

**ORDINANCE #69428**  
**Board Bill No. 160**  
**Committee Substitute**

An ordinance pertaining to mortgage foreclosure intervention; and containing a penalty, severability and emergency clause.

**WHEREAS**, the national residential property foreclosure crisis has manifested itself in the City of St. Louis by negatively impacting property values, reducing the City of St. Louis' tax base, imposing increasing burdens upon the City of St. Louis' budget, and impeding the orderly assessment of value and the collection of real property taxes; and

**WHEREAS**, unsecured and unmaintained properties present a danger to the health, safety and welfare of the public, including public safety officers, occupants, abutters, and neighborhoods, and as such, constitute a public nuisance; and

**WHEREAS**, jurisdictions across the country are currently using foreclosure mediation programs to successfully facilitate mutually beneficial alternatives to foreclosure and the Board of Aldermen is of the view that mediation in advance of foreclosures will be beneficial to homeowners, lenders and to all of City of St. Louis;

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

**SECTION ONE. Definitions.** Unless the context otherwise requires, as used in this Ordinance:

1. "Homeowner" means the individual(s) owning and whose principal place of residence is a Residential Property and who is/are the borrower(s) under the promissory note secured by the Deed of Trust on such Residential Property that is subject to foreclosure under Ch. 443 RSMo.

2. "Residential Property" means real property that is located within the City of St. Louis on which is situated either a single-family dwelling, or one or more condominium or co-op units, or a structure containing not more than four residential units.

3. "Lender" means a person or entity which has advanced funds for a loan to a Homeowner secured by a deed of trust on a Residential Property. For the purpose of this Ordinance, "Lender" shall include any servicer of mortgage loans, trustee named in the deed of trust or a duly appointed successor trustee.

4. "Notice of Foreclosure" means a written notice sent to the Homeowner of Lender's intent to foreclose according to the provisions of Chapter 443 R.S. Mo.

5. "Notice of Right to Request Mediation" means a written notice sent to the Homeowner informing the Homeowner of the right to participate in a Mediation Conference pursuant to this Ordinance.

6. "Mediation Coordinator" means the person or entity designated by the Mayor and the Comptroller of the City of St. Louis, acting on behalf of said City, to manage the mortgage foreclosure intervention program established by this Ordinance, pursuant to a contract with the City for such purposes.

7. "Mediation Conference" means the meeting between a Homeowner and Lender, in accordance with the requirements of this Ordinance, for the purpose of effectuating a mutually beneficial alternative to foreclosure.

8. "Presiding Mediator" means the person designated by the Mediation Coordinator to oversee and facilitate the Mediation Conference.

9. "Certificate of Compliance" means a certificate in a form promulgated by the Mediation Coordinator and approved by the City Counselor that is awarded to the Lender by the Mediation Coordinator, certifying that the Lender complied with this Ordinance and is eligible to record the foreclosure deed without penalty.

**SECTION TWO. Contract for Mediation Coordinator.** – The Mayor and Comptroller of the City of St. Louis, acting on behalf of said City, are authorized to contract with a person or entity to serve as a Mediation Coordinator. The contract shall require the Mediation Coordinator to provide all services established for the position by this Ordinance; shall provide for the Mediation Coordinator and Presiding Mediators to be compensated solely by the fees established by this Ordinance; and shall contain such other terms and conditions as are approved by the City Counselor.

**SECTION THREE. Notification requirements.**

1. The Lender, or any other person authorized to conduct a sale of the Homeowner's Residential Property pursuant to Chapter 443 R.S.Mo., shall, if desirous of filing a Certificate of Compliance pursuant to Section 727.700, contemporaneously provide to the Homeowner and the Mediation Coordinator a Notice of Right to Request Mediation which informs the Homeowner of the Homeowner's right to participate in a Mediation Conference by sending a request for same to the Mediation Coordinator within twenty days of mailing of the Notice of Right to Request Mediation; except, however, that no such notice shall be required if the Lender has received a Certificate of Compliance for the same Residential Property following notice to the same Homeowner within the preceding twelve months. Such notice shall be provided to Homeowner concurrently with the Lender's "Notice of Foreclosure" according to the provisions of Chapter 443 R.S.Mo., and shall include a form promulgated by the Mediation Coordinator and approved by the City Counselor for the Homeowner to make a written request for mediation under this Ordinance. The Notice of Right to Request Mediation provided to the Mediation Coordinator shall be accompanied by payment to the Mediation Coordinator of a fee of one hundred dollars (\$100.00).

