

BILL NO. 3006

ORDINANCE NO. 2993

SPONSORED BY Myers

AN ORDINANCE APPROVING A COOPERATIVE AGREEMENT AMONG THE CITY, THE OSAGE COMMERCIAL AREA COMMUNITY IMPROVEMENT DISTRICT AND 66 MARKETPLACE, LLC.

WHEREAS, pursuant to Ordinance No. 2600 passed by the Board of Aldermen of the City on September 2, 2008 (the "Original CID Ordinance"), and the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended (the "CID Act"), the City approved a Petition to Establish the Osage Commercial Area Community Improvement District (the "Original CID Petition"); and

WHEREAS, pursuant to Ordinance No. 2992 passed by the Board of Aldermen of the City on January 17, 2017 (the "Amending CID Ordinance" and, together with the Original CID Ordinance, the "CID Ordinance"), the City approved a Petition to Amend the Osage Commercial Area Community Improvement District (the "Amended CID Petition" and, together with the Original CID Petition, the "CID Petition"); and

WHEREAS, pursuant to the Amending CID Ordinance and the Amended CID Petition, the Board of Aldermen declared a portion of the Osage Commercial Area Community Improvement District (the "District") owned by 66 Marketplace, LLC (the "Owner") at 2244 West Osage Street (the "Project Site") to be a "blighted area" as defined in the CID Act.

WHEREAS, the Owner proposes to undertake certain improvements at the Project Site to remediate the blight, which will result in the development of an approximately _____ square foot grocery store at the Project Site; and

WHEREAS, the City desires to enter into a Cooperative Agreement among the City, the District and the Owner to set forth their respective roles relating to the financing and the Work;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF PACIFIC, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen finds and determines that it is necessary and desirable to enter into the Cooperative Agreement in substantially the form of **Exhibit A** attached hereto. The Mayor is hereby authorized and directed to execute, on behalf of the City, the Cooperative Agreement. The City Clerk is hereby authorized and directed to attest and to affix the seal of the City thereto. The Cooperative Agreement shall be in substantially the form attached to this Ordinance, which is hereby approved by the Board of Aldermen with such changes therein as shall be approved by the officers of the City executing the same.

Section 2. The officers, agents and employees of the City are hereby authorized and directed to execute all documents and take such steps as they deem necessary and advisable in order to carry out and perform the purpose of this Ordinance and the Cooperative Agreement.

Section 3. The sections of this Ordinance shall be severable. If any section of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining sections shall remain valid, unless the court finds that: (a) the valid sections are so essential to and inseparably connected with and dependent upon the void section that it cannot be presumed that the Board of Aldermen has or would have

enacted the valid sections without the void ones; and (b) the valid sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 4. This Ordinance shall take effect and be in full force from and after its passage by the Board of Aldermen and approval by the Mayor.

PASSED by the Board of Aldermen and **APPROVED** by the Mayor of the City of Pacific, Missouri, this January 17, 2017.

(Seal)

ATTEST:



Kimberly Barfield
City Clerk

Mike Pigg
~~Mayor~~
President of Board Pigg

EXHIBIT A

COOPERATIVE AGREEMENT

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (this "Agreement") dated as of February 7, 2017, by and among the CITY OF PACIFIC, MISSOURI, an incorporated political subdivision of the State of Missouri (the "City"), the OSAGE COMMERCIAL AREA COMMUNITY IMPROVEMENT DISTRICT, a community improvement district and political subdivision of the State of Missouri (the "District"), and 66 MARKETPLACE, LLC, a Missouri limited liability company (the "Owner" and, together with the City and the District, the "Parties").

RECITALS:

1. Pursuant to Ordinance No. 2600 passed by the Board of Aldermen of the City on September 2, 2008 (the "Original CID Ordinance"), and the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended (the "CID Act"), the City approved a Petition to Establish the Osage Commercial Area Community Improvement District (the "Original CID Petition").

2. The Osage Commercial Area Community Improvement District (the "District") was created for the purpose of assisting in funding certain improvements located within the boundaries of the District (the "District Project"), as described in the Original CID Petition.

3. The District imposes a community improvement district sales tax (the "District Sales Tax") of one percent (1.0%) on all retail sales occurring within the District that are subject to taxation under Sections 144.010 through 144.525 of the Revised Statutes of Missouri, as amended.

