

COOPERATIVE AGREEMENT

among the

CITY OF SEDALIA, MISSOURI,

GALAXY WEST COMMUNITY IMPROVEMENT DISTRICT,

and

STAR ACQUISITIONS, INC.

dated as of

March \_\_\_\_, 2016

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## COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT ("Agreement"), entered into as of this \_\_ day of March, 2016, among the CITY OF SEDALIA, MISSOURI, a third class city and political subdivision of the State of Missouri (the "City"), the GALAXY WEST COMMUNITY IMPROVEMENT DISTRICT, a Missouri political subdivision (the "District") and STAR ACQUISITIONS, INC., a Missouri corporation (the "Developer") (the City, District, and Developer are collectively referred to herein as the "Parties" and individually as "Party," as the context so requires).

### WITNESSETH:

WHEREAS, on December 18, 2015, a Petition to Establish the Galaxy West Community Improvement District was filed with the office of the City Clerk by more than fifty percent (50%) per capita of all owners of real property within the boundaries of the District and property owners collectively owning parcels representing more than fifty percent (50%) of the total assessed value of the real property within the boundaries of the District (the "Petitioners"); and

WHEREAS, the Petitioners requested that the City Council establish the District; and

WHEREAS, the Petitioners requested authority in the Petition for the District to impose a CID Sales Tax at a rate of up to one percent (1%) to fund the CID Improvements, Operating Costs, and any Financing Costs; and

WHEREAS, on February 16, 2016, the City Council held a public hearing to hear and consider information regarding the proposed District; and

WHEREAS, on March 7, 2016 the City Council adopted Ordinance No. \_\_\_\_\_, pursuant to which the City approved the Petition to establish the District, which includes the property described on **Exhibit A** and depicted on the map on **Exhibit B**, both exhibits are attached hereto and incorporated herein by reference (the "District Area") and established the District for the purposes set forth in the Petition; and

WHEREAS, on March 7, 2016, the City Council adopted Ordinance No. \_\_\_\_\_, pursuant to which the City authorized the execution of this Agreement; and

WHEREAS, on \_\_\_\_\_, 2016, the District passed Resolution No. \_\_\_\_\_, pursuant to which the District authorized the execution of this Agreement; and

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 CID Sales Tax and the funding of the CID Improvements, Operating Costs, and Financing Costs therefrom.

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.

In addition to words and terms defined by the CID Act and elsewhere in this Agreement, the following words and terms shall have the meanings ascribed to them in this Section unless the context in which such words and terms are used clearly requires otherwise:

“Administrative Fee” means that amount of the CID Sales Tax Revenue that the City shall receive as compensation for performing the administrative and accounting duties associated with the CID Sales Tax Revenue, pursuant to **Section 3.3** of this Agreement.

“Agreement” or “Contract” means this Cooperative Agreement among the City, the Developer and the District.

“Applicable Laws and Requirements” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence and specifically including but not limited to all ordinances, rules and regulations of the City, such as zoning ordinances, subdivision ordinances, building codes, and property maintenance codes.

“Board of Directors” or “CID Board” means the governing body of the District.

"CID Act" means the Missouri Community Improvement District Act, §§ 67.1401, *et seq*, RSMo.

"CID Improvements" means the construction of certain on-site improvements within the District Area set forth in **Exhibit 2** to the Five Year Management Plan of the Petition, specifically (and any other Reimbursable Project Costs permitted by Section 25.E of the Redevelopment Agreement, subject to the CID Act):

1. Water/Sanitary/Liftstation;
2. MoDOT Deceleration Lane; and
3. Stormwater/Detention.

“CID Improvement Plans” means detailed drawings, plans, design data estimates, and technical specifications to show the character and scope of the work to be performed by contractors for CID Improvements.

"CID Reimbursable Project Costs" means, all actual and reasonable costs and expenses which are incurred by or at the direction of the District or the Developer 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 for the CID Improvements that is constructed or undertaken by the District or Developer, plus all actual and reasonable costs to plan, finance, develop, design, and acquire the CID Improvements, including but not limited to the following:

- (1) 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 Costs, 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; and
- (2) 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 under the CID Act.

