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Jefferson County, Colorado

**DEVELOPMENT AGREEMENT
TCF BANK**

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into and made between TCF NATIONAL BANK, hereinafter referred to as "Owner" and the CITY OF ARVADA, COLORADO, a Colorado Municipal Corporation, hereinafter referred to as the "City." This Agreement shall be effective following its execution by all applicable parties, and immediately upon approval by the City of Arvada as evidenced by the approval signature where indicated below.

HB-03

1-9

RECITALS AND REPRESENTATIONS:

WHEREAS, the Owner represents that, prior to the commencement of construction, it shall be the sole owner of the property described as Lot 1, Parkway Center Subdivision Filing No. 3 Minor Subdivision, located in the City of Arvada, County of Jefferson, State of Colorado; hereinafter referred to as the "Property."

WHEREAS, the Owner is planning the development of one new building on the Property for use as a financial institution. The Owner's development and construction plans include the installation of sanitary sewer facilities, water line facilities, storm drainage facilities, roadways and emergency access improvements, walks, and landscape improvements as shown on City Job No. 3241.

WHEREAS, the Owner has submitted to the City a proposed final development plan set for TCF Bank on the Property, which includes a final plan for development, final landscape plan, final drainage plans, architectural elevations, and other supporting documentation for the development of the Property. The approved final development plan set and approved final construction documents, hereinafter referred to together as "Final Plans", are public records on file and available for review at the City of Arvada, City Hall, 8101 Ralston Road, Arvada, Colorado. The Final Plans are also incorporated into this Agreement for all purposes including illustration and interpretation of the terms and conditions of this Agreement. In the event of a conflict between this agreement and the Final Plans, the Final Plans shall govern.

WHEREAS, the parties hereto understand and agree that the intent of this agreement is to establish obligations and responsibilities in the event of development of the Property in accordance with approved Final Plans, said obligations and responsibilities being covenants that run with the land, encumbering such property and governing the development thereof. The Owner herein shall be affirmatively bound to satisfy all of the obligations and responsibilities set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements of the parties, the approval by the City of Arvada of the Final Plans for TCF Bank on the Property, the dedication of certain rights-of-way and easements to the City and other good and valuable considerations, the sufficiency and adequacy of which are hereby acknowledged by the parties, the parties hereto agree as follows:

- 1. PLAN AND AGREEMENT APPROVALS:** The Owner, upon final approval of the Final Plans for the Property, shall immediately submit three copies of the approved site plan to the Community Development Director. No construction may occur on or associated with the Property and no building permits may be issued until construction documents for all required improvements are submitted and approved by the City Engineer. Upon approval, the Owner shall file with the City Engineer eleven (11) copies of the approved final construction plans for the construction of emergency access lanes, water lines and mains, sanitary sewer lines and mains, storm drains and

storm drainage structures and streets associated with development of the Property, as required by the City. Said construction plans shall meet the approval of the City and the proposed development shall be constructed according to the Final Plans. No approval of the public improvements construction plans is conferred by this Agreement and approval shall be independently made by the City Engineer following City staff review and comment following the City Engineer's determination that the plans meet the applicable City engineering specifications, commonly accepted engineering practices, and all applicable codes, ordinances, and State, Federal and local laws.

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2. **CODE COMPLIANCE:** The Owner shall comply with all the ordinances, rules and regulations of the City. Development of the Property shall also be substantially in conformance with all aspects of the approved Final Plans and shall be completed prior to issuance of the first certificate of occupancy within the Property. This shall include, but not be limited to, street and parking lot paving and striping, landscaping, trash enclosures, rooftop and wall mounted equipment, building elevations, and all other requirements of the approved Final Plans and applicable City codes.

3. **RESTRICTION ON ALLOWED LAND USES.** The allowed land uses shall be restricted to general retail, office, restaurants (except fast food), financial institutions, personal services, and minor vehicle repair.