4. Pursuant to Ordinance No. 2997 passed by the Board of Aldermen of the City on Jan 17, 2017 (the "Amending CID Ordinance" and, together with the Original CID Ordinance, the "CID Ordinance"), the City approved a Petition to Amend the Osage Commercial Area Community Improvement District (the "Amended CID Petition" and, together with the Original CID Petition, the "CID Petition").

5. Pursuant to the Amending CID Ordinance and the Amended CID Petition, the Board of Aldermen declared a portion of the District owned by the Owner at 2244 West Osage Street (the "Project Site") to be a "blighted area" as defined in the CID Act.

6. The Owner proposes to undertake certain improvements (the "Work", as more fully described herein) at the Project Site to remediate the blight, which will result in the development of an approximately _____ square foot grocery store at the Project Site (the "Grocery Store"). The City and the District are willing to enter into this Agreement with the Owner to prescribe the circumstances under which the Owner will be reimbursed for the cost of the Work from the proceeds of the District Sales Tax generated by the Grocery Store.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

Section 1. Development.

(a) The Parties acknowledge and agree that the Owner has no obligation to undertake the Work or to construct, open or operate the Grocery Store. However, if the Owner completes the Work by December 1, 2017, the Owner may be reimbursed for the costs thereof in accordance with this Agreement. Completion of the Work shall be deemed to have occurred when the City issues an occupancy permit pursuant to its municipal code for the Grocery Store.

“Work” means the following repairs, replacements and improvements at the Project Site, and shall include all materials, labor and services necessary therefor:

- (i) concrete and asphalt repair and replacement to the building exterior and parking lot;
- (ii) pole lighting and signage;
- (iii) roof replacement or repair;
- (iv) HVAC replacement and/or improvement;
- (v) building interior improvements, including ceilings, electrical wiring, flooring and lighting; and
- (vi) rack compressor system.

(b) The Owner shall complete the Work according to all applicable federal, state and local ordinances, laws, regulations and codes, including, but not limited to, Section 107.170 of the Revised Statutes of Missouri, as amended, and laws relating to the payment of prevailing wages and competitive bidding, to the extent such laws are applicable to the Work. The City may inspect the Work in accordance with the applicable federal, state and local ordinances, laws, regulations and codes to ensure proper completion thereof.

(c) Following receipt of the occupancy permit, the Owner may submit a Certificate of Reimbursable Project Costs in substantially the form attached hereto as **Exhibit A** evidencing the costs of the Work for which the Owner wishes to be reimbursed pursuant to **Section 2** below, but not to exceed the sum of \$780,000. The City and the District shall review the Certificate of Reimbursable Project Costs and provide written objections, if any, to the Owner within 60 days following receipt. If any objections are provided, the Owner shall cure such objections and resubmit the Certificate of Reimbursable Project Costs. If no objections are provided within 60 days of receipt, the Certificate of Reimbursable Project Costs shall be deemed approved by the City and the District on the 61st day following receipt (unless affirmatively approved by the City and the District prior to such date).

Section 2. Reimbursement for Costs of the Work.

(a) The District shall annually reimburse the Owner for costs of the Work from District Sales Tax revenues attributable to the Grocery Store. In no event shall reimbursement to the Owner exceed the 1% additional District Sales Tax revenues that are collected from the grocery operations.

(b) The District’s payment obligation hereunder is conditioned upon receipt by the District of (i) the Grocery Store’s sales tax returns filed with the Missouri Department of Revenue, (ii) a certification of the Grocery Store operator, in form and substance acceptable to the District, that all sales tax revenues owing to the Missouri Department of Revenue, including but not limited to the District Sales Tax, have been remitted, and (iii) a consent from the Grocery Store operator, in form and substance acceptable to the District, to the release of confidential sales tax information for the limited purpose of preparing and approving budgets, appropriation requests and other actions contemplated by this Agreement.

Section 3. Annual Appropriation.

(a) The District is obligated only to make the payments set forth in **Section 2** as may lawfully be made from funds budgeted and appropriated for that purpose during the District's then-current fiscal year. If no funds are appropriated or otherwise legally available to make the required payments during the next occurring fiscal year of the District (an "Event of Nonappropriation"), this Agreement will terminate at the end of the then-current fiscal year.

