

Gilmore & Bell, P.C.
Draft - December 8, 2014

COOPERATIVE AGREEMENT

among the

CITY OF ROLLA, MISSOURI,

the

FORUM PLAZA COMMUNITY IMPROVEMENT DISTRICT,

and

SUPER MARKET DEVELOPERS, INC.

dated as of

_____, 2015

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COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (“**Agreement**”), entered into as of this ____ day of _____, 2015, by and among the **CITY OF ROLLA, MISSOURI**, a third-class city and political subdivision of the State of Missouri (the “**City**”), the **FORUM PLAZA COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district and political subdivision of the State of Missouri (“**District**” or “**CID**”), and **SUPER MARKET DEVELOPERS, INC.**, a Missouri corporation (the “**Developer**”) (the City, the District and the Developer being sometimes collectively referred to herein as the “**Parties**”, and individually as a “**Party**”, as the context so requires).

WITNESSETH:

WHEREAS, following a duly-noticed public hearing held on August 18, 2014, the City Council of the City (the “**City Council**”), on _____, 2015, adopted Ordinance No. _____ establishing the District and authorizing and directing the City to enter into this Agreement.

WHEREAS, on _____, 2015, the Board of Directors of the District adopted Resolution No. _____ authorizing and directing the District to enter into this Agreement.

WHEREAS, the District is authorized under the CID Act to impose a district-wide sales tax and special assessments and to enter into this Agreement for the administration of the District Revenues;

WHEREAS, the Parties desire to set forth through this Agreement their respective duties and obligations with respect to the administration, enforcement, and operation of the District Sales Tax and District Assessments and the use of the District Revenues.

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants herein contained, the Parties agree as follows:

ARTICLE 1

DEFINITIONS, RECITALS AND EXHIBITS

Section 1.1. Recitals and Exhibits. The representations, covenants and recitations set forth in the foregoing recitals and the exhibits attached to this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section, and the appropriate exhibits are incorporated into each Section of this Agreement that makes reference to an exhibit.

Section 1.2. Definitions. Words and terms defined elsewhere in this Agreement shall have the meanings assigned therein. Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

“**Application for Reimbursement**” means the Application for Reimbursement in substantially similar form to **Exhibit B**, filed with the City by the Developer pursuant to Section 4.3.

“**Board of Directors**” means the governing body of the Forum Plaza Community Improvement District.

“Bond Documents” means any bonds, indentures or other financing agreements, disbursement agreements and all other agreements and certificates executed in connection with the issuance of any Obligations.

“Budget” shall have the meaning set forth in Section 5.4.

“Certificate of Substantial Completion” means the Certificate of Substantial Completion in substantially the same form as **Exhibit C** attached hereto, to be delivered by the Developer pursuant to **Section 5.3**.

“CID Act” means the Missouri Community Improvement District Act, Sections 67.1401, *et seq.*, RSMo, as amended.

“CID Improvement Costs” means all actual and reasonable costs and expenses that are incurred by or at the direction of the District with respect to construction of the CID Improvements, including the actual and reasonable cost of labor and materials payable to contractors, builders, suppliers, vendors and materialmen in connection with the construction contracts awarded for the CID Improvements that are constructed or undertaken, plus all actual and reasonable costs to plan, finance, develop, design and acquire the CID Improvements, including but not limited to the following:

A. actual and reasonable fees and expenses of architects, appraisers, attorneys, surveyors and engineers for estimates, surveys, soil borings and soil tests and other preliminary investigations and items necessary to the commencement of construction, financing, preparation of plans, drawings and specifications and supervision of construction, as well as for the performance of all other duties of architects, appraisers, attorneys, surveyors and engineers in relation to the construction of the CID Improvements and all actual and reasonable costs for the oversight of the completion of the CID Improvements including overhead expenses for administration, supervision and inspection incurred in connection with the CID Improvements; and

B. all other items of expense not elsewhere specified in this definition which may be necessary or incidental to the review, approval, acquisition, construction, improvement and financing of the CID Improvements and which may lawfully be paid or incurred by the District under the CID Act.

An estimate of the CID Improvement Costs is set forth in **Exhibit A**.

