

**ORDINANCE #66428**  
**Board Bill No. 199**

**AN ORDINANCE RECOMMENDED BY THE BOARD OF ESTIMATE AND APPORTIONMENT AMENDING ORDINANCE NO. 65747, ADOPTED BY THE BOARD OF ALDERMEN ON DECEMBER 6, 2002; AUTHORIZING THE EXECUTION OF A NOTE PURCHASE AGREEMENT BY AND AMONG THE CITY, 920/1000 OLIVE, LLC AND U.S. BANK, N.A.; PRESCRIBING THE FORM AND DETAILS OF SAID AGREEMENT; MAKING CERTAIN FINDINGS WITH RESPECT THERETO; AUTHORIZING OTHER RELATED ACTIONS; AND CONTAINING A SEVERABILTY CLAUSE.**

**WHEREAS**, pursuant to Ordinance No. 65749, the City designated a portion of the City a Redevelopment Area and approved the 920 Olive/1000 Locust Amended TIF Redevelopment Plan and the RPA1 Project as described therein; and

**WHEREAS**, pursuant to Ordinance No. 65748, the City adopted tax increment allocation financing within the RPA1 Project, and established the Special Allocation Fund for the RPA1 Project, all as provided for and in accordance with the TIF Act; and

**WHEREAS**, pursuant to Ordinance No. 65748, the City and 920/1000 Olive, LLC (the "Developer") entered into that certain Redevelopment Agreement dated as of February 18, 2003 (the "Redevelopment Agreement"), in furtherance of the Redevelopment Plan; and

**WHEREAS**, pursuant to Ordinance No. 65747, the City agreed to finance a portion of the costs of the RPA1 Project by utilizing tax increment allocation financing in accordance with the TIF Act, and agreed to issue, from time to time, certain taxable and tax exempt tax increment financing revenue notes (920 Olive /1000 Locust Redevelopment Project), Series 2002 (the "TIF Note(s)"), to evidence the City's obligation to reimburse Developer for certain Issuance Costs and Reimbursable Redevelopment Project Costs (as defined in the Redevelopment Agreement); and

**WHEREAS**, in accordance with and pursuant to the Note Ordinance, the TIF Note(s) are payable solely from Available Revenues deposited into the Special Allocation Fund and, with respect to the EATs portion of the funds therein, subject to appropriation by the City; and

**WHEREAS**, the Developer has requested the City amend Ordinance No. 65747 to allow the issuance and sale of the TIF Notes to U.S. Bank, N.A. (the "Original Purchaser") in accordance with the terms of a Note Purchase 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 amend certain sections of Ordinance No. 65747 to provide for the sale of the Note as provided for herein; and

**WHEREAS**, the Board of Aldermen hereby determines that the terms of the Note Purchase Agreement attached as **Exhibit A** hereto and incorporated herein by reference is acceptable and that the execution, delivery and performance by the City, the Developer and the Original Purchaser of their respective obligations under the Note Purchase Agreement are 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 ONE.** Section 101 of Ordinance No. 65747 is hereby amended by deleting the definition of "Original Purchaser" and replacing it with the following:  
"Original Purchaser" means U.S. Bank, N.A.

**SECTION TWO.** Section 202 of Ordinance No. 65747 is hereby amended by deleting subsection (h) thereof and replacing it with the following:

- (h) Sale of TIF Notes. When TIF Notes have been executed and authenticated as required by this Ordinance, the Finance Officer shall hold the TIF Notes in trust or, if directed in writing by the Owners thereof, deliver the TIF Notes to or upon the order of the Owners thereof, as provided in paragraph (g) above, but only upon payment to the City by the Original Purchaser of a purchase price equal to not less than ninety percent (90%) of the face amount of the TIF Notes.

**SECTION THREE.** Section 207 of Ordinance No. 65747 is hereby amended by deleting the last paragraph of said section.

**SECTION FOUR.** Section 405 of Ordinance No. 65747 is hereby amended by deleting said section in its entirety and replacing it with the following:

**Section 405 Project Fund.** Upon the acceptance by the City of a Certificate of Reimbursable Redevelopment Project Costs and the issuance or endorsement of a TIF Note pursuant to **Section 207** of this Ordinance, the City shall disburse the proceeds from the sale of the TIF Note to Developer to reimburse Developer for Reimbursable Redevelopment Project Costs in accordance with the terms of the Redevelopment Agreement and the Note Purchase Agreement.

