

TAX INCREMENT FINANCING AGREEMENT**Sixth St. Development, LLC**

THIS AGREEMENT, is made and entered into on May 13, 2025, by and between the City of Brookings, a municipal corporation of the State of South Dakota, (referred to as the “City” herein), and Sixth St. Development, LLC, a South Dakota Limited Liability Company, with its principal office located at Brookings, South Dakota 57006, (referred to herein as the “Developer”).

Whereas, the Developer certifies that it is the owner of a tract of land legally described as set forth in Exhibit “A” and incorporated by reference; and

Whereas, the Developer certifies that it has the legal authority to enter into this agreement; and

Whereas, this agreement is given for the benefit of the City as well as successors in interest of real property, as shown on the Tax Increment District Number Seventeen boundary map; and

Whereas, the City of Brookings created Tax Increment (“TIF”) District Number Seventeen (17), and the legal description and map of TIF District Number 17 is attached, marked Exhibit “A” and made a part hereof; and

Whereas, Tax Increment Revenue will be used to assist in providing for certain of TIF District Number 17’s project costs; and

Whereas, the City hereby establishes certain requirements applicable to the Developer in exchange for use of tax increment funds for eligible project costs abutting and serving economic development within TIF District Number 17.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties, for themselves, their successors and assigns, hereby agree to the foregoing and as follows:

Section 1 - Developer's Obligations and Improvements

A. General

a. Developer agrees to construct, but not be limited to, a mix-use structure (Latitude 44) along 6th Street between 12th and 13th Avenue consisting of main floor commercial space and three stories of residential units comprising approximately 114 residential units as well as constructing a multi-story structure (Paragon) along Campanile Avenue between 6th Street and 7th Street comprising approximately 84 residential units, a parking structure on the west side of Campanile Avenue to provide additional parking for the Paragon project, boulevard parking along 12th Avenue, boulevard parking along 7th Street, a mid-block protected pedestrian crossing on Campanile Avenue, alley paving east of Campanile Avenue from 7th Street to 6th Street, and associated improvements associated with the construction of both sites.

b. Developer agrees to execute a separate Development Maintenance Agreement with the City that further defines the Developer's obligations in regard to maintenance of certain improvements and to provide a warranty covering improvements.

c. Developer further agrees to fund street improvements within the Campanile Avenue rights-of-way to include, but not be limited to street widening, curb and gutter, street paving, street lighting, and a center median with landscaping. Developer will not be responsible for maintaining the center median because SDSU desires to provide for landscaping, lighting and signage within the median. Therefore, SDSU will install and maintain any such landscaping, lighting and signage in the center median on Campanile Avenue, and Developer will not be responsible for these improvements or their maintenance.

d. For purposes of clarity, the City and the Developer agree that the Project Plan for TIF District Number 17 does not include the installation of a traffic signal or the relocation of a traffic signal to the intersection of 6th Street and Campanile/13th Avenue. Furthermore, neither the City nor Developer plan to include the installation of a traffic signal or the relocation of a traffic signal to the intersection of 6th Street and Campanile/13th Avenue. While South Dakota State University or the SDSU Foundation may contemplate the installation of a traffic signal or the relocation of a traffic signal to the 6th Street and Campanile/13th Avenue intersection, the

cost of such an installation shall not constitute a TIF District Number 17 Project Cost, and any cost associated with the installation or relocation of the traffic signal described herein shall be paid by South Dakota State University of the SDSU Foundation.

Section 2 - Tax Increment District Number 17

A. Project Costs

a. The Developer shall fund and construct such improvements as set forth in the Tax Increment District Number 17 Project Plan and this Development Agreement, with TIF reimbursement based on actual project costs. Reimbursement of actual Project costs to the Developer shall not exceed the sum of Six Million Five Hundred Thirteen Thousand Three Hundred Thirty-Eight Dollars (\$6,513,338). The City of Brookings will only reimburse Developer the actual costs per itemized construction contracts plus financing costs, and the total reimbursement to Developer with TIF proceeds as they are received shall not exceed an aggregate amount of Six Million Five Hundred Thirteen Thousand Three Hundred Thirty-Eight Dollars (\$6,513,338).

