

INTRODUCED BY: Councilmember Bwayne Smotherson

DATE: November 12, 2024

BILL NO. 9561

ORDINANCE NO. 7374

AN ORDINANCE APPROVING A PARCEL DEVELOPMENT AGREEMENT IN CONNECTION WITH THE OLIVE BOULEVARD COMMERCIAL CORRIDOR AND RESIDENTIAL CONSERVATION REDEVELOPMENT PLAN AND THE MARKETS AT OLIVE COMMUNITY IMPROVEMENT DISTRICT AND REPEALING ORDINANCE NO. 7226.

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, as amended by a First Amendment to Redevelopment dated June 29, 2020, a Second Amendment to Redevelopment Agreement dated March 15, 2023 and a Third Amendment to Redevelopment Agreement dated July 31, 2024 (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 an Amended and Restated District Project Agreement dated as of March 15, 2023, as amended by a First Amendment to Amended and Restated District Project Agreement dated as of July 31, 2024 (collectively and as amended, the “District Project Agreement”), 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 Redevelopment Agreement and the District Project Agreement contemplate that the City, the District, the Developer and The Industrial Development Authority of University City, Missouri (the “Authority”) may enter into parcel development agreements with sub-developers relating to completion of portions of the District Project; and

WHEREAS, pursuant to Ordinance No. 7226, passed by the City Council on May 8, 2023, the City approved a parcel development agreement among the City, the District, the Developer, the Authority and Dierbergs University City, LLC (“Dierbergs”) relating to a portion of the District Project, however, such parcel development agreement was never executed; and

WHEREAS, the City now desires to repeal Ordinance No. 7226 and approve the form of parcel development agreement attached hereto as **Exhibit A** among the City, the District, the Developer, the Authority and Dierbergs (the “Parcel Development Agreement”), pursuant to which Dierbergs will complete a portion of the District Project that is similar to, but not identical to the portion contemplated by Ordinance No. 7226; and

WHEREAS, the City Council finds and determines that it is in the best interests of the City to enter into the Parcel Development Agreement;

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, the Authority and Dierbergs in substantially the form of **Exhibit A** attached hereto.

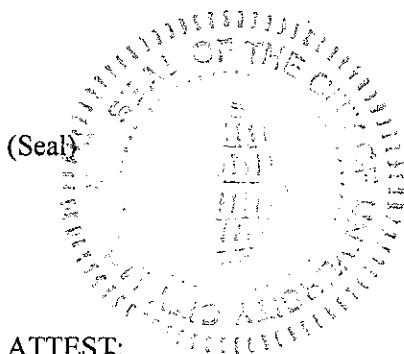
The City Manager is hereby authorized and directed to execute such document on behalf of the City in substantially the form attached with such changes therein as shall be approved by the City Manager. The City Clerk is hereby authorized and directed to attest to such document and to affix the seal of the City thereto.

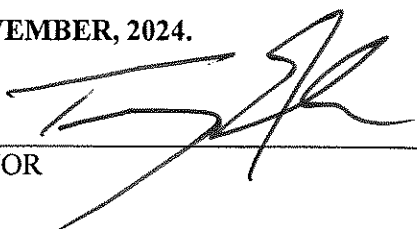
Section 2. The officers, agents and employees of the City are hereby authorized and directed to execute all documents and take such steps as they deem necessary and advisable to carry out and perform the purpose of this Ordinance.


Section 3. Ordinance No. 7226 is hereby repealed in its entirety.

Section 4. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED and ADOPTED THIS 25th DAY OF NOVEMBER, 2024.




MAYOR

ATTEST:

CITY CLERK

CERTIFIED TO BE CORRECT AS TO FORM:

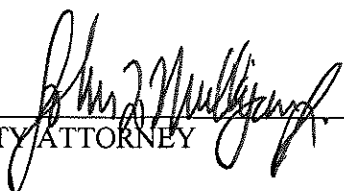

CITY ATTORNEY

EXHIBIT A

PARCEL DEVELOPMENT AGREEMENT

[On file in the City Clerk's Office]

PARCEL DEVELOPMENT AGREEMENT

This **PARCEL DEVELOPMENT AGREEMENT** (this “*Agreement*”) is made and entered into as of December __, 2024, by and among the **CITY OF UNIVERSITY CITY, MISSOURI**, a home-rule charter city organized and existing under the laws of the State of Missouri (the “*City*”), **THE MARKETS AT OLIVE COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district and political subdivision of the State of Missouri (the “*District*”), **THE INDUSTRIAL DEVELOPMENT AUTHORITY OF UNIVERSITY CITY, MISSOURI**, a corporation organized pursuant to Chapter 349 of the Revised Statutes of Missouri (the “*Authority*”), **U. CITY, L.L.C.**, a Missouri limited liability company (“*UCLLC*”), **U.CITY TIF CORPORATION**, a Missouri corporation (“*TIF Corp*” and, together with UCLLC, the “*Developer*”), and **DIERBERGS UNIVERSITY CITY, LLC**, a Missouri limited liability company (together with its successors and assigns, the “*Sub-Developer*”).