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

Section 4. Release and Indemnification.

(a) Notwithstanding anything herein to the contrary, the City, the District, their governing bodies, officials, agents, employees and independent contractors shall not be liable to the Owner for damages of any kind or nature whatsoever if any ordinance or resolution adopted by the City or the District or transaction completed by the City or the District in connection with this Agreement 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, and by reason thereof the City or the District is prevented from performing any of the covenants and agreements herein or the Owner is prevented from enjoying the rights and privileges hereof.

(b) The Owner releases from and covenants and agrees that the City, the District and their governing bodies, officials, agents, employees and independent contractors shall not be liable for, and agrees to indemnify and holds harmless the governing bodies, officials, agents, employees and independent contractors thereof against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the construction of the Grocery Store, except as such may be caused by the willful misconduct or negligence of the City or the District.

(c) The Owner agrees to indemnify, defend and hold harmless the City, the District, their governing bodies, officials, agents, employees and independent contractors from and against any and all suits, claims and attorneys' fees resulting from, arising out of, or in any way connected with (i) the construction of the Grocery Store, or (ii) the negligence or willful misconduct of the Owner, its managers, officials, agents, employees or independent contractors in connection with the management, development, redevelopment and construction of the Grocery Store, except as such may be caused by the willful misconduct or negligence of the City, the District, their governing bodies, officials, agents, employees or independent contractors.

(d) No member of the governing body, officials, agents, employees or independent contractors of the City or the District shall be personally liable to the Owner in the event of a default or breach by any party under this Agreement.

(e) All covenants, stipulations, promises, agreements and obligations of the City and the District contained herein shall be deemed to be the covenants, stipulations, promises, agreements and

obligations of the City and the District, and not of their governing bodies, officials, agents, employees or independent contractors in their individual capacities.

Section 5. Insurance.

(a) The Owner agrees to maintain commercial general liability insurance in a policy amount of not less than the then-current absolute statutory waivers of sovereign immunity in Sections 537.600 and 537.610 of the Revised Statutes of Missouri, as amended, as may be revised annually by the Missouri Department of Insurance. The Owner further agrees to name the City and the District as additional insureds with respect to such policy and to annually provide evidence of such insurance policies to the City and the District.

(b) The Owner agrees to annually provide the City and the District evidence of contractual liability insurance (in form and substance reasonably acceptable to the City's legal counsel) that insures the Owner's obligations to indemnify the City and the District, as provided in this Agreement.

Section 6. Default and Remedies.

(a) *Events of Default.* The following shall be events of default ("Events of Default") with respect to this Agreement:

(i) If any material representation made by a party in this Agreement, or in any certificate, notice, demand or request made by a party, in writing and delivered to another party pursuant to or in connection with this Agreement proves to be untrue or incorrect in any material respect as of the date made; or

(ii) Breach by a party of any material covenant, warranty or obligation set forth in this Agreement.

(b) *Remedies on Default.* In the case of an Event of Default by a party hereto or any successors to such party, such party or successor shall, upon written notice from another party, take immediate action to cure or remedy such Event of Default within sixty (60) days after receipt of such notice. If the Event of Default is not cured or remedied within such sixty (60) day period, then the aggrieved party may terminate this Agreement or institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default, including but not limited to, proceeding to compel specific performance by the party in default of its obligations. The prevailing party in any such proceedings shall be additionally entitled to recover court costs, costs of litigation or discovery and reasonable attorneys' fees from the non-prevailing party.

(c) *Other Rights and Remedies of Parties; Delay in Performance Waiver.*

(i) Any delay by a party in instituting or prosecuting any actions or proceedings or otherwise asserting their rights under this Agreement shall not operate to act as a waiver of such rights or to deprive them of or limit such rights in any way (it being the intent of this provision that the Parties should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made by a party with respect to any specific Event of Default by a party under this Agreement be considered or treated as a waiver of the rights of a

party under this Section or with respect to the particular Event of Default, except to the extent specifically waived in writing by the other parties.

(ii) The rights and remedies of the Parties (or their successors in interest) whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the time or different times, of any other such remedies for the same Event of Default by another party. No waiver made by any party with respect to the performance, nor the manner of time thereof, or any obligation of another party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of another party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect to regard to any other rights of the party making the waiver or any other obligations of another party.