“CID Improvements” means those improvements described in the Petition, along with any other CID Improvements that may be approved by the City and the District in accordance with the Petition, the CID Act and this Agreement.

“City Administrator” means the City Administrator of the City.

“City Council” means the governing body of the City.

“City Directors” shall have the meaning set forth in Section 6.1.

“Construction Inspector” means a licensed engineer or architect either employed by or retained and designated by the City from time to time, and/or such individuals as may be designated to carry out inspections on behalf of the City’s planning and public works departments.

“Costs of Formation” means those costs and expenses which are eligible to be paid under the CID Act and which are incurred in the process of preparing for the District, petitioning the City for formation of the District, considering the petition, holding public meetings and hearings and forming the District, and holding the first meeting of the District, including all activities through the conclusion of the first District meeting.

“Debt Service” means an amount required for the payment of interest on, principal of and premium, if any, on Obligations as they come due, for the payment of mandatory or optional redemption payments and for payments to reserve funds required by the terms of the Obligations to retire or secure the Obligations.

“Developer Directors” shall have the meaning set forth in Section 6.1.

“Director” means a director of the District.

“District Assessments” means the assessments levied by the District in accordance with the District’s Special Assessment Petition.

“District Assessments Revenues” means the monies actually collected, pursuant to this Agreement and the CID Act, from the imposition of the District Assessments.

“District Revenues” means the monies actually collected, pursuant to this Agreement and the CID Act, from the imposition of the District Assessments and District Sales Tax.

“District Sales Tax” means the sales tax levied by the District on the receipts from the sale at retail of all tangible personal property or taxable services at retail within its boundaries pursuant to the CID Act in the maximum amount of one percent (1.0%), as established by resolution of the District and approved by the qualified voters of the District, in accordance with this Agreement.

“District Sales Tax Revenues” means the monies actually collected, pursuant to this Agreement and the CID Act, from the imposition of the District Sales Tax.

“Event of Default” means any event specified in Section 7.1 of this Agreement.

“Excusable Delays” means delays due to acts of terrorism, acts of war or civil insurrection, strikes, riots, floods, earthquakes, fires, tornadoes, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, national or regional material shortages, failure to obtain regulatory approval from any Federal or State regulatory body, unforeseen site conditions, material litigation by parties other than the Parties not caused by the Parties’ failure to perform, or any other condition or circumstances beyond the reasonable or foreseeable control of the applicable party using reasonable diligence to overcome which prevents such party from performing its specific duties or obligation hereunder in a timely manner.

“Fiscal Year” means October 1 through September 30 of each year, which Fiscal Year coincides with the City’s fiscal year.

“Financing Costs” means those reasonable costs incurred by the City, the District, the Developer, or any other issuer approved by the City, the District or the Developer in furtherance of the issuance of Obligations or private loans to pay all or any portion of the CID Improvement Costs incurred or estimated to be incurred, including but not limited to financing loan origination fees and expenses, interest payable to banks, similar financing institutions or entities that loan money, plus reasonable

expenses, fees and expenses of attorneys (including City attorney, District counsel, special counsel and bond counsel), the Developer's or City's administrative fees and expenses, underwriters' discounts and fees, the costs of printing any Obligations and any official statements relating thereto, the costs of credit enhancement, if any, capitalized interest, debt service reserves, the fees of any rating agency rating any Obligations, and Costs of Formation.

"Mayor" means the Mayor of the City.

"Obligations" means any bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by or on behalf of the District which finance or refinance the CID Improvements.

"Operating Costs" means the actual, reasonable expenses which are necessary for the operation of the District which shall include, but is not limited to, costs associated with notices, publications, meetings, supplies, equipment, photocopying, the engagement of special legal counsel, financial auditing services performed for the District or the City on behalf of the District, and other consultants or services, and shall also include reasonable attorneys' fees for the formation of the District.

"Pay As You Go Reimbursements" means those reimbursements to the Developer for costs expended for CID Improvements, certified for reimbursement by the City.

"Petition" means the Petition to Establish the Forum Plaza Community Improvement District, approved by the City Council on _____, 201__, by Ordinance No. _____.

ARTICLE 2

REPRESENTATIONS

Section 2.1. Representations by the District. The District represents that:

A. The District is a community improvement district and political subdivision, duly organized and existing under the laws of the State of Missouri, including particularly the CID Act.

