

## ASSIGNMENT AND NOVATION AGREEMENT

THIS ASSIGNMENT AND NOVATION AGREEMENT (this "Agreement") has been made to be effective upon the date executed by the City (the "Effective Date"), and has been entered into by and between St. Joe Investment Group, L.L.C., a South Dakota limited liability company, 402 West 9<sup>th</sup> Street, Sioux Falls, South Dakota 57104 ("Assignor"), President's Plaza LLC, a South Dakota limited liability company, 528 Kansas City Street, Rapid City, South Dakota 57702 ("Assignee"), and the City of Rapid City, a municipal corporation, 300 6<sup>th</sup> Street, Rapid City, South Dakota 57701 (the "City").

WHEREAS, Assignor has entered into a master development agreement with the City, dated September 21, 2009, as amended (such agreement as amended, the "Master Development Agreement"), for the construction and development of a mixed use facility consisting of public improvements, public parking, private parking, retail, office, commercial, residential and green space located at the corner of 6<sup>th</sup> Street and St. Joseph Street in Rapid City, South Dakota (hereinafter the "Project"); and

WHEREAS, the assignment of the Master Development Agreement is subject to the provisions of Section 8A of the Master Development Agreement; and

WHEREAS, Assignor has agreed to transfer and assign to Assignee all of its rights, duties and obligations under the Master Development Agreement as a part of the sale to Assignee of certain assets of Assignor related to the Project; and

WHEREAS, Assignor desires to be discharged from further performance of the obligations imposed under the Master Development Agreement, and for Assignee to be

substituted in the name, place and stead of Assignor under the Master Development Agreement; and

WHEREAS, the City is willing to release and discharge Assignor from all obligations and liabilities enumerated under the Master Development Agreement from and after the Effective Date, and to permit the assignment of the Master Development Agreement to Assignee, subject to Assignee assuming the obligations imposed upon Assignor under the Master Development Agreement from and after the Effective Date.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree for themselves, and their respective successors and assigns, as follows:

1. Assignor hereby transfers and assigns to Assignee all of Assignor's right, title and interest in, to and under the Master Development Agreement.

2. Assignee hereby accepts the assignment of the Master Development Agreement and agrees to assume all of Assignor's rights, duties and obligations in, to and under the Master Development Agreement from and after the Effective Date.

3. The City agrees that Assignor shall be fully released from all obligations imposed under the Master Development Agreement.

4. Assignor, Assignee and the City hereby agree that this Agreement shall constitute a novation of the obligations of Assignor under the Master Development Agreement, and that Assignee shall be substituted in the name, place and stead of Assignor under the Master Development Agreement as of the Effective Date.

5. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

6. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the Effective Date.

[SIGNATURES FOLLOW SEPARATELY]

[SIGNATURE PAGE OF ASSIGNOR]

ASSIGNOR:

ST. JOE INVESTMENT GROUP, L.L.C.

By: *Bryan S. Vulcan*  
Its: *Member*

STATE OF SOUTH DAKOTA )  
 ) :SS:  
COUNTY OF *Pennington* )

On this the *11<sup>th</sup>* day of *April*, 2011, before me, the undersigned officer, personally appeared *Bryan Vulcan*, who acknowledged himself to be the *Member* of St. Joe Investment Group, L.L.C., a South Dakota limited liability company, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as *Member*.

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

*[Signature]*  
Notary Public, South Dakota  
My Commission Expires: *10/27/2016*

(SEAL)



[SIGNATURE PAGE OF ASSIGNEE]

ASSIGNEE:

PRESIDENT'S PLAZA LLC.

By: *Daniel F. Hall, Chairman*

Its: *members*

STATE OF SOUTH DAKOTA     )  
  :SS:  
COUNTY OF PENNINGTON    )

On this the *13<sup>th</sup>* day of *April*, 2011, before me, the undersigned officer, personally appeared *Daniel F. Hall, Chairman*, who acknowledged himself to be the *members* of President's Plaza LLC, a South Dakota limited liability company, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as *members*.

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

*[Signature]*  
Notary Public, South Dakota  
My Commission Expires: *8/29/13*

(SEAL)

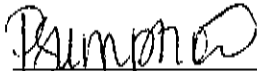
[SIGNATURE PAGE OF CITY]

CITY:

CITY OF RAPID CITY

  
\_\_\_\_\_  
Mayor Alan Hanks

ATTEST:

  
\_\_\_\_\_  
Finance Officer

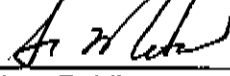
(SEAL)

STATE OF SOUTH DAKOTA        )  
  ):SS.  
COUNTY OF PENNINGTON        )

On this 18th day of April, 2011, before me, the undersigned officer, personally appeared Alan Hanks and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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



  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 4-19-2013

**EXHIBIT**

**MASTER DEVELOPMENT AGREEMENT**

[ATTACHED]

## MASTER DEVELOPMENT AGREEMENT

This Master Development Agreement ("Agreement") is made and entered into this 21 day of Sept., 2009, by and between the City of Rapid City, a South Dakota municipal corporation ("City") and St. Joe Investment Group, LLC ("St. Joe"), a South Dakota limited liability company ("St. Joe") and is subject to the following terms and conditions.

### RECITALS

WHEREAS, on August 3, 2009, the City approved a motion to direct the City Attorney's Office to enter into negotiations with St. Joe regarding a public/private project on the corner of 6th St. and St. Joseph St.

WHEREAS, the purpose of this Agreement is to define the obligations and responsibilities of the City and St. Joe in connection with the public/private partnership to privately develop certain real property currently owned by the City, legally described as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 in Block 95 of the Original Townsite of the City of Rapid City, Pennington County, South Dakota. ("City Property"), into a mixed use facility consisting of public improvements, public parking, private parking, retail, office, commercial, residential and green space as part of the City's commitment to revitalize downtown Rapid City ("St. Joe Project" or "Project").

WHEREAS, City and St. Joe acknowledge their respective obligations in this Agreement are contingent upon, and shall not be deemed to have arisen until each and every item identified as a condition precedent in this Agreement has occurred.

WHEREAS, City and St. Joe knowingly and voluntarily acknowledge the mutual covenants expressed herein shall constitute sufficient consideration for the performance of this Agreement by the respective parties.

NOW, THEREFORE, the parties hereby agree as follows:

1. **Overview of St. Joe Project.** In order to successfully complete the development of the City Property into the St. Joe Project in a timely manner, the following steps must occur in accordance with state law and City ordinance:
  - A. City must exchange the City Property with St. Joe pursuant to SDCL § 6-5-4. The exchange of City Property shall be conditioned on the Project being completed by St. Joe. If the Project is not completed by St. Joe, or this Agreement is terminated for any reason, St. Joe shall promptly transfer the City Property back to the City, subject to Section 3H.
  - B. City shall make available the fixed sum of two million eight hundred thousand dollars (\$2,800,000) in 2012 Funds to fund the design and construction of the public improvements of the St. Joe Project.



- C. A sum not to exceed five million dollars (\$5,000,000) in tax increment financing ("TIF") from Tax Increment District #62 ("TID #62") shall be made available by the City to fund applicable costs of the St. Joe Project, except as modified by Section 2C.
- D. St. Joe shall design and construct the Project and the City shall participate in the design of the Project through the building permit process and SDCL Chapter § 11-1 Historic Preservation review process. As design phases for the public improvements in the Project are completed, St. Joe shall transfer ownership of said designs to City.
- E. St. Joe will comply with the provisions of SDCL 5-18-1 through 5-18-25 for the public improvement portions of the Project that will ultimately be transferred to the City. The City's aggregate monetary obligations under this Agreement shall not exceed the actual applicable costs and bid amounts, including permissible change orders, incurred by St. Joe for the construction of the public improvement portions of the Project or the amounts set out in the Agreement, whichever is less.
- F. City shall lease from St. Joe a minimum of 350 public parking spaces within the Project ("Lease") for the sum of one dollar (\$1) annually. The term of the Lease will be consistent with the time period required for St. Joe to comply with New Markets Tax Credit ("NMTC") qualifying rules. During the term of the Lease, City shall retain all revenues from the public parking spaces and shall be responsible for the insurance, maintenance and upkeep of the leased parking spaces.
- G. At the end of the term of the Lease, the St. Joe shall transfer to the City a minimum of 350 public parking spaces within the Project under a condominium, or similar, legal arrangement. City and St. Joe shall put in place standard easements, covenants and maintenance agreements appropriate for City ownership of public parking spaces within a public/private development.