2. Homeowner shall have twenty (20) days from mailing by Lender of the Notice of Right to Request Mediation to complete and return to Mediation Coordinator the form requesting mediation.

3. Within fifteen (15) days of receipt of the Notice of Foreclosure and the Notice of Right to Request Mediation, the Mediation Coordinator shall make and document at least three (3) attempts to contact the Homeowner to inform the Homeowner of the right to participate in a Mediation Conference and to explain the mediation process. The explanation shall include advising the Homeowner of the Homeowner's right to request a Mediation Conference in writing, within twenty (20) days from the mailing by Lender of the Notice of Right to Request Mediation and Notice of Foreclosure.

4. If the Homeowner either fails to request a Mediation Conference within twenty (20) days of the mailing of the Notice of Foreclosure and Notice of Right to Request Mediation OR advises the Mediation Coordinator in writing of the Homeowner's waiver of the right to participate in a Mediation Conference OR has otherwise failed to comply with the requirements imposed herein upon Homeowners, the Lender shall be deemed to have satisfied the requirements of this Ordinance so long as the Lender has made the required \$100.00 payment, and the Mediation Coordinator shall issue the Lender a Certificate of Compliance within one (1) business day.

**SECTION FOUR. Mediation Procedures.**

1. Upon the written request of the Homeowner to participate in a Mediation Conference, the Mediation Coordinator shall schedule a Mediation Conference for a date within sixty (60) days of the date on which the Lender mailed the notices required by this Ordinance, and shall designate a Presiding Mediator, time, date and location for the Mediation Conference, and shall advise both the Lender and the Homeowner of same. Upon receipt of such information, the Lender shall submit a mediation fee of three hundred fifty dollars (\$350.00) to the Mediation Coordinator not less than seven (7) business days prior to the Mediation Conference and shall comply with all duties imposed upon Lenders hereunder if desirous of filing a Certificate of Compliance.

2. The written request to participate in the Mediation Conference by the Homeowner shall be deemed to be consent by the Homeowner for a continuance of the foreclosure sale for forty-two days as allowed under Section 443.355(2) R.S.Mo.

3. The Mediation Coordinator shall provide the Homeowner with a list of qualified housing counselors who may assist and represent the Homeowner throughout the mediation process. Nothing herein shall prevent a Homeowner from retaining an attorney for the mediation process, nor require use of the housing counselors.

4. Not less than seven (7) business days prior to the Mediation Conference, the Homeowner shall submit to the Mediation Coordinator and to the Lender the following materials:

- (a) a completed financial statement on a form provided by the Mediation Coordinator and approved by the City Counselor;
- (b) a completed Request for Mortgage Assistance form, on a form provided by the Mediation Coordinator and approved by the City Counselor;
- (c) the Homeowner's opinion of the condition of the subject residential property; and
- (d) a statement of any offers the Homeowner has made to the Lender in an effort to resolve the default of the loan.

5. Not less than seven (7) business days prior to the Mediation Conference, the Lender shall submit to the Mediation Coordinator and to the Homeowner the following materials:

- (a) an appraisal and/or broker's price opinion compiled not more than ninety (90) days prior to the Mediation Conference;
- (b) a written proposal to resolve the foreclosure and the evaluation methodology used to determine the eligibility or non-eligibility of the Homeowner for the retention or non-retention of the home;
- (c) an estimate of the "short sale" value of the Residential Property that the Lender may be willing to consider as part of the negotiation if loan modification is not agreed upon; and
- (d) a statement of any offers the Lender has made to the Homeowner in an effort to resolve the default on the loan.

6. Not less than seven (7) business days prior to the Mediation Conference, both the Lender and the Homeowner shall submit to the designated Presiding Mediator, in writing and under confidential cover, a non-binding proposal for avoiding foreclosure.