“CID Revenue Fund” means the trust fund established by the City on behalf of the District pursuant to the CID Act to be known as the “Galaxy West Community Improvement District Sales Tax Fund” into which CID Sales Tax Revenues shall be deposited in accordance with this Agreement.

"CID Sales Tax" means a sales tax levied by the District on the receipts from the sale at retail of all eligible tangible personal property or taxable services at retail within its boundaries pursuant and subject to the CID Act in the amount not to exceed one percent (1%).

"CID Sales Tax Revenue" means the monies actually collected, pursuant to this Agreement and the CID Act, from the imposition of a CID Sales Tax.

“DOR” or “Department of Revenue” means the Missouri Department of Revenue.

"Event of Default" means any event specified in **Section 6.1** 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 a Party and not caused by any Party's 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.

"City Council" means the governing body of the City.

"Financing Costs" means those costs incurred as a result of loans, notes, or other forms of indebtedness (excluding bonds) issued by the District pursuant to the CID Act subject to the restrictions in this Agreement to pay any portion attributable to CID Reimbursable Project Costs or Operating Costs incurred or estimated to be incurred, including but not limited to loan fees, capitalized interest, legal fees, financial advisor fees, broker fees or discounts, printing, and interest (which such interest shall have been actually incurred by the Developer at a rate not to exceed the Prime Rate plus 3%); provided that, Financing Costs shall also include interest on equity used to pay for CID Reimbursable Project Costs or Operating Costs shall be reimbursable at the same rate as Developer's aforementioned actual borrowing cost, but shall not exceed the Primate Rate plus 3%.

"Non-captured CID Sales Tax Revenue" means the remaining portion of the CID Sales Tax revenue that is not required to be deposited in the TIF Special Allocation Fund to pay Reimbursable Project Costs.

"Operating Costs" means the actual, reasonable expenses that are necessary or desirable for the creation and operation of the District that shall include, but is not limited to, costs associated with notices, publications, meetings, supplies, equipment, photocopying, the engagement of legal counsel, accounting, financial auditing services, insurance, administration of the CID Sales Tax, enforcement and collection of the CID Sales Tax, and other consultants or services, a general budget estimate for which is set forth in **Exhibit 2** to the Five Year Management Plan of the CID Petition.

"Ordinance" means an ordinance enacted by the City Council.

"Prime Rate" the prime rate reported in the "Money Rates" column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. If *The Wall Street Journal* ceases publication of the Prime Rate, then "Prime Rate" shall mean the "prime rate" or "base rate" announced by an equivalent publication that evaluates the same criteria as the *Wall Street Journal* to report such rate.

"Tax Increment Financing Contract" or "TIF Contract" means the Tax Increment Financing Contract between the City of Sedalia, Missouri and STAR Acquisitions, Inc. for the 50 Highway Tax Increment Financing Plan, approved by the City Council by Ordinance No. \_\_\_ on March 7, 2016, and any amendments thereto.

"Tax Increment Financing Plan" or "TIF Plan" means the 50 Highway Tax Increment Financing Redevelopment Plan approved by the City Council by Ordinance No. 10392 on November 23, 2015, and any amendments thereto.

## **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 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.

D. 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.

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

### **Section 2.2. Representations by the City.**

The City represents that:

A. The City is duly organized and existing under the Constitution and 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 has been duly authorized to execute and deliver this Agreement.

C. 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 City 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, agreement, or instrument to which the City 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 City 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 City under the terms of any instrument or agreement to which the City is a party.

D. 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 Developer.**

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.

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 which would affect or otherwise impede Developer's ability to perform its obligations under this Agreement, and do not and will not constitute a default under any of the foregoing.

C. No litigation, proceedings or investigations are pending or threatened against the Developer or the CID Improvements which would affect or otherwise impede Developer's ability to perform its obligations under this Agreement. In addition, no litigation, proceedings, or investigations are pending or threatened against the Developer seeking to restrain, enjoin, or in any way limit the approval or issuance and delivery of this Agreement or which 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 all valid laws, ordinances, orders, decrees, decisions, rules, regulations, and requirements of every duly constituted governmental authority, commission, and court having jurisdiction over the CID Improvements.