Section 7. Termination. This Agreement shall terminate upon the earliest of any of the following events:

- (a) the end of the current fiscal year in which there occurs an Event of Nonappropriation;
- (b) the payment by the District of the approved Certificate of Reimbursable Project Costs;
- (c) the date on which the Grocery Store is no longer operating at the Project Site; or
- (d) December 31, 2027.

Notwithstanding the foregoing, the Owner understands that the City or the District may desire, before December 31, 2027, to terminate the District and have the Owner reimbursed for costs of the Work from proceeds of a sales tax imposed by a new community improvement district encompassing solely the Project Site. In that regard, upon request of the City or the District, the Developer will file a petition to create a community improvement district that encompasses solely the Project Site. Upon creation of that district, imposition by that district of a sales tax, and agreement by that district to reimburse the Owner for any costs of the Work that have not yet been reimbursed hereunder, this Agreement shall terminate.

Section 8. Authority of the City. 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, and this Agreement has 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.

Section 9. Authority of the District. The District has the 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, and this Agreement has been duly and validly authorized and approved by all necessary District proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the District, enforceable in accordance with its terms.

Section 10. Authority of the Owner. The Owner has full corporate and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary corporate proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Owner, enforceable in accordance with its terms.

Section 11. Governance of the District. The Parties acknowledge that under the terms of the CID Petition and the CID Act, the District will be governed by a Board of Directors made up of representatives of the owners of real property, who will be appointed by the Mayor of the City with the consent of the Board of Aldermen of the City. The Owner, as an owner of real property in the District, will designate one person selected by the City who meets all other qualifications to serve on the CID Board of Directors, as its representative, thus allowing such person to be qualified to serve on the CID Board of Directors.

Section 12. Federal Work Authorization Program. Simultaneously with the execution of this Agreement, the Owner shall provide the District and the City with an affidavit and documentation meeting the requirements of Section 285.530, RSMo.

Section 13. Successors and Assigns. This Agreement may not be assigned by the Owner without the written consent of both the City and the District.

Section 14. Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by any of the Parties shall be deemed to be proper only if such action is commenced in the Circuit Court of Franklin County, Missouri. The Owner expressly waives its rights to bring such action in or to remove such action to any other court whether state or federal.

Section 15. Legal Fees. Upon presentation of invoices by the City or the District, the Owner shall promptly reimburse the City and the District for fees and expenses incurred in connection with the approval of the Amended Petition and the preparation of this Agreement.

Section 16. Immunity. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable state law.

Section 17. Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

Section 18. Waiver. The City's or the District's failure at any time hereafter to require strict performance by the Owner of any provision of this Agreement shall not waive, affect or diminish any right of the City thereafter to demand strict compliance and performance therewith.

Section 19. 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.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names and attested as to the date first above written.

CITY OF PACIFIC, MISSOURI

(SEAL)

Attest:

By: Ann Barfull
Title: City Clerk



By: Mike Pigg
Title: Mayor
President of Board, Pigg



(SEAL)


Attest:

By: Kimberly Barfull
Title: Secretary 3/21/17

**OSAGE COMMERCIAL AREA
COMMUNITY IMPROVEMENT
DISTRICT**

By: Jeffrey M. Roberts
Title: Chairman

66 MARKETPLACE, LLC

By: 
Title: Managing Member

COOPERATIVE AGREEMENT

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RECITALS:

1. Pursuant to Ordinance No. 2600 passed by the Board of Aldermen of the City on September 2, 2008 (the "Original CID Ordinance"), and the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended (the "CID Act"), the City approved a Petition to Establish the Osage Commercial Area Community Improvement District (the "Original CID Petition").

2. The Osage Commercial Area Community Improvement District (the "District") was created for the purpose of assisting in funding certain improvements located within the boundaries of the District (the "District Project"), as described in the Original CID Petition.

3. The District imposes a community improvement district sales tax (the "District Sales Tax") of one percent (1.0%) on all retail sales occurring within the District that are subject to taxation under Sections 144.010 through 144.525 of the Revised Statutes of Missouri, as amended.

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5. Pursuant to the Amending CID Ordinance and the Amended CID Petition, the Board of Aldermen declared a portion of the District owned by the Owner at 2244 West Osage Street (the "Project Site") to be a "blighted area" as defined in the CID Act.

