety if the Developer does not commence the construction of the RPA 1 Redevelopment Project on or before December 31, 2022;

(iv) the City may terminate this Agreement with respect to the Initial Work for the North Phase if the Developer does not complete the Initial Work (as evidenced by the City's acceptance or deemed acceptance of a Certificate of Substantial Completion for the Initial Work) for the North Phase by December 31, 2023; and

(v) the City may terminate this Agreement with respect to the South Phase if the Developer does not complete the Initial Work (as evidenced by the City's acceptance or deemed acceptance of a Certificate of Substantial Completion for the Initial Work) for the South Phase by December 31, 2023."

10. Section 7.7(a) of the Agreement is hereby amended by inserting the following clause at the end thereof:

"; provided, however, if the Developer claims the COVID-19 pandemic is an event of force majeure, the Developer must demonstrate to the City's reasonable satisfaction that the COVID-19 pandemic has directly caused a delay in the Developer's ability to acquire the Property and/or develop the RPA 1 Redevelopment Project in accordance with the terms of this Agreement, and the Developer must comply with the provisions of Section 7.7(b) with respect thereto."

11. This Amendment shall be construed and enforced in accordance with the laws of the State of Missouri and shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

12. This Amendment may be executed in the manner provided for in Section 7.12 of the Agreement. No provision of this Amendment may be amended or modified, except by an instrument in writing signed by the authorized agents of the parties.

13. This Amendment may be executed in multiple counterparts.

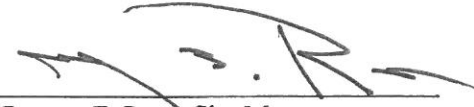
14. The parties acknowledge and agree that this Amendment does not alter the exterior boundaries, affect the general land uses established pursuant to the Redevelopment Plan or change the nature of the Redevelopment Project.

15. Except as expressly modified hereby, all other terms and conditions of the Agreement shall remain unaltered and in full force and effect.

[Signature Pages to Follow.]

IN WITNESS WHEREOF, the City and the Developer have caused this Amendment to be executed in their respective names and the City has caused its seal to be affixed thereto and attested as to the date first above written.

CITY OF UNIVERSITY CITY, MISSOURI

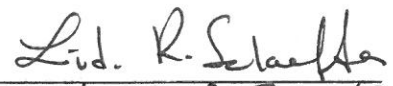
By: 
Gregory E. Rose, City Manager

Attest: 
LaRette Reese, City Clerk

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this 29 day of June, 2020, before me appeared **GREGORY E. ROSE**, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the **CITY OF UNIVERSITY CITY, MISSOURI**, an incorporated political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its City Council, and said **GREGORY E. ROSE** acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.


Name: Linda R. Schaeffer
Notary Public - State of Missouri
Commissioned in St. Louis County

(SEAL)

My Commission Expires:



U. CITY, L.L.C.

By: Jonathan Browne
Name: Jonathan Browne
Title: Authorized Representative

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this 8th day of May, 2020, before me appeared **JONATHAN BROWNE**, to me personally known, who, being by me duly sworn, did say that he is the Authorized Representative of **U. CITY, L.L.C.**, a Missouri limited liability company, and that he is authorized to sign the foregoing instrument on behalf of said limited liability company, and acknowledged to me that he executed the within instrument as said limited liability company's free act and deed.

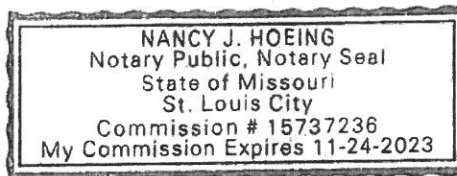
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Nancy J. Hoeing
Notary Public

(SEAL)

My Commission Expires:

11-24-2023



U. CITY TIF CORPORATION

By: *Jonathan Browne*
Name: Jonathan Browne
Title: President

STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this 8th day of May, 2020, before me appeared **JONATHAN BROWNE**, to me personally known, who, being by me duly sworn, did say that he is the President of **U. CITY TIF CORPORATION**, a Missouri corporation, and that he is authorized to sign the foregoing instrument on behalf of said corporation, and acknowledged to me that he executed the within instrument as said corporation's free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Nancy J. Hoeing
Notary Public

(SEAL)

My Commission Expires:

11-24-2023