## **ARTICLE 3: COLLECTION OF FUNDS**

### **Section 3.1. Imposition of the CID Sales Tax.**

The Board of Directors shall adopt a resolution, which, subject to qualified voter approval, imposes the CID Sales Tax. The CID Sales Tax shall be collected by the DOR as provided in the CID Act. The District shall notify the DOR of the CID Sales Tax and direct the DOR to forward

the CID Sales Tax Revenue to the City for deposit in the CID Revenue Fund. The City shall receive from the DOR the CID Sales Tax Revenue. Pursuant to the TIF Act, half of the CID Sales Tax Revenue will be deposited in the TIF Special Allocation Fund (“Captured CID Sales Tax Revenue”). The Non-Captured CID Sales Tax Revenue shall be deposited in the CID Revenue Fund by the City in accordance with **Section 3.2**, and shall be used to make those payments set forth in **Section 3.6**, in the order of priority set forth in **Section 3.6**. All CID Sales Tax Revenue disbursements shall be subject to annual appropriation of the District.

### **Section 3.2. Administration and Collection of the CID Sales Tax.**

The Parties anticipate that the CID Sales Tax will be collected and enforced by the DOR, as provided in the CID Act. The City agrees to perform for the District all functions incident to the administration and, if necessary, enforcement of the CID Sales Tax, pursuant to the CID Act and this Agreement. The District has enacted, or will enact, resolutions that: (i) impose the CID Sales Tax (subject to qualified voter approval); (ii) authorize the City to perform all functions incident to the administration, enforcement, and operation of the CID Sales Tax; and (iii) prescribe any required forms and administrative rules and regulations for reporting the CID Sales Tax. The CID Sales Tax Revenue shall be deposited by the City in the CID Revenue Fund in accordance with the resolution adopted by the District. The District may amend the forms, administrative rules, and regulations applicable to the administration, enforcement and operation of the CID Sales Tax, as needed.

All amounts in the CID Revenue Fund shall be expended solely in accord with this Agreement. Upon the expiration of the CID Sales Tax, all funds remaining in the CID Revenue Fund shall continue to be used solely in accord with this Agreement. Any funds in the CID Revenue Fund that are not needed for current expenditures may be invested by the City pursuant to applicable laws relating to the investment of other City funds.

### **Section 3.3. Administrative Fee.**

The City shall receive an Administrative Fee for administering the CID Sales Tax in the amount of one percent (1%) of the annual total CID Sales Tax Revenue. The annual total CID Sales Tax Revenue shall include that portion of the CID Sales Tax Revenue that is collected and deposited in the TIF Special Allocation Fund pursuant to the TIF Act.

### **Section 3.4. District Operating Costs.**

A. The City, on behalf of the District, shall pay for the Operating Costs of the District from CID Sales Tax Revenue in accord with **Section 3.6** of this Agreement. In the course of performing the administrative duties set forth in **Section 3.2**, the City may incur reasonable Operating Costs for the District, which are reimbursable Operating Costs subject to reasonable approval by the District. The Operating Costs shall be included in the District's annual budget, as provided in **Section 5.4**.

B. In the event that there are insufficient funds generated by CID Sales Tax Revenue in any fiscal year to cover the Operating Costs incurred with respect to such fiscal year, such costs shall be paid by the Developer, who may seek reimbursement of same and associated Financing Costs as a CID Reimbursable Project Cost in accordance with this Agreement. Reimbursement of

Developer for Operating Costs shall not count as reimbursement for purposes of the limits on Developer reimbursement under Section 25.B(1) of the TIF Contract; provided, however, that Operating Costs shall not exceed seven thousand five hundred dollars (\$7,500.00) per year without written authorization of the City and the Developer, which shall not be unreasonably withheld in either case.

### **Section 3.5. Enforcement of the CID Sales Tax.**

The District authorizes the City, to the extent permitted by law, to take all actions necessary for collection and enforcement of the CID Sales Tax. The City may, in its own name or in the name of the District, prosecute or defend an action, lawsuit or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure the payment of the CID Sales Tax. The District agrees to cooperate fully with the City and to take all actions necessary to effect the substitution of the City for the District in any such action, lawsuit or proceeding if the City shall so request.

Any costs incurred by any Party in an attempt to enforce and/or collect the CID Sales Tax pursuant to this Section shall be considered as an Operating Cost and distributed to such Party in accord with **Section 3.6** of this Agreement.