6. The Owner proposes to undertake certain improvements (the "Work", as more fully described herein) at the Project Site to remediate the blight, which will result in the development of an approximately _____ square foot grocery store at the Project Site (the "Grocery Store"). The City and the District are willing to enter into this Agreement with the Owner to prescribe the circumstances under which the Owner will be reimbursed for the cost of the Work from the proceeds of the District Sales Tax generated by the Grocery Store.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

Section 1. Development.

(a) The Parties acknowledge and agree that the Owner has no obligation to undertake the Work or to construct, open or operate the Grocery Store. However, if the Owner completes the Work by December 1, 2017, the Owner may be reimbursed for the costs thereof in accordance with this Agreement. Completion of the Work shall be deemed to have occurred when the City issues an occupancy permit pursuant to its municipal code for the Grocery Store.

“Work” means the following repairs, replacements and improvements at the Project Site, and shall include all materials, labor and services necessary therefor:

- (i) concrete and asphalt repair and replacement to the building exterior and parking lot;
- (ii) pole lighting and signage;
- (iii) roof replacement or repair;
- (iv) HVAC replacement and/or improvement;
- (v) building interior improvements, including ceilings, electrical wiring, flooring and lighting; and
- (vi) rack compressor system.

(b) The Owner shall complete the Work according to all applicable federal, state and local ordinances, laws, regulations and codes, including, but not limited to, Section 107.170 of the Revised Statutes of Missouri, as amended, and laws relating to the payment of prevailing wages and competitive bidding, to the extent such laws are applicable to the Work. The City may inspect the Work in accordance with the applicable federal, state and local ordinances, laws, regulations and codes to ensure proper completion thereof.

(c) Following receipt of the occupancy permit, the Owner may submit a Certificate of Reimbursable Project Costs in substantially the form attached hereto as **Exhibit A** evidencing the costs of the Work for which the Owner wishes to be reimbursed pursuant to **Section 2** below, but not to exceed the sum of \$780,000. The City and the District shall review the Certificate of Reimbursable Project Costs and provide written objections, if any, to the Owner within 60 days following receipt. If any objections are provided, the Owner shall cure such objections and resubmit the Certificate of Reimbursable Project Costs. If no objections are provided within 60 days of receipt, the Certificate of Reimbursable Project Costs shall be deemed approved by the City and the District on the 61st day following receipt (unless affirmatively approved by the City and the District prior to such date).

Section 2. Reimbursement for Costs of the Work.

(a) The District shall annually reimburse the Owner for costs of the Work from District Sales Tax revenues attributable to the Grocery Store. In no event shall reimbursement to the Owner exceed the 1% additional District Sales Tax revenues that are collected from the grocery operations.

(b) The District’s payment obligation hereunder is conditioned upon receipt by the District of (i) the Grocery Store’s sales tax returns filed with the Missouri Department of Revenue, (ii) a certification of the Grocery Store operator, in form and substance acceptable to the District, that all sales tax revenues owing to the Missouri Department of Revenue, including but not limited to the District Sales Tax, have been remitted, and (iii) a consent from the Grocery Store operator, in form and substance acceptable to the District, to the release of confidential sales tax information for the limited purpose of preparing and approving budgets, appropriation requests and other actions contemplated by this Agreement.

Section 3. Annual Appropriation.

(a) The District is obligated only to make the payments set forth in **Section 2** as may lawfully be made from funds budgeted and appropriated for that purpose during the District's then-current fiscal year. If no funds are appropriated or otherwise legally available to make the required payments during the next occurring fiscal year of the District (an "Event of Nonappropriation"), this Agreement will terminate at the end of the then-current fiscal year.

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

Section 4. Release and Indemnification.

(a) Notwithstanding anything herein to the contrary, the City, the District, their governing bodies, officials, agents, employees and independent contractors shall not be liable to the Owner for damages of any kind or nature whatsoever if any ordinance or resolution adopted by the City or the District or transaction completed by the City or the District in connection with this Agreement 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, and by reason thereof the City or the District is prevented from performing any of the covenants and agreements herein or the Owner is prevented from enjoying the rights and privileges hereof.