4. **ROAD IMPROVEMENT FEES.** The owner of each lot within Parkway Center Subdivision Filing No. 3 shall submit the required road improvement fees as specified in the First Amendment to the Parkway Center Subdivider's Agreement (Reception No. F0878001). The Owner shall submit the required road improvement fee prior to final approval of the Final Development Plan. The required road improvement fee for the Property (Lot 1, Parkway Center Subdivision Filing No. 3), based on a proportional amount of the total fee of \$103,894.59 as stated in the above referenced agreement, is \$34,815.64.

5. **PAYMENT OF FEES:** The Owner shall pay all fees and other charges in a timely manner as required by the City, including but not limited to building permits, inspection fees, tap fees, drainage fees, and departmental review fees imposed by the City by ordinance, rule, resolution, motion, or by the terms and conditions of this Agreement. Unless otherwise agreed to by the City, the Owner's payment of fees and charges specified by this Agreement shall be made in the form of certified funds, cashier's check, or cash delivered to the City of Arvada, Municipal Building, 8101 Ralston Road, Arvada, Colorado 80001. The City shall not accept personal or business checks or drafts not certified by a financial institution as payable.

6. **FIRE DEPARTMENT APPROVALS:** The Owner shall address all of the comments noted in the referral responses, including any requirements for fire hydrants, emergency access lanes, and fire lane signage, and shall obtain approval from the Arvada Fire Protection District prior to issuance of each building permit and certificate of occupancy (as applicable) for the Property.

7. **CONTRACTOR LICENSING:** Before proceeding with work contemplated herein, the Owner shall ensure that all contractors and/or subcontractors employed by the Owner shall be licensed by the City before the contractor and/or subcontractor may commence work on any improvements associated with development of the Property. The Owner shall be responsible for ascertaining the status of any contractor or subcontractor to be utilized in the development of the Property, with respect to any uncorrected deficiencies in that entity's previous, unrelated work within the public rights-of-way or its outstanding omissions related to such work, including, but not limited to, failure to submit as-built construction plans or failure to complete the process of placing public improvements under warranty as required elsewhere herein, or failure to submit tax certifications, or

failure to submit test records.

8. DEVELOPMENT IMPROVEMENTS: The Owner shall, at its own expense, design, furnish, construct, and install the public and private improvements in accordance with the plans and specifications approved by the City of Arvada, Colorado. These improvements shall include, but not be limited to, construction of all public/private streets, alleys, driveways, parking areas, water lines and mains, sewer lines and mains, drainage facilities, and landscaping within and adjacent to the Property in accordance with the approved Final Plans for the Property and with the requirements of the Arvada Land Development Code. The public improvements must be completed prior to issuance of the ~~first building permit~~ for the Property unless specified differently herein.

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Certificate of Occupancy

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All public improvements constructed by the Owner in public rights-of-way, easements, streets or alleys shall become the property of the City immediately upon acceptance of said improvements by the City and the Owner shall warrant said improvements for two years from the date of acceptance by the City. The Owner shall complete the process of placing completed public improvements under warranty promptly upon their completion. Failure to complete the process of placing such improvements under warranty may, in the City's discretion, result in the withholding or denial of subsequent building permits or certificates of occupancy.

The City may request, and the Owner shall provide at the Owner's cost, documentary evidence satisfactory to the City that any public rights-of-way, easements, or other property dedicated, conveyed, acquired, devised, or granted to the City are free and clear of encumbrances which, in the sole opinion of the City, defeat, limit, or impede the City's ability to use the public property as intended.

9. FUGITIVE DUST AND EROSION CONTROL: The Owner shall meet all requirements and obligations imposed by the State of Colorado concerning management of stormwater and runoff and fugitive dust, and shall comply with all State imposed requirements associated with State permits issued or governing the stormwater detention ponds, fugitive dust, and erosion control associated with the Property. The Owner shall provide a copy of said permits to the City Engineer prior to commencement of any work associated with the Property. Further, the Owner shall fully comply with the applicable sections of the City's Soil Erosion and Sediment Control Ordinance, sections 15-50 through and including 15-58 of the Arvada City Code, and in particular shall comply with section 15-54 pertaining to the use of reasonable practices to control soil erosion and sediment generated by development of the Property. Compliance with such shall be a pre-condition of obtaining building permits or certificates of occupancy, as the case may be. The City may deny or revoke any permit issued to the Owner in the event of non-compliance with the State or City requirements. The Owner shall also follow any new standards that the City may adopt for erosion control due to drought conditions.