2. **Obligations of St. Joe.**

- A. St. Joe agrees it will accept title to the City Property, after it has been replatted into one Lot as set forth in Section 3A, in exchange for granting the City a vested right, subject to a condition subsequent, to receive from St. Joe fee title to a minimum of 350 public parking spaces within the Project at the conclusion of the Lease term under a condominium, or similar, legal arrangement. St. Joe acknowledges the interest in City Property to be transferred by the City is a fee simple determinable interest with a possibility of reverter retained by the City in the event the Project is not completed, or this Agreement is terminated. St. Joe further

acknowledges the City shall release or extinguish its reversionary interest in the City Property by quitclaim deed, or other legal instrument, when the public parking spaces are transferred to the City at the end of the Lease term. St. Joe shall be responsible for one-half the cost of title insurance and transfer fee, if any, upon the closing of the transfer of City Property to St. Joe and when the public parking spaces are transferred to the City.

- B. Prior to payment of 2012 Funds to St. Joe, for construction of public improvements in the Project, St. Joe agrees to provide to the City complete documentation of its full compliance with the provisions of the public bidding statutes contained in SDCL 5-18-1 through 5-18-25. 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 2012 funds to St. Joe for the construction phase of the Project. As design phases for the public improvements in the Project are completed, St. Joe shall transfer ownership of said designs to City. St. Joe's transfer of ownership of the designs to the public improvements is a condition precedent to the City's obligation to release 2012 funds for the design phase of the Project. The request for all payments shall be accompanied by documentation that includes a description of the specific improvements or designs completed, the cost of the completed improvements or designs, and fully executed lien releases from the contractor for the completed portion of the public improvements or designs. The City will review the request for payment, and upon determining that all required documentation has been submitted, will process the payment within 45 days.
- C. St. Joe agrees to jointly apply with the City for an amendment to TID #62 to reallocate line items for applicable costs of the Project, as appropriate. St. Joe agrees to enter into a Contract for Private Development with the City in connection with TID #62. St. Joe acknowledges the City shall not expend more than five million dollars (\$5,000,000) in TIF funds for applicable costs of the Project, except that the amount stated in this Section may be modified by mutual agreement of the parties in the event the value of the City Property fails to appraise for the amount used in St. Joe's pro forma calculations in the amount of one million dollars (\$1,000,000), or unforeseeable statutorily allowed expenditures are incurred by St. Joe. For example, if the cost of removing contaminated soil exceeds the estimates set forth in the Contract for Private Development or TID Project Plan, St. Joe may request reallocation of the Project Plan line items.
- D. St. Joe agrees to design and construct the Project in compliance with all City ordinances and state law, including Historic Preservation rules. St.

Joe agrees to collaborate with the City on the design of the public improvements within the Project. As design phases for the public improvements in the Project are completed, St. Joe shall transfer ownership of said designs to City.

- E. St. Joe will comply with the provisions of SDCL § 5-18-1 through § 5-18-25 for the public improvement portions of the Project that will ultimately be transferred to the City. St. Joe acknowledges the City's aggregate monetary obligations under this Agreement shall not exceed the actual applicable costs and bid amounts, including permissible change orders, incurred by St. Joe for the construction of the public improvement portions of the Project or the amounts set out in the Agreement, whichever is less
- F. St. Joe agrees to enter into a Lease with the City in connection with a minimum of 350 public parking spaces within the Project, as generally described, without limitation, in Sections 1F & 1G.
- G. At the end of the term of the Lease, the St. Joe shall transfer to the City a minimum of 350 public parking spaces within the under a condominium, or similar, legal arrangement. St. Joe also agrees to enter into standard easements, covenants and agreements with the City appropriate for City ownership of public parking spaces within a public/private development.

3. **Obligations of City.**

- A. City agrees it will comply with SDCL § 6-5-4 in a timely manner in order to transfer title to City Property to St. Joe in exchange for St. Joe granting the City a vested right, subject to a condition subsequent, to receive from St. Joe fee title to a minimum of 350 public parking spaces within the Project as set forth in the Lease. The City further agrees to replat the City Property in a timely manner to create a single lot legal description for the City Property. The City further agrees the interest initially transferred by the City to St. Joe is a fee simple determinable interest with a possibility of reverter retained by the City in the event the Project is not completed, or this Agreement is terminated. City further acknowledges it shall release or extinguish its reversionary interest in the City Property by quitclaim deed, or other legal instrument, when the public parking spaces are transferred to the City at the end of the Lease term. The City shall take all actions necessary to grant St. Joe fee simple title to the City Property after the conditions set forth in this Agreement have been satisfied. City shall be responsible for one-half the cost of title insurance and transfer fee, if any, upon the closing of the transfer of City Property to St. Joe and when the public parking spaces are transferred to the City. City agrees to pay the full cost of the appraisal required by SDCL § 6-5-4.

- B. City agrees to take actions required by state law and City ordinances to make the fixed sum of two million eight hundred thousand dollars (\$2,800,000) in 2012 Funds available for the design and construction of the public improvements in the Project, as set forth in Section 2B.
  - C. City agrees to jointly apply with St. Joe for an amendment to TID #62 to reallocate line items for applicable costs of the Project, as appropriate. City agrees to enter into a Contract For Private Development with St. Joe in connection with TID #62. City shall not expend more than five million dollars (\$5,000,000) in TIF funds for the applicable costs of the Project, except that the amount stated in this Section may be modified by mutual agreement of the parties as set forth in Section 2C.
  - D. City agrees to issue a building permit for the St. Joe Project upon St. Joe's compliance with all City Ordinances and state statutes.
  - E. City agrees St. Joe may use any method it desires for managing the overall Project, provided that the public improvement portions of the Project shall be constructed using the public bidding process contained in SDCL § 5-18-1 through § 5-18-25.
  - F. City agrees to enter into a Lease with St. Joe in connection with 350 public parking spaces within the Project, as generally described, without limitation, in Sections 1F & 1G.
  - G. Prior to St. Joe's transfer of a minimum of 350 public parking spaces to the City, City agrees to enter into standard easements, covenants and agreements with St. Joe appropriate for City ownership of public parking spaces within a public/private development.
  - H. In the event St. Joe places a mortgage upon the Project or City Property, City agrees that upon request from the holder or proposed holder of any mortgage, City shall execute a subordination agreement subordinating the City's reversionary interest in the City Property, future interest in the public parking spaces, leasehold interest under the Lease, or any other interest the City may have in the Project or City Property that may be reasonably identified, to the interest of such mortgage holder and their respective heirs, successors and assigns. The lender shall agree to release its mortgage on the public parking spaces transferred to City at the end of the Lease term or upon foreclosure of the mortgage.
4. **Conditions Precedent.** The obligations of the City and St. Joe are expressly conditioned on:
- A. Closing on the transfer of the replatted City Property to St. Joe as set forth in Sections 1A, 2A and 3A by December 31, 2009.

- B. The sum of two million eight hundred thousand dollars (\$2,800,000) in City 2012 Funds shall be dedicated to design and construction costs of the public improvements in the Project.
- C. City and St. Joe entering into a Contract for Private Development in connection with TID #62 and the reallocation of Project Plan line items as set forth in Section 2C and 3C.
- D. The City's timely issuance of a building permit for construction of the Project upon St. Joe's submission of complete plans for the permit sought to the City.
- E. City and St. Joe entering into a Lease generally described in Sections 1F, 2F and 3F no later than December 31, 2009.

The obligations of St. Joe are expressly conditioned on:

- F. An allocation of NMTCs to St. Joe for the Project in an amount no less than fifteen million dollars (\$15,000,000).
- G. St. Joe obtaining financing from lenders on terms and conditions acceptable to St. Joe.
- H. The Project remains economically feasible as determined by St. Joe, except this condition may not be asserted after the date the City issues a building permit to St. Joe.