7. Both Lender and Homeowner, or their authorized representatives, shall appear in person at the Mediation Conference. Any representative appearing at the Mediation Conference for the Lender must have full authority to agree to a proposed settlement, loan modification, or dismissal. A Lender representative who is participating in the Mediation Conference must have real time access to the Homeowner's account information and records relating to consideration of loss mitigation options; have knowledge of loss mitigation and the ability to review options for the Homeowner's specific type of loan; and understand the investor guidelines for the Homeowner's specific loan. If the Lender is located outside the Statistical St. Louis Metropolitan Area, Lender may exercise the option to participate by telephone, videoconferencing, or other communication equipment. If participating by communication equipment, the Lender representative must be available at all times during the Mediation Conference. Counsel or other authorized individual for Lender must appear at the Mediation Conference to sign documents and settlement agreements on behalf of Lender.

8. A continuance of a scheduled Mediation Conference will be granted by the Mediation Coordinator only upon (1) written request submitted prior to the mediation upon a showing of extraordinary circumstances, or (2) written agreement of the Lender and Homeowner. The Mediation Coordinator may grant a continuance of the scheduled mediation conference of up to eighty days from the date on which the Lender mailed the required notices.

9. In the event the Lender and Homeowner are able to resolve the foreclosure prior to the Mediation Conference, they shall forward a copy of a written settlement agreement signed by Lender and Homeowner to the Mediation Coordinator and the Mediation Coordinator shall issue the Lender a Certificate of Compliance within one business day. If notice of settlement is received by the Mediation Coordinator at least one business day prior to the Mediation Conference, the \$350 mediation fee will be refunded. Otherwise, there will be no refund of any fees.

10. If the Lender and Homeowner reach a settlement during the Mediation Conference, the Presiding Mediator shall submit to the Mediation Coordinator a true and correct copy of a settlement agreement within one business days following the Mediation Conference and the Mediation Coordinator shall issue the Lender a Certificate of Compliance within one (1) business days following the Mediation Conference.

11. If the Lender and Homeowner fail to reach a settlement during the Mediation Conference, a good faith effort on behalf of the Lender shall be deemed to satisfy the requirements of this Ordinance, and the Mediation Coordinator shall, within five (5) one (1) days following the Mediation Conference, issue a Certificate of Compliance to the Lender if:

- (a) the Lender sent the Notice of Foreclosure and the Notice of Right to Request Mediation and forms as required by Section 727.400;
- (b) the Lender provided all of the necessary paperwork as required by Section 727.500 4(a)-(d) and (5);
- (c) the Lender's representative who participated in the mediation had the authority to negotiate and modify the loan in question, and the ability to review and approve options for the Homeowner's specific type of loan as required by Section 727.500(6); and
- (d) the Lender paid all fees required by this Ordinance.

12. If the Lender fails to satisfy any of the requirements identified in this Ordinance, the Mediation Coordinator shall not issue a Certificate of Compliance to the Lender.

13. All documents and discussions presented during the Mediation Conference shall be deemed confidential and inadmissible in subsequent actions or proceedings as provided in Section 435.014 R.S. Mo. and Missouri Supreme Court Rule 17 except to the extent needed to prosecute a violation of Section 727.700. Aggregate data to monitor and/or evaluate the implementation of the program may be collected by the City of St. Louis.

**SECTION FIVE. Interaction with State law.** 1. Nothing in this Ordinance shall prohibit any person from exercising the right to carry out a judicial or non-judicial foreclosure sale pursuant to Chapter 443 R.S.Mo.

2. Nothing in this Ordinance shall be construed to create any private right of action for any person or entity, or to affect title to any Residential Property to which this code applies, or to interfere with any private right of action not related to mediation requirement of this ordinance.

**SECTION SIX. Filing of Certificate of Compliance with Assessor-Penalties for Failure to File.**-1. It shall be a violation of this ordinance for a Lender to fail either to file or cause to be filed with the Assessor, a valid Certificate of Compliance for the foreclosed Residential Property subject to the provisions of this Chapter, either before or contemporaneously with the filing for recordation with the Recorder of Deeds any instrument of conveyance of title to the foreclosed Residential Property; provided, however, that the Recorder shall not refuse to file any such instrument for failure to comply with this requirement; and further provided that it shall be a complete defense to prosecution hereunder that the Lender has in fact complied with the requirements set forth in Section 727.500.10(a)-(d).

