


RESOLUTION 16-85

BE IT RESOLVED that the appropriate officers of the City are authorized but not required to accept and deliver on behalf of the City that certain Agreement between the City and The St. Joe Company, relating to the conveyance and mitigation of land for the Colony Club Exit Road Project, in substantially the form attached and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

THIS RESOLUTION shall be effective immediately upon passage.

PASSED in special session this 9th day of June, 2016.

CITY OF PANAMA CITY BEACH

By: 
Mike Thomas, Mayor

ATTEST:


Diane Fowler, City Clerk

RIGHT OF WAY AND PUBLIC
ACCESS DEVELOPMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made by and between THE ST. JOE COMPANY, a Florida corporation ("St. Joe") and the CITY OF PANAMA CITY BEACH, FLORIDA, a municipal corporation ("City"), as of the ____ day of _____, 2016, upon the terms and conditions following.

WITNESSETH:

WHEREAS, City desires to establish a connector road ("Connector Road") from the Colony Club subdivision ("Colony Club") to the intersection of North Nautilus Street ("Existing Street") and Panama City Beach Parkway in order to provide signalized access to Colony Club;

WHEREAS, St. Joe previously conveyed the Existing Street to City by virtue of that certain Dedication of Roadway dated April 15, 2008 and recorded in Official Records Book 3041, Page 2214 of the public records of Bay County, Florida;

WHEREAS, City owns the land within Colony Club at a location that will be the eastern termini of the Connector Road, and St. Joe owns the land required to construct the remainder of the Connector Road;

WHEREAS, the parties agree that the Connector Road will immediately serve the public interest by creating signalized access to Colony Club;

WHEREAS, the parties also agree that a portion of the Connector Road will ultimately serve the public interest by connecting Panama City Beach Parkway with the future, so-called Back-Back Beach Road;

WHEREAS, St. Joe previously granted City an easement for that certain, approximately 0.7 acre stormwater pond (the "Original Pond") by virtue of that certain Stormwater Utility and Drainage Easement dated April 15, 2008 and recorded in Official Records Book 3041, Page 2217 of the public records of Bay County, Florida;

WHEREAS, St. Joe owns the Original Pond which shall be used in connection with the St. Joe North-South Portion (as hereinafter defined in the body of the Agreement);

WHEREAS, St. Joe has entered into an Ecosystem Management Agreement ("EMA") with Florida Department of Environmental Protection ("FDEP") dated October 11, 2004 covering a regional area inclusive of the Project (as such Project is hereinafter defined in the body of the Agreement) area;

WHEREAS, the Army Corps of Engineers ("Corps") has issued a Regional General Permit dated June 30, 2004 and renewed on June 23, 2009 and March 25, 2015 referred to as RGP/SAJ-86 ("RGP") covering a regional area inclusive of the Project area;

WHEREAS, the EMA and RGP include certain environmental and stormwater design procedures and requirements.

NOW THEREFORE, in consideration of reliance upon these premises, the parties agree:

1. Recitals. The forgoing recitals are true, complete and not misleading.

2. The Project.

a. Description. The Connector Road will connect the Existing Street to Fairway Boulevard in Colony Club and will include pedestrian features, stormwater facilities and certain utility improvements. The Connector Road consists of the following segments, as generally depicted on Exhibit A attached hereto and incorporated herein:

i. A 150 foot wide right-of-way across St. Joe lands serving as a linear extension from the Existing Street to the St. Joe East-West Portion (as described below) (approximately 2.3 acres) to be constructed in compliance with Florida Department of Transportation standards (“St. Joe North-South Portion”) which shall include within it a 6’ sidewalk on the East side of the right-of-way;

ii. An 80 foot wide right-of-way across St. Joe lands from the termini of the St. Joe North-South Portion to the City East-West Portion (as described below) adjacent to Fairway Boulevard (approximately 1 acre) to be constructed in compliance with local standards (“St. Joe East-West Portion”) which shall include within it a 5’ sidewalk and 8” force main under said sidewalk on the south side of the right-of-way; and

iii. An 80 foot wide right-of-way across City lands from the termini of the St. Joe East-West Portion to Fairway Boulevard to be constructed in compliance with local standards (“City East-West Portion”) which shall include within it a 5’ sidewalk and 8” force main under said sidewalk on the south side of the right-of-way.