### **Section 3.6. Distribution of the CID Sales Tax Revenue.**

No disbursements of the CID Sales Tax Revenue from the CID Revenue Fund will be made for CID Reimbursable Project Costs until the City has approved a Certificate of Completion and Compliance, as defined in **Section 4.3**. The City, on behalf of the District, shall disburse on a monthly basis the CID Sales Tax Revenue in the following order of priority:

A. Pursuant to the TIF Act and the TIF Plan, for so long as tax increment financing is in effect within the Redevelopment Project Area, one-half (1/2) of the CID Sales Tax Revenue received by the City from the DOR as provided in this Agreement will be captured as Economic Activity Taxes and deposited by the City into the TIF Special Allocation Fund, which amounts shall then be subject to distribution pursuant to the TIF Contract.

B. The City shall distribute to itself the Administrative Fee, as described in **Section 3.3**.

C. The City shall pay the approved Operating Costs of the District incurred by the City, the District or the Developer and any associated Financing Costs.

D. The City shall pay the approved CID Reimbursable Project Costs and related Financing Costs.

### **Section 3.7. Records of the CID Sales Tax.**

The City shall keep accurate records of the CID Sales Tax Revenue collected and all deposits and expenditures from the CID Revenue Fund. Such records and any other records pertaining to the CID Sales Tax shall be available to the District upon reasonable request by the District.

**Section 3.8. Repeal of the CID Sales Tax.**

The District shall remain in existence for the earlier of (a) thirty (30) years from the date of the ordinance approving the Petition; or (b) the length of time required to reimburse all CID Reimbursable Project Costs and Financing Costs (“Triggering Events”). Upon one of these Triggering Events, the City shall:

- A. Retain the City’s Administrative Fee, if applicable, to which it is entitled in accordance with this Agreement.
- B. Pay all outstanding Operating Costs and associated Financing Costs.
- C. Retain any remaining CID Sales Tax until such time as the CID is abolished and the CID has provided for the transfer of any funds remaining in a manner permitted by the CID Act.

**ARTICLE 4: FINANCING CID IMPROVEMENTS**

**Section 4.1. Design and Construction of CID Improvements.**

The District and the City both hereby acknowledge that the CID Improvements are a part of the TIF Plan being undertaken pursuant to the Redevelopment Agreement. The District and City hereby further acknowledge that the Developer plans to construct the CID Improvements in accordance with the TIF Plan, the TIF Contract, and this Agreement. The District's primary role is to fund and/or assist in the funding of the CID Improvements. The District shall delegate by resolution its power to review and approve the construction of the CID Improvements to the City. The CID Improvements shall be carried out by or at the direction of Developer, subject to Applicable Laws and Requirements; the District shall have no obligation to design and construct the CID Improvements. The Developer shall comply with all Applicable Laws and Requirements including, as applicable, laws related to public bidding, the posting of bonds, prohibitions and requirements contained Chapters 67, 208, 285, 292, and 650, RSMo, and the payment of prevailing wages to contractors or subcontractors of Developer for construction of the CID Improvements. Developer shall indemnify and hold harmless the City and the District for any damage resulting to it from the failure of either Developer or its contractor or subcontractors to pay prevailing wages if legally required.

**Section 4.2. Financing the CID Improvements.**

The financing for the CID Improvements shall be done in accordance with **Section 16**, Funding Sources and Uses of Funds, of the TIF Contract.

**Section 4.3. Certificate of Completion and Compliance.**

Upon substantial completion of the CID Improvements, Developer shall submit a report to the City certifying that the CID Improvements have been completed in accordance with the TIF Plan. Obtaining a certificate of completion and compliance (“Certificate of Completion and

Compliance”) for the CID Improvements shall be done in accordance with **Section 25** of the TIF Contract.

**Section 4.4. Ownership and Maintenance of CID Improvements.**

Except for any CID Improvements dedicated to the City or MoDOT, the District shall control the CID Improvements for the duration of the District’s existence. The District shall own and maintain the CID Improvements until such time as the District is terminated, at which time they will be deeded to the City or other applicable body. Any costs incurred by the District to maintain the CID Improvements shall be considered Operating Costs.

**Section 4.5. New CID Improvements.**

The District shall not undertake new improvement projects without the prior approval of the City Council.