10. RIGHTS-OF-WAY: The Owner shall comply with all applicable provisions of Chapter 27, Article V, sections 27-200 through 27-226 of the Arvada City Code, entitled "Rights-of-Way." This article contains requirements including, but not limited to, Owner escrow for improvements in public rights-of-way and street surface restoration for public streets.

11. SUBDIVISION MONUMENTATION: In accordance with the applicable Colorado Revised Statutes as amended, and in accordance with Section 7.7 of the Arvada Land Development Code, the Owner shall establish all subdivision monumentation and have the monumentation approved by the City prior to issuance of the first certificate of occupancy within the Property.

12. STREET IMPROVEMENTS AND MAINTENANCE: The Owner shall maintain, in a

reasonable, suitable and proper condition for travel, ingress and egress, all streets and access ways included within the Final Plans for the Property until they are completed and accepted for maintenance by the City. The Owner shall take all steps necessary to limit and prevent the accumulation of, and to remove mud, sediment, dirt, trash, and other debris that is "tracked," blown, or otherwise carried onto public property or off-site onto private property during development. Such obligation shall continue until all development associated with the Property is complete and improvements accepted by the City for maintenance. If the Owner fails to remedy any conditions caused or generated by the development as contemplated herein within twenty-four hours (24 hrs.) of oral or written notice by the City, the City may enter the property, streets and public ways to remedy such conditions. The Owner shall pay the City for any and all costs incurred by the City in remedying such conditions. Payment of said costs shall be made prior to the City's issuance of additional building permits or certificates of occupancy for all or any part of the development, or immediately upon request from the City, whichever is sooner. The City may limit, deny or revoke building permits or certificates of occupancy until such time as costs incurred, pursuant to this Agreement, are paid in full. Nothing herein shall obligate the City to remedy such conditions or shall limit the City in its selection of the method or manner of remedy, including but not limited to contracting with an individual or company to remedy such conditions. The Owner shall also replace any broken, damaged, or settled concrete that fronts the Property as deemed necessary by the City, prior to the issuance of the final certificate of occupancy on the Property.

13. INSTALLATION OF PARKING AND HARD SURFACE ACCESS: The Owner shall install, sign and stripe all parking and hard surface areas within the Property, as illustrated on the approved Final Plans and in conformance with the Arvada Land Development Code prior to the issuance of any certificate of occupancy for the Property. The Owner shall comply with "Interpretation of Hard Surface Areas," Arvada City Code, Sections 30-46 through 30-83as amended and with the Arvada Land Development Code.

14. PUBLIC UTILITY FEES: The Owner shall pay all installation charges for lighting, electric and gas required by Public Service Company/Xcel Energy for development of the Property.

15. LIGHTING RESTRICTIONS: Cut-off type fixtures with flush-mounted, flat lenses that cast light downward, and not out toward adjacent properties, must be used. All exterior lighting specifications must comply with the Arvada Land Development Code and the new lighting regulations currently being adopted by the City of Arvada. All exterior lighting must be approved by the Community Development Director prior to issuance of the first building permit within the Property. All lighting associated with the development of this Property shall be extinguished within 1 hour of closing (except for that needed for security purposes) and shall remain off until 1 hour prior to opening for business on the following day. Should it be determined by the City, at a later date, that lighting on the Property is problematic to any adjacent residential uses, the Owner, or its successors and assigns, as applicable, shall promptly adjust the light fixtures to resolve the issue to the City's satisfaction.