B. Guarantee

a. The Developer agrees to pay for all public improvements as specified in the final construction plans, subject to reimbursement with TIF proceeds. It is understood that if there are not sufficient Tax Increment Revenues for the Developer's debt service for the public improvements, that the City will not be responsible for any shortfall.

C. Tax Increment Revenue

a. The Developer shall receive one hundred (100%) percent of the Tax Increment District Number 17 revenue, with such revenue to be utilized to pay for eligible project costs as described in this Agreement, until such time as the eligible project costs have been paid in full or the district is decertified per state law. The use of tax increment revenue to reimburse Developer shall be based upon actual construction and financing costs, with a "not to exceed" amount of Six Million Five Hundred Thirteen Thousand Three Hundred Thirty-Eight Dollars (\$6,513,338) for the Developer's project costs.

D. Payment Agent

a. The City will act as the paying agent of the Tax Increment Revenue to the Developer.

E. Draw Down

a. The City and Developer agree Tax Increment District Number 17 Revenue will be reimbursed to Developer in accordance with this Agreement to the extent revenue is available in the Tax Increment Financing District Number 17 Fund once the following have been completed:

- i. Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the eligible project costs described herein have been made consistent with the Tax Increment Financing District Number 17 Project Plan and this Agreement.
- ii. Developer shall have submitted invoices showing the services / public improvements have been made.

F. Financing Costs

a. The Developer shall be eligible to receive reimbursement from TIF Number 17 for realized costs associated with financing the public improvements set forth in this agreement, subject to available TIF Number 17 revenue. Developer agrees to provide a copy of the financing terms and amortization schedule as documentation of financing costs. Developer further agrees that if the financing terms or conditions change, an updated copy of the financing terms and amortization schedule shall be provided to the City.

G. Discretionary Tax Formula

a. The Developer agrees to waive the discretionary tax formula on platted lots within the development in accordance with the Brookings County discretionary tax formula policies and procedures during the duration of Tax Increment Financing District Number 17. Developer shall submit in writing to Brookings County their request to waive the discretionary formula. Failure to do so may result in nullification of the development agreement. If the developer sells

the land within this TIF District, the purchase agreement will provide that the buyer agrees to waive the discretionary formula.

Section 3 - General Provisions

A. Bidding of Public Improvements by Developer

a. Upon review and approval by the City and local municipal utilities of the Developer's final construction plans and specifications for the public improvements as detailed in the TIF Number 17 Project Plan, Developer agrees to obtain competitive quotes for the project improvements through Developer's project manager. The project manager shall be responsible for soliciting quotes from multiple contractors, and providing tabulations to the satisfaction of the City Engineer for review and approval prior to awarding such quote or quotes to the lowest responsible bidders/contractors. The project manager shall provide to the City Engineer copies of all advertising notices, plan holders lists, and any direct marketing efforts such as mailings, email, telephone solicitations as proof of obtaining competitive quotes for the public improvements.

b. All required public improvements shall be installed to the satisfaction of the City Engineer within two (2) years of the date this Agreement is fully executed. Notwithstanding any contrary provision in either statute or ordinance, including those relating to the passage of time, Developer acknowledges and agrees that all terms and conditions contained herein shall remain a continuing obligation until satisfaction or completion.

c. City may undertake any legal or equitable action available to enforce the provisions of this agreement in addition to any other remedy provided herein. In the event the City is required to undertake any action to enforce the terms of this agreement or its subdivision regulations in connection with this agreement, the Developer, its heirs, assigns or successors in interest agree the City may recover its reasonable expenses, including attorney's fees incurred with respect to such action.

B. Mechanics Liens

a. The Developer agrees to immediately satisfy any and all mechanic's or materialman's liens that arise as a result of their respective improvements. This provision shall

not prevent Developer from subsequently seeking compensation from a contractor, subcontractor or others who may be responsible for such liens or for such payment.