The St. Joe North-South Portion and the St. Joe East-West Portion will be referred to herein as the “Rights-of-Way.”

b. Location. The parties acknowledge that the exact location of the Connector Road shall be subject to St. Joe’s approval, and will depend upon final wetland delineation and permitting and that the total acreage to be conveyed, precise contours, and accordingly the exact length, of the Connector Road generally depicted on Exhibit A may change but that the general route and specific termini will not change.

c. Additional Improvements. The City agrees that it shall be responsible for landscape maintenance on the Existing Street and may additionally be responsible for installation of street lights on the St. Joe North-South Portion, the St. Joe East-West Portion, and the City East-West Portion.

d. Project Defined. Transfer to the City of the Rights-of-Way and the construction of the Connector Road improvements by the City will be referred to collectively herein as the "Project."

3. St. Joe's Conceptual Approval. St. Joe hereby approves and accepts the City's conceptual description of the Project as generally depicted on Exhibit A and acknowledges that the City shall immediately proceed to design and permit the Project at its sole cost and expense.

4. Right of Entry. St. Joe hereby grants to the City a license to enter upon the Rights-of-Way and the Original Pond for purposes of undertaking or performing any inspections, tests, surveys or investigations as City deems necessary or desirable for the Project. This license shall extend to City's agents, representatives, consultants, and contractors. Any damage to the Rights-of-Way or the Original Pond or improvements thereon caused by any such entry, inspection, test, or investigation shall be repaired immediately by City. City shall defend, indemnify and hold St. Joe harmless from and in respect of any loss, costs, damage or expense as a result of any claim asserted against St. Joe arising out of such entry, inspection, test or investigation. This right of entry commenced February 1, 2016 and shall terminate on the earlier of: (a) Closing (defined in this Agreement); or (b) 22 days following the date of the City Council's action to conclusively reject construction of the Project as evidenced by recorded vote of the City Council. The provisions of this paragraph 4 shall survive Closing or the earlier termination of this Agreement.

5. Design and Permitting. The City intends to immediately undertake the design and permitting of the Project. The parties agree they will use their best efforts to ensure the design and permitting of the Project will be completed on or before August 31, 2016.

6. St. Joe Permits. The Property is subject to the EMA and RGP which establish certain guidelines for regulatory permitting of the Property subject to the jurisdiction of the FDEP, the Corps and other applicable governmental agencies. The EMA and RGP may be reviewed at <http://www.dep.state.fl.us/northwest/StJoeEMA/joeema.htm>.

St. Joe hereby agrees to serve as the co-applicant to the City on any EMA or RGP permit applications. The City agrees to obtain any necessary permits related to (i) wetlands impacts and subsequent mitigation due to construction upon low quality wetlands, (ii) wetlands impacts and subsequent mitigation due to construction upon high quality wetlands which shall not exceed 2 acres, and (iii) the management of stormwater or provision of stormwater improvements necessary to support the Project in compliance with the EMA and RGP. The City shall be responsible for any and all costs related to the application for the EMA and RGP permits. The City agrees to comply with all applicable laws, rules and regulations, including but not limited to provisions of the EMA and RGP, governing the use and development of any wetlands. In the event the City is permitted to fill or otherwise impact any wetlands located on the Property pursuant to the EMA or RGP, the City agrees not to fill or otherwise impact any wetlands beyond the boundary of that for which a permit is obtained. Furthermore, the City acknowledges and agrees that it shall comply with the stormwater management system requirements attached as Appendix E to the EMA and as may be incorporated into the RGP. City shall defend, indemnify and hold St. Joe harmless from and in respect to any loss, costs, damage or expense as a result of either: (a) the unauthorized filling or impacting of wetlands

within or beyond the boundary of the Property, including but not limited to the impacting of wetlands beyond that permitted hereunder, and agrees to promptly restore the Property to its original condition prior to filling or impacting pursuant to the written direction of St. Joe and/or applicable governing authorities or (b) the City's failure to comply with the RGP or EMA including but not limited to the stormwater management requirements of the EMA. Nothing herein shall preempt the City's obligation to obtain a dredge and fill permit for any wetland impacts on the Property, as required by the Corps.

7. Mitigation. The City shall be solely responsible for all mitigation required for impacts to low quality wetlands and high quality wetlands within the Project area.

St. Joe will provide no more than two (2) acres within the Southwest West Bay Conservation Unit which is located in the same sub basin as the Project area and must be used for any off-site preservation lands ("Off-Site Mitigation") required for the Project. Pursuant to the RGP/EMA, a conservation easement shall be recorded to offset Project wetland impacts made within the same sub basin. This off-site preservation area is determined by figuring the percent of impacts within the Project and applying that percentage to the number of acres in the Southwest West Bay Conservation Unit. The City shall be responsible for any and all costs related to identifying and obtaining a legal description, sketch and title policy for the Off-Site Mitigation. St. Joe will be responsible for recording any conservation easements associated with this Project.