16. DETENTION MAINTENANCE: The Owner shall obtain approval from the City Engineer of the final drainage plan for this development prior to approval of the associated construction plans/Final Plans. Drainage easements are required for all detention areas and drainage channels, which shall be privately maintained by the Owner, its successors or assigns. The Owner shall include language to this effect in any covenants for the Property. In no event shall the City be responsible for constructing or maintaining the drainage/detention facilities or easements within the Property.

17. PARK AND TRAIL IMPROVEMENTS: The Owner shall be responsible for constructing

a 10-ft. wide trail along West 64th Avenue adjacent to the Property, prior to issuance of the first certificate of occupancy within the Property. The design of this trail and its connections must meet the requirements stated in the referral responses from the Golf, Parks and Hospitality Services Department, the approved Final Plans, and the Arvada Land Development Code.

18 INSTALLATION OF LANDSCAPING AND RECREATIONAL AMENITIES: The Owner acknowledges that the City has adopted in the past, and may in the future, adopt water restrictions which impact the viability of installing and maintaining the landscaping as illustrated on the approved landscape plans for the Property. Those watering restrictions may prohibit or qualify the installation of trees, shrubs, new seed, and/or sod for irrigated turf areas. In the event of such prohibition, the Owner shall deposit funds with the City for escrow in an amount equal to 110% of the estimated cost of improvements not installed due to the prohibition, including, but not limited to irrigated turf areas, trees, shrubs, mulch, edger, and weed barrier. Upon expiration of water restrictions, the Owner shall complete installation of the remaining improvements in accordance with the Final Plans for the Property, within ninety (90) days. During any restrictions, the City still encourages the installation of trees and shrubs, if they are drip irrigated or hand watered. However, the City may not have any water available for the irrigation of these landscape materials installed at that time. If the Owner proceeds with the installation of any plantings at that time, it is done at the Owner's sole risk.

Installation of irrigation systems and other hard surface areas (such as fencing, playground equipment, covered shelters, or other such amenities) shall be completed by the Owner, at its sole expense, prior to the issuance of the first certificates of occupancy within the Property, unless the improvements have been delayed due to reasons beyond the Owner's control, such as adverse weather conditions. The Owner shall deposit funds with the City for escrow in an amount equal to 150% of the estimated cost of the remaining hard surface site elements (including irrigation systems, fencing and other elements as noted above) that are not installed prior to issuance of certificates of occupancy. During periods of time when no water restrictions are in effect, the Owner shall deposit funds with the City for escrow in an amount equal to 150% for all improvements not completed prior to issuance of a certificate of occupancy. A landscape contractor, acceptable to the City, shall make a determination of the estimated cost of improvements. The City, at its sole discretion and upon the City's rejection of an estimate provided by the Owner, may obtain an estimate of the costs of landscaping. Such estimate shall be binding upon the Owner in determining the amount of funds to be escrowed for purposes of this paragraph.

The City shall release its interest in the escrowed funds only upon completion of all landscaping obligations by the Owner and approval of such by the City. In the event that the Owner defaults upon its obligations as specified in this paragraph, following the escrow of funds, the City may apply all funds toward the completion of the Owner's landscaping obligations. For the purpose of applying such funds toward the completion of the Owner's landscaping obligations "completion" shall mean and include the cost of labor, materials, contract management, and administration. The City shall refund the escrowed funds not applied to completion of landscaping required by the final landscape plan upon application and verification of entitlement. The method and manner in which the City elects to undertake and complete the landscaping obligations of the defaulting Owner shall be within the sole discretion of the City; provided, however, that nothing herein shall obligate the City to install or complete the landscaping improvements and nothing herein shall prevent, prohibit, or limit the remedies available to the City to enforce the Owner's obligations under this paragraph.

19. INSTALLATION OF FENCING: The Owner shall ensure that all fencing for the Property conforms to the Final Plans and the requirements of Section 6.5 of the Arvada Land Development Code. Fencing shall require separate permits and approvals from the City prior to

construction/installation. The Owner agrees to install all fencing as illustrated on the Final Plans for the Property. Installation of the fencing must be completed prior to the issuance of the first certificate of occupancy within the Property.