**SECTION FIVE.** Section 708 of Ordinance No. 65747 is hereby amended by deleting said section in its entirety and replacing it with the following:

**Section 708 Private Sale.** The Board of Aldermen of the City hereby declares that it is in the City's best interest to sell the TIF Notes at private sale to U.S. Bank, N.A. because a public sale of the TIF Notes would cause additional expense to the City and because the condition of the current financial markets makes such a public sale not feasible or the best course of action for the City.

**SECTION SIX.** 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 Note Purchase Agreement among the City, the Developer and the Original Purchaser, and the City Register is hereby authorized and directed to attest to the Note Purchase Agreement and to affix the seal of the City thereto. The Note Purchase Agreement shall be in substantially the form attached hereto as Exhibit A, with such changes therein as shall be approved by the officers of the city executing the same and as may be consistent with the intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized.

**SECTION SEVEN.** 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, desirable, convenient or proper in order to carry out the matters herein authorized.

**SECTION EIGHT.** The Mayor and the Comptroller or their designated representatives are hereby further authorized and directed to make any changes to the documents and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary, desirable, convenient or proper in order to carry out the matters herein authorized.

**SECTION NINE.** 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**  
**Note Purchase Agreement**

**TIF NOTE PURCHASE AGREEMENT**

This Tax Increment Financing Note Purchase Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2004, by and among the City of St. Louis, Missouri, a body corporate and political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of its charter, the Constitution and laws of the State of Missouri (the "City"), U.S. Bank, N.A., a national banking association, and its successors and assigns ("Purchaser"), and 920/1000, LLC, a Missouri limited liability company ("Developer") (the City, Purchaser and Developer may be referred to collectively herein as the "Parties").

## WITNESSETH:

**WHEREAS**, pursuant to Ordinance No. 65749, the City designated a portion of the City approved the 920 Olive/1000 Locust Amended TIF Redevelopment Plan and the RPA1 Project as described therein; and

**WHEREAS**, pursuant to Ordinance No. 65748, the City adopted tax increment allocation financing within the RPA1 Project, and established the Special Allocation Fund for the RPA1 Project, all as provided for and in accordance with the TIF Act; and

**WHEREAS**, pursuant to Ordinance No. 65748, the City and Developer entered into that certain Redevelopment Agreement dated as of February 18, 2003, in furtherance of the Redevelopment Plan; and

**WHEREAS**, pursuant to Ordinance No. 65747 (the "Note Ordinance"), the City agreed to finance a portion of the costs of the RPA1 Project by utilizing tax increment allocation financing in accordance with the TIF Act, and agreed to issue, from time to time, certain taxable and tax exempt tax increment financing revenue notes (920 Olive /1000 Locust Redevelopment Project), Series 2002 (the "TIF Note(s)"), to evidence the City's obligation to reimburse Developer for certain Issuance Costs and Reimbursable Redevelopment Project Costs (as defined in the Redevelopment Agreement); and

**WHEREAS**, in accordance with and pursuant to the Note Ordinance, the TIF Note(s) are payable solely from Available Revenues deposited into the Special Allocation Fund and, with respect to the EATs portion of the funds therein, subject to appropriation by the City; and

**WHEREAS**, pursuant to Ordinance No. \_\_\_\_ [Board Bill No. 199] (the "Amended Note Ordinance"), the City amended Ordinance No. 65747 to allow the private sale of the TIF Note(s) to US. Bank, N.A. in accordance with the terms of this Agreement and the Development Documents; and

**WHEREAS**, the Parties have determined that it is in the best interest of the Parties to sell the TIF Note(s) to Purchaser in accordance with the Amended Note Ordinance and subject to the terms and conditions provided for herein; and

**WHEREAS**, the Redevelopment Agreement, Redevelopment Plan, Ordinance Nos. 65747, 65748, 65749 and \_\_\_\_\_, and TIF Note(s) issued in connection therewith, and all other documents and agreements between the City and Developer relating thereto are collectively referred to herein as the "Development Documents".

**NOW THEREFORE**, in consideration of the foregoing recitals, the agreements, promises and covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement hereby agree as follows:

**ARTICLE I.  
DEFINITIONS**

**1.1.** DEFINITION OF WORDS AND TERMS. Capitalized words and terms used herein shall have the meaning set forth in the Development Documents unless some other meaning is plainly indicated.

