INTRODUCED BY: Councilmember Bwayne Smotherson

BILL NO. 9509 ORDINANCE NO. 7226

AN ORDINANCE APPROVING A PARCEL DEVELOPMENT AGREEMENT IN CONNECTION WITH THE OLIVE BOULEVARD COMMERCIAL CORRIDOR AND RESIDENTIAL CONSERVATION REDEVELOPMENT PLAN.

DATE: February 27, 2023

WHEREAS, U. City, L.L.C. and U. City TIF Corporation (collectively, the "Developer") and the City entered into a Redevelopment Agreement dated June 13, 2019 and a First Amendment to Redevelopment dated June 29, 2020 (collectively and as subsequently amended, the "Redevelopment Agreement") relating to the redevelopment of Redevelopment Project Area 1 ("RPA 1") as described in the Olive Boulevard Commercial Corridor and Residential Conservation Redevelopment Plan; and

WHEREAS, the City, the Developer and The Markets at Olive Community Improvement District (the "District") entered into a District Project Agreement dated as of August 21, 2020, setting forth their rights and responsibilities regarding the funding of certain public improvements and certain activities and improvements related to the remediation of blight within RPA 1 (the "District Project"); and

WHEREAS, the City Council finds and determines that it is in the best interests of the City to enter into a Parcel Development Agreement with the Developer, the District and Dierbergs University City, LLC ("Dierbergs") regarding the implementation of a portion of the District Project;

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

- Section 1. The City Council hereby approves the Parcel Development Agreement among the City, the Developer, the District and Dierbergs in substantially the form of Exhibit A attached hereto. The City Manager is hereby authorized and directed to execute such document on behalf of the City in substantially the form attached with such changes therein as shall be approved by the City Manager. The City Clerk is hereby authorized and directed to attest to such document and to affix the seal of the City thereto.
- 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 8th DAY OF MAY, 2023.

(Seal)

MAYOR

CITY CLERK

CERTIFIED TO BE CORRECT AS TO FORM:

CITY ATTORNEY

EXHIBIT A

PARCEL DEVELOPMENT AGREEMENT

[On file in the City Clerk's Office]

PARCEL DEVELOPMENT AGREEMENT

This PARCEL DEVELOPMENT AGREEMENT (this "<u>Agreement</u>") is made and entered into as of the __ date of ____, 2023, by and among the undersigned MARKETS AT OLIVE COMMUNITY IMPROVEMENT DISTRICT, a political subdivision of the State of Missouri ("<u>District</u>"), THE CITY OF UNIVERSITY CITY, MISSOURI, a political subdivision of the State of Missouri ("<u>City</u>"), THE INDUSTRIAL DEVELOPMENT AUTHORITY OF UNIVERSITY CITY, MISSOURI, a corporation organized pursuant to Chapter 349 of the Revised Statutes of Missouri (the "<u>IDA</u>"), U. CITY, L.L.C., a Missouri limited liability company, ("<u>UCLLC</u>"), U.CITY TIF CORPORATION, a Missouri corporation ("<u>TIF Corp</u>" and, together with UCLLC, the "<u>Primary Developer</u>") and DIERBERGS UNIVERSITY CITY, LLC, a Missouri limited liability company (together with its successors and assigns, "<u>DUCLLC</u>").

RECITALS

- **A.** The District was established pursuant to Ordinance No. 7131 passed on July 13, 2020 (the "<u>Formation Ordinance</u>") and the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri (the "CID Act").
- **B.** Pursuant to the Formation Ordinance and the CID Act, the District was created for the purpose of assisting in funding certain public improvements and certain activities and improvements related to the remediation of blight within the District (the "District Project"), as described in the Formation Ordinance and a Redevelopment Agreement dated as of June 13, 2019 (as amended, the "Redevelopment Agreement") by and between the City and the Primary Developer.
- C. Pursuant to Ordinance Nos. 7153 and 7208, approved by the City Council on June 14, 2021 and November 28, 2022, respectively, the City approved expansions to the District's boundaries, which expansions included the property legally described on <u>Exhibit A</u> attached hereto and incorporated by this reference (the "South Parcel").
- **D.** Pursuant to Ordinance No. 7224, approved by the City Council on March 13, 2023, the City entered into that certain Amended and Restated District Project Agreement (the "ARDPA") with the District and the Primary Developer for the funding of the District Project.
- **E.** Section 8(c) of the ARDPA contemplates the development of all or a portion of the DUCLLC Property (as hereinafter described, the "South Parcel Project") by a sub-developer other than Primary Developer, and provides for the funding of such development with proceeds from the community improvement district sales and use tax imposed by the District in the amount of one percent (1.0%) pursuant to Resolution No. 2020-004 of the District (the "District Sales Tax").
- **F.** The City intends to provide additional support for the South Parcel Project by entering into a lease and leaseback transaction with DUCLLC for the purpose of effectuating an exemption from certain sales taxes on the purchase of construction materials relating to the South Parcel Project.

