

## **DEVELOPMENT AGREEMENT**

This Development Agreement ("Agreement") entered into as of the \_\_\_ day of \_\_\_\_\_, 2012, between THE CITY OF ROCHELLE, an Illinois municipal corporation ("City"), ILLIANA REALTY, LLC, an Illinois limited liability company ("Owner") and CENTRAL BIG R STORES, INC., an Illinois corporation d/b/a Big R Stores ("Operator"):

### **WITNESSETH**

**THAT WHEREAS**, Owner is the owner of a parcel of land located within the corporate boundaries of the City, consisting generally of 9.5 acres located at 1240 North 7<sup>th</sup> Street, improved with a 55,000-square foot vacant commercial building and a parking lot, which was formerly used as a Walmart store ("the Property"); and

**WHEREAS**, Owner intends to develop the Property for use as a "Big R" farm, home and ranch family store, including constructing a warehouse addition to the existing structure and making renovations to the existing structure ("Development"), provided that the City offers to Owner and the operator of the store certain economic incentives to do so; and

**WHEREAS**, Operator will be the operator of the Big R store to be located on the Property, pursuant to one or more agreements between Owner and Operator; and

**WHEREAS**, the City deems it to be in the best interests of the City for the Property to be developed in the manner intended by the Owner, and for the City to offer certain economic incentives to the Owner and Operator to do so; and

**WHEREAS**, the Rochelle City Council has made the following findings with respect to the sales tax rebate provisions of paragraph 2(b) of this Agreement: (1) that the building on the Property no longer complies with current building codes; (2) that the Development is expected to create or retain job opportunities within the City; (3) that the Development will serve to further the development of adjacent areas; (4) that without the agreement for a rebate of sales taxes the Development would not be possible; (5) that the Owner and Operator meet high standards of creditworthiness and financial strength, as demonstrated by a letter from a financial institution with assets of \$10,000,000.00 or more attesting to the financial strength of the Owner and Operator; (6) that the Development will strengthen the commercial sector of the City; (7) that the Development will enhance the tax base of the City; and (8) that this Agreement is made in the best interest of the City; and

**WHEREAS**, the parties have entered into this Agreement for the purpose of memorializing the agreements reached by the parties with respect to the Development, and the economic incentives to be offered by the City to the Owner and Operator for the Development;

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

**1. Development of Property.** Owner agrees to develop the Property as a "Big R" farm, home and ranch family store, with development commencing on or before May 1, 2012, and being completed on or before September 1, 2012. The Development shall include a warehouse addition to the existing structure of at least 12,000 square feet, as well as renovation of the existing structure to conform to the general appearance of other "Big R" stores owned by Owner. The Development shall comply in all respects with the requirements of the Rochelle Municipal Code, except as expressly set forth in this Agreement, unless a variance is granted following the procedures set forth in the Rochelle Municipal Code.

The Property, as so developed, shall employ a minimum of forty (40) full-time employees for at least five (5) years.

**2. Economic Incentives.** In consideration of Owner's development of the Property in conformity with the terms of this Agreement, the City shall provide the following economic incentives to Owner and Operator for the Development:

(a) Real Estate Tax Abatement: The City will provide to Owner an abatement of the City's real estate taxes attributable to any new improvements added to the Property, on a graduated basis over five (5) years, commencing with the real estate taxes for the year 2013, payable in 2014, as follows: 90% for year one, 75% for year two, 60% for year three, 45% for year four, and 20% for year five. Additionally, the City will use its best efforts to obtain the same percentage rebates for the same tax years from all other taxing bodies which impose real estate taxes on the Property. The foregoing abatement(s) will not apply to real estate taxes attributable to the Property as it exists on the date of this Agreement, but only to new improvements.

(b) Sales Tax Rebate: The City will rebate to the Operator a sum equal to ½ of the 1% portion of the Operator's Retail Occupation Tax paid by the Operator to the Illinois Department of Revenue ("Department") and distributed by the Department to the City, for a period of three (3) consecutive years, commencing with the calendar year 2013. Operator shall execute the required consent forms to allow the Department to share Operator's sales tax information and returns with the City. The City's rebate to the Operator shall be made by the end of the month in which the City receives the Department's distribution to the City for the applicable months. In the event the Owner uses local contractors (contractors whose business offices are served by Rochelle Municipal Utilities) for the Development, and the local contractors' contracts account for at least 50% of the total contracted cost of the Development, the City will extend the sales tax rebate for an additional two (2) consecutive years, commencing with the calendar year 2016, on the same terms. Owner shall provide adequate documentation to the City of its compliance with the terms of this provision when applying for an extension. In no event shall any rebate be made on taxes paid by Operator after the calendar year 2017. This Agreement does not require that the Development be the exclusive business location or sales office for the Owner or Operator in Illinois. However, during the term of this Agreement, the Development shall not be covered by another economic incentive agreement providing for a rebate of sales taxes. The rebate provided herein does not apply to the taxes imposed by the City pursuant to Section 90-131 of the Rochelle Municipal Code.