**ARTICLE 5: SPECIAL COVENANTS**

**Section 5.1. Records of the District.**

The City, on behalf of the District, shall keep proper books of record and account in which full, true, and correct entries will be made of all dealings or transactions of or in relation to its business affairs in accordance with generally accepted accounting principles consistently applied, and will furnish the District upon written request (within a reasonable time not to exceed three business days) such information as it may request concerning the District, including such statistical and other operating information requested by the District on a periodic basis, in order to determine whether the covenants, terms, and provisions of this Agreement have been met.

In addition, the City shall provide for the preparation of annual audited financial statements of the District for each fiscal year no later than September 1<sup>st</sup> following the end of such fiscal year, if legally required. For that purpose, all pertinent books, documents, and vouchers relating to the District’s business, affairs, and properties shall at all times during regular business hours be open to the inspection of such accountant, other agent, or City official or employee (who may make copies of all or any part thereof provided that the confidentiality of all records shall be maintained pursuant to such confidentiality agreements as reasonably required) as shall from time to time be designated and compensated by the inspecting party. To the extent permitted, the City may include the CID’s audit as a component of the City’s annual audit.

**Section 5.2. Notice to and Consent by Tenants and Transferees.**

A. Developer shall comply with **Section 30** of the TIF Contract regarding the leasing of project property.

B. Prior to the transfer of any project property, Developer shall comply with **Section 31** of the TIF Contract.

**Section 5.3. Developer's Obligations to the City under Bond or Surety.**

A. The Parties agree that the CID Improvements, or any portion thereof, which the Developer is or becomes obligated to the City to construct pursuant to any City Code provision or Ordinance, does not diminish the consideration to the District as recited in **Section 2.1** and shall be a CID Reimbursable Project Cost that may be reimbursed in accordance with this Agreement.

B. The Parties agree that in the event that the City constructs or causes to be constructed any portion of the CID Improvements pursuant to any action on a bond or other form of surety that is provided to the City by the Developer pursuant to the City Code or a City ordinance, then the City shall be entitled to reimbursement from the District for such CID Reimbursable Project Costs that are not paid or reimbursed to the City under such bond or surety.

**Section 5.4. Annual Budget.**

The CID Board shall prepare, or cause to be prepared, a budget for capital and operating expenses for the District's first fiscal year and submit that budget to the City's Director of Finance ("Finance Director") within sixty (60) days after the date the City Council approves an ordinance to establish the District. For each subsequent fiscal year of the District, the CID Board shall prepare, or cause to be prepared, a budget for capital and operating expenses for the District's upcoming fiscal year and, no earlier than one hundred eighty (180) days and no later than ninety (90) days prior to the first day of each fiscal year, shall submit a proposed budget to the Finance Director, for review and approval (the "Annual Budget"). Within a reasonable time after obtaining the Finance Director's approval of the Annual Budget, the CID Board shall approve the same. If the Finance Director rejects the Annual Budget initially submitted by the CID Board within a reasonable time (not to exceed ten (10) business days), the Finance Director shall request, in writing, with written reasons for rejection of the Annual Budget, that the CID Board submit to the Finance Director an alternate budget. If an alternate budget is requested, the CID Board shall submit the alternate budget to the Finance Director, within ten (10) business days following the request, for the Finance Director's review and approval. In the event that the alternate budget is also rejected by the Finance Director within a reasonable time (not to exceed ten (10) business days), the Finance Director shall submit to the District written reasons for the rejection of the alternate budget along with a budget that meets the City's approval (the "City's Proposed Budget") for the CID Board's review and approval. In the event that the City-Proposed Budget is not acceptable to the CID Board, then the immediately preceding year's approved Annual Budget, adjusted for inflation by a factor of the most current Consumer Price Index (CPI) for each expense category identified therein, which the City's Finance Director shall verify and approve, shall be deemed to be the approved Annual Budget for the then upcoming fiscal year. Each Annual Budget for the District shall be prepared in accordance with all applicable state statutes including Section 67.010 RSMo, as amended.

**ARTICLE 6: DEFAULTS AND REMEDIES**

**Section 6.1. Events of Default.**

If the following event shall occur and be continuing following the expiration of any cure provisions herein, then such event shall constitute an Event of Default under this Agreement: failure by any Party in the performance of any covenant, agreement or obligation imposed or

created by this Agreement (except as otherwise provided in **Section 5.2**), and the continuance of such default for sixty (60) days after a non-defaulting Party has given written notice to the defaulting Party specifying such default.