B. The District has authority to enter into this Agreement and to carry out its obligations under this Agreement. By proper action of its Board of Directors, the District has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

C. The CID Improvements are authorized in the Petition.

D. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the performance of or compliance with the terms and conditions of this Agreement by the District will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the District is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the District or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreements to which the District is a party.

E. The District acknowledges that the construction of the CID Improvements is of significant value to the District, the property within the District and the general public. The District finds

and determines that the CID Improvements will promote the economic welfare and the development of the City and the State of Missouri through: (i) the creation of temporary and permanent jobs; (ii) stimulating additional development in the area near the CID Improvements; (iii) increasing local and state tax revenues; and (iv) providing necessary street infrastructure for the District and for other surrounding development. Further, the District finds that the CID Improvements conform to the purposes of the CID Act.

F. There is no litigation or proceeding pending or threatened against the District affecting the right of the District to execute or deliver this Agreement or the ability of the District to comply with its obligations under this Agreement or which would materially adversely affect its financial condition.

Section 2.2. Representations by the City. The City represents that:

A. The City is duly organized and existing under the laws of the State of Missouri as a third-class city.

B. The City has authority to enter into this Agreement and to carry out its obligations under this Agreement, and the Mayor is duly authorized to execute and deliver this Agreement.

C. There is no litigation or proceeding pending or threatened against the City affecting the right of the City to execute or deliver this Agreement or the ability of the City to comply with its obligations under this Agreement.

Section 2.3. Representations by the Developer. The Developer represents that:

A. The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

B. The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

C. No litigation, proceedings or investigations are pending or, to the knowledge of the Developer, threatened against the Developer or any member of the Developer or the CID Improvements, which litigation, proceedings or investigations would in any manner challenge or adversely affect the existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer, the terms and provisions of this Agreement.

D. The Developer is in compliance with Section 285.530, RSMo., at the time of execution of this Agreement and has provided a sworn affidavit and documentation affirming participation in a qualified work authorization program as evidence thereof.

ARTICLE 3

DISTRICT SALES TAX AND ASSESSMENT

Section 3.1. Imposition, Collection and Administration of the District Sales Tax. The Board of Directors shall adopt a resolution, which, subject to qualified voter approval, imposes the District Sales Tax. The District shall notify the Missouri Department of Revenue of the District Sales Tax. The District Sales Tax shall be collected by the Missouri Department of Revenue as provided in the CID Act. The District official charged with formulating a budget for the District shall include a request to appropriate the District Sales Tax Revenues in a manner consistent with the Petition and this Agreement in such budget.

Section 3.2. Imposition, Collection, and Administration of the District Assessments. The Board of Directors may adopt a resolution, which, subject to qualified voter approval, levies the District Assessments. The District may cooperate with the Phelps County Collector to have the District Assessments collected by the Phelps County Collector pursuant to Section 67.1521.5 of the CID Act or collect the District Assessments itself. The District official charged with formulating a budget for the District shall include a request to appropriate the District Assessments Revenues in a manner consistent with the Petition and this Agreement in such budget.

Section 3.3. Operating Costs. The District shall pay for the Operating Costs of the District from District Revenues. The Operating Costs shall be included in the Budget, as provided in Section 5.4.

Section 3.4. Distribution of the District Revenues. Beginning in the first month following the effective date of the District Sales Tax or District Assessments and continuing each month thereafter until the expiration or repeal of the District Sales Tax and District Assessments, the District shall, not later than the fifteenth (15th) day of each month, distribute the District Revenues received in the preceding month in the following order of priority:

A. If Obligations have been issued by or on behalf of the District –

1. Subject to Section 67.1461.3 of the CID Act, the District shall pay the City the amount of \$2,000 per year until the final Application for Reimbursement is processed and \$1,000 per year thereafter during the life of the District as reimbursement to the City for its responsibilities relating to the District under the CID Act and this Agreement.