**ARTICLE II.  
SALE AND PURCHASE OF TIF NOTE(S)**

**2.1.** PURCHASE, SALE AND DELIVERY OF THE TIF NOTE(S). Subject to the terms and conditions herein set forth, Purchaser agrees to purchase from the City the TIF Note(s) at a purchase price of \$2,400,000 (the "Purchase Price"), which Purchase Price is equal to approximately 90% of the aggregate maximum principal amount authorized to be issued by the City pursuant to the Note Ordinance. The TIF Note(s) shall be issued under and secured as provided, have the maturities and interest rates and be subject to redemption as set forth, in the Amended Note Ordinance.

Payment for the TIF Note shall be made by federal wire transfer or certified or official bank check or draft in immediately available federal funds payable to the order of the City for the account of the City, at the offices of Armstrong Teasdale LLP, One Metropolitan Square, Suite 2600, St. Louis, Missouri 63102 at \_\_\_\_\_, local time, on \_\_\_\_\_, 2004, (the "Closing Date") or such other place, earlier time and/or date as shall be mutually agreed upon by the Parties in writing.

**ARTICLE III.  
CONDITIONS TO SALE**

**3.1. CONDITIONS TO PURCHASER'S OBLIGATIONS.** Purchaser's obligations hereunder shall be subject to the due performance by the City and/or Developer of its respective obligations and agreements to be performed hereunder and under the Development Documents at or prior to the Closing Date, which include but are not limited to the following:

(a) The City and Developer shall have duly authorized, executed or adopted, as appropriate, and delivered to Purchaser a certified copy of the Redevelopment Agreement by and between the City and Developer;

(b) Developer shall have duly recorded the Redevelopment Agreement in the City of St. Louis, Recorder of Deed office, and shall have provided to Purchaser evidence of the same;

(c) The City shall have delivered to Purchaser a certified copy of the Note Ordinance of the City authorizing and approving the execution and delivery of the TIF Note(s);

(d) The Developer, in accordance with the Redevelopment Agreement, shall have submitted to the City a Certificate of Reimbursable Project Costs and the City shall have approved such certificate in accordance with the terms of the Redevelopment Agreement for an amount equal to the aggregate maximum principal amount authorized to be issued by the City pursuant to the Development Documents;

(e) The City shall provide to Purchaser such additional certificates, legal and other documents, listed on a closing agenda to be approved by Purchaser, as Purchaser may reasonably request to evidence performance or compliance with the provisions hereof and the transactions contemplated hereby and by the Amended Note Ordinance, all such certificates and other documents to be satisfactory in form and substance to Purchaser;

(f) Developer shall have delivered to the City its Certificate of Substantial Completion in accordance with the Redevelopment Agreement, and the City shall have accepted the same; and

(h) The City shall have duly created and established the 920 Olive/1000 Locust Special Allocation Fund, and, in accordance with Sections 10.06 and 10.07 of the Redevelopment Agreement, shall have determined, certified and provided to Developer the total equalized assessed value of all taxable property within RPA1 Project Area as of the date of Ordinance No. 65748, and shall have determined, certified and provided to Developer the total amount of revenue from taxes, penalties and interest which were imposed by the City or other taxing districts, and which were generated by economic activities within the RPA1 Project Area in the calendar year prior to the adoption of Ordinance No. 65748, but excluding certain taxes as set forth in §99.845.3 of the TIF Act.

**ARTICLE IV.  
COVENANTS AND REPRESENTATIONS**

**4.1. COVENANTS AND REPRESENTATIONS OF DEVELOPER.**

(a) Developer hereby covenants and agrees to perform its obligations under the Development Documents including, but not limited to, timely completion of the Redevelopment Project in accordance with the Redevelopment Plan and Redevelopment Agreement and further, timely submission to the City Certificate(s) of Reimbursable Redevelopment Project Costs for Redevelopment Project Costs that qualify as a "redevelopment project cost" under Section 99.805(14) of the TIF Act and in accordance with the Redevelopment Agreement in an amount equal to not less than \$2,667,732, which amount equals the aggregate maximum principal amount of TIF Note to be issued in accordance with the Amended Note Ordinance. The Developer shall exercise its best efforts to ensure acceptance and approval by the City of such Certificate(s) of Reimbursable Redevelopment Project Costs equal to the amount as provided for in this Section 4.1.

(b) Developer hereby represents and warrants that:

(i) Developer has full power to execute and deliver and perform the terms and obligations of this Agreement and all of the foregoing has been duly and validly authorized by all necessary corporate proceedings. This Agreement constitutes the legal, valid and binding obligation of Developer, enforceable in accordance with its terms.