5. **Termination of Agreement.** The parties may terminate this agreement as follows:

- A. At any time by mutual written agreement.
- B. Failure of either party to meet any of its obligations under this Agreement.
- C. Either party filing for bankruptcy or being placed under a receivership.
- D. Dissolution of St. Joe.
- E. Upon foreclosure of any security interest in the Project.

6. **Default Remedies.**

- A. In the event either party defaults under this Agreement, the other party shall have all rights and remedies available at law and in equity.

B. Each party shall bear their own costs, including attorney fees, in defending or bringing any action under this Agreement.

7. **Notice.** Any notice or communication under this Master Development Agreement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its address for purposes of this Agreement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.

If to City:

City of Rapid City  
300 6th St  
Rapid City, SD 57701  
Attn: City Attorney

If to St. Joe:

St. Joe Investment Group, LLC  
402 West 9th Street  
Sioux Falls, SD 57104  
With copy to:  
Patrick G. Goetzinger  
Gunderson, Palmer, Nelson &  
Ashmore, LLP  
P.O. Box 8045  
Rapid City, SD 57709

8. **Miscellaneous.**

- A. This Agreement and the rights and obligations hereunder shall not be assigned or transferred by any party without express written consent of the other. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
- B. This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.
- C. This Agreement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes all prior negotiations, representations or agreements, oral or written. This Agreement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Agreement. The parties waive their rights to amend or modify this Agreement in any other manner.

- D. If any one or more of the provisions of this Agreement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Agreement shall not be in any way impaired.
- E. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Agreement.
- F. This Agreement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. The Circuit Court of Pennington County shall be the sole venue for any disputes arising under this Agreement.
- G. The section headings within this Agreement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Agreement.
- H. This Agreement may be executed in separate counterparts with separate signature pages and each counterpart with attached executed signatures shall constitute an executed original of this Agreement.
- I. City shall not impose special assessments on St. Joe in connection with the Project construction activities contemplated by this Agreement. This Section shall not prevent the City from including the City Property in a Business Improvement District or for imposing special assessments in the future which do not arise directly out of the construction of the Project.
- J. This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between City and St. Joe nor between City and any officer, employee, contractor or representative of St. Joe.
- K. This Agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.
- L. The parties agree time is of the essence in performing the obligations set forth in this Agreement.
- M. The parties shall execute and deliver such instruments as each party shall reasonably request, promptly and without further consideration, to more effectively consummate the transactions contemplated by this Agreement.

Dated this 21<sup>st</sup> day of September, 2009.

ST. JOE INVESTMENT GROUP, LLC

[Signature]  
By: Foster A. Kinstel  
Its: President

CITY OF RAPID CITY

[Signature]  
Mayor

ATTEST:

[Signature]  
Finance Officer

(SEAL)

State of South Dakota )

ss.

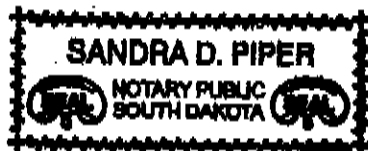
County of Pennington )

On this 21<sup>st</sup> day of September, 2009, before me, the undersigned officer, personally appeared Foster A. Kinstel, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged themselves to be a member of St. Joe Investment Group, LLC, and as a member of St. Joe Investment Group, LLC executed the foregoing instrument for the purposes herein contained.

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

[Signature]  
Notary Public, South Dakota  
My Commission Expires  
6 Feb 2013

My Commission Expires:  
(SEAL)





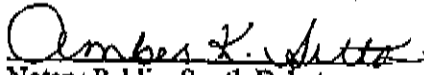
State of South Dakota )

ss.

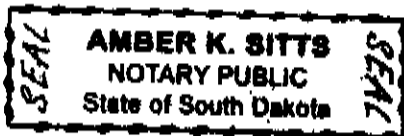
County of Pennington )

On this 25 day of September, 2009, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that he, as such Mayor and Finance Officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

  
Notary Public, South Dakota

My Commission Expires: 9-13-15  
(SEAL)



## FIRST ADDENDUM TO THE MASTER DEVELOPMENT AGREEMENT

This First Addendum to the Master Development Agreement ("Addendum") is made and entered into this 16 day of November, 2009, by and between the City of Rapid City, a South Dakota municipal corporation ("City") and St. Joe Investment Group, LLC, a South Dakota limited liability company ("St. Joe") and is subject to the following terms and conditions.

### RECITALS

WHEREAS, on September 21, 2009, the City approved The Master Development Agreement ("Agreement") between the City and St. Joe regarding the St. Joe Project.

WHEREAS, the City and St. Joe have executed a final version of the Agreement on September 21, 2009.

WHEREAS, the purpose of this Addendum is to revise certain provisions of the Agreement.

WHEREAS, the defined terms used in the Addendum shall have the same meaning as set forth in the Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Section 1B of the Agreement shall be deleted and replaced with the following:

City shall transfer the fixed sum of two million eight hundred thousand dollars (\$2,800,000) in 2012 Funds to an escrow account for the purpose of funding the design and construction of the public improvements of the St. Joe Project.

2. Section 2B of the Agreement shall be deleted and replaced with the following:

St. Joe agrees to comply with the public bidding statutes contained in SDCL § 5-18-1 through § 5-18-25. The City shall deposit the 2012 Funds in escrow with appropriate parties to facilitate new market tax credit financing for the Project, but as a condition for doing so, the City and such other appropriate parties shall enter into a disbursement agreement pursuant to which the City shall be entitled to approve any draws of 2012 Funds. Such disbursement agreement shall also provide that (i) if this Agreement is terminated any unspent 2012 Funds shall be distributed to the City; (ii) the City shall receive the interest earned on the funds held in escrow; and (iii) St. Joe shall pay the costs of the escrow arrangement. No draws of 2012 Funds from the escrow shall be permitted unless St. Joe (i) establishes compliance with the public bidding statutes for construction costs through appropriate documentation evidencing such compliance; (ii) completes the design and construction of distinct portions of the public improvements which are subject to the City's right of acquisition as described in this Agreement; and (iii) transfers ownership of the designs to the public improvements which are

subject to the City's right of acquisition as described in this Agreement. The request for all payments shall be accompanied by documentation which includes a description of the specific improvements or designs completed, the cost of the completed improvements or designs, and fully executed lien releases from the contractor, when obtained from the contractor, for the completed portion of the public improvements or designs. Within 45 days from receipt of a request for disbursement from St. Joe, the City will review the request for payment, and upon determining that all required documentation has been submitted and lien waivers have been arranged for, will direct the escrow agent to process the payment.

3. Section 3B of the Agreement shall be deleted and replaced with the following:

City agrees to take actions required by state law and City ordinances to transfer the fixed sum of two million eight hundred thousand dollars (\$2,800,000) in 2012 Funds to an escrow account for the design and construction of the public improvements in the Project, as set forth in Section 2B.


4. Section 4B of the Agreement shall be deleted and replaced with the following:

The sum of two million eight hundred thousand dollars (\$2,800,000) in City 2012 Funds shall be held in escrow and shall be dedicated to design and construction costs of the public improvements in the Project.

5. The remainder of the Agreement shall remain unchanged.

Dated this 10 day of November, 2009.


ST. JOE INVESTMENT GROUP, LLC

  
By: Lester A. Kinstad  
Its: President

CITY OF RAPID CITY

  
Mayor

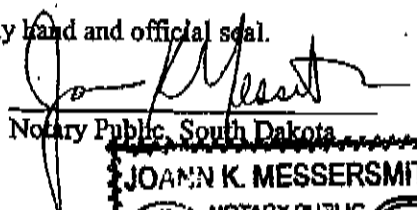
ATTEST:

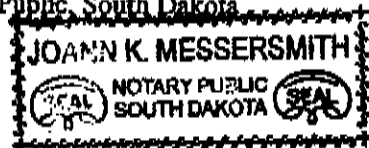
  
James H. Prestor  
Finance Officer  
(SEAL)

State of South Dakota )  
County of Minnehaha )  
ss.

On this 11<sup>th</sup> day of Nov., 2009, before me, the undersigned officer, personally appeared Les Kinsler, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged themselves to be a member of St. Joe Investment Group, LLC, and as a member of St. Joe Investment Group, LLC executed the foregoing instrument for the purposes herein contained.