G.	Pursuant to Ordinance No.	, approved by the City Council on	, 2023,
the City author	rized the execution of this A	greement, and pursuant to Resolution No	, approved
by the IDA on	1, 2023, the IDA	approved execution of this Agreement.	

AGREEMENT:

- **NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements contained in this Agreement, the parties hereto agree as follows:
- **Section 1. Authority of the City.** The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.
- **Section 2. Authority of the District.** The District has the full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary District proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the District, enforceable in accordance with its terms.
- **Section 3. Authority of the Primary Developer.** The Primary Developer has full corporate and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary corporate proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Primary Developer, enforceable in accordance with its terms.
- **Section 4. Authority of DUCLLC.** DUCLLC has full corporate and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary corporate proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of DUCLLC, enforceable in accordance with its terms.
- **Section 5. Authority of the IDA.** The IDA has full corporate and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary corporate proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the IDA, enforceable in accordance with its terms.
- Section 6. Covenants Regarding the South Parcel Project. The "South Parcel Project" shall consist (but shall not be limited to), the preparation of the South Parcel and

construction thereon of (a) a building suitable for occupation by a grocery user of at least 65,000 square feet, and (b) adjacent retail uses as may be determined by DUCLLC in its sole discretion. In consideration for the financing and support contemplated under this Agreement, DUCLLC agrees to complete or cause the substantial completion of the South Parcel Project by [December 31 2025], subject to extension due to events of force majeure; *provided, however*, that the sole remedy of the District, the IDA, the Primary Developer, or the City for DUCLLC's failure to complete the South Parcel Project within such timeframe shall (after the provision of written notice and one hundred eighty (180) days opportunity to cure) be the termination of this Agreement, the obligation to cause the issuance of the South Parcel CID Notes, and the repayment of the sales tax referenced in Section 8.

Section 7. South Parcel Project – District Financing.

- (a) Subject to DUCLLC's compliance with the other terms of this Agreement, and subject to approval of the governing board of the IDA, the IDA, the District, the City and the Primary Developer shall cooperate to cause the IDA to issue one or more revenue notes (collectively, the "South Phase CID Note") to or at the direction of DUCLLC, to evidence DUCLLC's right to reimbursement for costs incurred by or on behalf of DUCLLC with respect to the South Parcel Project, to the extent that such costs are eligible for reimbursement under the CID Act. The South Phase CID Note shall be in the principal amount of \$2,600,000 plus costs of issuance, shall have a final maturity of not later than June 15, 2053 and shall bear interest at the rate of 6.00% per annum.
- The South Phase CID Note shall be payable solely from revenue from District Sales Tax generated within the South Parcel which revenue is not pledged by the District, pursuant to Sections 8(a) and (b) of the ARDPA (as it exists on the date of this Agreement), for application to the payment of either the TIF Notes or TIF Bonds (as defined in the ARDPA), less the allocable share (based upon the acreage of the South Parcel as a percentage of the total acreage within the District) of expenses of the District (such revenues less allocable expenses being the "South Phase Revenues"). Notwithstanding any provision of this Agreement to the contrary, so long as the South Phase CID Note is outstanding, the District shall, subject to annual appropriation, transfer all South Phase Revenues to the trustee for the South Phase CID Note on the 15th day of each month (or if the 15th is not a Business Day (as defined in the indenture authorizing the South Phase CID Note), the next Business Day), for application to the payment of the South Phase CID Note. In the event that, prior to the maturity or earlier termination of the South Phase CID Note, the District fails to appropriate South Phase Revenues to the payment of the South Phase CID Note as contemplated by this Agreement, then the District and the IDA shall each cause to be filed with the Municipal Securities Rulemaking Board at www.emma.msrb.org (or any successor repository) a notice of non-appropriation describing such failure to appropriate in accordance with this Agreement.
- (c) The District Sales Tax shall not be reduced or terminated so long as any South Phase CID Note remains outstanding.