**SECTION SEVEN. Penalty Clause.**

Any person, firm or corporation convicted of violating any provision of this Ordinance shall be assessed a fine of up to five hundred dollars (\$500.00.) A fine assessed against the Lender may not be passed on to the Homeowner.

**SECTION EIGHT. Severability Clause.**

The provisions of this ordinance shall be severable. In the event that any provision of this ordinance is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this ordinance are valid unless the court finds the valid provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed that the Board of Aldermen would have enacted the valid provisions without the void ones or unless the Court finds that the valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.

**SECTION NINE. Emergency Clause.**

This being an ordinance for the preservation of public peace, health, and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore shall become effective immediately upon its passage and approval by the mayor.

**Approved: February 27, 2013**

**ORDINANCE #69429  
Board Bill No. 275  
Floor Substitute**

An Ordinance establishing policies for the possession and enforcement of marijuana offenses in the City of St. Louis, Missouri; containing a severability clause, and a penalty clause and an effective date clause.

**WHEREAS**, the Missouri State Court system and Circuit Attorney's Office of the City of St. Louis currently handle a multitude of marijuana possession cases;

**WHEREAS**, valuable prosecutorial resources are utilized in prosecuting marijuana offenses;

**WHEREAS**, the City Counselor's Office of the City of St. Louis has available resources to prosecute minor marijuana offenses in an efficient and expeditious manner in City Court thereby allowing State resources to be focused on more serious crime;

**WHEREAS**, people should not possess the controlled substance of marijuana, but also should not incur unreasonably harsh consequences as a result of possession of minor amounts;

**WHEREAS**, the message of this ordinance is that people should not use marijuana, but also should not lose opportunities for education and employment because of such use. The limited resources of law enforcement should be directed primarily toward crimes of violence or property loss;

**WHEREAS**, when any law enforcement officer suspects any adult as defined by state criminal statutes, other than those excluded in section two below, of possession of less than 35 grams of marijuana, it is desired that such person not be required to post bond, suffer physical arrest, be taken into custody or detained for other than the issuance of a summons;

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

**SECTION ONE. Possession and Enforcement of Marijuana Offenses.**

It shall be unlawful for any person to possess marijuana as defined in Chapter 195.010 et. seq. of the Revised Statutes of Missouri as amended.

**SECTION TWO.**

It is intended that the following persons shall continue to be prosecuted in State Court rather than City Court:

- i. Those who have pled or been found guilty of a felony within the preceding ten (10) years; or
- ii. Who have pled or been found guilty in a state court of a Class A misdemeanor, other than misdemeanor marijuana possession, within the preceding five (5) years; or
- iii. Who have pled or been found guilty in a state or municipal court of misdemeanor marijuana possession on two or more occasions within the preceding five (5) years; or
- iv. Who are arrested on suspicion of any felony or misdemeanor arising from the same set of facts and circumstances as the alleged marijuana offense.
- v. Who possess marijuana packaged in a manner intended for sale or distribution;
- vi. Who possesses over 35 grams of marijuana;
- vii. Who otherwise causes the City Counselor's Office to reasonably believe that a request for handling by the Circuit Attorney is warranted.

**SECTION THREE. Penalty Clause.**

Any person violating this Ordinance shall be subject to a fine of not less than one hundred dollars and not more than five hundred dollars. There is a strong presumption that the proper disposition of any such case is to suspend the imposition of sentence and/or require community service work and/or drug counseling and education.

**SECTION FOUR. Funding of Substance Abuse Awareness, Prevention and Treatment Programs.**

Any fine collected as a result of this ordinance will be used to cover administrative costs of the court, and any amount collected greater than the cost of administration shall be evenly divided between the City of St. Louis General Revenue Fund and the St. Louis Mental Health Board for the purpose of funding substance abuse awareness, prevention and treatment programs with an emphasis on high school-aged youth.