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

  
Notary Public, South Dakota

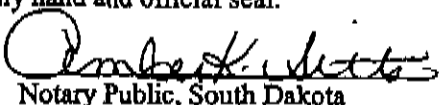


My Commission Expires:  
(SEAL)

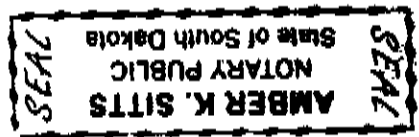
State of South Dakota )  
County of Pennington )  
ss.

On this 10 day of November, 2009, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that he, as such Mayor and Finance Officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

  
Notary Public, South Dakota

My Commission Expires: 9-13-15  
(SEAL)



PRESIDENTS  
PLAZA

January 27, 2010

Mayor Alan Hanks  
City of Rapid City  
300 Sixth St  
Rapid City, SD 57701-5034

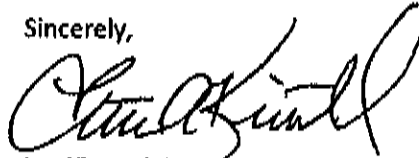
Re: St. Joe Project and Master Development Agreement between City of Rapid City and St. Joe Investment Group, LLC

Dear Mayor Hanks:

The purpose of this letter is to confirm our mutual agreement to extend the deadlines set forth in Sections 4 (A) and 4(E) of the Master Development Agreement between the City of Rapid City ("City") and St. Joe Investment Group, LLC ("St. Joe") dated September 21, 2009. Both the City and St. Joe agree the dates set forth in Sections 4(A) and 4(E) of the Master Development Agreement shall be extended to April 15, 2010. To formalize our agreement to extend the dates in Sections 4(A) and 4(E) please execute both originals of this letter. Keep one for the City's records and return one fully executed original to Patrick Goetzinger, counsel for St. Joe.

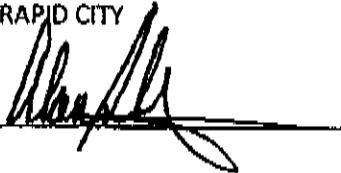
Thank you for your attention to this matter.

Sincerely,

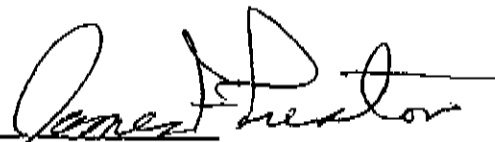


Les Kinstad, Manager  
St. Joe Investment Group, LLC

CITY OF RAPID CITY

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Finance Officer  
(SEAL)

drainage pond design is appropriate for this area. In addition, a revised drainage design detail shall be submitted for review and approval; 4. Prior to submittal of a Final Plat application, the storage building shall be removed from proposed Lot 15RA as proposed or surety shall be posted to insure that it is removed as a part of the subdivision improvements for this property; 5. Upon submittal of a Final Plat application, surety for any required subdivision improvements that have not been completed shall be posted and the subdivision inspection fees shall be paid; 6. Prior to the City's acceptance of the public improvements, warranty surety shall be submitted for review and approval as required; and, 7. The approved Preliminary Plat for which no grading, construction or other improvements have been initiated within two years of the date of approval of the plat shall be deemed as expired. However, the owner or applicant of the plat may, prior to the termination of the two year period, request a one year extension subject to approval by the City Council. Elkins explained that the applicant brought forward a phasing plan so the southeast lot is platted prior to the larger lot. Staff has met with the applicant and believe the stipulations protect the city's interest ensuring improvements are in place prior to platting of Lot A, allowing Lot B to move forward. Motion carried.

**NON-CONSENT ITEMS** – Items 62 – 94

Motion was made by Olson, second by Costello and carried to open the public comment for Items 62 – 94. Gary Hamilton expressed his concern that there are too many static signs and said there should be more than two sign credits required for electronic signs. He said the issue requires more investigation and study. Pat Hamilton said we need to pay attention to businesses with legitimate needs for advertising, safety for the community and having opportunity not to have signs block views. She said the recommendation of four sign credits is moderate. Cody Champion said that he was a member of the sign committee and that there was a good cross section of the community represented. He did research on other city's regulations, and Rapid City was the largest in volume and most difficult to understand. They did their best to make the recommendation equitable for all parties involved. Brendan Casey pointed out that there are 30 fewer billboards than 3 years ago. He said the existing sign credit scenario is working, and LEDs boards were to be encouraged. He suggested the sign credits are being devalued and said this is a regulatory taking that does not get us closer to removal of billboards. He suggested the Mayor meet with the sign people before electing a committee, and he also suggested that Alderwoman Olson abstain due to a conflict of interest. Terry Olson said they understand and accept the recommendation by the task force. They prefer the code remain as is but will abide by Council recommendations. Jim Jackson pointed out that the sign businesses represent the business community. He encouraged support for Item 91 (No. CC060710-06) and recommended that the sign credits required are 2 per structure at the most. Lisa Modrick said the task force did a lot of work and the recommendation came after careful evaluation. She said the vote was unanimous except for 3. Debra Jensen said citizens are interested in the issue of billboards. She said the work of the task force is important and should be presented to the public.

Sandra Runde expressed her support for Item 78 (No. LF060210-26).

Ron Bradeen explained that he was hired for the city surplus action and expressed his disappointment that a competing firm was hired for the Cleghorn School surplus. He does not understand why his company was not contact for the bid.

Tracy Bernard, Chris Johnson, Les Kinstand for Phil Lampert, Mike Derby for Ben Snow, Pat Getsinger, and John Brewer for Jack Lynass expressed their support for the time extension request by the St. Joe Investment Group. Jim Diddier said he would like things on a level playing ground and asked how many more extensions there will be to get locked-in funding and a completed project.

Motion was made by Chapman, second by Costello and carried to close the public comment for Items 62 – 94.

Responding to Chapman, Green explained that the purpose of 20 days after publication is to allow the referendum to operate, and he does not believe this is a referable action. Motion carried as amended.

RESOLUTION #2010-069

A RESOLUTION ENDING THE MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR ON-PREMISE SIGN PERMITS AND OFF-PREMISE SIGN PERMITS

WHEREAS, on March 15th, 2010, the Rapid City Common Council passed a resolution establishing a ninety (90) day moratorium on the acceptance of applications for certain sign permits, including those for on-premise signs; and

WHEREAS, on April 19, 2010, the Rapid City Common Council approved the appointment of an Ad Hoc Billboard Task Force composed of community members and representatives of the sign industry to make recommendations related to the installation of digital billboards, the conversion of traditional static billboards to digital billboards and issues related to the display of off-premises messages on on-premise signs; and

WHEREAS, the ad hoc task force has completed its work and made specific recommendations to the Rapid City Common Council regarding both on-premise and off-premise digital signs; and

WHEREAS, the Ad Hoc Billboard Task Force has recommended that no changes be made to the portions of the Rapid City Municipal Code governing on-premise signs; and

WHEREAS, based on the recommendation of the Ad Hoc Billboard Task Force the Rapid City Common Council finds that it is in the best interests of the City of Rapid City to end the moratorium on the acceptance of applications for sign permits as it pertains to on-premise signs.

NOW THEREFORE, BE IT RESOLVED by the City of Rapid City that the moratorium on the acceptance of applications for on-premise signs is hereby terminated; AND

BE IT FURTHER RESOLVED, by the City of Rapid City that the moratorium on the acceptance of applications for off-premise signs is hereby terminate.

Dated this 7th day of June, 2010.

ATTEST:  
s/ James F. Preston  
Finance Officer

CITY OF RAPID CITY  
s/ Alan Hanks, Mayor

(SEAL)

**Council Items & Liaison Reports**

Alderman Martinson addressed (No. CC060710-07) City Ordinance for Yard Care and explained that a constituent is looking for more stringent standards for taking care of property. Green said we have the nuisance standard, but he will research further and report to committee. Motion was made by LaCroix, second by Chapman and carried to acknowledge the report.

Larry Canfield and Norman Drake, St. Joe Investment Group, gave a presentation with a project update on the Presidential Plaza, and they explained they need a time extension to get financing in place. Chapman said this could be an attraction, and responding to Chapman, Drake pointed out this type of structure can sometimes generate additional revenue. Drake said financing could take another 2 to 5

months, and he confirmed a 6 month extension would be sufficient. Kooiker suggested considering new Council and the special election and said a short term extension would be reasonable.