RECITALS

A. The District was established pursuant to Ordinance No. 7131 passed on July 13, 2020 (the “*Formation Ordinance*”) and the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri (the “*CID Act*”) as a political subdivision of the State of Missouri. Pursuant to Ordinance Nos. 7153 and 7208, passed by the City Council on June 14, 2021 and November 28, 2022, respectively, the City approved expansions to the District’s boundaries.

B. The City and the Developer entered into a Redevelopment Agreement dated June 13, 2019, as amended by a First Amendment to Redevelopment dated June 29, 2020, a Second Amendment to Redevelopment Agreement dated March 15, 2023 and a Third Amendment to Redevelopment Agreement dated July 31, 2024 (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.

C. The City, the Developer and District entered an Amended and Restated District Project Agreement dated as of March 15, 2023, as amended by a First Amendment to Amended and Restated District Project Agreement dated as of July 31, 2024 (collectively and as amended, the “*District Project Agreement*”), 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*”).

D. The Redevelopment Agreement and the District Project Agreement contemplate that the City, the District, the Authority, the Developer and sub-developers may enter into parcel development agreements relating to the completion of portions of the District Project located on “Undeveloped Parcels” (as defined in the Redevelopment Agreement).

E. The property legally described on **Exhibit A** attached hereto and incorporated by this reference (the “*Lots 1-3 Undeveloped Parcels*”) is an Undeveloped Parcel as defined in the Redevelopment Agreement upon which the Sub-Developer desires to complete a portion of the District Project (as further described herein, the “*Lots 1-3 District Project*”).

F. Pursuant to Ordinance No. __, passed by the City Council on November 25, 2024, the City is authorized to enter into this Agreement.

G. Pursuant to Resolution No. 24-006, passed by the Board of Directors of the District on November __, 2024 the District is authorized to enter into this Agreement.

H. Pursuant to Resolution No. __, passed by the Board of Directors of the Authority on November __, 2024, the Authority is authorized to enter into 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 Authority. The Authority 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 Authority, enforceable in accordance with its terms.

Section 4. Authority of the Developer. The 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 Developer, enforceable in accordance with its terms.

Section 5. Authority of the Sub-Developer. The Sub-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 Sub-Developer, enforceable in accordance with its terms.

Section 6. Covenants Regarding the Lots 1-3 District Project.

(a) The Sub-Developer shall construct a building suitable for a Large Retailer, as defined in the Redevelopment Agreement and as described on the Large Retailer Certification attached hereto as **Exhibit B**, upon the Lots 1-3 Undeveloped Parcels, and use best efforts to lease said building to the Large Retailer identified on the Large Retailer Certification. The District has approved the Large Retailer Certification attached hereto as **Exhibit B**.

(b) The “*Lots 1-3 District Project*” shall consist of (but shall not be limited to), the following: (i) site improvement work and preparation of the Lots 1-3 Undeveloped Parcels and construction thereon of surface parking and other improvements to accommodate development of a grocery store and, at the Sub-Developer’s discretion, other commercial uses as may be determined by the Sub-Developer and subject to any applicable zoning or other land use restrictions, (ii) access drives and improvements, (iii) public utilities, (iv) rights-of-way, and (v) any other work necessary for completion of site work and other improvements to serve the District. In consideration for the financing and support contemplated under this Agreement, the Sub-Developer agrees to complete or cause the substantial completion of the Lots 1-3 District Project by June 30, 2027, subject to extension due to events of force majeure; *provided, however*, that the sole remedy of the City, the District, the Authority, or the Developer for the Sub-Developer’s failure to complete the Lots 1-3 District Project within such timeframe shall (after the provision of written notice to the Sub-Developer and one hundred eighty (180) days’ opportunity for the Sub-Developer to cure) be the termination of this Agreement, upon which the Lots 1-3 District Notes, as defined below, shall be canceled.

Section 7. Lots 1-3 District Project – District Financing.

(a) Subject to the Sub-Developer’s compliance with the other terms of this Agreement, and subject to approval of the Authority, the parties hereto shall cooperate to cause the Authority to issue one or more revenue notes (collectively, the “*Lots 1-3 District Note*”) to or at the direction of the Sub-Developer, to evidence the Sub-Developer’s right to reimbursement for costs incurred by or on behalf of the Sub-Developer with respect to the Lots 1-3 District Project, to the extent that such costs are eligible for reimbursement under the CID Act. The Lots 1-3 District Note shall be in the principal amount of not to exceed \$2,600,000.00 plus costs of issuance, shall have a final maturity of not later than June 15, 2053, shall bear interest at the rate of 6.00% per annum, and be subject to the other terms and conditions set forth in the Trust Indenture approved by the Authority in connection with the issuance of the Lots 1-3 District Note. The Lots 1-3 District Note shall constitute “PDA Reimbursement Obligations” as defined in Section 8(b) of the District Project Agreement.