- (d) None of the District, the IDA, or the City shall cause to be issued any notes secured by South Phase Revenues until such time as the South Phase CID Note has matured or terminated earlier pursuant to this Agreement.
- (e) The District will not impose any special assessment or other tax on the South Parcel without the written consent of the fee owner(s) of such parcel.
- (f) To the extent requested by DUCLLC in its sole discretion, the District shall enter into any easements or other documentation necessary to accept ownership of public improvements comprising a portion of the South Parcel Project.
- (g) The parties consent to DUCLLC, in its sole discretion, recording a memorandum of this Agreement in the land records of St. Louis County with the St. Louis County Recorder of Deeds.
- (h) The District agrees not to make any pledge of South Phase Revenues until such time as the South Phase CID Note has been issued and repaid in full. The District agrees to send a copy of any District meeting agenda to DUCLLC at least twenty-four (24) hours prior to any District meeting, and to provide copies of any resolutions or other District documents to DUCLLC promptly upon request.
- **Section 8. South Parcel Project City Financing.** The City agrees to assist in the funding of the South Parcel Project by providing for an exemption from sales tax on construction materials as follows (subject to the subsequent approval by the City Council of the City of necessary bond documents with respect to the same):
 - (a) The City will acquire a ground lease interest in the South Parcel from DUCLLC (or its designee) in exchange for the City's agreement to issue revenue bonds under Chapter 100 of the Revised Statutes of Missouri (the "<u>Chapter 100 RE Bonds</u>"), to be purchased by DUCLLC or its designee.
 - (b) The City will sublease the South Parcel back to DUCLLC or its designee in exchange for periodic rent payments equal to the interest payments on the Chapter 100 RE Bonds.
 - (c) The City's leasehold interest in the South Parcel will allow for DUCLLC and its contractors and assignees to utilize the City's sales tax exemption certificate for purchases of materials used in the construction of the South Parcel Project.
 - (d) Upon completion of the South Parcel Project, the City's interest in the South Parcel will terminate, provided that DUCLLC shall have the option at any time prior to such expiration to cause the City to reconvey such ground lease interest for a price equal to (a) \$100, plus (b) surrender of any Chapter 100 RE Bonds.
- Section 9. Federal Work Authorization Program. Simultaneously with the execution of this Agreement, DUCLLC shall provide the District and the City with an affidavit

and documentation meeting the requirements of Section 285.530 of the Revised Statutes of Missouri.

- **Section 10. Insurance.** The District will maintain reasonable levels of insurance throughout its existence, including but not limited to the procurement of a directors and officers liability or similar policy which includes coverage for all suits, claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, including court costs and attorneys' fees and expenses, resulting from, arising out of, or in any way connected with the proceedings of the Board of Directors pursuant to the CID Act and Chapter 610 of the Revised Statutes of Missouri.
- **Section 11.** Successors and Assigns. This Agreement, and any and all rights or obligations hereunder (or any portion thereof), may be assigned by DUCLLC upon at least five (5) days' advance written notice to the other parties to this Agreement. Any assignment to an unrelated party may not occur without the prior written consent of the City.
- **Section 12. Severability.** If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.
- **Section 13.** Waiver. The City's failure at any time hereafter to require strict performance by the District or DUCLLC of any provision of this Agreement shall not waive, affect or diminish any right of the City thereafter to demand strict compliance and performance therewith.
- **Section 14.** Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.
- **Section 15. Anti-Israel Discrimination.** Pursuant to Section 34.600 of the Revised Statutes of Missouri, DUCLLC certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names and attested as to the date first above written.