20. LANDSCAPING AND FENCING MAINTENANCE: The Owner or its successors, or assigns, including any property owner's association, shall maintain in perpetuity (at its sole expense) all landscaping, fencing, and any other amenities (collectively referred to herein as "Landscaping") installed within or associated with the Property pursuant to the Final Plans, regardless of whether the Landscaping, as actually installed, fails to specifically conform to the requirements of the Final Plans and regardless of whether the Owner or the City installs the Landscaping. 6

21. SCREENING OF MECHANICAL EQUIPMENT: The Owner shall screen all roof mounted and wall mounted equipment from view pursuant to Section 6.6.4.F.3 of the Arvada Land Development Code to the satisfaction of the City of Arvada Community Development Director prior to issuance of each certificate of occupancy within the Property.

22. TRASH ENCLOSURES: The Owner shall construct all trash enclosures in conformance with the approved Final Plans and per Section 6.5.11 of the Arvada Land Development Code, prior to issuance of the first certificate of occupancy for the Property. The trash enclosures, including the gates, must be constructed of non-combustible materials, and have an architectural design compatible with the primary structure, using matching materials and colors. The Owner or its successors or assigns shall keep the trash enclosure gates closed at all times, except for the periodic moments when access is needed to place trash within the containers, or empty or replace the trash receptacles themselves.

23. SIGNAGE: The Owner shall ensure that all signage for the Property conforms to the Final Plans and the requirements of Section 6.17 of the Arvada Land Development Code. No signage illustrated on the Final Plans is deemed approved by the City as part of the Final Plans approval. Signage shall require separate permits and approvals from the City prior to construction/installation.

24. INTENTIONALLY OMITTED.

25. AS-BUILT CONSTRUCTION PLANS: The Owner shall file, or cause to be filed, with the City an original or reproducible copy of the as-built construction plans of said public improvements promptly upon the completion of the improvements. Failure to do so will delay commencement of the two-year warranty for said public improvements, in which case the Owner agrees to hold harmless and indemnify the City for any and all actions, claims, damages, injuries, and liabilities resulting from, or in any way related to, such improvements or the failure to submit such as-built plans. The Owner further understands and agrees that, as a result of its failure to promptly submit such as-built plans, the City may withhold or deny subsequent building permits or certificates of occupancy; either related to the Property or any subsequent development by the Owner, until such failure is remedied.

26. DELAYS: The parties have executed this Agreement such that completion of the improvements shall be subject to strikes, accidents, acts of God, weather conditions which justify a delay in construction in light of standard practices in the building profession, inability to secure labor, fire regulations or restrictions imposed by any government or governmental agency, or other delay resulting from events which are beyond the control of the delaying party and which are agreed to by the parties as justifying delay.

27. WAIVER: A waiver by any party to this Agreement or the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

28. BINDING EFFECT: The parties hereto agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns thereof and shall constitute covenants running with the Property. In the event that all or part of the Property is sold, transferred, or otherwise conveyed to additional or multiple parties, all Owners and Owners shall be jointly and severally responsible for the obligations of the Owner and Owner as set forth in this Agreement. 7

29. SEVERABILITY: Invalidation of any of the provisions of this Agreement or any paragraph sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement. This Agreement may be amended only by an instrument in writing signed by all parties.

30. NO THIRD PARTY BENEFICIARIES: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City, the Owner, and the Owner, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of the City, the Owner, and the Owner that any person other than the City, the Owner, or the Owner receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

31. GOVERNING LAW AND ENFORCEMENT: The laws of the State of Colorado shall govern this Agreement. The parties agree and acknowledge that this Agreement may be enforced at law or in equity. In addition to any other available remedies, it is understood and agreed that the City may withhold or revoke any permits or certificates, including but not limited to building permits and certificates of occupancy, for the Property or for any structure or lot within this development in the event of a breach of this Agreement by the Owner or Owner.