Motion was made by Kooiker, second by Olson, to grant an extension to July 19, 2010 and ask that the item is added to that City Council agenda. Responding to Olson, Drake confirmed the design of the building is scalable. Responding to a question from Costello, Drake explained that they worked with a bank that lost interest and the only reason given was that the project was in South Dakota. He said that the current source they are working with is not their last resort. Weifenbach expressed concern for the process, and when asked, Green said that no funds have been moved at this point. Hadcock said this is a good project and said a time line of 6 months is realistic.

Amendment motion was made by Hadcock, second by Martinson, to grant an extension to December 6, 2010. Chapman suggested changing the date to December 31, 2010, and Martinson indicated her support with the understanding that if they get financing in place they will bring it forward right away. Responding to Weifenbach, Drake confirmed there has been no change in ownership or developers, and Weifenbach then asked for the Mayor's opinion. Responding to LaCroix, Green confirmed the City currently has 2012 funds, TIF funds and the land on the table. LaCroix and Olson expressed their support for the extension. Chapman said there was pressure to get agreements in place, and he said the bottom line is if the Council is willing to extend the agreements. Mayor Hanks said that he feels the best use for the land is for the multi-use facility, so he agrees with giving the city's partners an opportunity to get the financing. Amendment motion carried.

Upon vote being taken on the original motion as amended, motion carried.

#### Motion for Delivery of Items from Committee

Alderman Kooiker addressed the Direction on Resolution on Council Notification Procedures, and he said at minimum there should be a report but preferably a resolution. Motion was made by Kooiker, second by Waugh, to request that the Legal and Finance Committee deliver this item. Mayor Hanks explained that the item will go to committee but it must be delivered to the full Council. Olson said transparency is important and is certain this will be treated appropriately. Costello pointed out that the item was tabled because no one was there to address it at committee previously. Hadcock said if an item is brought forward it should be followed through. Weifenbach explained that he was late for the committee meeting and missed the item. Motion carried.

Elkins explained the Silver Street overlay project and said there is a neighborhood meeting set for June 22, 2010. Motion was made by Olson, second by Chapman and carried to acknowledge the report.

Alderwoman Hadcock gave a report on the Year of Unity Committee. Motion was made by Chapman, second by Olson, to acknowledge the report. Martinson requested an update on upcoming events, and Hadcock agreed to send information to Council. Motion carried.

#### **Staff Items**

Ellis indicated there is no report for the (No. CC060710-03) Vision 2012 Update. Motion was made by Chapman, second by Costello, to acknowledge the report. Chapman reported on the Phase 4 process thus far, and Martinson commented that the committees benefit from Council presence as well. LaCroix thanked Chapman for his efforts. Motion carried.

#### **PUBLIC HEARING ITEMS** -- Items 95 – 225



The following companies submitted informal quotes for (No. CC120610-02.3) Ice Sanding Material for Winter Operations, Street Division opened on October 29, 2010: Pete Lien & Sons. Staff reviewed the informal quote and recommends bid award to Pete Lien & Sons. Motion was made by Kroeger, second by Brown to award the informal quote to the lowest responsible bidder, Pete Lien & Sons, for the per unit price of \$14.50. Ellis addressed the types of materials used during snow events. Ellis addressed the impact the change of materials has had on the water quality of Rapid Creek. Ellis stated that Rapid Valley Water District continually monitors the downstream water quality and notifies the City of any issues with water quality. Motion carried.

### ***Council Items & Liaison Reports***

Bryan Vulcan (St Joe Investment Group Update) stated that the project is proceeding forward noting that a letter of intent has been received for the project financing. Vulcan indicated that the design has been modified to eliminate the top floor commercial office space noting that commercial office space will be offered at the street level. Vulcan indicated that conversations have been initiated with the City Attorney's Office regarding the land transfer. Motion was made by Weifenbach, second by Hadcock and carried to acknowledge the St Joe Investment Group Update.

Joan Martin and Helen Pich (Soccer Complex) provided an overview of the organizational structure, development of a Complex Executive Board, and the complex design and cost estimates. Martin reviewed the projected revenues from individual and corporate fund raising and player fees. Pich stated that the soccer organization will be responsible for maintenance of the facility. Pich addressed the need to dig the well to determine water quality and quantity. Pich requested that Council approve release of the 2012 funding to finance development of the well and the construction documents. Pich stated that the intent is to complete the bid process by June, 2011 with construction starting in the summer of 2011. In response to a question from Kroeger, Pich indicated that the 2012 funding was identified for Phase One of the project. Pich stated that there is sufficient community and user support to complete Phases Two and Three from donations. In response to a question from Hadcock, Pich addressed the expense to bring City water to the site noting that the project engineer has recommended the on-site well. Hadcock expressed concern for possible water contamination with the on-site well and on-site septic arrangement. Ellis stated that the on-site well is a good solution noting his preference for the use of non-treated water, instead of city water, for irrigation purposes. Green recommended that the appropriation request be placed on a future agenda. Weifenbach indicated that he could not support the project in this location. Pich advised that the soccer committee has provided project information to the new council members. In response to a question from Mayor Hanks, Pich indicated that the 2012 funding would fund Phase One including twelve fields and parking. Pich indicated that two permanent restrooms would be bid as alternates. Discussion followed regarding the construction of the restrooms subject to receiving favorable bids on Phase One. In response to Petersen, Pich commented on the materials donated to the facility indicating that donations would be sought to cover any shortfall. In response to a question from Davis, Martin indicated that prior support was lacking as the project did not have land or City support. Martin indicated that the two soccer organizations are working together and as the land and city support have been secured the response to fund raising efforts are more positive. Martin indicated that the organization is continuing to research grant opportunities. Motion was made by Kooiker, second by Hadcock and carried to place the Soccer Complex appropriation request on the December 15, 2010 Legal & Finance Committee agenda.

### ***Staff Items***

Motion was made by Mason, second by Waugh and carried to acknowledge the (No. CC120610-03) Vision 2012 Update

**PUBLIC HEARING ITEMS** – Items 94 - 197

The following companies submitted bids for (No. CC022211-02.3) Pavement Rehabilitation Project #2 Lakota Homes Project No. ST11-1911 / CIP No. 50549 opened on February 15, 2011: J & J Asphalt Company, Simon Contractors of SD, Inc., and Hills Materials Company. Staff reviewed the bid and recommends bid award to Hills Material Company. Motion was made by Waugh, second by Brown and carried to award the bid to the lowest responsible bidder, Hills Material Company, in the amount of \$279,699.21.

Sumption presented the bid for (No. CC022211-02.4) Anamosa Street Reconstruction, Haines Avenue to Midway Street, City Project No. ST07-1472 / CIP No. 50519, State Project No. P 1648(03), PCN H021. Staff recommends concurrence with the South Dakota Department of Transportation's bid award to Highmark, Inc. Motion was made by Mason, second by Waugh and carried to concur with the South Dakota Department of Transportation's award of the total bid to the lowest responsible bidder, Highmark, Inc., in the amount of \$590,956.50.

### ***Council Items & Liaison Reports***

Bryan Vulcan (Presidential Plaza Funding) provided a project update noting the continual forward progress of the project, the elements of the project and the impact of the current economic climate on new and expansion businesses. Vulcan advised that the St. Joe Investment Group has added two new members whose experience and financial investment will have a positive impact on the project. Vulcan requested a 90 day extension noting their inability to provide the letter of financial commitment at this time. Costello advised that he would abstain from voting on the request. Motion was made by Kroeger, second by Hadcock to grant a 90 day extension for the Presidential Plaza project. A substitute motion was made by Davis, second by Brown to grant a 180 day extension for the Presidential Plaza project. In response to a request from Weifenbach, Mayor Hanks indicated that he would bring forward a replacement recommendation for Costello's position on the project review committee. In response to a question from Mason, Hani Shafai indicated that the intent is to provide monthly updates to the Council noting that the financial commitments would be provided as they become available. In response to a question from Mason, Davis stated that the intent of the extended timeframe is to avoid adversely impacting the project given the current economic climate. Davis indicated that the extended timeframe will also remove the project as a political issue in the upcoming election. Waugh stated that he supports the extension and indicated he looks forward to receiving the monthly updates. In response to a question from Waugh, Vulcan indicated that there have not been major changes to the initial project elements which are outlined in the Master Developers Agreement. Brown cautioned the applicant against seeking any further extensions. In response to a question from Hadcock, Green stated that the City's agreement is with the legal entity and that the addition of new partners to that legal entity does not impact the agreement. Mayor Hanks stated that the Tax Increment Financing District expires April, 2012. Kooiker requested that significant changes to the original proposal be brought forward for Council discussion and approval. Koolker encouraged the applicant to utilize the monthly updates to present any changes to the original proposal as they occur. Motion carried with Costello abstaining.