**Section 6.2. Remedies on Default.**

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 to require and compel duties and obligations required by the provisions of this Agreement.

**Section 6.3. Rights and Remedies Cumulative.**

The rights and remedies reserved by the Parties 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. The Parties 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 each party hereby waives the right to raise such defense in any proceeding in equity.

**Section 6.4. 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 6.5. 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 7: MISCELLANEOUS**

**Section 7.1. Effective Date and Term.**

This Agreement shall become effective on the date this Agreement has been fully executed by the Parties. Upon the expiration of the CID Sales Tax as provided in **Section 3.8**, and the abolishment of the District in accordance with Section 67.1481, RSMo, and the terms of this Agreement, this Agreement shall terminate.

**Section 7.2. Immunities.**

No recourse shall be had for any claim based upon any representation, obligation, covenant or agreement in this Agreement maintained against any past, present or future officer, member, employee, director or agent of the City, Developer or the District, or of any successor thereto, as such, either directly or through the City; Developer or the District, or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement. The District, as a separate political subdivision of the state, is responsible for compliance with all applicable state laws and agrees, to the extent permitted by law, to hold harmless and indemnify the City from and against all suits, claims, costs of defense, damages, injuries, liabilities, costs and/or expenses, including court costs and attorneys fees, resulting from, arising out of, or in any way connected with the District's failure to comply with any applicable state law; except that, the District shall have no responsibility under this **Section 7.2** for any such non-compliance arising from areas of CID administration that are the responsibility of the City under this Agreement.

### **Section 7.3. Indemnification.**

Developer shall indemnify, protect, defend and hold harmless the City and the District, its officers, directors, members, commissioners, employees and agents from and against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed, of whatsoever kind or character (including consequential and punitive damages), to persons or property occurring as a result of any acts or omissions of Developer, its constituent members or partners, their employees, agents, independent contractors, or licensees acting by, through or under such indemnifying parties, in connection with its or their activities conducted pursuant to this Agreement and/or in connection with the ownership, use or occupancy and development or redevelopment of the Redevelopment Area or a portion thereof and the CID Improvements, except for any claims, demands, liabilities and costs incurred due to the negligence or willful misconduct of City or District, or their respective employees, agents or assigns.

### **Section 7.4. Modification.**

The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement between the Parties. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

### **Section 7.5. Applicable Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri and all actions shall be heard in Pettis County Circuit Court.

### **Section 7.6. Validity and Severability.**

It is the intention of the parties hereto 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 7.7. 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 7.8. Recording.**

Upon full execution by City, Developer, and the District, this Contract or a memorandum thereof shall be recorded by City, at Developer's expense, in the Office of the Recorder of Deeds for Pettis County, Missouri. Such expense shall be an Operating Cost.

**Section 7.9. City Approvals.**

Unless specifically provided to the contrary herein, all approvals of City hereunder may be given by the City Administrator or his/her designee without the necessity of any action by the City Council. The City Administrator, at his discretion, may seek the advice or consent of the City Council for any requested approval.

**Section 7.10. District Approvals.**

Unless specifically provided to the contrary herein, all approvals of District hereunder may be given by the Chairman or his/her designee without the necessity of any action by the Board of Directors.

**Section 7.11. Developer Approvals.**

Unless specifically provided to the contrary herein, all approvals of Developer hereunder may be given by the agent of Developer.

**Section 7.12. Authorized Employees.**

A. Developer acknowledges to the City and District that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the state of Missouri. Developer therefore covenants to the City and District that it is not knowingly in violation of subsection 1 of Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work related to this Contract, and that its employees are lawfully eligible to work in the United States.

B. District acknowledges to the City that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the state of Missouri. District therefore

covenants to the City that it is not knowingly in violation of subsection 1 of Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work related to this Contract, and that its employees are lawfully eligible to work in the United States.

C. City acknowledges to the District that Section 285.530, RSMo prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the state of Missouri. City therefore covenants to the District that it is not knowingly in violation of subsection 1 of Section 285.530, RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work related to this Contract, and that its employees are lawfully eligible to work in the United States.

