

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND
PRESIDENT’S PLAZA, L.L.C.**

This Settlement Agreement (the “Agreement”) is made and entered into on this ___ day of June, 2017, by and between the City of Rapid City, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the “City,” President’s Plaza, L.L.C., a South Dakota corporation, located at, 528 Kansas City Street, Rapid City, South Dakota 57701, herein after referred to as “President’s Plaza,” and Pat Hall and Hani Shafai personally and as representatives and owners of President’s Plaza.

SECTION ONE: PURPOSE

President’s Plaza has made a claim against the City alleging that the City has breached its duty of good faith and fair dealing pursuant to the contracts between the parties. This claim is outlined in a letter from the attorney for President’s Plaza dated April 21, 2017. In addition, President’s Plaza has provided the City with invoices showing out of pocket expenses it has incurred pursuant to its efforts to fulfill its obligations under its agreements with the City. Under South Dakota law these expenses would be recoverable as damages should President’s Plaza prevail on its breach of contract claim. President’s Plaza and its owners have offered to resolve their claims against the City and its officer and elected officials if the City would agree to pay a portion of its’ out of pocket expenses. By resolving this dispute prior to filing of a lawsuit the parties will also recognize a potentially significant savings in legal fees that would result from the filing of a lawsuit. Based on the City’s assessment of President’s Plaza’s claim, the City has determined is in its best interests to resolve this claim prior to the filing of a summons and complaint.

SECTION TWO: TERMS OF THE AGREEMENT

The City, President's Plaza, and its owners wish to resolve all matters, known and unknown, discovered or discoverable by them arising out of parties interactions related to the mixed use development and related contracts identified below which may be in controversy between the parties and resolve all claims that were made, or could have been made by either party arising out of the parties interactions related to a mixed use development proposed for the south west corner of 5th Street and St. Joseph Street including any and all claims arising out of alleged breaches of the Master Development Agreement entered into between the parties on the 21st day of September 2009 and any subsequent amendments thereto, and the Contract for Private Development for Tax Increment District #73 along with any subsequent amendments thereto. This settlement and release extends to the individual employees, elected officials, shareholders, officers, directors, agents, affiliates and assigns of the parties in their official and individual capacities as well as to their respective insurers. Each party specifically denies any liability whatsoever to each other on these claims, but specifically express their desire to settle all current disputes between them fully and finally. It is the intent of the parties that this Agreement shall release and discharge all claims that were brought, or that could have been brought, based on the above described relationship and contractual agreements. It is not the intent of this Agreement to release any claims, demands, damages or causes of action for acts or omissions that occur after the date of this Agreement or for breaches of this Agreement or to release any claims unrelated to the above described relationship and contractual agreements.

In consideration of the mutual covenants set forth herein, the City and President's Plaza agree that within thirty (30) days of this Agreement being approved by the parties, the City and President's Plaza will instruct Pennington Title Co. (the parties escrow agent) to disburse

\$363,040.60 to President's Plaza in consideration of a portion of President's Plaza's actual out of pocket expenses related to this project. The parties further agree that they will authorize Pennington Title to disburse the balance of the funds remaining after the payment to President's Plaza (approximately \$1,710,078.41 plus any accrued interest) to the City pursuant to the terms of the parties' escrow agreement.

SECTION THREE: EFFECT OF AGREEMENT

The City and President's Plaza agree and warrant that no promises, inducements, or representations have been made or offered except as herein set forth. The parties further agree that this Agreement is executed without reliance upon any statement or representation by any of the parties, their attorneys, or representatives, concerning the nature and extent of damages, or legal liability therefore, or the strength, weakness, or merit of any claims as part of this settlement. Both parties and their attorneys have made their own determination as to the law and facts and assume any and all risk in that regard. The consideration identified in this Agreement is not a mere recital. All agreements and understandings between the parties are embodied and expressed in this Agreement or otherwise excluded.

Each entity executing this Agreement represents that it has full legal authority to do so. Each party assumes the risk of any mistake of fact, whether the fact, or facts, be present, past, or future, including the extent of any injuries, damages, or losses that may have been incurred or may be incurred in the future. This Agreement shall be binding on and inure to the benefit of President's Plaza and the City and their respective legal representatives, successors, and assigns. President's Plaza and the City hereby represent that they have carefully read the foregoing Agreement, have consulted with their attorneys, know the contents thereof, and sign this Agreement of their own volition.

SECTION FOUR: CHOICE OF LAW AND VENUE

The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

SECTION FIVE: WAIVER

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.

SECTION SIX: CONSTRUCTION, SEVERABILITY AND MERGER

The parties acknowledge that they have each contributed to the making of this Agreement. The parties further acknowledges that they have had an adequate opportunity to consult with their own legal counsel in the negotiation and preparation of this Agreement. In the event of a dispute between the parties over interpretation of this Agreement, ambiguities shall not be attributed to either party. If any provision or term of this Agreement is held to be unconstitutional, invalid, or unenforceable by any court or tribunal having jurisdiction over the parties, the remainder of this Agreement shall remain in full force and such invalidity shall not affect any other provision of this Agreement if the remaining sections or provisions can be given effect without the invalid section or provision. This document constitutes the entire agreement of the parties. No other promises or consideration form a part of this Agreement. All prior discussions and negotiations are merged into this document or intentionally omitted.

SECTION SEVEN: EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts which, taken together, shall constitute but a single agreement. Signatures exchanged by facsimile or electronically shall be considered binding.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Pauline Sumption, Finance Officer

(The rest of this page has been intentionally left blank.)