Section 4 - Agreement

a. This document, along with the Project Plan for Tax Increment Financing District Number 17 and the Development Maintenance Agreement, shall constitute the Tax Increment Financing agreement of the parties. All prior discussions and negotiations are merged into this Tax Increment Financing Development Agreement. In the event of a conflict between the Project Plan and this Agreement, this Agreement shall be controlling. Any changes or addendums hereto shall be agreed to in writing by all parties.

Section 5 - Successors

a. To the extent any rights or obligations under this Agreement remain in effect, this Agreement shall be binding upon and enforceable against, and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

Section 6 - Independent Contractor

a. In performing under this Agreement, the Developer, including its officers, agents, employees, and volunteers, is at all times acting and performing as in independent contractor, in an independent capacity, and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the City.

Section 7 - Notices

a. All notices, demands and other communications shall be given in writing and shall be delivered by certified mail, postage prepaid, and return receipt requested, or by personal delivery. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as required in that notice:

City: City of Brookings

520 3rd Street

Brookings, SD 57006

Developer: Sixth St Development, LLC

1100 6th Street

Brookings, SD 57006

Attn: City Engineer

Attn: David Jones

Section 8 - Amendments

a. Any amendment to this Agreement shall be effective only when duly executed by Developer and City.

Section 9 - Severability

a. The provisions of this Agreement are severable, and, if any one or more provisions is determined to be judicially unenforceable, in whole or in part, the remaining provisions, and any partially enforceable provision, to the extent enforceable shall nevertheless be binding and enforceable.

Section 10 - Termination of Agreement

a. Should the Developer not adhere to the terms of this Agreement, or violate any other part of this Agreement, the City reserves the right to terminate payments of Tax Increment Revenue received for TIF District Number 17, regardless if there are any outstanding and unreimbursed project costs. The City may also exercise any other legal or equitable remedies to enforce this Agreement.

Section 11 - Litigation

a. Any dispute arising out of or related to this Agreement shall be litigated in the Third Judicial Circuit Court for the State of South Dakota, located in Brookings, South Dakota.

Section 12 - Attorney's Fees

a. In the event that suit is brought for the enforcement of this Agreement or as the result of any alleged breach thereof, or any other court action occurs arising out of this Agreement, the prevailing party or parties in such suit shall be entitled to recover their reasonable attorneys' fees, costs, and expenses from the losing party or parties, and any judgment or decree rendered in such proceedings shall include an award thereof.

Section 13 - No Third Party Beneficiary Rights

a. This Agreement is entered into for the sole benefit of City and Developer and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

Section 14 - Assignment of Agreement

a. Neither City nor Developer may assign or transfer their respective rights or obligations under this Agreement without first obtaining the prior written consent of the other party, which consent may be granted or withheld in the sole and absolute discretion of the applicable party.

Section 15 - Authorized Signature

a. The Developer represents and warrants to the City that: (a) The Developer is duly authorized and empowered to sign and perform its obligations under this Agreement; and (b) the individual signing this Agreement on behalf of the Developer is duly authorized to do so and their signature on this Agreement legally binds the Developer to the terms of this Agreement.

Section 16 – Counterparts

a. This Agreement may be signed electronically and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, City and Developer have caused this Agreement to be executed as of the day and year provided on Page 1 of this Agreement.

CITY OF BROOKINGS

Sixth St Development, LLC

Oepke Niemeyer, Mayor

Its: Agent (Signature)

Its: Agent (Printed Name)

ATTEST

Bonnie Foster, City Clerk

Dated this ____ day of _____, 2025.

Exhibit A
Tax Increment District #17



Legal Description:

- Lot 1A in Block 4 of Hill Park Addition, an addition to the City of Brookings, Brookings County, South Dakota
- Lot 13A in Block 2 of Sanderson's Addition to the City of Brookings, Brookings County, South Dakota
- S 40' Lot 4, Lot 5, N 15' Lot 6, Block 1 of Sanderson's Addition to the City of Brookings, Brookings County, South Dakota

Exhibit B
Tax Increment Financing #17 Project Plan

(Insert Project Plan here)

Exhibit C
Development Maintenance Agreement

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