(b) The Owner releases from and covenants and agrees that the City, the District and their governing bodies, officials, agents, employees and independent contractors shall not be liable for, and agrees to indemnify and holds harmless the governing bodies, officials, agents, employees and independent contractors thereof against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the construction of the Grocery Store, except as such may be caused by the willful misconduct or negligence of the City or the District.

(c) The Owner agrees to indemnify, defend and hold harmless the City, the District, their governing bodies, officials, agents, employees and independent contractors from and against any and all suits, claims and attorneys' fees resulting from, arising out of, or in any way connected with (i) the construction of the Grocery Store, or (ii) the negligence or willful misconduct of the Owner, its managers, officials, agents, employees or independent contractors in connection with the management, development, redevelopment and construction of the Grocery Store, except as such may be caused by the willful misconduct or negligence of the City, the District, their governing bodies, officials, agents, employees or independent contractors.

(d) No member of the governing body, officials, agents, employees or independent contractors of the City or the District shall be personally liable to the Owner in the event of a default or breach by any party under this Agreement.

(e) All covenants, stipulations, promises, agreements and obligations of the City and the District contained herein shall be deemed to be the covenants, stipulations, promises, agreements and

obligations of the City and the District, and not of their governing bodies, officials, agents, employees or independent contractors in their individual capacities.

Section 5. Insurance.

(a) The Owner agrees to maintain commercial general liability insurance in a policy amount of not less than the then-current absolute statutory waivers of sovereign immunity in Sections 537.600 and 537.610 of the Revised Statutes of Missouri, as amended, as may be revised annually by the Missouri Department of Insurance. The Owner further agrees to name the City and the District as additional insureds with respect to such policy and to annually provide evidence of such insurance policies to the City and the District.

(b) The Owner agrees to annually provide the City and the District evidence of contractual liability insurance (in form and substance reasonably acceptable to the City's legal counsel) that insures the Owner's obligations to indemnify the City and the District, as provided in this Agreement.

Section 6. Default and Remedies.

(a) *Events of Default.* The following shall be events of default ("Events of Default") with respect to this Agreement:

(i) If any material representation made by a party in this Agreement, or in any certificate, notice, demand or request made by a party, in writing and delivered to another party pursuant to or in connection with this Agreement proves to be untrue or incorrect in any material respect as of the date made; or

(ii) Breach by a party of any material covenant, warranty or obligation set forth in this Agreement.

(b) *Remedies on Default.* In the case of an Event of Default by a party hereto or any successors to such party, such party or successor shall, upon written notice from another party, take immediate action to cure or remedy such Event of Default within sixty (60) days after receipt of such notice. If the Event of Default is not cured or remedied within such sixty (60) day period, then the aggrieved party may terminate this Agreement or institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default, including but not limited to, proceeding to compel specific performance by the party in default of its obligations. The prevailing party in any such proceedings shall be additionally entitled to recover court costs, costs of litigation or discovery and reasonable attorneys' fees from the non-prevailing party.

(c) *Other Rights and Remedies of Parties; Delay in Performance Waiver.*

(i) Any delay by a party in instituting or prosecuting any actions or proceedings or otherwise asserting their rights under this Agreement shall not operate to act as a waiver of such rights or to deprive them of or limit such rights in any way (it being the intent of this provision that the Parties should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of concepts of waiver, laches or otherwise); nor shall any waiver in fact made by a party with respect to any specific Event of Default by a party under this Agreement be considered or treated as a waiver of the rights of a

party under this Section or with respect to the particular Event of Default, except to the extent specifically waived in writing by the other parties.

(ii) The rights and remedies of the Parties (or their successors in interest) whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party of any one or more of such remedies shall not preclude the exercise by it, at the time or different times, of any other such remedies for the same Event of Default by another party. No waiver made by any party with respect to the performance, nor the manner of time thereof, or any obligation of another party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of another party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect to regard to any other rights of the party making the waiver or any other obligations of another party.

Section 7. Termination. This Agreement shall terminate upon the earliest of any of the following events:

- (a) the end of the current fiscal year in which there occurs an Event of Nonappropriation;
- (b) the payment by the District of the approved Certificate of Reimbursable Project Costs;
- (c) the date on which the Grocery Store is no longer operating at the Project Site; or
- (d) December 31, 2027.

