

**ESCROW AGREEMENT BETWEEN THE CITY OF RAPID CITY, PRESIDENT'S
PLAZA, LLC AND PENNINGTON TITLE COMPANY**

I. PARTIES:

The parties to this Agreement are City of Rapid City, President's Plaza, LLC, of 528 Kansas City Street, Rapid City, SD 57701 and Pennington Title Company of 725 Kansas City Street, Rapid City, SD 57701.

II. PURPOSE:

The purpose of this Agreement is to set forth the terms under which the City of Rapid City shall transfer \$2,800,000 in Vision Funds into escrow with Pennington Title Company pursuant to Master Development Agreement between the City of Rapid City and President's Plaza, LLC and Addenda thereto and to set forth the terms under which said funds shall be disbursed as well as the compensation to be received by Pennington Title Company for this service.

III. DEPOSIT AND DISBURSEMENT AGREEMENT:

- A. Deposit of funds by City Within 10 days of the execution of this Escrow Agreement by all parties, City of Rapid City shall transfer \$2,800,000 in Vision Funds into the escrow account as directed by Pennington Title Company.
- B. Disbursement Agreement The escrow funds are to be used for the design and construction of the public improvements of the project. Payments from the Vision Funds are governed by the Master Development Agreement dated September 21, 2009, between City of Rapid City and St. Joe Investment Group, LLC, which Agreement was assigned to President's Plaza, LLC and Addenda thereto. Funds shall be disbursed upon the following terms and conditions:

DESIGN PHASE

- 1. As design phases for the public improvements in the project are completed, President's Plaza shall transfer ownership of the designs to City as a condition precedent to the City's approval of transfer of funds in reimbursement for design fees.
- 2. All requests for payment of design fees shall be submitted to the City and shall be accompanied by documentation which includes a description of the specific designs completed; the cost of the completed designs and fully

executed lien releases by the design consultant acknowledging payment and agreeing to the transfer of the design ownership to the City of Rapid City.

3. Within 45 days from receipt of a request for disbursement from President's Plaza, the City will review the request for payment, and upon all required documents having been submitted, and lien waivers have been arranged for, shall if the requirements of this disbursement agreement have been met, direct the escrow agent in writing to process the payment.
4. If the Master Development Agreement is terminated, any unearned funds shall be distributed to the City.

CONSTRUCTION PHASE

1. Prior to payment of Vision Funds to President's Plaza for construction of public improvements in the project, President's Plaza agrees to provide to the City complete documentation of its full compliance with the provisions of the public bidding statutes contained in SDCL 5-18A, 5-18B, 5-A18C, and or 5-18D.
2. Compliance with the public bidding statutes for construction costs, delivery of documentation of compliance with public bidding statutes and completion of the construction of distinct portions of the public improvements ultimately to be transferred to the City are conditions precedent to the City's obligation to release Vision Funds to President's Plaza for the construction phase of the project.
3. The request for all payments shall submitted to the City and shall be accompanied by documentation that includes a description of the specific improvements completed, the cost of the completed improvements, and fully executed lien releases from the contractor for the completed portion of the public improvements.
4. Within 45 days from receipt of a request for disbursement from President's Plaza, the City will review the request for payment, and upon all documentation having been submitted and lien waivers arranged for, shall if the requirements of this disbursement agreement have been met, direct the escrow agent in writing to process the payment.
5. If the Master Development Agreement is terminated, any unearned funds shall be distributed to the City.

IV. ESCROW AGENT'S DUTIES:

The Escrow Agent's duties are as follows:

1. Escrow Agent shall hold the funds and disburse them, including upon termination of the Master Development Agreement, only upon written direction and approval from both City and President's Plaza signed by the City Finance Officer and a member of President's Plaza or upon receipt of a final Judgment from a court of competent jurisdiction directing disbursement.
2. During the term of the escrow, the Escrow Agent shall be authorized and shall deposit the Vision Funds in an interest bearing account or accounts in banking institutions approved in writing by both City and President's Plaza. Escrow Agent shall not be liable for any loss of funds caused by any act or failure of any approved bank.
3. Any interest earned on the deposited funds shall be paid to the City quarterly with the first payment to be made on or about September 1, 2014.

V. ESCROW AGENT'S FEES:

The Escrow Agent shall receive a fee of _____ to be paid by President's Plaza.

VI. DISPUTES:

1. If the City Finance Officer refuses to authorize a disbursement request submitted by President's Plaza, Finance Officer shall set forth in writing the basis for such refusal.
2. President's Plaza shall have the right, if it elects to do so, to appeal any such refusal to the City Council.
3. If the City Council denies the appeal, President's Plaza shall have the right to seek declaratory relief in Pennington County Circuit Court.

VII. GOVERNING LAW:

This Agreement shall be governed by South Dakota law. Venue of any case shall be in Pennington County Circuit Court.

VIII. INDEMNIFICATION:

That City of Rapid City and President's Plaza, LLC do hereby agree to indemnify, save harmless and reimburse Pennington Title Company for any loss or damage it may incur as a result of acting as the Escrow Agent under this agreement, including the cost of defending any

action which may be brought by any person or persons because of the aforementioned escrow unless such loss or damage is caused by actions on the part of Pennington Title Company that are willful or grossly negligent.

IX. BINDING EFFECT:

This Agreement shall inure to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

X. DRAFTING:

This Agreement was initially drafted by counsel for President’s Plaza, but has been reviewed by City Attorney and City Staff and input provided. The Agreement shall be construed as though both parties drafted it.

XI. ENTIRE AGREEMENT:

The parties agree that this writing represents the entire agreement between them related to the escrow account and payments therefrom and that there are no other oral or collateral agreements or understandings of any kind or character except those contained herein. City of Rapid City and President’s Plaza, LLC acknowledge that there are other Agreements between them related to the President’s Plaza Project which are not modified or affected by this Agreement.

Dated _____

CITY OF RAPID CITY

By _____

Sam Kooiker, Mayor

ATTEST:

Finance Officer

Dated _____

PRESIDENT’S PLAZA, LLC

By _____

Hani Shafai, Member

By _____
Pat Hall, Member

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF PENNINGTON)

On this the _____ day of _____ 2014, before me, the undersigned officer, personally appeared Hani Shafai, who acknowledged himself to be a member of President's Plaza, L.L.C., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My commission expires:

(SEAL)

STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF PENNINGTON)

On this the _____ day of _____ 2014, before me, the undersigned officer, personally appeared Pat Hall, who acknowledged himself to be a member of President's Plaza, L.L.C., and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My commission expires:

(SEAL)

Dated _____

PENNINGTON TITLE COMPANY

By _____

Its _____

STATE OF SOUTH DAKOTA)

)ss.

COUNTY OF PENNINGTON)

On this the _____ day of _____ 2014, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be _____ of Pennington Title Company, and that as such, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires:

(SEAL)