### **PUBLIC HEARING ITEMS**

Motion was made by Waugh, second by Kroeger and carried to open public comment on Items 70 – 76.

### **CONTINUED PUBLIC HEARING CONSENT ITEMS**

Motion was made by Waugh, second by Brown and carried to approve items 70 – 72 as they appear on the Continued Public Hearing Consent Items.

***Continue the following items until March 7, 2011:***

PRESIDENTS  
PLAZA

January 27, 2010

Mayor Alan Hanks  
City of Rapid City  
300 Sixth St  
Rapid City, SD 57701-5034

Re: St. Joe Project and Master Development Agreement between City of Rapid City and St. Joe Investment Group, LLC

Dear Mayor Hanks:

The purpose of this letter is to confirm our mutual agreement to extend the deadlines set forth in Sections 4 (A) and 4(E) of the Master Development Agreement between the City of Rapid City ("City") and St. Joe Investment Group, LLC ("St. Joe") dated September 21, 2009. Both the City and St. Joe agree the dates set forth in Sections 4(A) and 4(E) of the Master Development Agreement shall be extended to April 15, 2010. To formalize our agreement to extend the dates in Sections 4(A) and 4(E) please execute both originals of this letter. Keep one for the City's records and return one fully executed original to Patrick Goetzinger, counsel for St. Joe.

Thank you for your attention to this matter.

Sincerely,

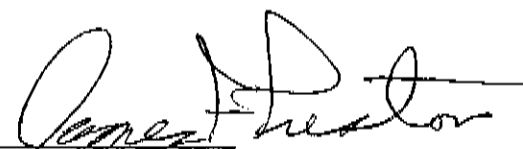


Les Kinstad, Manager  
St. Joe Investment Group, LLC

CITY OF RAPID CITY

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
Finance Officer  
(SEAL)

## FIRST ADDENDUM TO THE MASTER DEVELOPMENT AGREEMENT

This First Addendum to the Master Development Agreement ("Addendum") is made and entered into this 16 day of November, 2009, by and between the City of Rapid City, a South Dakota municipal corporation ("City") and St. Joe Investment Group, LLC, a South Dakota limited liability company ("St. Joe") and is subject to the following terms and conditions.

### RECITALS

WHEREAS, on September 21, 2009, the City approved The Master Development Agreement ("Agreement") between the City and St. Joe regarding the St. Joe Project.

WHEREAS, the City and St. Joe have executed a final version of the Agreement on September 21, 2009.

WHEREAS, the purpose of this Addendum is to revise certain provisions of the Agreement.

WHEREAS, the defined terms used in the Addendum shall have the same meaning as set forth in the Agreement.

NOW, THEREFORE, the parties agree as follows:

1. Section 1B of the Agreement shall be deleted and replaced with the following:

City shall transfer the fixed sum of two million eight hundred thousand dollars (\$2,800,000) in 2012 Funds to an escrow account for the purpose of funding the design and construction of the public improvements of the St. Joe Project.

2. Section 2B of the Agreement shall be deleted and replaced with the following:

St. Joe agrees to comply with the public bidding statutes contained in SDCL § 5-18-1 through § 5-18-25. The City shall deposit the 2012 Funds in escrow with appropriate parties to facilitate new market tax credit financing for the Project, but as a condition for doing so, the City and such other appropriate parties shall enter into a disbursement agreement pursuant to which the City shall be entitled to approve any draws of 2012 Funds. Such disbursement agreement shall also provide that (i) if this Agreement is terminated any unspent 2012 Funds shall be distributed to the City; (ii) the City shall receive the interest earned on the funds held in escrow; and (iii) St. Joe shall pay the costs of the escrow arrangement. No draws of 2012 Funds from the escrow shall be permitted unless St. Joe (i) establishes compliance with the public bidding statutes for construction costs through appropriate documentation evidencing such compliance; (ii) completes the design and construction of distinct portions of the public improvements which are subject to the City's right of acquisition as described in this Agreement; and (iii) transfers ownership of the designs to the public improvements which are

subject to the City's right of acquisition as described in this Agreement. The request for all payments shall be accompanied by documentation which includes a description of the specific improvements or designs completed, the cost of the completed improvements or designs, and fully executed lien releases from the contractor, when obtained from the contractor, for the completed portion of the public improvements or designs. Within 45 days from receipt of a request for disbursement from St. Joe, the City will review the request for payment, and upon determining that all required documentation has been submitted and lien waivers have been arranged for, will direct the escrow agent to process the payment.

3. Section 3B of the Agreement shall be deleted and replaced with the following:

City agrees to take actions required by state law and City ordinances to transfer the fixed sum of two million eight hundred thousand dollars (\$2,800,000) in 2012 Funds to an escrow account for the design and construction of the public improvements in the Project, as set forth in Section 2B.

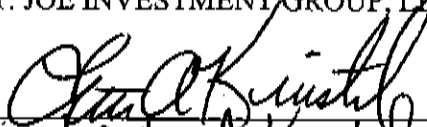
4. Section 4B of the Agreement shall be deleted and replaced with the following:

The sum of two million eight hundred thousand dollars (\$2,800,000) in City 2012 Funds shall be held in escrow and shall be dedicated to design and construction costs of the public improvements in the Project.

5. The remainder of the Agreement shall remain unchanged.

Dated this 10 day of November, 2009.

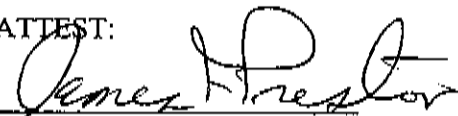
ST. JOE INVESTMENT GROUP, LLC

  
By: Lester A. Kinstad  
Its: President

CITY OF RAPID CITY

  
Mayor

ATTEST:

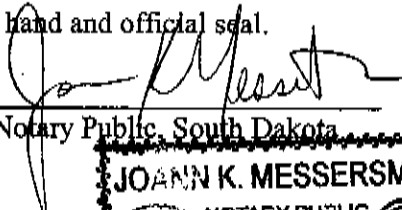
  
James F. Prestor  
Finance Officer  
(SEAL)

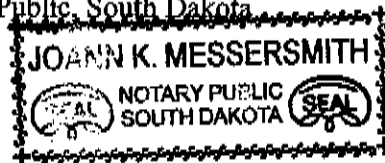
State of South Dakota )

County of Minnehaha )<sup>ss.</sup>

On this 16<sup>th</sup> day of Nov., 2009, before me, the undersigned officer, personally appeared Les Kinstad, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged themselves to be a member of St. Joe Investment Group, LLC, and as a member of St. Joe Investment Group, LLC executed the foregoing instrument for the purposes herein contained.

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

  
Notary Public, South Dakota



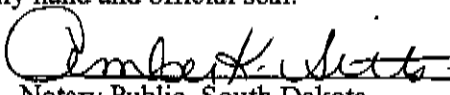
My Commission Expires:  
(SEAL)

State of South Dakota )

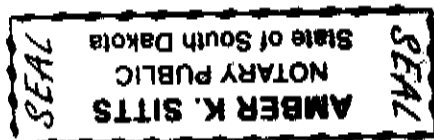
County of Pennington )<sup>ss.</sup>

On this 16 day of November, 2009, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that he, as such Mayor and Finance Officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

  
Notary Public, South Dakota

My Commission Expires: 9-13-15  
(SEAL)



## MASTER DEVELOPMENT AGREEMENT

This Master Development Agreement ("Agreement") is made and entered into this 21 day of Sept., 2009, by and between the City of Rapid City, a South Dakota municipal corporation ("City") and St. Joe Investment Group, LLC ("St. Joe"), a South Dakota limited liability company ("St. Joe") and is subject to the following terms and conditions.