32. ATTORNEY'S FEES: If the Owner or Owner breaches this Agreement, then such breaching party shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

33. PARAGRAPH CAPTIONS: The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

34. RECORDATION FEES: The City of Arvada shall record this Agreement and any approved subdivision plat for the Property (as applicable) with the Clerk and Recorder's office of the appropriate County per the provisions of the Arvada Land Development Code. Prior to recordation, the Owner shall provide the City with an updated title commitment to ensure that all appropriate parties in interest sign this Agreement. Prior to recordation, the Owner shall also pay all costs associated with recordation of these items with the County Clerk and Recorder, based on the recordation rate of \$6 for the first 8 1/2" x11" sheet and \$5 per each sheet thereafter and \$11 for the first 24" x 36" sheet and \$10 per each sheet thereafter.

35. INCORPORATION OF EXHIBITS: Unless otherwise stated in this Agreement, exhibits referenced in this Agreement shall be incorporated into this Agreement for all purposes. Reference to "Job Numbers" or "Project Numbers" in this Agreement is a reference to Final Plans and documentation which is retained as a public record on file and available for public inspection and

review upon request at the City of Arvada, Municipal Building, 8101 Ralston Road, Arvada, Colorado. Such Final Plans and documentation filed with the City, approved by the City and noted within this Agreement are hereby incorporated into this Agreement for all purposes.

36. REVIEW OF REFERENCED DOCUMENTS: The Owner and Owner hereby understand and acknowledge that the public documents referenced in this Agreement, including but not limited to the Arvada City Code, Arvada Land Development Code, Engineering Specifications, and Design Guidelines were prior to the execution of this Agreement, and are presently, available for review and inspection at the Arvada Municipal Building, 8101 Ralston Road, Arvada, Colorado, from 8:00 a.m. through 5:00 p.m., Monday through Friday.

37. INDEMNIFICATION AND HOLD HARMLESS: The Owner and Owner shall indemnify, hold harmless, release and discharge the City of Arvada and the City's officers, employees, agents, and contractors from all liability, claims, and demands, including reasonable attorney's fees and court costs, which arise out of or are in any manner connected with or related to the approval of the Final Plans for the Property

38. NOTICES: Any notice or communication required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail or mail service such as Federal Express, United Parcel Service, etc.. Such notice or communications shall be given to the parties at their addresses set forth below:

City:
City of Arvada
Attn: City Manager (copy to City Attorney)
8101 Ralston Road
Arvada, Colorado, 80001-8101

Owner:
TCF National Bank
6400 South Fiddler's Green Circle, Suite 800
Englewood, CO 80111

In witness whereof, the parties hereto have set their hands and seals on the day and year noted below.

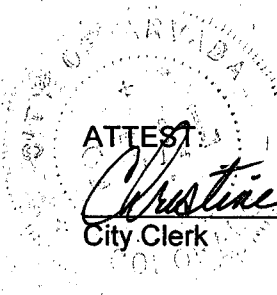
DATED THIS 27 DAY OF June, 2006.

CITY OF ARVADA, a Colorado Municipal Corporation

D. Michael Elms

D. Michael Elms, Community Development Director

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ATTEST

Christine A Koch

City Clerk

APPROVED AS TO FORM:

Christopher K. Daly

for Christopher K. Daly, City Attorney

OWNER
TCF National Bank

Wayne Marty

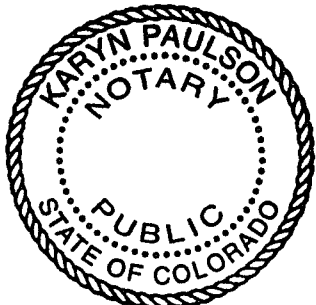
Wayne Marty, President

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF ARAPAHOE)

The foregoing was acknowledged before me this 1st day of June, 2006, by Wayne Marty, as President of TCF National Bank.

Karyn Paulson
Notary

My Commission Expires: 11/29/09



My Commission Expires 11/29/2009