**SECTION FIVE. Severability Clause.**

The provisions of this section are severable. If any provision of this Ordinance is declared invalid, that invalidity shall not affect other provisions of the Ordinance which can be given effect without the invalid provision.

**SECTION SIX. Effective Date.**

This Ordinance shall take effect on June 1, 2013.

**Approved: April 29, 2013**

**ORDINANCE #69430  
Board Bill No. 288**

An Ordinance Authorizing The Execution Of A Cooperation Agreement And Authorizing Reimbursement In Accordance Therewith, And Containing A Severability Clause.

**WHEREAS**, pursuant to Board Bill No. 287, the City found that the property commonly known as Union Station and generally located at 1820 Market Street (the "Redevelopment Area") is a "blighted area" pursuant to Section 67.1401.2(3) of the Revised Statutes of Missouri, as amended; and

**WHEREAS**, pursuant to Ordinance No. 57286, as amended by Ordinances 58294 and 58800, and Chapter 353 of the Revised Statutes of Missouri, as amended ("Chapter 353"), the City approved a Development Plan (the "353 Plan") and approved redevelopment of the Union Station properties in the City of St. Louis, Missouri, as described in the 353 Plan and the Ordinances (the "353 Project Area"); and

**WHEREAS**, pursuant to Ordinance 58219 and Sections 99.300 to 99.715 of the Revised Statutes of Missouri, as amended (the "Act"), the City approved a Redevelopment Plan and approved redevelopment of the project area, as described in the Ordinance ; and

**WHEREAS**, all or a portion of the Redevelopment Area is being redeveloped into commercial uses (the "Redevelopment Project") and USH, LLC (the "Company") or an affiliate will expend funds in connection with the Redevelopment Project, which will benefit the Redevelopment Area and alleviate the conditions that qualify it as a "blighted area"; and

**WHEREAS**, the City is agreeable to assisting the Company by reimbursing the Company or an affiliate up to the Redevelopment Project costs pursuant to a Cooperation Agreement between the Company (or an affiliate) and the City (the "Cooperation Agreement"); and

**WHEREAS**, this Board of Aldermen hereby finds that it is necessary and desirable and in the best interest of the City to enter into the Cooperation Agreement with the Company or an affiliate and to utilize funds from the Sales Tax Reimbursement Account described therein, in order to provide for the promotion of the general welfare through redevelopment of the Redevelopment Area in accordance with the Cooperation Agreement, which redevelopment includes, but is not limited to, assistance in the physical, economic, and social development of the City, providing for a stabilized population and plan for the optimal growth of the City, encouragement of a sense of community identity, safety and civic pride, the elimination of impediments to land disposition and development in the City, creation of sustainable jobs in a targeted industry, and provision of additional tax revenue to the City; and

**WHEREAS**, the Board of Aldermen hereby determines that the terms of the Cooperation Agreement attached as **Appendix A** hereto and incorporated herein by this reference is acceptable and the execution, delivery and performance by the parties of their respective obligations under the Cooperation Agreement are in the best interests of the City and the health, safety, morals and welfare of its residents; and

**WHEREAS**, this Board of Aldermen hereby finds that the adoption of this ordinance is in the best interest of the City of St. Louis and that the City as a whole will benefit from the transactions described herein.

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

**SECTION ONE.** The Board of Aldermen finds and determines that, in order to promote the general welfare, as described above, it is necessary and desirable to enter into the Cooperation Agreement, which, subject to annual appropriation, pledges certain tax revenues for reimbursement to the Company or an affiliate in order to benefit the Redevelopment Project.

**SECTION TWO.** 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 Cooperation Agreement attached hereto as **Appendix A**, and the City Register is hereby authorized and directed to attest to the Cooperation Agreement and to affix the seal of the City thereto. The Cooperation Agreement shall be in substantially the form attached, with changes therein as shall be approved by said Mayor and

Comptroller as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized.

**SECTION THREE.** The Mayor and Comptroller of the City or his or her 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 or Comptroller or his or her designated representatives.

**SECTION FOUR.** The Mayor and Comptroller and his or her 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 or Comptroller or his or her designated representatives.