2. The District shall pay the Operating Costs of the District.

3. The Developer shall be reimbursed for Costs of Formation, to the extent not paid from the proceeds of Obligations.

4. The District shall make any Debt Service payments, to the extent required for outstanding Obligations.

5. The District shall make Pay As You Go Reimbursements to the Developer for any CID Improvement Costs set forth in an approved Application for Reimbursement pursuant to Section 4.3, but not otherwise reimbursed from the proceeds of Obligations.

B. If Obligations have not been issued by or on behalf of the District –

1. Subject to Section 67.1461.3 of the CID Act, the District shall pay the City the amount of \$2,000 per year until the final Application for Reimbursement is processed and \$1,000 per year thereafter during the life of the District as reimbursement to the City for its responsibilities relating to the District under the CID Act and this Agreement.

2. The District shall pay the Operating Costs of the District.

3. Developer shall be reimbursed for Costs of Formation.

4. The District shall make Pay As You Go Reimbursements to the Developer for any CID Improvement Costs set forth in an approved Application for Reimbursement pursuant to Section 4.3.

Section 3.5. Effect of Obligations. The Parties acknowledge that the CID Act and the Petition authorize the District to issue or cause the issuance of the Obligations and that the priority for distribution of the District Revenues set forth in Section 3.4 may be modified by Bond Documents. In the event of a conflict between the terms of this Agreement and any documents creating Obligations, the documents creating the Obligations will control with respect to priority of disbursement of District Revenues (so long as the payments due to the City pursuant to Section 3.4.A.1 are not affected).

Section 3.6. Records of the District Sales Tax. The District shall keep accurate records of the District Sales Tax due and collected and copies of such records shall be made available to the City on a monthly basis. Any other District records pertaining to the District Sales Tax shall be provided to the City upon written request of the City, as permitted by law.

Section 3.7. Repeal of the District Sales Tax. Unless extended by mutual agreement of the Parties and in accordance with the CID Act, the District shall implement the procedures in the CID Act for repeal of the District Sales Tax and abolishment of the District upon the earlier of (A) the expiration of the District Sales Tax in accordance with the District Sales Tax ballot measures as approved by the qualified electors of the District or (B) the date that the Developer is reimbursed in full for its eligible CID Improvement Costs plus Financing Costs pursuant to Article 4. Upon repeal of the District Sales Tax, the District shall:

1. Pay all outstanding Operating Costs.

2. Retain any remaining District Sales Tax Revenues until such time as the District is abolished and the District has provided for the transfer of any funds remaining in a manner permitted by the CID Act.

ARTICLE 4

REIMBURSEMENTS TO DEVELOPER

Section 4.1. Limitations on Reimbursement to Developer.

A. The District shall reimburse the Developer for CID Improvement Costs approved by the City pursuant to Section 4.3 in the amount of up to Four Million Dollars (\$4,000,000.00), plus any Financing Costs, as provided in this Article.

B. Simultaneously with the submission of the Certificate of Substantial Completion pursuant to Section 5.3, the Developer shall provide the City with a final project budget in the form of the table set

forth in **Exhibit A** and copies of invoices or other evidence sufficient for the City, in its sole determination, to verify that the costs in the final project budget have been incurred. Notwithstanding anything to the contrary in this Agreement, if the final project budget submitted by the Developer and verified by the City pursuant to this subsection is less than \$13,925,000, then the maximum amount of reimbursement permitted by subsection A shall be reduced by \$1 for every \$2 that such final project budget is below \$13,925,000.

Section 4.2. District's Obligation to Reimburse Developer.

A. The Parties agree that reimbursement will occur on a "pay as you go" basis as revenues are collected by the District in accordance with this Agreement, unless the District elects to issue or cause the issuance of Obligations in accordance with subsection B (in which case reimbursement payments will be made from the proceeds of the Obligations). The District will only reimburse the Developer for costs which may lawfully be paid or incurred by the District under the CID Act and which are approved pursuant to Section 4.3.

B. If the District desires to issue or cause the issuance of Obligations, the District shall provide written notice of such desire to the City, which notice shall include (1) the proposed maximum principal amount of the Obligations, (2) the name of the issuer of the Obligations and (3) the tax status of the proposed Obligations (i.e., whether interest on the Obligations will be excludable from gross income for federal income tax purposes). If the Obligations are proposed to be issued on a taxable basis, the District may proceed with the issuance any time after giving notice to the City. If the Obligations are proposed to be issued on a tax-exempt basis, the District shall not issue the Obligations until it receives written consent from the City; provided, however, that (i) no consent from the City shall be required for Obligations issued in calendar year 2015 and (ii) the City shall not withhold its consent for two or more consecutive years (i.e., if the City withholds its consent for 2016, the District would be allowed to issue or cause the issuance of tax-exempt Obligations in 2017).

