

Agreement No. 11-0144 P.O. No. _____ Attorney David Hoffle
 CIP No. _____ Project _____ Finance Raymond
 Dept. No./MOU Lois Amount _____ City Engineer _____

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is entered into as of this 6th day of October, 2011 (this "Agreement") by and between the **CITY OF SIOUX FALLS**, a South Dakota home rule municipal corporation ("City"); **BANCROFT PLACE PARTNERS, LLC**, 120 S. Phillips Suite 350, Sioux Falls, SD 57104 ("Developer");

WITNESSETH:

WHEREAS, City has an interest in eliminating the blight and in promoting economic development and is authorized pursuant to SDCL Chapter 11-9 (the "Act") to create tax increment districts for such purposes; and

WHEREAS, in order to accelerate the development of certain property that would not otherwise occur solely through private investment in the reasonably foreseeable future, the City Council on May 16, 2011 adopted Resolution No. 37-11, a copy of which is attached hereto as *Exhibit A*, City created Tax Increment District Number 11 (the "TID") encompassing the following described real property:

PARCEL 1: Block 2 Dunning and Wagner's Addition except lots 5 through 8; and

PARCEL 2: Block 17 of Emerson and Sherman's Addition; and

PUBLIC RIGHT-OF-WAY: Public right-of-way: all public right of way lying adjacent to parcel 1 and parcel 2 commonly known as Blauvelt Avenue, 8th Street and Mable Avenue;

all in the City of Sioux Falls, Minnehaha County, South Dakota, according to the recorded plat thereof (the "TID Property");

and

WHEREAS, the Act authorizes the expenditure of funds derived within a tax increment district for the payment of expenditures made or estimated to be made and monetary obligations incurred or estimated to be incurred by the City establishing the TID, for grants, costs of public works or public improvements in the TID, plus other costs incidental to those expenditures and obligations, consistent with the project plan of the TID, which expenditures and monetary obligations constitute project costs, as defined in Section 11-9-14 of the Act; and

WHEREAS, on May 16, 2011, the City Council adopted Resolution No. 38-11 to approve the Tax Increment Project Plan, a copy of which is attached hereto as *Exhibit B* providing for development of the TID Property (the "Project Plan"), which included the payment of a grant in the amount of \$475,000 toward certain costs of development as described in the Project Plan.

NOW, THEREFORE, in consideration of the mutual promises, covenants, obligations, and benefits contained in this Agreement, City and Developer hereby agree as follows:

Section 1. Definitions

Unless the context otherwise requires, the terms used in this Agreement will have the meanings set forth in this Section. If not defined in this Agreement, capitalized terms will have the meaning given to them in the Project Plan.

"Act" means SDCL Chapter 11-9, as may be amended from time to time.

“**Base Revenues**” means the taxes collected on the Base Value.

“**Base Value**” means the value of the TID Property at the time of the creation of the district as certified by the South Dakota Secretary of Revenue.

“**Construction Schedule**” means the timetable for constructing the improvements specified in Section 2.08.

“**Eligible Project Costs**” means those costs set forth in the Project Plan in the amount of \$475,000 eligible for reimbursement by the City through the use of Tax Increment Revenues.

“**Project**” will have the meaning specified in Section 3.01 of this Agreement.

“**Project Costs**” means the costs set forth on Schedule 1 to the Project Plan, and any additional costs necessary to complete the Project.

“**Project Plan**” means the Project Plan attached as *Exhibit B*.

“**Tax Increment Revenues**” means all tax revenues of the TD Property in excess of the Base Revenues.

“**TID**” will have the meaning specified in the recitals.

“**TID Property**” will have the meaning set forth in the recitals.

Words used herein in the singular, where the context so permits, also includes the plural and vice versa, unless otherwise specified.

Section 2. Obligation and Representations

2.01 Remittance of Tax Increment Revenues; City’s Expenses.

- (a) As reimbursement for Eligible Project Costs, City agrees to pay to Developer, but solely from Tax Increment Revenues, a sum not to exceed \$475,000, plus interest computed at the rate of 5% per annum on the principal balance from time to time until the expiration of the term hereof set forth in Section 5.01.
- (b) To cover its expenses in connection with the formation of the TIF and the negotiation of this Agreement, City may retain, from the amount otherwise payable to Developer under Section 2.01(a), an amount not to exceed \$5,000. Such amount may be deducted by City from the initial remittance of Tax Increment Revenues.

2.02 Grant. The parties acknowledge that Developer’s right to receive the Tax Increment Revenues hereunder is a grant under the Act, and a personal property right vested with Developer on the date hereof.

2.03 No Certificated Tax Increment Revenue Bonds. City will have no obligations to the Developer except as set forth in this Agreement, and will not issue any certificated tax increment revenue bonds to evidence such obligations.