The City shall work with St. Joe to determine, in St. Joe's sole and absolute discretion, the on-site conservation easements ("On-Site Mitigation") and the Project boundary prior to permit submittal to ensure the On-Site Mitigation does not obstruct future road and utility connections. The City shall be responsible for any and all costs related to identifying and obtaining a legal description, sketch and title policy for the On-Site Mitigation. St. Joe will be responsible for recording any conservation easements associated with this Project.

Any mitigation credits for impacts to high quality wetlands related to the Project shall be purchased by the City from St. Joe's Breakfast Point Mitigation Bank at 50% of the market price. The City and St. Joe shall enter into a separate agreement for the purchase of mitigation credits at the time the City determines the number of mitigation credits required for the Project. The formula to be used to determine the number of mitigation credits is as follows:

$$\begin{aligned} X &= \text{High Quality Wetland Impacts} \\ X \times .92 \text{ FU (Functional Unit per the RGP/EMA)} &= \text{ ______ } \times \$75,000.00 \text{ (market price of} \\ \text{mitigation credit)} &= \text{ ______ } \times 50\% = \text{purchase price} \end{aligned}$$

8. City's Obligations. The City shall be responsible for the planning, design, permitting, construction and associated mitigation of the Project. The City agrees to pay all costs associated with the engineering, surveying, permitting and construction of the Project. Within 14 days of the City's receipt of 60% complete design plans, the City will submit same to St. Joe for approval, which approval shall not be unreasonably withheld or delayed.

9. St. Joe's Obligations. St. Joe agrees to use its best efforts to cooperate and assist the City in its attempts to obtain environmental permits necessary for the Project as further set

forth in paragraph 6. St. Joe shall, within five (5) days following the date of this Agreement, provide City with copies of all Phase I environmental reports, surveys or other due diligence materials of any nature in its possession (the "Due Diligence Materials"). St. Joe represents that there are no current permits associated with the Project. City shall return the Due Diligence Materials to St. Joe no later than five (5) days following termination of this Agreement.

10. Survey and Title.

a. Title. Immediately upon entry of this Agreement, the City shall order a standard form of ALTA Owner's Title Commitment in an amount to be determined (the "Commitment") covering the Existing Street, Rights-of-Way, Off-Site Mitigation and the On-Site Mitigation, or such larger parcel assessed to St. Joe on the most recent ad valorem tax roll which is reasonably anticipated to cover the final location of the Rights-of-Way, to be issued by a Title Insurance Company licensed to do business in the State of Florida ("Title Company"), together with copies of all instruments, if any, referred to in the Commitment as exceptions to title. Within thirty (30) days of receipt of the Commitment, together with copies of all documents constituting exceptions to title and Survey, City shall give notice in writing to St. Joe of any defects in or objections so specified. Failure to give such notice shall be a waiver of any defects or objections. If St. Joe elects not to clear the title of defects and objections within forty-five (45) days of receipt of City's objections, the City may either (a) proceed to Closing and take title subject to the defects; or (b) terminate this Agreement and neither party shall have any further obligations hereunder, except for those provisions which expressly survive Closing or the earlier termination of this Agreement.

b. Survey. Upon completion of design plans, City shall cause to be prepared, at its expense, a boundary survey of the Existing Street (if it is determined in the Commitment that the Existing Street is not owned by City), Rights-of-Way, City East-West Portion, Off-Site Mitigation and On-Site Mitigation areas. Said boundary survey shall be prepared by a licensed Florida land surveyor ("Survey"). The Survey shall be certified to City, St. Joe and the Title Company.

11. Conveyance of Rights-of-Way and Expanded Pond. At Closing, St. Joe agrees to dedicate and convey fee-simple title to the Existing Street, if necessary, and the Rights-of-Way to the City by Special Warranty Deed in substantially the form attached and incorporated as Exhibit B hereto (the "Deed"), free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for the following:

- a. General real estate taxes for the year of closing and subsequent years not yet due and payable;
- b. Any exceptions approved or waived by the City pursuant to this Agreement; and
- c. Any exceptions approved by the City in writing; and
- d. Any exceptions disclosed in the public record.

12. Purchase Price. St. Joe shall donate to the City the Rights-of-Way.

13. Closing. Unless extended by mutual agreement of the parties, the Closing shall occur no later than the earlier of: (a) fifteen (15) days following the City Council's award of a construction contract for the Project; or (b) December 31, 2016.