(c) Stormwater: The existing impervious surfaces located on the Property (consisting of the building and parking lot), shall not be required to comply with current stormwater provisions of

the Rochelle Municipal Code, because they were constructed prior to the adoption of said provisions. However, in the event additional impervious areas or new buildings, additions or extensions are added to the Property, the new impervious areas shall be subject to the stormwater provisions of the Rochelle Municipal Code in effect as of the date of this Agreement. Furthermore, should any of the existing stormwater runoff detention facilities be filled in or modified then said volume displaced by filling and grading operations shall be replaced in kind on the site in accordance with Chapter 22 of the Rochelle Municipal Code. Stormwater runoff from the site shall drain into the stormwater detention facilities onsite before discharging into City or state owned storm sewers, culverts or drainage ditches. The existing stormwater detention facility along Illinois Route 251 (Ill. Rte. 251) shall be improved and regraded to provide more effectual efficient drainage and/or storage of stormwater runoff tributary to said area. This will include, without limitation, maintenance of existing curb depressions draining from the existing parking lot and entrance area off of Ill. Rte. 251 into the existing detention area along Ill. Rte. 251. Furthermore, the Developer will construct a new pipe outlet and orifice restrictor, as approved by the City, at or near the existing Ill. Rte. 251 right of way line. Said pipe outlet and orifice restrictor shall connect the existing detention area along Ill. Rte. 251 to the storm sewer and drainage improvements proposed by the Illinois Department of Transportation (IDOT). This work shall commence upon the completion of the Ill. Rte. 251 storm sewer and drainage improvements constructed by IDOT.

(d) Right of way and temporary construction easements affecting the Property shall be dedicated or donated by the Developer from the Property to the City of Rochelle and/or the State of Illinois, along Carrie Avenue, Ill. Rte. 251, and the west property line of the Property to facilitate the roadway and pedestrian shared use path improvements contemplated by IDOT. These improvements are expected to begin in 2013. Furthermore, right of way and temporary construction easements shall be dedicated or donated by the Developer along the southerly, westerly and northerly boundary lines of the Property in accordance with the plans developed by IDOT for the new proposed Ill. Rte. 251, Carrie Avenue and shared use path improvements. IDOT will prepare the necessary plats of survey and right of way deed documents for the Developer to execute.

(e) Electric Rate: The City agrees, based on the Owner's and Operator's representations as to the anticipated use of the Property, that the Property will qualify for the RMU #190 Electric Rate.

(f) Building Permit Fees: The City will waive any building permit fees for new construction or renovations of existing structures on the Property for a period of one (1) year from the date of this Agreement.

(g) Codes: Additions to the existing structure on the Property, and renovations to the existing structure, shall be subject to the provisions of the building codes incorporated by reference in Chapter 22 of the Rochelle Municipal Code as of the date of this Agreement. Portions of the existing structure which are not being renovated, and which were in compliance with applicable building codes at the time of construction or installation, shall remain subject to those codes, and shall not be subject to the provisions of the building codes incorporated by reference in Chapter 22 of the Rochelle Municipal Code.

**3. Term.** This Agreement shall terminate on \_\_\_\_\_, 201\_\_.

**4. Entire Agreement; Non-Assignability; Severability.** This Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and supersedes and discharges all prior oral or written, or contemporaneous oral, agreements. This Agreement may not be assigned by either party. If any portion of this Agreement should for any reason be declared to be invalid or illegal by a court of competent jurisdiction, the remaining portions of this Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Agreement as of the date set forth above.

THE CITY OF ROCHELLE, an Illinois municipal corporation

By: \_\_\_\_\_  
DAVID S. PLYMAN, City Manager

Attest: \_\_\_\_\_  
BRUCE W. MCKINNEY, City Clerk

ILLIANA REALTY, LLC, an Illinois limited liability company

By: \_\_\_\_\_  
JERRY L. GIBBS, Managing Member

CENTRAL BIG R STORES, INC., an Illinois corporation

By: \_\_\_\_\_  
Its: JERRY L. GIBBS, President

ALAN H. COOPER  
Law Offices of Alan H. Cooper  
233 East Route 38, Suite 202  
P. O. Box 194  
Rochelle, IL 61068  
(815) 562-2677  
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