2.04 Developer’s Representations. Developer represents to City as follows:

- (a) Developer is a limited liability company organized in the State of South Dakota;
- (b) Developer has the authority to enter into this Agreement and to perform the requirements of this Agreement;

- (c) Developer’s performance under this Agreement will not violate any applicable judgment, order, law or regulation;
- (d) Developer’s performance under this Agreement will not result in the creation of any claim against City for money or performance, any lien, charge, encumbrance or security interest upon any asset of City; and
- (e) Developer will have sufficient capital to perform all of its obligations under this Agreement when it needs to have said capital, and that Developer owns the TID Property.

2.05 Approvals. City and Developer represent each to the other that the execution, delivery, and performance of this Agreement on its part does not require consent or approval of any person that has not been obtained.

2.06 Assignment of Payments. Developer may assign its rights to payments hereunder for the purposes of financing its obligations related to this Agreement, but Developer’s right to such payments is subject to the other limitations of this Agreement.

2.07 Continued Cooperation. City and Developer represent each to the other that it will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires its continued cooperation.

2.08 Completion of Improvements. Developer shall diligently work to successfully complete any and all improvements described in the Project Plan on the following schedule:

<u>Estimated Start Date</u>	<u>Improvement</u>	<u>Estimated Completion Date</u>
10-2011	Phase 1 – buildings one through four	3-2013
6-2012	Phase 2 – buildings five through eight	3-2013
12-2012	All other improvements	6-2013

2.09 No General Obligation of the City. City’s obligations hereunder are limited obligations payable solely out of the Tax Increment Revenues and are not payable from any other revenues of City, nor a charge against its general taxing power. Developer shall bear all risks that such Tax Increment Revenues may be insufficient to pay the maximum amounts specified in Section 2.01.

Section 3. The Project

3.01 The Project. The Project will be comprised of real estate, and the design, construction, assembly, and installation of the improvements described in the Project Plan, including elements described within the Project Plan as “project costs” and “non-project costs,” and the full implementation thereof.

3.02 Construction of the Public Infrastructure Improvements. Public Improvements will be constructed by the Developer through private contract. The City will not bid nor contract any improvement described in this Agreement.

3.03 Financing of the Project and Improvements. Payment of all Project Costs will be made from Developer’s own capital and from other sources obtained solely by Developer. Developer may use any or part of the TID Property as collateral for such loans as required to pay Project Costs.

Section 4. Developer Covenants

4.01 Duties and Obligations of Developer. Developer hereby agrees to: (a) complete, or cause to be completed, all improvements described in the Project Plan and this Agreement, (b) provide, or cause to be provided, all materials, labor, and services for completing the Project, (c) obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the construction of improvements to the TID Property, (d) cooperate with the City in providing all necessary information to City in order to assist the City in complying with this Agreement, and (e) submit written annual reports, starting no later than thirty (30) days following the end of the fiscal year in which the TID was created detailing the amount of Tax Increment Revenues received and the amounts thereof applied to pay Developer's principal and interest on its private financing.

4.02 Insurance. Developer will maintain a policy of liability insurance, acceptable to City, with liability limits of at least one million dollars \$1,000,000.00 that names City as an additional insured. Such a policy must remain in effect until City accepts the improvements.

4.03 Indemnification. Developer will FULLY INDEMNIFY and HOLD HARMLESS, City (and the elected officials, employees, officers, directors, and representatives of City) from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death and property damage, made upon City directly or indirectly arising out of, resulting from or related to Developer's negligence, willful misconduct or criminal conduct in its activities under this Agreement, including any such acts or omissions of Developer, any agent, officer, director, representative, employee, consultant or subconsultants of Developer, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement, all without, however, waiving any governmental immunity available to City under South Dakota law and without waiving any defenses of the parties under South Dakota law. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Developer will promptly advise City in writing of any claim or demand against City related to or arising out of Developer's activities under this Agreement and will see to the investigation and defense of such claim or demand at Developer's cost to the extent required under the Indemnity in this paragraph. City will have the right, at its option and expense, to participate in such defense without relieving Developer of any of its obligations under this paragraph.

4.04 Liability. Developer will be solely responsible for compensation payable to any employee or contractor of Developer, and none of Developer's employees or contractors will be deemed to be employees or contractors of City. No director, officer, employee or agent of City shall be personally responsible for any liability arising under or growing out of this Agreement.

4.05 Taxes & Licenses. Developer will pay, on or before their respective due dates, to the appropriate collecting authority all Federal, State, and local taxes and fees that are now or may hereafter be levied upon the TID Property or upon Developer or upon the business conducted on the TID Property, or upon any of Developer's property used in connection therewith, including employment taxes; and Developer shall maintain in current status all federal State, and local licenses and permits required for the operation of the business conducted by Developer.