**SECTION FIVE.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is held to be invalid or unconstitutional, or unlawful for any reason, by any court of competent jurisdiction, such portion shall be deemed and is hereby declared to be a separate, distinct and independent provision of this ordinance, and such holding or holdings shall not affect the validity of the remaining portions of this ordinance.

#### APPENDIX A

Form of Cooperation Agreement

**SEE ATTACHED**

#### COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (this "Cooperation Agreement") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2013, by and between the City of St. Louis, Missouri (the "City"), a city and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Missouri, and USH, LLC, a Missouri limited liability company, whose address is 111 Westport Plaza, Suite 500, St. Louis, MO 63146 (the "Company").

#### RECITALS

- A. The Company or an affiliate owns the property commonly known as Union Station in the City (the "Project Area").
- B. All or a portion of the Project Area is being redeveloped into commercial uses (the "Redevelopment Project").
- C. Pursuant to Ordinance No \_\_\_\_, the City declared all or a portion of the Project Area a blighted area pursuant to Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended (the "CID Act").
- D. The Redevelopment Project would not be able to be undertaken without assistance from the City, which would adversely impact the viability of the Redevelopment Project.
- E. The Redevelopment Project will alleviate the conditions that qualify the Project Area as a "blighted area", as defined in the CID Act.
- F. On February \_\_\_\_, 2013, the City adopted Ordinance No. \_\_\_\_ (the "Authorizing Ordinance"), which authorized the City to enter into this Cooperation Agreement with the Company. The City is authorized to enter into this Cooperation Agreement pursuant to the provisions of Section 70.210 to 70.320 of the Revised Statutes of Missouri, as amended, and the Charter of the City.
- G. This Cooperation Agreement promotes and protects the health, safety, morals, and welfare of the public through redevelopment of the Project Area in accordance with the Cooperation Agreement and the Plan, which redevelopment includes assistance in the physical, economic, and social development of the City, providing for a stabilized population and plan for the optimal growth of the City, encouragement of a sense of community identity, safety and civic pride, the elimination of impediments to land disposition and development in the City, creation of sustainable jobs in a targeted industry, and provision of additional tax revenue to the City.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions. For the purposes of this Cooperation Agreement the following terms shall have the following meanings:

(a) "Project Costs" means the costs and expenses incurred by the Company or an affiliate in connection with the redevelopment of the Project Area.

(b) "Reimbursement Period Commencement Date" means the first day of the month following the date of this Cooperation Agreement.

(c) "Sales Tax Revenue" means (a) the general municipal sales tax levied pursuant to Ordinance No. 62884 or any successor thereto, (b) the general municipal sales tax levied pursuant to Ordinance No. 55497, as amended by Ordinance Nos. 57179 and 57979, or any successor thereto, (c) the transportation sales tax levied pursuant to Ordinance No. 56554, or any successor thereto, (d) the capital improvements sales tax levied pursuant to Ordinance No. 62885, or any successor thereto, and (e) public safety sales tax levied pursuant to Ordinance No. 67774, or any successor thereto, all as generated by the hotel operations, including revenue from rental of rooms, sale of food and beverage, conventions, restaurants, and any ancillary operations, generally located at 1820 Market Street in the City of St. Louis.

(d) "Semi-Annual Calculation Period" means each six (6) month period during the Term commencing on January 1 and ending on June 30, and commencing on July 1 and ending on December 31.

(e) "Term" means the period beginning on the date of this Cooperation Agreement and ending on the date that is the earlier of (i) twenty (20) years from the Reimbursement Period Commencement Date or (ii) the Company being reimbursed an amount equal to the Project Costs.

2. Creation of Sales Tax Reimbursement Account. There is hereby established an account of the Company to be held by the City, designated and named the "Sales Tax Reimbursement Account – USH, LLC, St. Louis Missouri" (the "Sales Tax Reimbursement Account") into which there shall be deposited an amount equal to fifty percent (50%) of the Sales Tax Revenue in accordance with Section 3. The Sales Tax Reimbursement Account shall be under the custody and control of the City, subject however, to the provisions of this Cooperation Agreement and the Authorizing Ordinance.