Section 4.3. Reimbursement Application Process.

A. The District appoints the City as its agent to administer the reimbursement application process. All requests for reimbursement of CID Improvement Costs shall be made by the Developer to the City in an Application for Reimbursement in substantially the form as **Exhibit B**. Each Application for Reimbursement shall include itemized invoices, receipts or other information, if any, reasonably requested by the City to confirm that each cost identified in the Application for Reimbursement has been incurred and qualifies for reimbursement pursuant to the CID Act and this Agreement.

B. The amounts listed in **Exhibit A** do not represent caps on any individual expenditure or category of expenditures, as reimbursable amounts may be moved from one line item or category to another, to the full extent permitted by law, to reflect actual expenditures, subject to the limitations on reimbursement set forth in Section 4.1. However, the District will not reimburse the Developer for any cost that is not eligible for reimbursement under the CID Act.

C. The Developer may submit an Application for Reimbursement to the City Administrator not more often than once each calendar month. The City shall either accept or reject each Application for Reimbursement within thirty (30) days after the submission thereof. If the City determines that any cost identified as a CID Improvement Cost is not eligible for reimbursement under the CID Act or this Agreement, the City shall so notify the Developer in writing within said 30-day period, identifying the ineligible cost and the basis for determining the cost to be ineligible, whereupon the Developer shall have the right to identify and substitute other costs for reimbursement with a supplemental application for payment, subject to the limitations of this Agreement. The City may also request such additional

information from the Developer as may be required to process the requested reimbursement, and the time limits set forth in this paragraph shall be extended by the duration of time necessary for the Developer to respond to such request by the City. The City's identification of any ineligible costs shall not delay the City's approval of the remaining costs on the Application for Reimbursement that the City determines to be eligible.

ARTICLE 5

DISTRICT PROJECTS

Section 5.1. Design and Construction of CID Improvements. In order to receive reimbursements hereunder, the Developer shall design and construct the CID Improvements. Neither the District nor the City will have any obligation to design and construct the CID Improvements.

Section 5.2. Schedule. The Developer shall cause the completion of the CID Improvements in accordance with the following schedule (subject to any excusable delay permitted by Section 7.4):

	Date for Completion
Obtain building permits	July 1, 2015
Approval or deemed approval of a Certificate of Substantial Completion	December 31, 2016

Section 5.3. Certificate of Substantial Completion. For purposes of this Agreement, "Substantial Completion" shall mean substantial completion of (A) the reconstruction of an approximately 46,391 square foot grocery store; (B) the rehabilitation of the exterior of inline building and the shopping center, including, without limitation, the parking lots and building façade; and (C) the construction or reconstruction of public improvements servicing the shopping center. The Parties acknowledge and agree that certain tenant finish and other interior work to the inline building may continue past Substantial Completion and shall not preclude the CID Improvements from being deemed substantially complete. After Substantial Completion of the CID Improvements in accordance with the provisions of this Agreement, the Developer shall furnish to the Construction Inspector a Certificate of Substantial Completion certifying the Substantial Completion of the CID Improvements. The Construction Inspector shall, within 60 days following delivery of the Certificate of Substantial Completion, carry out such inspections as he deems necessary to verify to his reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the Construction Inspector on behalf of the City and the District unless, prior to the end of such 60-day period after delivery to the Construction Inspector of the Certificate of Substantial Completion, the Construction Inspector furnishes the Developer with specific written objections to the status of the CID Improvements, describing such objections and the measures required to correct such objections in reasonable detail. Upon acceptance of the Certificate of Substantial Completion by the Construction Inspector or upon the lapse of 60 days after delivery thereof to the Construction Inspector without any written objections thereto, the Developer may record the Certificate of Substantial Completion with the Phelps County Recorder of Deeds, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to complete the CID Improvements.