### RECITALS

WHEREAS, on August 3, 2009, the City approved a motion to direct the City Attorney's Office to enter into negotiations with St. Joe regarding a public/private project on the corner of 6th St. and St. Joseph St.

WHEREAS, the purpose of this Agreement is to define the obligations and responsibilities of the City and St. Joe in connection with the public/private partnership to privately develop certain real property currently owned by the City, legally described as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 in Block 95 of the Original Townsite of the City of Rapid City, Pennington County, South Dakota. ("City Property"), into a mixed use facility consisting of public improvements, public parking, private parking, retail, office, commercial, residential and green space as part of the City's commitment to revitalize downtown Rapid City ("St. Joe Project" or "Project").

WHEREAS, City and St. Joe acknowledge their respective obligations in this Agreement are contingent upon, and shall not be deemed to have arisen until each and every item identified as a condition precedent in this Agreement has occurred.

WHEREAS, City and St. Joe knowingly and voluntarily acknowledge the mutual covenants expressed herein shall constitute sufficient consideration for the performance of this Agreement by the respective parties.

NOW, THEREFORE, the parties hereby agree as follows:

1. **Overview of St. Joe Project.** In order to successfully complete the development of the City Property into the St. Joe Project in a timely manner, the following steps must occur in accordance with state law and City ordinance:
  - A. City must exchange the City Property with St. Joe pursuant to SDCL § 6-5-4. The exchange of City Property shall be conditioned on the Project being completed by St. Joe. If the Project is not completed by St. Joe, or this Agreement is terminated for any reason, St. Joe shall promptly transfer the City Property back to the City, subject to Section 3H.
  - B. City shall make available the fixed sum of two million eight hundred thousand dollars (\$2,800,000) in 2012 Funds to fund the design and construction of the public improvements of the St. Joe Project.

- C. A sum not to exceed five million dollars (\$5,000,000) in tax increment financing ("TIF") from Tax Increment District #62 ("TID #62") shall be made available by the City to fund applicable costs of the St. Joe Project, except as modified by Section 2C.
- D. St. Joe shall design and construct the Project and the City shall participate in the design of the Project through the building permit process and SDCL Chapter § 11-1 Historic Preservation review process. As design phases for the public improvements in the Project are completed, St. Joe shall transfer ownership of said designs to City.
- E. St. Joe will comply with the provisions of SDCL 5-18-1 through 5-18-25 for the public improvement portions of the Project that will ultimately be transferred to the City. The City's aggregate monetary obligations under this Agreement shall not exceed the actual applicable costs and bid amounts, including permissible change orders, incurred by St. Joe for the construction of the public improvement portions of the Project or the amounts set out in the Agreement, whichever is less.
- F. City shall lease from St. Joe a minimum of 350 public parking spaces within the Project ("Lease") for the sum of one dollar (\$1) annually. The term of the Lease will be consistent with the time period required for St. Joe to comply with New Markets Tax Credit ("NMTC") qualifying rules. During the term of the Lease, City shall retain all revenues from the public parking spaces and shall be responsible for the insurance, maintenance and upkeep of the leased parking spaces.
- G. At the end of the term of the Lease, the St. Joe shall transfer to the City a minimum of 350 public parking spaces within the Project under a condominium, or similar, legal arrangement. City and St. Joe shall put in place standard easements, covenants and maintenance agreements appropriate for City ownership of public parking spaces within a public/private development.

2. **Obligations of St. Joe.**

- A. St. Joe agrees it will accept title to the City Property, after it has been replatted into one Lot as set forth in Section 3A, in exchange for granting the City a vested right, subject to a condition subsequent, to receive from St. Joe fee title to a minimum of 350 public parking spaces within the Project at the conclusion of the Lease term under a condominium, or similar, legal arrangement. St. Joe acknowledges the interest in City Property to be transferred by the City is a fee simple determinable interest with a possibility of reverter retained by the City in the event the Project is not completed, or this Agreement is terminated. St. Joe further



acknowledges the City shall release or extinguish its reversionary interest in the City Property by quitclaim deed, or other legal instrument, when the public parking spaces are transferred to the City at the end of the Lease term. St. Joe shall be responsible for one-half the cost of title insurance and transfer fee, if any, upon the closing of the transfer of City Property to St. Joe and when the public parking spaces are transferred to the City.

- B. Prior to payment of 2012 Funds to St. Joe, for construction of public improvements in the Project, St. Joe agrees to provide to the City complete documentation of its full compliance with the provisions of the public bidding statutes contained in SDCL 5-18-1 through 5-18-25. 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 2012 funds to St. Joe for the construction phase of the Project. As design phases for the public improvements in the Project are completed, St. Joe shall transfer ownership of said designs to City. St. Joe's transfer of ownership of the designs to the public improvements is a condition precedent to the City's obligation to release 2012 funds for the design phase of the Project. The request for all payments shall be accompanied by documentation that includes a description of the specific improvements or designs completed, the cost of the completed improvements or designs, and fully executed lien releases from the contractor for the completed portion of the public improvements or designs. The City will review the request for payment, and upon determining that all required documentation has been submitted, will process the payment within 45 days.
- C. St. Joe agrees to jointly apply with the City for an amendment to TID #62 to reallocate line items for applicable costs of the Project, as appropriate. St. Joe agrees to enter into a Contract for Private Development with the City in connection with TID #62. St. Joe acknowledges the City shall not expend more than five million dollars (\$5,000,000) in TIF funds for applicable costs of the Project, except that the amount stated in this Section may be modified by mutual agreement of the parties in the event the value of the City Property fails to appraise for the amount used in St. Joe's pro forma calculations in the amount of one million dollars (\$1,000,000), or unforeseeable statutorily allowed expenditures are incurred by St. Joe. For example, if the cost of removing contaminated soil exceeds the estimates set forth in the Contract for Private Development or TID Project Plan, St. Joe may request reallocation of the Project Plan line items.
- D. St. Joe agrees to design and construct the Project in compliance with all City ordinances and state law, including Historic Preservation rules. St.

Joe agrees to collaborate with the City on the design of the public improvements within the Project. As design phases for the public improvements in the Project are completed, St. Joe shall transfer ownership of said designs to City.

- E. St. Joe will comply with the provisions of SDCL § 5-18-1 through § 5-18-25 for the public improvement portions of the Project that will ultimately be transferred to the City. St. Joe acknowledges the City's aggregate monetary obligations under this Agreement shall not exceed the actual applicable costs and bid amounts, including permissible change orders, incurred by St. Joe for the construction of the public improvement portions of the Project or the amounts set out in the Agreement, whichever is less
- F. St. Joe agrees to enter into a Lease with the City in connection with a minimum of 350 public parking spaces within the Project, as generally described, without limitation, in Sections 1F & 1G.
- G. At the end of the term of the Lease, the St. Joe shall transfer to the City a minimum of 350 public parking spaces within the under a condominium, or similar, legal arrangement. St. Joe also agrees to enter into standard easements, covenants and agreements with the City appropriate for City ownership of public parking spaces within a public/private development.

3. **Obligations of City.**

- A. City agrees it will comply with SDCL § 6-5-4 in a timely manner in order to transfer title to City Property to St. Joe in exchange for St. Joe granting the City a vested right, subject to a condition subsequent, to receive from St. Joe fee title to a minimum of 350 public parking spaces within the Project as set forth in the Lease. The City further agrees to replat the City Property in a timely manner to create a single lot legal description for the City Property. The City further agrees the interest initially transferred by the City to St. Joe is a fee simple determinable interest with a possibility of reverter retained by the City in the event the Project is not completed, or this Agreement is terminated. City further acknowledges it shall release or extinguish its reversionary interest in the City Property by quitclaim deed, or other legal instrument, when the public parking spaces are transferred to the City at the end of the Lease term. The City shall take all actions necessary to grant St. Joe fee simple title to the City Property after the conditions set forth in this Agreement have been satisfied. City shall be responsible for one-half the cost of title insurance and transfer fee, if any, upon the closing of the transfer of City Property to St. Joe and when the public parking spaces are transferred to the City. City agrees to pay the full cost of the appraisal required by SDCL § 6-5-4.