- (ii) Developer is not in default under the Development Documents and has not breached any of the terms of the Development Documents.
- (iii) There is no litigation or proceeding pending or threatened against or affecting Developer which would materially adversely affect the Development Documents, the projects described therein, or the ability of Developer to perform any of its obligations under the Development Documents and this Agreement.

#### 4.2. COVENANTS AND REPRESENTATIONS OF CITY.

(a) The City hereby covenants and agrees for the benefit of Purchaser to observe and perform all of its covenants and obligations under the Development Documents. In addition, the City hereby covenants and agrees that at anytime during the term of the Redevelopment Agreement, should the City become the owner of record of any parcel(s) within the RPA1 Project Area to enforce the terms of the Redevelopment Agreement, including but not limited to Section 10.03 of the Redevelopment Agreement.

(b) The City hereby represents and warrants that:

- (i) 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, including without limitation the right, power and authority to issue and sell the TIF Note(s), and all of the foregoing have 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.
- (ii) The Development Documents are in full force and effect on the Closing Date and represent the valid, binding and enforceable obligations of the City. The City is not in default under the Development Documents and has not breached any of the terms of the Development Documents. To the best knowledge of the Mayor in consultation with the St. Louis Development Corporation (“SLDC”), Developer is not in default under the Redevelopment Agreement and has not breached any of the terms of the Redevelopment Agreement. As of the Closing Date and to the best knowledge of the Mayor in consultation with SLDC, the City has no claims against Developer, and no offsets or defenses against the performance of its obligations under the Redevelopment Agreement.
- (iii) The City has not subordinated or caused to be subordinated its interest in the Development Documents to any deed of trust or other lien. The City has not sold, transferred or assigned the Development Documents or otherwise incurred or granted a lien or encumbrance of its interest in the Development Documents.
- (iv) To the best knowledge of the Mayor in consultation with the SLDC, there is no litigation or proceeding pending or threatened against or affecting the City which would materially adversely affect the Development Documents, the projects described therein, or the ability of the City to perform any of its obligations under the Development Documents or this Agreement.
- (v) The City has received no notice of prior sale, transfer or assignment, hypothecation or pledge of Developer’s interest in the TIF Note.
- (vi) Neither of the following events has occurred: (a) the filing of a petition in bankruptcy, insolvency or reorganization, or for the appointment of a receiver or trustee, affecting City.
- (vii) The City hereby covenants and agrees that during the term of the Redevelopment Agreement, the City will not authorize or grant tax abatement for any parcel of real property within the RPA1 Project Area.

#### 4.3. COVENANTS AND REPRESENTATIONS OF PURCHASER. Purchaser hereby represents to and for the benefit of the City and Developer that:

(a) Purchaser has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of limited revenue obligations, to be able to evaluate the risks and merits of the investment represented by the purchase

by Purchaser of the TIF Note(s). Purchaser is able to bear the economic risk represented by the purchase by Purchaser of the TIF Note(s). Purchaser understands that the TIF Note(s) is repayable solely from Available Revenues in the Special Allocation Fund described in the Note Ordinance and, with respect to the EATs portion of the funds therein, subject to appropriation.

(b) Purchaser has made its own inquiry and analysis with respect to or affecting the likelihood of the payment of the TIF Note(s). Purchaser acknowledges that the City has offered to give access, without restriction or limitation, to all information to which a reasonable investor would attach significance in making investment decisions, and Purchaser has had the opportunity to ask questions of and receive answers from knowledgeable individuals concerning the TIF Note(s), this financing transaction, and the City.

(c) Purchaser acknowledges that the City has not made any representation or warranty concerning the accuracy or completeness of any information furnished in connection with the purchase by Purchaser of the TIF Note(s). Accordingly, Purchaser has not relied upon the City as to the accuracy or completeness of such information. As a sophisticated investor, Purchaser has made its own decision to purchase the TIF Note(s) based solely upon its own inquiry and analysis.

(d) Purchaser understands that the TIF Note(s) does not constitute an indebtedness of the City or a loan or credit thereof within the meaning of any constitutional or statutory debt limitation or restriction.

(e) Purchaser is familiar with and has counsel who are familiar with the federal and state legislation, rules, regulations and case law pertaining to the transfer and distribution of securities, including, but not limited to, disclosure obligations of the seller incident to any such transfer or distribution. Purchaser hereby covenants and agrees that Purchaser will not sell, offer for sale, pledge, transfer, convey, hypothecate, mortgage or dispose of the TIF Note(s) or any interest therein in violation of applicable federal or state law or in violation of restrictions on transfer set forth in the TIF Note(s).