Section 5.4. New CID Improvements. The District shall not undertake new District projects without the prior approval of the City.

ARTICLE 6

SPECIAL COVENANTS

Section 6.1. Composition of the Board of Directors and Officers.

A. In accordance with the Petition, the Board of Directors shall be composed of five (5) Directors. Three (3) of the Directors shall be designees of the Developer (the “**Developer Directors**”) and two (2) of the Directors shall be designees of the City (the “**City Directors**”).

B. All Directors shall meet all qualifications of the CID Act and the Missouri Constitution. The City and the Developer will cooperate to provide for the designation in writing that each of the City Directors and the Developer Directors are representatives of a property owner or a business owner within the District, in order to satisfy the requirements of Section 67.1451.2(2)(a), RSMo.

C. Successor Directors shall be appointed by the Mayor with the consent of the City Council as provided in the Petition and in compliance with Section 67.1451.5, RSMo, provided that the Mayor’s appointment of the Developer Directors shall be based upon those persons who are designated by Developer.

D. The District will maintain reasonable levels of insurance throughout its existence, including, but not limited to directors and officers liability insurance (or in lieu of directors and officers insurance, an indemnification agreement or other arrangement reasonably acceptable to the City that will protect the City Directors if they were sued or threatened to be sued in conjunction with the performance of their duties on the District’s Board of Directors).

Section 6.2. Release and Indemnification.

A. The indemnification and covenants contained in this Section shall survive expiration or earlier termination of this Agreement.

B. The Developer hereby agrees that, anything to the contrary herein notwithstanding, it will defend, indemnify and hold harmless the City, its governing body members, employees and agents (collectively, the “**City Indemnified Parties**”) against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including attorneys’ fees and court costs) to the extent resulting from, arising out of, or in any way connected with (i) the Developer’s or the District’s failure to comply with any provision of this Agreement, (ii) the negligence or intentional misconduct of the Developer, an affiliate of the Developer, or the District, or their respective officers, employees and agents in connection with this Agreement or the CID Improvements, (iii) the presence of hazardous wastes, hazardous materials or other environmental contaminants on any property within the District, or (iv) otherwise arising out of the construction of the CID Improvements or the administration of this Agreement. If the validity or construction of the CID Act and/or any other ordinance of the City adopted in connection with this Agreement or the Petition or affecting the District are contested in court, the Developer shall defend, hold harmless and indemnify the City from and against all claims, demands and/or liabilities of any kind whatsoever including, without limitation, any claim for attorney fees and court costs, and the Developer shall pay any monetary judgment and all court costs rendered against the City, if any.

C. The District hereby agrees, to the extent permitted by law, that it will defend, indemnify and hold harmless the City Indemnified Parties and the Developer, its officers, employees and agents against any and all claims, demands, actions, causes of action, loss, damage, injury, liability and/or expense (including attorneys' fees and court costs) to the extent resulting from, arising out of, or in any way connected with (i) the District's failure to comply with any provision of this Agreement, or (ii) the negligence or intentional misconduct of the District or its officers, employees and agents.

D. If any suit, action, investigation, claim or proceeding (collectively, an "Action") is threatened, initiated or made as a result of which the Developer may become obligated to one or more of the City Indemnified Parties hereunder, any one of the applicable City Indemnified Parties shall give prompt notice to the Developer of the occurrence of such event. After receipt of such notice, the Developer, at its cost, shall defend, contest and otherwise protect the City Indemnified Parties against the Action utilizing counsel of the Developer's choice. The City Indemnified Parties shall cooperate in good faith with the Developer and its counsel in the defense of an Action. The Developer shall provide to the City regular periodic reports on the status of such Action. If the Indemnifying Party fails to timely defend, contest or otherwise protect any of the City Indemnified Parties against such Action, the City Indemnified Parties shall have the right to do so and to hire the counsel of their choice, and, if such defense is undertaken by the City Indemnified Parties after notice to the Developer asserting the Developer's failure to timely defend, contest or otherwise protect against such Action, the cost of such defense shall be at the expense of the Developer.

E. All proposed settlements to any Action shall be subject to the mutual approval of the Developer and the applicable City Indemnified Parties. Neither the Developer nor the City Indemnified Parties will unreasonably withhold their consent to a proposed settlement.

F. Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer or the District for damages or otherwise if all or any part of the CID Act, the ordinance approving the Petition and/or any other ordinance of the City adopted in connection with this Agreement, the CID Improvements or the Petition is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction. If, as a result of a final judgment, the revenue mechanisms and/or the reimbursements to the Developer contemplated by this Agreement cannot be implemented, the City and the District agree, subject to any necessary future legislative approvals by the City Council or Board of Directors, as applicable, to make good faith efforts to take all actions necessary remedy any deficiencies and effectuate the intent of this Agreement.

G. Notwithstanding the foregoing terms of this Section, the Developer is not obligated to defend, hold harmless or indemnify the City Indemnified Parties or the City Directors with respect to any matter or expense resulting from or arising out of the gross negligence or willful misconduct of the City Indemnified Parties or the City Directors.

H. Notwithstanding the foregoing, the Developer's agreement to indemnify for the District, its officers, employees and agents, as set forth in subsection B above, shall only be enforceable so long as persons designated by the Developer hold a majority of the seats on the District's Board of Directors.

ARTICLE 7

DEFAULTS AND REMEDIES

Section 7.1. Default and Remedies. An Event of Default shall occur upon the failure by any Party in the performance of any covenant, agreement or obligation imposed or created by this Agreement and the continuance of such failure for fifteen (15) days after the other Party has given written notice to such Party specifying such failure.

If any Event of Default has occurred and is continuing, then any non-defaulting party may, upon its election or at any time after its election while such default continues, by mandamus or other suit, action or proceedings at law or in equity, enforce its rights against the defaulting party and its officers, agents and employees, and require and compel duties and obligations required by the provisions of this Agreement.

Section 7.2. Rights and Remedies Cumulative. The rights and remedies maintained by any Party under this Agreement and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. Any Party shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and any Party hereby waives the right to raise such defense in any proceeding in equity.

Section 7.3. Waiver of Breach. No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of an Event of Default, a non-defaulting Party may nevertheless accept from the defaulting party, any payment or payments without in any way waiving the non-defaulting party's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting party.

Section 7.4. Excusable Delays. No Party shall be deemed to be in default of this Agreement because of Excusable Delays. Excusable Delays shall extend the time of performance for the period of such Excusable Delay.

ARTICLE 8

MISCELLANEOUS

Section 8.1. Effective Date and Term. This Agreement shall become effective on the date this Agreement has been fully executed by the Parties. This Agreement shall remain in effect for as long as the District is legally in existence.

Section 8.2. Modification. The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement among the City, the District and the Developer. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

Section 8.3. Jointly Drafted. The Parties agree that this Agreement has been jointly drafted and shall not be construed more strongly against another Party.

Section 8.4. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

Section 8.5. Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 8.6. Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 8.7. City Approvals. Unless specifically provided to the contrary herein, all approvals of the City hereunder may be given by the City Administrator or his or her designee without the necessity of any action by the City Council. The City Administrator may seek the input from the City Council before granting any approval.

Section 8.8. District Approvals. Unless specifically provided to the contrary herein, all approvals of the District hereunder may be given by the District's chairperson or his or her designee without the necessity of any action by the Board of Directors.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY OF ROLLA, MISSOURI

(SEAL)

Attest:

By: _____
Louis J. Madgits, IV
Mayor

Carol Daniels
City Clerk

STATE OF MISSOURI)
) SS
COUNTY OF PHELPS)

On this ___ day of _____, 2015, before me appeared **LOUIS J. MADGITS, IV**, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the **CITY OF ROLLA, MISSOURI**, an incorporated political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its City Council, and said **LOUIS J. MADGITS, IV** acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Name: _____
Notary Public – State of Missouri
Commissioned in _____

(SEAL)

My Commission Expires:

FORUM PLAZA COMMUNITY IMPROVEMENT DISTRICT

By: _____
Chairman

ATTEST:

Secretary

STATE OF MISSOURI)
) **ss.**
COUNTY OF _____)