- B. City agrees to take actions required by state law and City ordinances to make the fixed sum of two million eight hundred thousand dollars (\$2,800,000) in 2012 Funds available for the design and construction of the public improvements in the Project, as set forth in Section 2B.
- C. City agrees to jointly apply with St. Joe for an amendment to TID #62 to reallocate line items for applicable costs of the Project, as appropriate. City agrees to enter into a Contract For Private Development with St. Joe in connection with TID #62. City shall not expend more than five million dollars (\$5,000,000) in TIF funds for the applicable costs of the Project, except that the amount stated in this Section may be modified by mutual agreement of the parties as set forth in Section 2C.
- D. City agrees to issue a building permit for the St. Joe Project upon St. Joe's compliance with all City Ordinances and state statutes.
- E. City agrees St. Joe may use any method it desires for managing the overall Project, provided that the public improvement portions of the Project shall be constructed using the public bidding process contained in SDCL § 5-18-1 through § 5-18-25.
- F. City agrees to enter into a Lease with St. Joe in connection with 350 public parking spaces within the Project, as generally described, without limitation, in Sections 1F & 1G.
- G. Prior to St. Joe's transfer of a minimum of 350 public parking spaces to the City, City agrees to enter into standard easements, covenants and agreements with St. Joe appropriate for City ownership of public parking spaces within a public/private development.
- H. In the event St. Joe places a mortgage upon the Project or City Property, City agrees that upon request from the holder or proposed holder of any mortgage, City shall execute a subordination agreement subordinating the City's reversionary interest in the City Property, future interest in the public parking spaces, leasehold interest under the Lease, or any other interest the City may have in the Project or City Property that may be reasonably identified, to the interest of such mortgage holder and their respective heirs, successors and assigns. The lender shall agree to release its mortgage on the public parking spaces transferred to City at the end of the Lease term or upon foreclosure of the mortgage.

4. **Conditions Precedent.** The obligations of the City and St. Joe are expressly conditioned on:

- A. Closing on the transfer of the replatted City Property to St. Joe as set forth in Sections 1A, 2A and 3A by December 31, 2009.

- B. The sum of two million eight hundred thousand dollars (\$2,800,000) in City 2012 Funds shall be dedicated to design and construction costs of the public improvements in the Project.
- C. City and St. Joe entering into a Contract for Private Development in connection with TID #62 and the reallocation of Project Plan line items as set forth in Section 2C and 3C.
- D. The City's timely issuance of a building permit for construction of the Project upon St. Joe's submission of complete plans for the permit sought to the City.
- E. City and St. Joe entering into a Lease generally described in Sections 1F, 2F and 3F no later than December 31, 2009.

The obligations of St. Joe are expressly conditioned on:

- F. An allocation of NMTCs to St. Joe for the Project in an amount no less than fifteen million dollars (\$15,000,000).
- G. St. Joe obtaining financing from lenders on terms and conditions acceptable to St. Joe.
- H. The Project remains economically feasible as determined by St. Joe, except this condition may not be asserted after the date the City issues a building permit to St. Joe.

5. **Termination of Agreement.** The parties may terminate this agreement as follows:

- A. At any time by mutual written agreement.
- B. Failure of either party to meet any of its obligations under this Agreement.
- C. Either party filing for bankruptcy or being placed under a receivership.
- D. Dissolution of St. Joe.
- E. Upon foreclosure of any security interest in the Project.

6. **Default Remedies.**

- A. In the event either party defaults under this Agreement, the other party shall have all rights and remedies available at law and in equity.

B. Each party shall bear their own costs, including attorney fees, in defending or bringing any action under this Agreement.

7. **Notice.** Any notice or communication under this Master Development Agreement shall be in writing and delivered (by hand, telecopy, telegraph, telex or courier) or deposited in the United States mail (first class, registered or certified), postage fully prepaid and addressed as stated below. Either party may, from time to time, specify as its address for purposes of this Agreement any other address upon the giving of ten days notice thereof to the other party in the manner required by this paragraph. This paragraph shall not prevent the giving of written notice in any other manner, but such notice shall be deemed effective only when and as of its actual receipt at the proper address and by the proper addressee.

If to City:

City of Rapid City  
300 6th St  
Rapid City, SD 57701  
Attn: City Attorney

If to St. Joe:

St. Joe Investment Group, LLC  
402 West 9th Street  
Sioux Falls, SD 57104  
With copy to:  
Patrick G. Goetzinger  
Gunderson, Palmer, Nelson &  
Ashmore, LLP  
P.O. Box 8045  
Rapid City, SD 57709

8. **Miscellaneous.**

- A. This Agreement and the rights and obligations hereunder shall not be assigned or transferred by any party without express written consent of the other. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.
- B. This Agreement is intended solely for the benefit of the parties hereto and shall not be enforceable by or create any claim or right of action in favor of any other party.
- C. This Agreement represents the entire and integrated agreement between the parties hereto with respect to the subjects described herein and supersedes all prior negotiations, representations or agreements, oral or written. This Agreement may be amended or modified only in writing signed by the party to be bound by such amendment or modification and stating that it is intended as an amendment or modification of this Agreement. The parties waive their rights to amend or modify this Agreement in any other manner.

- D. If any one or more of the provisions of this Agreement shall be determined to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality or enforceability of such provision in every other respect and the remaining provisions of this Agreement shall not be in any way impaired.
- E. Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon adherence to that term or any other term of this Agreement.
- F. This Agreement shall be governed by and interpreted under the substantive laws of the State of South Dakota without regard to principles of conflicts of law. The Circuit Court of Pennington County shall be the sole venue for any disputes arising under this Agreement.
- G. The section headings within this Agreement are intended solely for the parties' convenience and shall not affect the interpretation or construction of any portion or provision of this Agreement.
- H. This Agreement may be executed in separate counterparts with separate signature pages and each counterpart with attached executed signatures shall constitute an executed original of this Agreement.
- I. City shall not impose special assessments on St. Joe in connection with the Project construction activities contemplated by this Agreement. This Section shall not prevent the City from including the City Property in a Business Improvement District or for imposing special assessments in the future which do not arise directly out of the construction of the Project.
- J. This Agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association as between City and St. Joe nor between City and any officer, employee, contractor or representative of St. Joe.
- K. This Agreement shall be deemed to be prepared jointly by the parties hereto and neither shall be deemed to be its sole author. In the event of any claim of ambiguity, no provision shall thereby be construed against either party.
- L. The parties agree time is of the essence in performing the obligations set forth in this Agreement.
- M. The parties shall execute and deliver such instruments as each party shall reasonably request, promptly and without further consideration, to more effectively consummate the transactions contemplated by this Agreement.

Dated this 21<sup>st</sup> day of September, 2009.

ST. JOE INVESTMENT GROUP, LLC

[Signature]  
By: Lester H. Kinstad  
Its: President

CITY OF RAPID CITY

[Signature]  
Mayor

ATTEST:

[Signature]  
Finance Officer

(SEAL)

State of South Dakota )

ss.

County of Pennington )

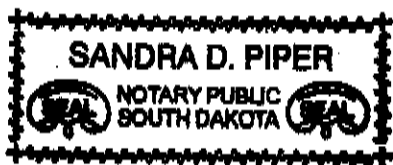
On this 21<sup>st</sup> day of September, 2009, before me, the undersigned officer, personally appeared Lester H. Kinstad, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged themselves to be a member of St. Joe Investment Group, LLC, and as a member of St. Joe Investment Group, LLC executed the foregoing instrument for the purposes herein contained.

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

[Signature]  
Notary Public, South Dakota  
my commission expires  
6 Feb 2013

My Commission Expires:

(SEAL)



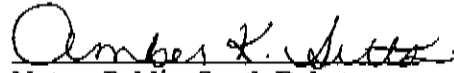
State of South Dakota )

ss.

County of Pennington )

On this 25 day of September, 2009, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City and that he, as such Mayor and Finance Officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing as such Mayor and Finance Officer of the City of Rapid City.

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

  
Notary Public, South Dakota

My Commission Expires: 9-13-15  
(SEAL)