(f) Purchaser is purchasing the TIF Note(s) for its own account for investment (and not on behalf of another) and has no present intention of reselling the TIF Note(s) or dividing its interest therein, either currently or after passage of a fixed or determinable period of time or upon the occurrence or nonoccurrence of any predetermined event or circumstance; but Purchaser reserves the right to sell, offer for sale, pledge, transfer, convey, hypothecate, mortgage or dispose of the TIF Note(s) at some future date determined by it.

(g) Purchaser acknowledges that the right to transfer, assign or negotiate the TIF Note(s) shall be limited to transfer, assignment or negotiation in accordance with the terms of the TIF Note(s) and the Note Ordinance.

(h) Purchaser has satisfied itself that the TIF Note(s) may be legally purchased by Purchaser.

#### **ARTICLE V. PURCHASER'S RIGHTS AND INTEREST**

##### **5.1. ACKNOWLEDGMENT OF PURCHASER'S RIGHTS AND INTEREST IN TIF NOTE.**

(a) The City has agreed to issue taxable TIF Note(s) and tax exempt TIF Note(s) to evidence City's obligations to Developer under the Redevelopment Agreement and Note Ordinance, which TIF Note(s) shall be endorsed from time to time on the Schedule A thereto to evidence the amount of City's indebtedness to Purchaser.

(b) Developer and Purchaser hereby direct the City to deliver the TIF Note(s) (as and when issued in accordance with the Redevelopment Agreement and Note Ordinance), together with endorsement(s) thereof to the order of Purchaser or Purchaser's designee, as Purchaser may from time to time direct the City in writing, to enable Purchaser to constructively hold (through possession in trust by the Finance Officer) such TIF Note(s). The Parties hereto further acknowledge that any time the Comptroller, as Finance Officer, holds the TIF Note(s), the Comptroller is doing so solely on the account of and for the exclusive benefit of Purchaser or Purchaser's designee.

(c) Developer and Purchaser hereby authorize the Comptroller, as Finance Officer, to hold the TIF Note(s) solely as Purchaser's bailee for Purchaser's account and at Purchaser's sole and absolute discretion, until otherwise directed by Purchaser in writing. The City shall take such other steps as Purchaser may direct in order to insure the validity and first priority status of its lien against and security interest in such TIF Note(s) promptly upon Purchaser's written request therefor as set forth in such request, provided, however, that the City shall not be responsible for and makes no representation as to the value or condition of the TIF Note(s) or as to the validity or first priority status of Purchaser's lien on and security interest in such TIF Note(s).

(d) The Parties acknowledge that pursuant to the terms of the Note Ordinance, Purchaser is entitled to actual physical possession of the TIF Note(s), and that the City's possession thereof as described in this Agreement is solely as Purchaser's bailee. So long as any TIF Note is registered in the name of Purchaser, no exchange, transfer or cancellation of any TIF Note(s) shall be made without Purchaser's prior written consent, and no exchange shall be effective unless any such substitute TIF Note(s) is issued subject to the terms and conditions of the Note Ordinance.

(e) The Parties acknowledge that the Comptroller shall endorse the TIF Note(s) only as provided in the Amended Note Ordinance and Redevelopment Agreement and, upon each such endorsement, shall send a copy, as so endorsed, to Purchaser as provided in the Amended Note Ordinance and the notice provision of this Agreement.

(f) The Parties further acknowledge, and Developer acknowledges and agrees and irrevocably directs, that all payments of principal, interest or other amounts paid under the TIF Note(s), including without limitation, any amounts paid in full or partial redemption of the TIF Note(s), shall be paid to Purchaser for application in accordance with the Note Ordinance.

#### **ARTICLE VI. CLOSING**

##### **6.1. CLOSING. At Closing:**

- (a) Developer shall pay to the City all fees and costs due and owing to the City and/or SLDC pursuant to Section 2.06 of the Redevelopment Agreement.
- (b) Developer shall pay to the Comptroller an additional amount to reimburse the Comptroller for its actual legal expenses incurred in connection with the negotiation and execution of the Note Purchase Agreement and the review and adoption of Ordinance No. \_\_\_\_\_ [Board Bill No. 199] amending the Note Ordinance.
- (c) Purchaser shall remit the Purchase Price to the City in accordance with Section 2.1 of this Agreement.
- (d) The City shall issue to Purchaser a TIF Note(s) in an amount equal to the aggregate maximum principal amount authorized by the Note Ordinance.
- (e) The City shall disburse the Purchase Price to Developer in full satisfaction of its obligations to Developer under Article III of the Redevelopment Agreement.
- (f) The Parties shall deliver all documents necessary to satisfy the conditions of Section 3.1 of this Agreement.