[no further text; signature pages follow]

IN WITNESS WHEREOF, Developer, the District, and the City have caused this Agreement to be executed in their respective names and attested as to the date as set forth below.

CITY:

CITY OF SEDALIA, MISSOURI

By: \_\_\_\_\_  
Steven Galliher, Mayor

ATTEST:

\_\_\_\_\_  
Arlene Silvey, MPCC City Clerk

**CERTIFICATE OF ACKNOWLEDGEMENT**

STATE OF MISSOURI     )  
  ) ss  
COUNTY OF PETTIS     )

On this \_\_\_ day of \_\_\_\_\_, in the year 2016, before me, a Notary Public in and for said state, personally appeared Stephen Galliher, the Mayor known to me to be the person who executed this Cooperative Agreement on behalf of the City of Sedalia, Missouri and acknowledged to me that he executed the same for the purposes therein stated.

Subscribed and affirmed before me this \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires:

DEVELOPER:

STAR ACQUISITIONS, INC.

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

Name: Timothy D. Harris

Title: President

**CERTIFICATE OF ACKNOWLEDGEMENT**

STATE OF MISSOURI     )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_ in the year 2016 before me, a Notary Public in and for said state, personally appeared Timothy D. Harris, President of STAR Acquisitions, Inc., known to me to be the person who executed the within Cooperative Agreement on behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

Subscribed and affirmed before me this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires:

CID:

GALAXY WEST COMMUNITY  
IMPROVEMENT DISTRICT

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Secretary

**CERTIFICATE OF ACKNOWLEDGEMENT**

STATE OF MISSOURI     )  
  ) ss  
COUNTY OF PETTIS     )

On this \_\_\_ day of \_\_\_\_\_, in the year 2016, before me, a Notary Public in and for said state, personally appeared \_\_\_\_\_, the Chairman of the Galaxy West Community Improvement District, known to me to be the person who executed the within Cooperative Agreement on behalf of the Galaxy West Community Improvement District and acknowledged to me that he/she executed the same for the purposes therein stated.

Subscribed and affirmed before me this \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**EXHIBIT A**  
**LEGAL DESCRIPTION**  
**DISTRICT AREA**

**WEST PARCEL**

COMMENCING AT THE NORTHWEST CORNER OF SECTION 6, TOWNSHIP 45 NORTH, RANGE 21 WEST, SEDALIA, PETTIS COUNTY, MISSOURI; THENCE S 87 °19'30" E ALONG THE NORTH LINE OF SAID SECTION, 526.25 FEET; THENCE S 2 °40'30" W 38.24 FEET TO A POINT OF BEGINNING; THENCE S 81 °39'10" E 267.58 FEET; THENCE N 3 °10'10" E 15.37 FEET; THENCE S 87 °19'30" E 541.59 FEET; THENCE S 25 °12'20" W 386.20 FEET TO THE NORTHERLY RIGHT OF WAY OF U.S. HIGHWAY 50; THENCE ALONG THE LINES OF SAID RIGHT OF WAY N 64 °53'00" W 2.88 FEET; THENCE N 53 °22'50" W 302.55 FEET; THENCE N 72 °03'50" W 202.47 FEET; THENCE N 64 °53'00" W 200.46 FEET; THENCE N 18 °05'10" W 72.65 FEET TO THE POINT OF BEGINNING;

BEING ALL OF TRACT "A" AS SHOWN ON SURVEY RECORDED NOVEMBER 25, 2014 AS DOCUMENT NO. 2014-6117 IN THE PETTIS COUNTY RECORDER'S OFFICE.

---

AND

**EAST PARCEL**

Lot 3 and 4, HSB 2<sup>nd</sup> Subdivision, an addition to the City of Sedalia, Pettis County, Missouri.

AND

**RIGHT-OF-WAY**

All that public right-of-way from the southern property line of the "West Parcel" (as described above) south to the southern boundary of the Highway 50 right-of-way, as well as all of the public right-of-way for Highway 50 between the location where the Highway 50 right-of-way intersects the southeast corner of the "West Parcel" described above and the location where the Highway 50 right-of-way intersects the northeast corner of the "East Parcel" described above.

**EXHIBIT B**  
**MAP OF THE DISTRICT AREA**