3. Reimbursement to Company.

(a) The City agrees, subject to annual appropriation, to reimburse the Company an amount equal to fifty percent (50%) of the Sales Tax Revenue generated during the Term, in accordance with the terms and provisions of this Cooperation Agreement.

(b) Within sixty (60) days after the last day of each Semi-Annual Calculation Period during the Term, the City shall cause an amount equal to fifty percent (50%) of the Sales Tax Revenue to be deposited into the Sales Tax Reimbursement Account and disbursed to the Company.

4. Annual Appropriation.

(a) The City's obligation to appropriate an amount equal to fifty percent (50%) of the Sales Tax Revenue for deposit into the Sales Tax Reimbursement Account and to appropriate the funds on deposit from time to time in the Sales Tax Reimbursement Account shall not be construed to be a debt of the City within the meaning of Article VI, Section 26(a) of the Missouri Constitution or any other applicable constitutional or statutory limitations, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of the City. With regard to the obligation to pay an amount equal to fifty percent (50%) of the Sales Tax Revenue, the parties believe that this is a current expense of the City in each applicable fiscal year.

(b) During the Term, the City covenants and agrees that with respect to each fiscal year of the City, the Budget Director or other designated representative at any time charged with the responsibility of formulating budget proposals will be directed to include in the budget proposal submitted to the City a request for an

appropriation equal to fifty percent (50%) of the Sales Tax Revenue received in such fiscal year for deposit into the Sales Tax Reimbursement Account.

(c) The City is obligated only to make the payments set forth in this Cooperation Agreement as may lawfully be made from funds budgeted and appropriated or otherwise legally available to make the required payments during each respective fiscal year.

(d) The obligations of the City to make the payments hereunder constitute a current expense of the City, are from year to year and do not constitute a mandatory payment obligation of the City in any fiscal year beyond the then current fiscal year of the City in which such appropriation has been made. The City's obligation hereunder shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or money of the City.

(e) The City reasonably believes that legally available funds in an amount sufficient to fully repay the obligations undertaken herein can be obtained. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds for any subsequent fiscal year is solely within the discretion of the then current governing body of the City.

5. Non-Appropriation. In the event that the City adopts a budget for a fiscal year, which budget does not include an appropriation equal to fifty percent (50%) of the Sales Tax Revenue to be received in such fiscal year for deposit into the Sales Tax Reimbursement Account, the same shall constitute an "Event of Non-appropriation." Should an Event of Non-appropriation occur, the City shall immediately notify in writing the following entities of the Event of Non-appropriation: (i) each nationally recognized municipal securities repository, and (ii) each nationally recognized rating agency which then maintains a rating on any of the City's bonds, notes or other securities. In the event that the City fails to give notice in accordance with the provisions of this section within thirty (30) days following the occurrence of an Event of Non-appropriation, then Company shall have the right, in addition to all other remedies available at law or in equity, to give such notice on the City's behalf.

6. Notice. Any notice, demand or other communication required by this Cooperation Agreement to be given to either party hereto to the other shall be in writing and shall be sufficiently given or delivered if sent by United States first class certified mail, return receipt requested, postage prepaid, or via a nationally recognized overnight delivery service that provides a receipt for delivery, addressed as follows:

If to Company: Craig Cobler  
c/o Lodging Hospitality Management  
111 Westport Plaza, Suite 500  
St. Louis, Missouri 63146

with a copy to: Husch Blackwell LLP  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105  
Attn: David M. Richardson

If to the City: City of St. Louis, Missouri  
Office of the Mayor  
1200 Market Street  
Room 200 City Hall  
St. Louis, MO 63103

With a copy to: City of St. Louis, Missouri  
Office of the Comptroller  
1200 Market Street  
Room 212 City Hall  
St. Louis, MO 63103

Either party shall have the right to change its respective address for notices by a written notice to that effect.

7. Choice of Law. This Cooperation Agreement shall be construed and enforced in accordance with the laws of the State of Missouri.