#### **ARTICLE VII. MISCELLANEOUS**

**7.1. AMENDMENT OF DEVELOPMENT DOCUMENTS.** The Parties hereby acknowledge and agree that the Redevelopment Agreement, including, but not limited to Article VII thereof, is hereby amended and modified to conform to the terms of this Agreement. The Parties further hereby acknowledge and agree that during the term of the Redevelopment Agreement, neither the City nor Developer shall, without the prior written consent of each of the Parties hereto, (a) amend or modify any of the Development Documents other than as amended or modified by this Agreement, (b) cancel or terminate any of the Development Documents in contravention of the provisions of this Agreement, or (c) assign any of the Development Documents in contravention of the provisions of this Agreement or the Development Documents.

**7.2. TERMINATION.** This Agreement shall terminate upon the earlier of: (a) the mutual written consent of each of the Parties; (b) the payment in full, satisfaction and discharge of all of the principal of and interest on all the TIF Note(s); or (c) the Maturity Date of the TIF Note(s).

##### **7.3. ASSIGNMENT; BINDING EFFECT.**

(a) Notwithstanding any provision of the Development Documents to the contrary, including but not limited to Section 14.11 of the Redevelopment Agreement, in addition to consent of the City required pursuant to the Redevelopment Agreement, the Parties hereby expressly acknowledge and agree that the rights, duties, interests and obligations of Developer under

the Redevelopment Agreement and Development Documents shall not be assigned in whole or in part without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld or delayed upon written agreement that such assignee assumes all of the duties and obligations of Developer under this Agreement.

(b) The Parties hereby acknowledge and agree that Purchaser may assign this Agreement at any time upon written notice to the Parties.

(c) This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective heirs, administrators, executors, personal representatives, successors and assigns.

**7.4. WAIVER.** No waiver of any breach or default hereunder shall constitute or be construed as a waiver by Purchaser of any subsequent breach or default or of any breach or default of any other provisions of this Agreement. Any waiver by Purchaser must be in writing and will not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default of Developer or the City.

**7.5. NOTICES.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if and when received if personally delivered, or on the second business day after being deposited in United States registered or certified mail, postage prepaid, and addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other Parties by notice in accordance herewith:

If to Purchaser:

U.S. Bank, N.A.  
1232 Washington Avenue  
Suite 200  
St. Louis, MO 63103  
Attention: Zachary M. Boyers

with copies to:

Husch & Eppenberger, LLC  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
Attention: Edward J. Lieberman

If to City:

City of St. Louis, Missouri  
City Hall  
Tucker and Market Streets  
St. Louis, Missouri 63103  
Attention: Mayor, Room 200  
Attention: Comptroller, Room 311

with copies to:

St. Louis Development Corporation  
1015 Locust Street, Suite 1200  
St. Louis, Missouri 63103  
Attention: Executive Director

and to:

Armstrong Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102  
Attention: James E. Mello, Esq.

If to Developer:

920/1000 LLC  
c/o Loftworks LLC  
1006 Olive St.  
St. Louis, Missouri 63101  
Attention: Craig Heller

with copies to:

Husch & Eppenberger, LLC  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
Attention: David Richardson

or to such other address the party to receive such notice may have theretofore furnished to all other Parties by notice in accordance herewith. Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to Purchaser herein is required to be given.

**7.6. 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.

**7.7. Governing Law.** This Agreement and the terms, provisions and conditions herewith shall be governed by and construed and enforced in accordance with the internal laws of the State of Missouri (without giving effect to the conflicts of law provisions thereof).

**7.8. General.** This Agreement may not be modified or amended except by written agreement of the Parties hereto. The headings contained herein have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms and provisions hereof. If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement represents the entire agreement between the Parties and all prior negotiations and communications between the Parties concerning the purchase of the TIF Note are superseded hereby.

**7.9. RIGHTS HEREUNDER.** This Agreement is made for the benefit of the City, Developer and Purchaser and no other person shall acquire or have any rights hereunder or by virtue hereof.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed as of the year and date first set forth above.

“CITY,”

City of St. Louis, Missouri, a municipal corporation

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

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

“PURCHASER”

U.S. BANK, N.A., a national banking association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

“DEVELOPER”

920/1000 LLC, a Missouri limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Approved: August 2, 2004**