On this ____ day of _____, 2015, before me appeared _____, who being by me duly sworn, did say that he is the Chairman of the **FORUM PLAZA COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district organized and existing under the laws of the State of Missouri, and that said instrument was signed in behalf of said District by authority of its Board of Directors and said individual acknowledged said instrument to be the free act and deed of said District.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

(SEAL)

My commission expires: _____

EXHIBIT A

CID IMPROVEMENTS AND ESTIMATED CID IMPROVEMENT COSTS

CID Improvement Costs will include any of the following costs associated with reconstruction of an approximately 46,391 square foot grocery store, the rehabilitation of approximately 95,175 square feet of retail and restaurant space and the repair, replacement and installation of associated public improvements; provided, however that such costs shall qualify as CID Improvement Costs to the extent that (1) they are eligible under the CID Act to be paid from District Revenues and (2) the total amount of CID Improvement Costs does not exceed \$4,000,000 plus Financing Costs.

Item	Cost
Land Acquisition	\$4,000,000
Demolition	\$150,000
Site Work	\$1,250,000
Grocery Store Building	\$3,600,000
Shopping Center Remodel	\$750,000
Small Tenant Improvements	\$500,000
Soft Costs	\$750,000
Grocery Tenant Improvements	\$2,925,000
Total	\$13,925,000

EXHIBIT B

APPLICATION FOR REIMBURSEMENT

TO: City of Rolla, Missouri
Attention: City Administrator

Re: Forum Plaza Community Improvement District

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Cooperative Agreement dated as of _____, 2015 (the "Agreement") among the City of Rolla, Missouri (the "City"), the Forum Plaza Community Improvement District and Super Market Developers, Inc. (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on *Schedule 1* hereto is a CID Improvement Cost and was incurred in connection with the construction of CID Improvements.
2. These CID Improvement Costs have been paid by the Developer and are reimbursable under the Agreement.
3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the District Revenues and no part thereof has been included in any other Application previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the work for which this application relates have been issued and are in full force and effect.
6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. If any cost item to be reimbursed under this application is deemed not to constitute a CID Improvement Cost within the meaning of the Agreement, the Developer shall have the right to substitute other eligible costs for payment hereunder.
8. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.
9. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this ____ day of _____, 20____.

SUPER MARKET DEVELOPERS, INC.,
a Missouri corporation

By: _____

Name: _____

Title: _____

Approved for Payment this ____ day of _____, 20____:

CITY OF ROLLA, MISSOURI

By: _____

Name: _____

Title: _____

EXHIBIT C

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

CERTIFICATE OF SUBSTANTIAL COMPLETION

SUPER MARKET DEVELOPERS, INC. (the “Developer”), pursuant to that certain Cooperative Agreement dated as of _____, 2015 (the “Agreement”), among the City of Rolla, Missouri (the “City”), the Developer and the Forum Plaza Community Improvement District (the “District”), hereby certifies to the City as follows:

1. That as of _____, 20___, the CID Improvements have been substantially completed in accordance with the Agreement.

2. The CID Improvements have been completed in a workmanlike manner and in accordance with all applicable zoning, building and other permits issued by the City.

3. Lien waivers for the CID Improvements have been obtained.

4. This Certificate of Substantial Completion is accompanied by the project architect’s certificate of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as Appendix A and by this reference incorporated herein), certifying that the CID Improvements have been substantially completed in accordance with the Agreement.

5. This Certificate of Substantial Completion is being issued by the Developer to the City and the District in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the completion of the CID Improvements.

6. The City’s and the District’s acceptance (below) in writing to this Certificate and the recordation of this Certificate with the Phelps County Recorder of Deeds, shall evidence the satisfaction of the Developer’s agreements and covenants to complete the CID Improvements.

This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

All certifications or statements made or set forth in this Certificate of Substantial Completion are made solely for the benefit of the City and the District and shall not be relied upon or used for any purpose by any third party in any proceeding, claim or contest of any kind, nature or character.

All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this _____ day of _____, 20__.

SUPER MARKET DEVELOPERS, INC.

By: _____
Name: _____
Title: _____

ACCEPTED:

CITY OF ROLLA, MISSOURI

By: _____
Mayor

**FORUM PLAZA COMMUNITY
IMPROVEMENT DISTRICT**

By: _____
Chairman

(Insert Notary Form(s) and Legal Description)