8. Entire Agreement; Amendment; Assignment. This Cooperation Agreement constitutes the entire agreement between the parties and there are no other agreements or representations other than those contained in this Cooperation Agreement. This Cooperation Agreement may not be amended, modified or waived orally, but only by a writing signed by the party against whom enforcement of such amendment, modification or waiver is sought. Company may assign this Cooperation Agreement to an affiliate without the consent of the City.

9. Invalid Provisions. If any one or more of the provisions of this Cooperation Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable by final non-appealable order of a court of competent jurisdiction, such provision shall be judicially modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Cooperation Agreement and all other applications of any such provision shall not be affected thereby; provided, however, that if, in the Company's sole judgment, the invalidity or unenforceability of such provision, or the terms of such provision as modified in accordance with this section, materially diminish the likelihood that the Company will be reimbursed fifty percent (50%) of the Sales Tax Revenue, the Company shall have the right to terminate this Cooperation Agreement and be relieved of any further obligations hereunder.

10. Binding Effect. This Cooperation Agreement shall be binding upon and inure to the benefit of the parties, and their respective successors and assigns.

11. Counterparts. This Cooperation Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank.]

**IN WITNESS WHEREOF**, the parties have caused this Cooperation Agreement to be executed by their respective officers or officials.

CITY OF ST. LOUIS MISSOURI

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

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

(SEAL)

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Patricia A. Hageman, City Counselor

USH, LLC

By: \_\_\_\_\_

**Approved: April 29, 2013**

**ORDINANCE #69431**  
**Board Bill No. 295**  
**Committee Substitute**  
**As Amended**

An Ordinance repealing Section One, part 86.040 of Ordinance 56716, pertaining to the opening of bids, codified as Section 5.58.040 of the Revised Code of the City of St. Louis, and enacting a new provision on the same subject matter which allows a local bidder to match the lowest bid when the lowest bid is from a non-local bidder; enacting a new provision on the same subject matter; containing severability clause.

**WHEREAS**, local businesses which seek to enter into contracts with the City of St. Louis are at a competitive disadvantage with businesses from other areas because of the higher administrative costs of doing business in the City;

**WHEREAS**, the City of St. Louis desires to encourage businesses to remain in the City and to relocate to the City;

**WHEREAS**, by enacting a local preference law that allows a local firm to match the lowest bid when its bid is within 2% percent of the lowest bid, the City hopes to encourage and stimulate local business.

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

**SECTION ONE.** Section One, part 86.040, Ordinance 56716 is hereby repealed.

**SECTION TWO.** Enacted in lieu thereof is the following new section.

5.58.040 - Opening of bids.

**A.** Proposals shall be opened at the time and place fixed by the advertisement, in the presence of such bidders as desire to be present, and shall be open to the inspection of bidders.

**B.** The bids shall not be materially modified or amended as to price, specification or otherwise, nor substitutions placed thereon, after opening except when the lowest bid is from a non-local bidder. When the lowest bid is from a non-local bidder, any local bidder within two percent of the lowest bid may match the lowest bid. If a local bidder matches the lowest bid, then the Supply Commissioner may select the bid from the local bidder. If more than one local bidder is within two percent of the lowest bid, then only the lowest local bidder may match the bid. In all other circumstances, modification, supplementation or amendment shall cause rejection of the bid. For purposes of this chapter, local bidder means a bidder whose principal place of business is within the City of St. Louis, has had a valid business license for at least one year, and is current in payment of local taxes. Principal place of business shall be defined as the business's physical office, plant, or site where a majority (51%) of the full-time employees, chief officer, and managers of the business regularly work and conduct business, or where the plant or office and equipment required for the furnishing of the goods or performance of the services provided to the City, as required by the contract, are physically located in the City of St. Louis for at least one taxable year immediately prior to the date of the bid.

**C.** Bids may be for one or more or all the articles advertised for, but there shall be a specific bid on each article. The award may be made to the lowest bidder for any article, or to the lowest bidder for the entire requisition or any part thereof, but the Board of Standardization may reject any or all bids or any part of any bid.

**SECTION THREE.** Severability.

The provisions of this section are severable. If any provision of this ordinance is declared invalid, that invalidity shall not affect other provisions of the ordinance which can be given effect without the invalid provision.

**Approved: April 29, 2013**