	CITY OF UNIVERSITY CITY, MISSOURI
(SEAL)	
	Ву:
Attest:	City Manager
City Clerk	

THE MARKETS AT OLIVE COMMUNITY IMPROVEMENT DISTRICT

(SEAL)	
Attest:	By: Name: Lawrence R. Chapman, Jr. Title: Chairman
By: Name: Caroline P. Saunders Title: Secretary	

THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF UNIVERSITY CITY, MISSOURI

By:	
Name:	
Its:	

By: CRG Services Management, LLC, its Manager ("CRG") By: Name: Lawrence R. Chapman, Jr. Title: Vice President of CRG U. CITY TIF CORPORATION

By:
Name: Lawrence R. Chapman, Jr.

U. CITY, L.L.C.

Title: President

DIERBERGS UNIVERSITY CITY, LLC

By:	
Name:	
Title:	

EXHIBIT A

LEGAL DESCRIPTION

The South Parcel includes all or a portion of the below properties.

8660	Olive	Lot 1 of Beyers Subdivision according to the plat thereof record in Plat
	Blvd.	Book 272 page 30 of the St. Louis County Records.
8680	Olive Blvd.	A Tract of land being part of Lot 6 of Beyers Subdivision, a Subdivision in the County of St. Louis, State of Missouri, according to the plat thereof recorded in Plat Book 272 page 30 of the St. Louis County Records, being more particularly described as follows: Beginning at the Northeast corner of said Lot 6; thence along the East line of Lot 6 South 0 degrees 22 minutes East 240.23 feet to the point of curvature of a curve having a radius of 2,285 feet and a chord bearing, South 0 degrees 23 minutes 31 seconds West 60.52 feet, thence along said curve a distance of 60.52 feet to the Northeast corner of Lot 5; thence North 87 degrees 52 minutes West 85.18 feet to the Northwest corner of Lot 5: thence along the Western line of Lot 5, the following courses and distances South 2 degrees 08 minutes West 72.75 feet; South 87 degrees 52 minutes East 2.65 feet, South 2 degrees 08 minutes West 69.21 feet, South 87 degrees 52 minutes East 5.00 feet; South 2 degrees 08 minutes West 54.91 feet to the Southwest corner of Lot 5; thence along the Northwest line of Lot 4 South 59 degrees 52 minutes West 3.60 feet; thence South 49 degrees 51 minutes West 50.00 feet; thence South 39 degrees 43 minutes West 3.75 feet; to the Northwest corner of Lot 4: thence North 1 degree 48 minutes 34 seconds East 235.41 feet to a point North 87 degrees 52 minutes West 36.00 feet from the Northwest corner of Lot 5: thence North 24 degrees 46 minutes 27 seconds East 51.51 feet to a point; thence North 0 degrees 22 minutes West 250.80 feet to the North lien of Lot 6, being also the South line of Olive Street Road; thence South 89 degrees 14 minutes East 100.00 feet to the point of beginning, EXCEPTING THEREFROM that part conveyed to the State
		of Missouri, by instrument recorded in Book 17357 Page 2828.
8664	Olive Blvd.	Lot 2 of Beyers Subdivision according to the plat thereof record in Plat Book 272 page 30 of the St. Louis County Records.
8666	Olive Blvd.	Lot 7 of Beyers Subdivision according to the plat thereof record in Plat Book 272 page 30 of the St. Louis County Records.
8676	Olive Blvd.	Lot 4A of the Resubdivision of Beyers Subdivision according to the Resubdivision Plat recorded in Book 297 Page 24 of the Recorder of Deeds for St. Louis County, Missouri
8668	Olive Blvd.	Lot 7 of Beyers Subdivision according to the plat thereof record in Plat Book 272 page 30 of the St. Louis County Records.
8674	Olive Blvd.	Lot 3A of the Resubdivision of Beyers Subdivision according to the Resubdivision Plat recorded in Book 297 Page 24 of the Recorder of Deeds for St. Louis County, Missouri

8678	Olive	Lot 5 of Beyers Subdivision according to the plat thereof record in Plat
	Blvd.	Book 272 page 30 of the St. Louis County Records.
8684	Olive	Lot 6 of Beyers Subdivision, according to the plat thereof recorded in
	Blvd.	Plat Book 272 Page 30 of the St. Louis County Records, EXCEPT
		THEREFROM that part conveyed to Edward O. Beyers, III, by
		instrument recorded in Book 17110 page 4959 of the St. Louis County
		Records, FURTHER EXCEPTING THEREFROM that part conveyed
		to the State of Missouri by instrument recorded in Book 17357 page
		2828 of the St. Louis County Records.