

ORDINANCE NO.: 2016-064

Authorizing the Mayor to execute a Second Amendment to Development Agreement between the City of Columbia, South Carolina and Bull Street Development, LLC, successor in interest to and assignee of Hughes Development Corporation, as equitable owner and developer of approximately 165 acres of land within the City of Columbia, commonly known as the Department of Mental Health's "Bull Street Campus"

WHEREAS, by Ordinance No.: 2013-072 enacted on July 9, 2013, City Council authorized the Mayor to execute a Development Agreement with Hughes Development Corporation for the Bull Street Development Project; and,

WHEREAS, the Development Agreement provides for the amendment thereof; and

WHEREAS, Hughes Development Corporation subsequently assigned all of its rights and interest in the Development Agreement to Bull Street Development, LLC; NOW THEREFORE,

BE IT ORDAINED by the Mayor and Council this 2nd day of August, 2016 that the Mayor is hereby authorized to execute the attached Second Amendment to Development Agreement, or on a form approved by the City Attorney, amending the City's obligation under Subsection 14(a) to build the first parking lot to no earlier than January 1, 2017 and amending the Developer Progress Benchmarks for the Public Improvement Funds made available by the City to the Developer.

Requested by:

Assistant City Manager Gentry

Mayor

Approved by:

Cheresa Wilson
City Manager

Approved as to form:

[Signature]
City Attorney

ATTEST:

Erika D. Moore
City Clerk

Introduced: 7/19/2016

Final Reading: 8/2/2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

SECOND AMENDMENT TO
DEVELOPMENT AGREEMENT
BULL STREET NEIGHBORHOOD

This Second Amendment to Development Agreement ("Second Amendment") is made and entered into this 17th day of August, 2016, by and between Bull Street Development, LLC, a South Carolina limited liability company ("Developer"), and the City of Columbia, South Carolina ("City").

Recitals

Hughes Development Corporation and the City entered into a Development Agreement dated July 31, 2013, as amended by that First Amendment dated April 8, 2014 (collectively, the "Development Agreement") with respect to Property known as the Bull Street Neighborhood. Hughes Development Corporation has subsequently assigned all of its rights and obligations under the Development Agreement to Developer. Significant events have occurred in the development of the Bull Street Neighborhood Project, including the construction and completion of the multi-use entertainment venue that is being used by the Columbia Fireflies minor league baseball team. Recognizing the importance of this opportunity to the success of the Bull Street Neighborhood Project, and therefore to the City, the parties have agreed to modify the Development Agreement as set forth in this Second Amendment.

Agreements

NOW THEREFORE, in consideration of the terms and conditions set forth herein, and other good and valuable consideration, including the potential economic benefits to the City and Developer by entering this Second Amendment, the receipt and sufficiency of such consideration being hereby acknowledged, the City and Developer agree that the Development Agreement is amended as follows:

1. The above Recitals and the Definitions in the Development Agreement are hereby incorporated into this Second Amendment.
2. Developer and City have agreed to amend the triggers that result in the City's obligation to build the first parking garage. Subsection 14(a) of Article XIX, Section C of the Development Agreement is hereby amended in all respects to provide that the City's obligation to build the first parking facility shall be triggered upon the request of the Developer once the Developer obtains funding and commitments to construct or preserve and rehabilitate taxable improvements valued over \$25,000,000, provided, however, that the City shall not be obligated to build the first parking facility under this Subsection 14(a) prior to January 1, 2017.
3. Developer and City have agreed to amend the Developer Progress Benchmarks for the Public Improvement Funds made available by the City to the Developer. Exhibit C of the Development Agreement is hereby amended in all respects to provide that Developer shall be entitled to receive the first \$5,000,000 of the Public Improvement Funds under Phase Four Infrastructure upon Developer obtaining funding or commitments to either: (a) construct or preserve and rehabilitate a combined 120,000 square feet of office, retail and/or 6% assessed residential space that is subject to real property taxes; or (b) rehabilitate the Babcock building. The remaining Development Progress Benchmarks for the Public Improvement Funds shall continue as set out in the Development Agreement.
4. General Provisions:
 - A. Entire Agreement. This Second Amendment, together with the Development Agreement, sets forth and incorporates by reference all of the agreements, conditions and understandings between the City

and Developer relative to the Property and its Development, and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein.

B. Construction. The parties agree that each party and its counsel have reviewed and revised this Second Amendment and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Second Amendment or any amendments or exhibits hereto.

C. Severability. The invalidity or unenforceability of any provision of this Second Amendment shall not affect the other provisions hereof, and this Second Amendment shall be construed in all respects as if such invalid and unenforceable provision were omitted.

D. Counterparts. This Second Amendment may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute but one and the same instrument.

E. Effective Date. The Effective Date of this Second Amendment shall be the date set forth above which shall be the date the Second Amendment is signed by all parties, and if the parties do not sign on the same date, the date on which it is signed by the last party.

F. Effect on the Agreement. Except as modified by the terms hereof, the provisions of the Agreement shall be unchanged and shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective as of the date first above written, and by doing so, agree to be bound by the terms of this Second Amendment.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

SIGNATURES AND ACKNOWLEDGMENTS CONTINUE ON THE FOLLOWING PAGE

ATTEST:

CITY OF COLUMBIA

Erika D. Moore
Erika D. Moore, City Clerk

BY: [Signature]
Stephen K. Benjamin, Mayor

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this 17th day of August, 2016, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared Stephen K. Benjamin, as Mayor of the City of Columbia, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, in his stated capacity as the appropriate official of the City of Columbia, South Carolina, who acknowledged the due execution of the foregoing document.

Erika D. Moore
Notary Public for South Carolina
My Commission Expires: 4.16.2022

WITNESSES:

BULL STREET DEVELOPMENT, LLC

[Signature]
[Signature]

BY: [Signature]
Robert E. Hughes, Jr., President

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 19th day of August, 2016, by Robert E. Hughes, Jr., President of Bull Street Development, LLC, a South Carolina limited liability company, on behalf of the company.

Carrie M. David
Notary Public for South Carolina
My Commission Expires: 3/08/2021

APPROVED AS TO FORM
[Signature]
Legal Department City of Columbia, SC