

**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. he 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**