(b) The Lots 1-3 District Note shall be payable solely from revenue from District Sales Tax generated within the Lots 1-3 Undeveloped Parcels and available for payment of PDA Reimbursement Obligations under Section 8(b) of the District Project Agreement (i.e., revenue that is not pledged by the District to the payment of the TIF Obligations (as defined in Section 8(a) of the District Project Agreement)), less the allocable share (based upon the acreage of the Lots 1-3 Undeveloped Parcels as a percentage of the total acreage within the District) of expenses of the District (such revenues less allocable expenses being the “*Lots 1-3 District Revenues*”). Notwithstanding any provision of this Agreement to the contrary, so long as the Lots 1-3 District Note is outstanding, the District shall, subject to annual appropriation, transfer all Lots 1-3 District Revenues to the trustee for the Lots 1-3 District Note on the 15th day of each month (or if the 15th is not a Business Day (as defined in the indenture authorizing the Lots 1-3 District Note), the next Business Day), for application to the payment of the Lots 1-3 District Note. In the event that, prior to the maturity or earlier termination of the Lots 1-3 District Note, the District fails to appropriate Lots 1-3 District Revenues to the payment of the Lots 1-3 District Note as contemplated by this Agreement, then the District and the Authority 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 rate shall not be reduced and the District Sales Tax shall not be terminated so long as any Lots 1-3 District Note remains outstanding.

(d) None of the City, the Authority, or the District shall cause to be issued any other notes secured by a senior pledge of Lots 1-3 District Revenues until such time as the Lots 1-3 District Note has matured or terminated earlier pursuant to this Agreement.

(e) The District will not impose any special assessment or other tax on the Lots 1-3 Undeveloped Parcels without the written consent of the fee owner(s) of such parcel.

(f) To the extent requested by Sub-Developer 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 Lots 1-3 District Project.

(g) The parties consent to Sub-Developer, 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.

(i) The District agrees not to make any other senior pledge or appropriation of Lots 1-3 District Revenues until such time as the Lots 1-3 District Note has been issued and repaid in full. The District agrees to send a copy of any District meeting agenda to the Sub-Developer at least twenty-four (24) hours prior to any District meeting, and to provide copies of any resolutions or other District documents to the Sub-Developer promptly upon request.

Section 8. Chapter 100 Financing. The City agrees to assist in the commercial development of the Lots 1-3 Undeveloped Parcels by facilitating an exemption from state and local sales and use tax on construction materials pursuant to Chapter 100, RSMo. and other applicable law 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 base lease interest in the Lots 1-3 Undeveloped Parcels and any improvements thereon from the Sub-Developer (or its designee) in exchange for the City's agreement to issue revenue bonds under Chapter 100 of the Revised Statutes of Missouri (the "*Chapter 100 Bonds*"), which Chapter 100 Bonds shall be purchased by the Sub-Developer or its designee.

(b) The City will sublease the Lots 1-3 Undeveloped Parcels and any improvements thereon back to Sub-Developer or its designee in exchange for periodic rent payments equal to the debt service payments on the Chapter 100 Bonds due to the owner of the Chapter 100 Bonds.

(c) The City's leasehold interest in the Lots 1-3 Undeveloped Parcels and improvements thereon will allow for the Sub-Developer and its general contractor, sub-contractors and other assignees to utilize the City's sales and use tax exemption certificate for purchases of materials used in and incorporated into the construction of commercial uses on the Lots 1-3 Undeveloped Parcels. Upon issuance of the Chapter 100 Bonds, the City shall provide a project exemption certificate to the Sub-Developer in accordance with Section 144.062, RSMo.

(d) Upon completion of the construction of such commercial uses, the City's interest in the Lots 1-3 Undeveloped Parcels and improvements thereon will terminate, provided that the Sub-Developer shall have the option at any time prior to such expiration to cause the City to reconvey such base lease interest for a price equal to (a) \$100, plus (b) surrender of any Chapter 100 Bonds.

Section 9. Federal Work Authorization Program. Simultaneously with the execution of this Agreement, the Sub-Developer 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 the Developer or the Sub-Developer 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 the Developer 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, the Sub-Developer 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)

Attest:

By: _____
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: James Nowogrocki
Its: President

U. CITY, L.L.C.

By: CRG Services Management, LLC, its
Manager

By: _____
Name: Lawrence R. Chapman, Jr.
Title: Vice-President

U. CITY TIF CORPORATION

By: _____
Name: Lawrence R. Chapman, Jr.
Title: President

DIERBERGS UNIVERSITY CITY, LLC,
a Missouri limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION OF LOTS 1-3 UNDEVELOPED PARCELS

[Adjusted Lot 1, Adjusted Lot 2 and Adjusted Lot 3 of Market at Olive Plat 7, recorded at Plat Book ____,
Page ____.] [Title Company to confirm legal description after recording of plat]

EXHIBIT B

LARGE RETAILER CERTIFICATION