14. Closing Costs. Each party shall pay their respective attorney's fees related to this transaction. The City shall pay the following costs:

- a. Title Commitment.
- b. Owner's Title Policy.
- c. Documentary stamps affixed to the Deed, recording fees and transfer taxes.
- d. Appraisal, if required for title insurance or donation purposes.
- e. Real property taxes shall be prorated and adjusted on the basis of thirty (30) days of each month. St. Joe to be responsible for all days prior to and including the date of Closing. Taxes for all prior years shall be paid by St. Joe. If the Closing shall occur before the tax rate is fixed for the then-current year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, with the proration to be adjusted between the parties based on actual taxes for the year in which Closing occurs at the time such actual taxes are determined.
- f. Assessments, either general or special, for improvements completed prior to the date of Closing, whether matured or unmatured, shall be paid in full by St. Joe.
- g. Assessments of an annual and continuing nature, such as stormwater assessments, shall be prorated as taxes, as described above.
- h. Survey.

15. Future Roadway Widening. This Agreement does not obligate either party for any costs or responsibilities associated with (i) any future planning, construction, or widening of the two lane roadway to be constructed within the St. Joe North-South Portion as part of this Project or (ii) any future planning or construction of the commonly called "Back-Back Beach Road" contemplated to run parallel to US 98 from SR 79 to Nautilus Road. Nonetheless, the parties agree that the Project will serve as a key segment of the contemplated Back-Back Beach Road and agree to discuss in good faith the feasibility of Back-Back Beach Road and to include other parties in said discussion, including but not limited to the Florida Department of Transportation and Bay County.

16. St. Joe's Reservation of Rights. St. Joe reserves perpetual easements upon, under, over and across the Rights-of-Way for access, maintenance and utilities, in addition to the right to tie into North Nautilus Road as constructed as of the date hereof or shall be constructed subsequent to the date hereof, with driveways or additional road rights-of-way, or both, provided St. Joe complies with all applicable local, state and federal laws.

17. St. Joe's Representations. As a material inducement to the City to execute and perform its obligations under this Agreement, St. Joe represents and warrants that:

- a. There are no actions, suits, or proceedings (including condemnation) pending or threatened against St. Joe, at law or in equity or before any federal, state,

municipal, or other government agency or instrumentality, domestic or foreign which could adversely affect the ability of St. Joe to perform any of its obligations undertaken in this Agreement, nor is St. Joe aware of any facts which to its knowledge might result in any such action, suit, or proceeding, which could adversely affect the ability of St. Joe to perform any of its obligations undertaken in this Agreement.

- b. St. Joe has good, absolute, and infeasible title to all of the lands encompassing the Rights-of-Way, held subject to no lease, mortgage, pledge, lien, charge, security interest, encumbrance, or restriction whatsoever not reflected in the Official Records of Bay County.
- c. The entry of this Agreement and St. Joe's performance of its obligations hereunder will not violate or contradict any agreement, judicial decree or federal or state administrative order or permit by which St. Joe is bound.
- d. To the best knowledge of St. Joe's representatives familiar with the Property, but without conducting an independent investigation, the Rights-of-Way and the Original Pond are not contaminated with any chemical, material or substance to which exposure is prohibited, limited or regulated by any federal, state, county, local or regional authority or which is known to pose a hazard to health and safety including but not limited to substances regulated as "pollutants" under the Federal Water Pollution Control Act or substances regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, the Federal Resource Conservation and Recovery Act, the Federal Comprehensive Environmental Response, Compensation, and Liability Act, the Federal Oil Pollution Act, the Federal Toxic Substances Control Act, or Chapters 373, 376, or 403 of the Florida Statutes and that neither the Rights-of-Way nor the Original Pond have ever been used as a fill site, dump site, storage site of hazardous substances, livestock farm, manufacturing site of any product, or for any other industrial use.

The forgoing representations and warranties shall be renewed at Closing.

18. Remedies. The parties agree that due to the nature of this Agreement, damages to address a breach of this Agreement by either party would be inadequate. Therefore, each party agrees that the other party shall be entitled to the remedy of specific performance in the event of a breach of this Agreement. In addition, the prevailing party in any action or claim arising out of or related to a breach of this Agreement shall be entitled to collect from the non-prevailing party all attorneys' fees and costs incurred by the prevailing party in prosecuting the claim.