Notwithstanding the foregoing, the Owner understands that the City or the District may desire, before December 31, 2027, to terminate the District and have the Owner reimbursed for costs of the Work from proceeds of a sales tax imposed by a new community improvement district encompassing solely the Project Site. In that regard, upon request of the City or the District, the Developer will file a petition to create a community improvement district that encompasses solely the Project Site. Upon creation of that district, imposition by that district of a sales tax, and agreement by that district to reimburse the Owner for any costs of the Work that have not yet been reimbursed hereunder, this Agreement shall terminate.

Section 8. Authority of the City. 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, and this Agreement has 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.

Section 9. Authority of the District. The District has the 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, and this Agreement has been duly and validly authorized and approved by all necessary District proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the District, enforceable in accordance with its terms.

Section 10. Authority of the Owner. The Owner has full corporate and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary corporate proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Owner, enforceable in accordance with its terms.

Section 11. Governance of the District. The Parties acknowledge that under the terms of the CID Petition and the CID Act, the District will be governed by a Board of Directors made up of representatives of the owners of real property, who will be appointed by the Mayor of the City with the consent of the Board of Aldermen of the City. The Owner, as an owner of real property in the District, will designate one person selected by the City who meets all other qualifications to serve on the CID Board of Directors, as its representative, thus allowing such person to be qualified to serve on the CID Board of Directors.

Section 12. Federal Work Authorization Program. Simultaneously with the execution of this Agreement, the Owner shall provide the District and the City with an affidavit and documentation meeting the requirements of Section 285.530, RSMo.

Section 13. Successors and Assigns. This Agreement may not be assigned by the Owner without the written consent of both the City and the District.

Section 14. Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by any of the Parties shall be deemed to be proper only if such action is commenced in the Circuit Court of Franklin County, Missouri. The Owner expressly waives its rights to bring such action in or to remove such action to any other court whether state or federal.

Section 15. Legal Fees. Upon presentation of invoices by the City or the District, the Owner shall promptly reimburse the City and the District for fees and expenses incurred in connection with the approval of the Amended Petition and the preparation of this Agreement.

Section 16. Immunity. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable state law.

Section 17. Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

Section 18. Waiver. The City's or the District's failure at any time hereafter to require strict performance by the Owner of any provision of this Agreement shall not waive, affect or diminish any right of the City thereafter to demand strict compliance and performance therewith.

Section 19. 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.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names and attested as to the date first above written.

CITY OF PACIFIC, MISSOURI

(SEAL)



Attest:

By: Ann Bayfull
Title: City Clerk

By: Mike Pigg
Title: ~~Mayor~~
President of Board, Pigs



(SEAL)

Attest:

By: Kimberly Barfield
Title: Secretary
3/21/17
Re 2017-01 of CID Board

**OSAGE COMMERCIAL AREA
COMMUNITY IMPROVEMENT
DISTRICT**

By: Jeffrey M. Roberts
Title: Chairman

66 MARKETPLACE, LLC

By: _____
Title: Managing Member

EXHIBIT A

FORM OF CERTIFICATE OF REIMBURSABLE PROJECT COSTS

Certificate of Reimbursable Project Costs

Osage Commercial Area Community Improvement District
300 Hoven Drive
Pacific, Missouri 63069
Attention: Chairman

City of Pacific, Missouri
300 Hoven Drive
Pacific, Missouri 63069
Attention: City Manager

Re: 2244 West Osage Street

Terms not otherwise defined herein shall have the meanings ascribed to such terms in the Cooperation Agreement dated as of _____, 2017 (the "Agreement") among the Osage Commercial Area Community Improvement District, the City of Pacific, Missouri, and 66 Marketplace, LLC (the "Owner"). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1** hereto has been incurred in connection with the completion of the Work.
2. Such costs have been paid by the Owner and are reimbursable under the CID Act and the Agreement.
3. There has not been filed with or served upon the Owner 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.
4. All necessary permits and approvals required for the Work and the Grocery Store are in full force and effect.
5. The Owner is not in default or breach of any term or condition of the Agreement.

Dated this ____ day of _____, 20__.

66 MARKETPLACE, LLC

By: _____
Managing Member

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

OSAGE COMMERCIAL AREA COMMUNITY IMPROVEMENT DISTRICT

By: _____
Name:
Title:

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

CITY OF PACIFIC, MISSOURI

By: _____
Name:
Title: