

**ORDINANCE #68593**  
**Board Bill No. 317**

An ordinance authorizing the execution of an amendment to Redevelopment Agreement by and between the City of St. Louis and Hepfner, Smith, Airhart & Day, Inc.; prescribing the form and details of said amendment; making certain findings with respect thereto; authorizing other related actions; and containing a severability clause.

**WHEREAS**, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865 of the Revised Statutes of Missouri, as amended (the “Act” or “TIF Act”), the City adopted Ordinance No. 68006 (the “Approving Ordinance”), which Approving Ordinance (i) designated as a “redevelopment area” a certain portion of the City (the “Redevelopment Area”), (ii) approved a redevelopment plan titled “Station G Apartments TIF Redevelopment Plan” (the “Redevelopment Plan”), (iii) approved the redevelopment project described in the Redevelopment Plan (the “Redevelopment Project”), (iv) adopted tax increment allocation financing within the Redevelopment Area, and (v) established the “Station G Apartments Special Allocation Fund” all as set forth in the Approving Ordinance and in accordance with the requirements of the Act; and

**WHEREAS**, pursuant to provisions of the Act, the City adopted Ordinance No. 68007, which authorized the execution of a redevelopment agreement (as subsequently executed as of February 19, 2009, the “Redevelopment Agreement”) by and between the City and Hepfner, Smith, Airhart & Day, Inc. (the “Developer”) setting forth the terms and obligations of the parties with respect to the implementation of the Redevelopment Project approved in the Approving Ordinance; and

**WHEREAS**, pursuant to the provisions of the Act, the City adopted Ordinance No. 68008 (the “Note Ordinance”), which authorized and directed the issuance and delivery of not to exceed \$3,681,000 principal amount of Tax Increment Revenue Notes (Station G Apartments Redevelopment Project), Series 200\_-A/B (the “TIF Notes”), to finance the development of the Redevelopment Project; and

**WHEREAS**, the Developer and the City desire to approve and execute an amendment to the Redevelopment Agreement (the “Amendment”) to extend the deadlines for commencement and completion of the Redevelopment Project and to amend or modify certain other terms of the Redevelopment Agreement; and

**WHEREAS**, it is hereby found and determined that it is necessary and advisable and in the best interest of the City and of its inhabitants to authorize the City to execute the Amendment in order to amend the Redevelopment Agreement as it concerns the deadlines for commencement and completion of the Redevelopment Project and certain other terms of the Redevelopment Agreement.

**WHEREAS**, the Board of Aldermen hereby determines that the terms of the Amendment attached as **Exhibit A** hereto and incorporated herein by reference are acceptable and that the execution, delivery and performance by the City and the Developer of the attached Amendment is necessary and desirable and in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the TIF Act.

**BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:**

**Section 1.** The Board of Aldermen finds and determines that it is necessary and desirable to enter into the Amendment with the Developer in order to implement the Redevelopment Project and to enable the Developer to carry out its proposal for development of the Redevelopment Project.

**Section 2.** The Board of Aldermen hereby approves, and the Mayor and Comptroller of the City are hereby authorized and directed to execute, on behalf of the City, the Amendment by and between the City and the Developer attached hereto as **Exhibit A**, and the City Register is hereby authorized and directed to attest to the Amendment and to affix the seal of the City thereto. The Amendment shall be in substantially the form attached, with such changes therein as shall be approved by said Mayor and Comptroller executing the same and as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized.

**Section 3.** The Mayor and Comptroller of the City or their designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor and the Comptroller or their designated representatives.

**Section 4.** The Mayor and the Comptroller or their designated representatives, with the advice and concurrence of the City Counselor and after approval by the Board of Estimate and Apportionment, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor and the Comptroller or their designated representatives.

**Section 5.** It is hereby declared to be the intention of the Board of Aldermen that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the Board of Aldermen intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

**EXHIBIT A**  
**Form of First Amendment to Redevelopment Agreement**  
**(Attached hereto.)**

**FIRST AMENDMENT TO  
REDEVELOPMENT AGREEMENT**

This First Amendment to Redevelopment Agreement (this "Amendment") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2010, by and between the **CITY OF ST. LOUIS, MISSOURI**, a municipal corporation and political subdivision of the State of Missouri ("City"), and **HEPFNER, SMITH, AIRHART & DAY, INC.**, a Texas corporation ("Developer").

**RECITALS**

A. By Ordinance No. 68006, the City, upon the recommendation of the TIF Commission, approved the Station G Apartments TIF Redevelopment Plan for the Station G. Apartments Redevelopment Area (the "Redevelopment Area") dated February 22, 2008, with amendments, if any, from time to time (the "Redevelopment Plan"), which Redevelopment Area was more fully described therein.

B. By Ordinance No. 68007, the City affirmed adoption of the Redevelopment Plan, designated the Developer as developer of the Redevelopment Area, and authorized the City to enter into a Redevelopment Agreement with the Developer (the "Redevelopment Agreement") with respect to the Station G Apartments Redevelopment Project (the "Redevelopment Project").

C. The City and the Developer entered into the Redevelopment Agreement for the Redevelopment Project as of February 19, 2009.

D. In light of difficult economic conditions and in consideration of the continued progress that the Developer has made with the Redevelopment Project, the City and the Developer desire to enter into this Amendment to extend the deadlines for commencement and completion of the Redevelopment Project and to amend or modify certain other terms of the Redevelopment Agreement.

**AGREEMENT**

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The first paragraph of Section 3.4 of the Redevelopment Agreement shall be deleted in its entirety and replaced with the following:

**3.4 Developer to Construct the Work.** The Developer shall commence or cause the commencement of the construction of the Work not later than September 30, 2011, which Work shall be constructed in a good and workmanlike manner in accordance with the terms of this Agreement and the Redevelopment Plan. The Developer shall substantially complete or cause the Work to be substantially complete not later than July 31, 2014, absent an event of Force Majeure. In the event of any delay caused by an event of

Force Majeure as defined in **Section 7.5** of this Agreement, Developer shall be granted additional time to complete the Work, but under no circumstance shall such time to complete the Work extend beyond July 31, 2015.

2. The definition of the term "TIF Notes" in Section 1.1 of the Redevelopment Agreement shall be deleted in its entirety and replaced with the following:

*"TIF Notes"* means one or more series of tax increment revenue notes issued by the City pursuant to and subject to this Agreement and the Note Ordinance, to evidence the City's limited obligation to repay Reimbursable Redevelopment Project Costs incurred by or on behalf of the Developer on behalf of the City in accordance with the TIF Act and this Agreement.

3. The definition of the term "Project Lender" in Section 1.1 of the Redevelopment Agreement shall be deleted in its entirety and replaced with the following:

*"Project Lender"* means a commercial bank, savings bank, savings and loan association, credit union or other financial institution that has loaned funds to the Developer or a Related Entity to be used for construction of the Redevelopment Project and has secured such loan with a mortgage or security interest in the Redevelopment Project.

4. The following sentence shall be added to the end of Section 2.1 of the Redevelopment Agreement:

Wherever applicable herein, any requirement imposed upon Developer shall be satisfied to the extent Developer takes such action or causes such action to be taken, and Developer may modify the form of any certificate attached hereto as an Exhibit to reflect that Developer has caused any action provided for therein to have been taken.

5. Section 7.3.2 of the Redevelopment Agreement contains the phrase "...the fee title to the Property shall not be sold, transferred or otherwise disposed of and the rights, duties and obligations of the Developer under this Agreement shall not be assigned...", which shall be amended to read as follows:

...the fee title to the Property shall not be sold, transferred or otherwise disposed of (to anyone other than a Related Entity) and the rights, duties and obligations of the Developer under this Agreement shall not be assigned...

6. All capitalized terms not otherwise defined herein shall have the meaning given such term in the Redevelopment Agreement.

7. This Amendment may be executed in multiple counterparts, each of which when taken together shall constitute one and the same instrument.

8. Except as expressly set forth herein, the provisions of the Redevelopment Agreement shall remain as set forth therein.

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

**IN WITNESS WHEREOF**, the City and the Developer have caused this Agreement 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"**

**CITY OF ST. LOUIS, MISSOURI**

By: \_\_\_\_\_  
Francis G. Slay, Mayor

By: \_\_\_\_\_  
Darlene Green, Comptroller

(SEAL)

Attest:

\_\_\_\_\_  
Parrie May, City Register

Approved as to Form:

\_\_\_\_\_  
\_\_\_\_\_, City Counselor

“DEVELOPER”

**HEPFNER, SMITH, AIRHART & DAY, INC.** a Texas corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF ST. LOUIS, MISSOURI, a 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 Board of Aldermen, and said individual 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.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

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

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a 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 Board of Aldermen, and said individual 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.

\_\_\_\_\_  
Notary Public