19. Amendments and Modifications. No amendment, modification, or alteration of the terms or conditions contained in this Agreement shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

20. Notices. All notices and communications required or allowed by this Agreement shall be in writing and delivered in person, by overnight delivery, by electronic mail delivery, or by Certified Mail, Return Receipt Requested, postage prepaid or as otherwise provided in this Section, addressed to the party or person to whom the notice is being given at the following addresses:

TO ST. JOE: Jorge Gonzalez
The St. Joe Company
133 S. WaterSound Parkway
WaterSound, FL 32413
Phone: (850) 231-6400
Email: jorge.gonzalez@joe.com

COPY TO: Ken Borick
The St. Joe Company
133 S. WaterSound Parkway
WaterSound, FL 32413
Phone: (850) 231-6400
Email: ken.borick@joe.com

TO PCB: Mario Gisbert, City Manager
Kelly Jenkins, City Engineer
City of Panama City Beach
110 South Arnold Road
Panama City Beach, Florida 32407
(850) 233-5100
Email: mgisbert@pcb.gov
Email: kjenkins@pcb.gov

COPY TO: Amy E. Myers
Harrison Sale McCloy
304 Magnolia Avenue
Post Office Box 1579
Panama City, Florida 32402
Email: amyers@HSMcLaw.com

21. Prior Agreements. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

22. Applicable Law and Venue. This Agreement shall be governed, construed and controlled according to the laws of the State of Florida and any applicable laws of the United States of America. Any claim, objection or dispute arising out of the terms of this Agreement shall be litigated in the appropriate court situated in Bay County, Florida.

23. Severability. If any part of this Agreement is found by a court of competent jurisdiction to be contrary to, or prohibited by, or deemed to be invalid under applicable laws or regulations, such provisions shall be inapplicable and shall be deemed omitted to the extent so contrary, prohibited or invalid, but the remaining provisions hereof shall not be invalidated thereby and shall be given effect as far as possible.

24. Interpretation. The section headings used in this Agreement are for convenience of reference only and are not intended to affect the construction of, or to be taken into consideration in interpreting this Agreement.

25. Joint Preparation. The preparation of this Agreement has been a joint effort of the parties hereto and the resulting document shall not, solely as a matter of judicial construction, be constructed more severely against one of the parties than the other.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the day and year first above written. This agreement may be executed in multiple counterparts, each taken together shall constitute an original.

Witnesses

THE ST. JOE COMPANY,
a Florida corporation

By: _____
Name: _____
Title: _____

ATTEST:

Diane Fowler, City Clerk

PANAMA CITY BEACH, FLORIDA

By: _____
Mario Gisbert, City Manager

EXHIBIT A
(aerial depiction of project and project area)



Colony Club to North Nautilus Street Connector

Bay County, FL
 Section 21
 of T3S R16W.

- St. Joe Property
- Est. High Quality Wetlands
1.93 +/- acres
- Bay County Parcels from FDOR



5/31/2016

FDOT Aerial Photo taken in 2015



EXHIBIT B

SPECIAL WARRANTY DEED

THIS INSTRUMENT PREPARED BY
BUT NOT EXECUTED BEFORE:

Amy E. Myers, Esquire
HARRISON SALE McCLOY
304 MAGNOLIA AVENUE
PANAMA CITY, FLORIDA 32401
(850) 769-3434

THIS INDENTURE, made and executed this ____ day of _____, 2016, by THE ST. JOE COMPANY, a Florida corporation, whose address is 133 S. Watersound Parkway, Watersound, FL 32413, hereinafter called the Grantor, to THE CITY OF PANAMA CITY BEACH, FLORIDA, a municipal corporation, whose post office address is 110 South Arnold Road, Panama City Beach, FL 32413, hereinafter called the Grantee;

WITNESSETH:

That the Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, by these presents does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee, all that certain land situate in Bay County, Florida, more particularly described in Exhibit A attached hereto and made a part hereof.

SUBJECT, however, to ad valorem taxes for 2016 and all reservations, covenants, conditions, restrictions and easements of record.

TOGETHER with all the tenement, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD unto the Grantee, its successors and assigns, in fee simple forever. The Grantor warrants title only against lawful claims of persons claiming by, through or under grantor, but not otherwise.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed the day and year first above written.

Signed, sealed and delivered
in the presence of:

WITNESS:

THE ST. JOE COMPANY, a Florida corporation

By: _____ (SEAL)

STATE OF FLORIDA
COUNTY OF WALTON

THE FOREGOING INSTRUMENT was acknowledged before me this _____ day of _____, 2016, by _____, as _____ of The St. Joe Company, on behalf of the company, who is personally known to me.

Notary Public State of Florida