4.06 Examination of Records. Developer will allow City to conduct examinations, during regular business hours and following notice to Developer by City, of the books and records related to this Agreement no matter where books and records are located.

Section 5. Term and Termination

5.01 Term. The term of this Agreement shall commence on the date hereof and end on the date which is the *earliest* to occur of the following, at which time City's obligations hereunder will be deemed fully discharged:

- (i) the date on which the amount payable under Section 2.01 has been paid to Developer; or
- (ii) the date this Agreement is terminated as provided in Section 5.02; or
- (iii) the 20th anniversary of the creation of the TID.

5.02 Default and Termination. If Developer fails to commence and complete construction substantially in accordance with the Construction Schedule, City may terminate this Agreement if Developer does not cure its failure within forty-five (45) calendar days after receiving written notice from City requesting the failure be cured. If the Agreement is terminated as set forth in this Section, City's obligations under this Agreement will be deemed fully discharged.

Section 6. Miscellaneous

6.01 Non-Waiver. Provisions of this Agreement may be waived only in writing. No course of dealing on the part of City, or Developer nor any failure or delay by City or Developer in exercising any right, power, or privilege under this Agreement shall operate as a waiver of any right, power or privilege owing under this Agreement.

6.02 Conflict of Interest. Developer acknowledges that City's Charter and ethics code prohibit a City officer or employee from having a financial interest in any contract with City or any City agency such as City-owned utilities. Developer warrants and certifies, and this Agreement is made in reliance thereon, that no officer, employee or agent of City has a financial interest in the execution of this Agreement separate from that of the general public.

6.03 Entire Agreement. This Agreement embodies the final and entire agreement between the parties hereto concerning the subject matter herein. *Exhibit B* attached to this Agreement is incorporated herein and shall be considered a part of this Agreement for the purposes stated herein, except that if there is a conflict between *Exhibit B* and a provision of this Agreement, the provision of this Agreement will control.

6.04 Amendments. All amendments to this Agreement and the Project Plan may only be made in a writing executed by City and Developer.

6.05 Severability. If any clause or provision of this Agreement is held invalid or unenforceable, such holding will not invalidate or render unenforceable any other provision hereof.

6.06 Venue and Governing Law. This Agreement shall be construed under and in accordance with the laws of the state of South Dakota. Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in Minnehaha County, South Dakota.

6.07 Notice. Any notice sent under this Agreement shall be written and mailed with sufficient postage, sent by certified mail, return receipt requested, documented facsimile or delivered personally to an officer of the receiving party at the following addresses:

City

City of Sioux Falls
235 W. Tenth St.
P.O. Box 7402
Sioux Falls, SD 57117-7402
Attn: TIF Administrator
Fax: (605) 367-7801

Developer

Bancroft Place Partners, LLC
120 S. Phillips Avenue Suite 350
Sioux Falls, SD 57104
Attn: Mike Crane
Fax: (605) 332-1100

Any of the above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications may be sent.

6.08 Captions. Captions used herein are only for the convenience of reference and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

IN WITNESS THEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year first written above.

CITY OF SIOUX FALLS

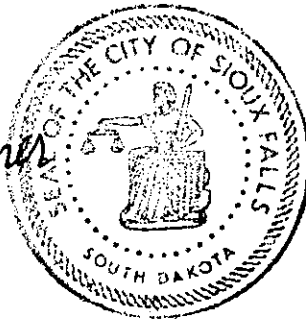
Maureen A. For Mayor

Mayor

ATTEST:

Jane Halmer

City Clerk, Asst.



SEAL

BANCROFT PLACE PARTNERS, LLC

Michael A. Crane

By: *Michael A. Crane*
Its: *Managing Member*

COUNTERSIGNED

[Signature]

Resident Attorney

Notice of Hearing: NA
Date of Hearing: 5/16/11
Date Adopted: 5/16/11
Date Published: 5/27/11
Date Effective: 6/16/11

RESOLUTION NO. 37-11

A RESOLUTION CREATING SIOUX FALLS TAX INCREMENT DISTRICT NUMBER ELEVEN.

WHEREAS, the property within this district meets the qualifications and criteria set forth in SDCL 11-9; and

WHEREAS, the City Council of the City of Sioux Falls finds that:

- 1) The aggregate assessed value of the taxable property in this district plus all other existing districts does not exceed 5 percent of the total assessed value of the taxable property in the City of Sioux Falls;
- 2) The project complies with the City's adopted 2035 Growth Management Plan [Comprehensive Plan] and all other appropriate plans and regulations;
- 3) The improvements of the area are likely to enhance significantly the value of substantially all of the other real property in the district.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SIOUX FALLS, SD:

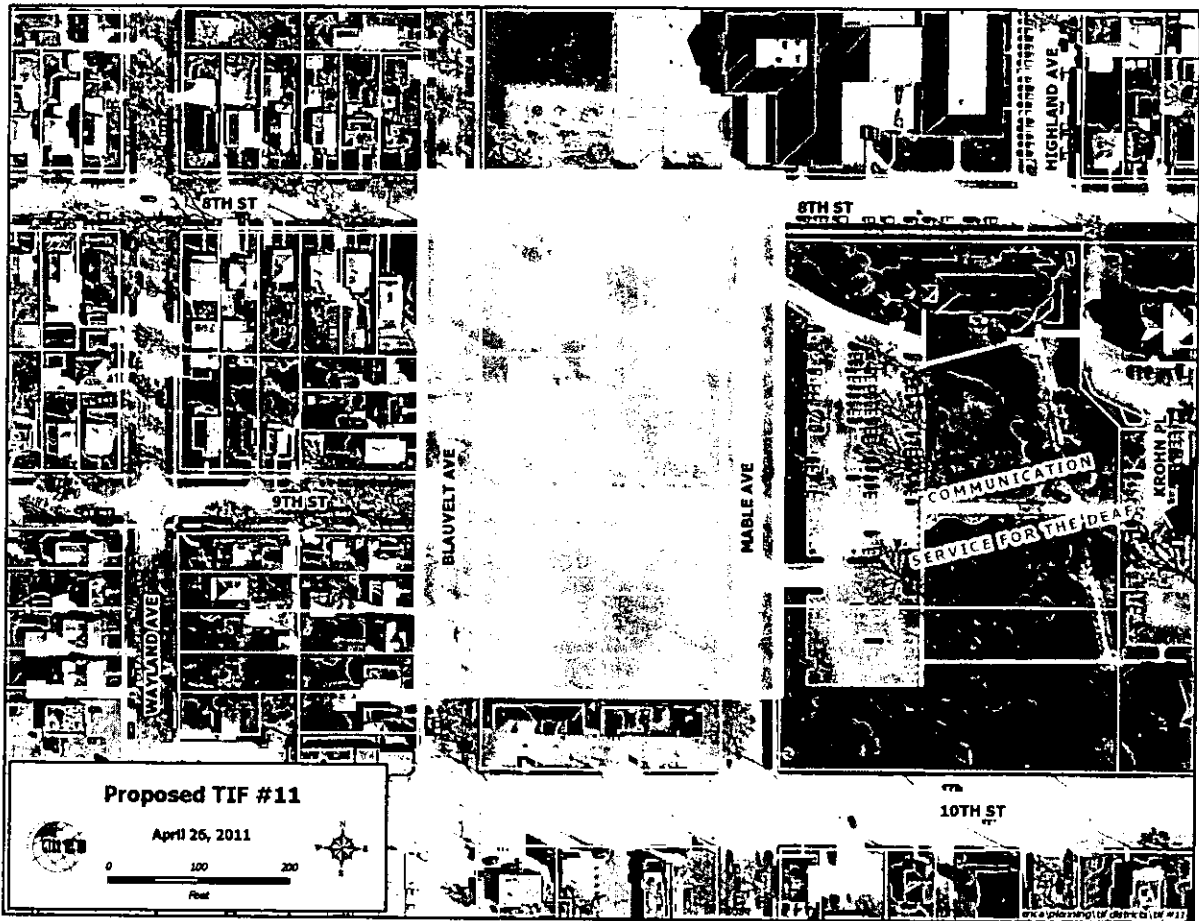
That all lands within the boundaries shown on Exhibit A—Tax Increment District Eleven shall be and are hereby designated as the Sioux Falls Tax Increment District Number Eleven, City of Sioux Falls.

Date adopted: 5/16/11.

Mike T. Huether
Mayor

ATTEST:

Debra A. Owen
City Clerk



Notice of Hearing: NA
Date of Hearing: 5/16/11
Date Adopted: 5/16/11
Date Published: 5/27/11
Date Effective: 6/16/11

RESOLUTION NO. 38-11

A RESOLUTION APPROVING THE PROJECT PLAN FOR SIOUX FALLS TAX INCREMENT DISTRICT ELEVEN.

WHEREAS, the City Planning Commission has prepared and adopted a project plan which identifies certain development activities and public improvements to be undertaken by the City or private developers and paid for, in whole or in part, from the collection of tax increment revenues derived from the district; and

WHEREAS, the City Tax Increment Project Plan is both economically feasible and in conformity with the Sioux Falls 2015 Growth Management Plan; and

WHEREAS, it is anticipated that project costs, less the finance costs, in the plan will be expended prior to July 01, 2013;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SIOUX FALLS, SD:

That the Tax Increment Project Plan for Tax Increment District Number Eleven, is hereby approved.

Date adopted: 5/16/11.

Mike T. Huether
Mayor

ATTEST:

Debra A. Owen
City Clerk