DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into as of the ___ day of November, 2015 (the "**Effective Date**"), by and between Ivins City, a Utah municipal corporation (the "**City**"), and Rocky Vista University LLC, a Colorado limited liability company ("**RVU**").

RECITALS:

The City acknowledges that RVU entered into a Purchase Agreement dated as of August 1, 2015 with certain landowners (the "**Purchase Agreement**"), for property located in Ivins City consisting of 30.35 +/- acres designated as Washington County Tax Parcel No. I-SB-16-A-I-A ("North Parcel") and 2.13 acres+/- designated as Washington County Tax Parcel No. I-SB-24-A-7 ("South Parcel") which are generally described as approximately 30.35 acres of land surrounding the existing Southern Utah Veterans Home – from the corner of 200 East and Center Street to 400 East up to 200 North, as well as the acquisition and use of the property associated with the existing clinic (f/k/a Snow Canyon Clinic) located at 272 East Center Street (collectively the "Property").

A. The Purchase Agreement includes options provisions pursuant to which RVU is not bound to close on the purchase of the property unless certain contingencies are met, including approval by the AOA Commission on Osteopathic College Accreditation, due diligence feasibility on development of the property as determined by RVU and entitlement approvals from the City acceptable to RVU as the buyer of the land.

B. RVU has decided to construct a substantial portion of the internal road system on the North Parcel serving much of the 30.35 acre area, notwithstanding the fact that its first phase will largely focus on construction of the main medical school building covering approximately ten acres of land on the southwest quarter of the North Parcel. In so doing, RVU and the City agree that it is in their respective best interests to also complete the exterior road, which will be known as 400 East Street and which will run the entire length of the eastern boundary of the North Parcel. To accommodate this, it will be necessary for certain right of way to be conveyed by RVU to the City. Additionally, the plans call for a flood control facility ("Detention Basin) on the southeast corner of the North Parcel which will accommodate flood control, meeting the needs of both parties - which Detention Basin will be comprised of approximately 1.8 acre feet for the City and approximately 1.5 acre feet for RVU. These numbers are current estimates and may vary when the storm drain study is complete. The City also plans to create a traffic roundabout where the new 400 East Street will meet Center Street at the Southeast corner of the North Parcel. In this regard, additional right of way will need to be conveyed to the City by RVU. Additionally, a pedestrian crossing shall be installed at a point on Center Street for the most reasonable and useable access between the main medical school building area on the North Parcel and the old Snow Canyon Clinic building on the South Parcel.

C. The City Council finds that in the event the Purchase Agreement closes, it is in the best interests of the City and its residents, and that it is also in accord with the public purposes of applicable state and local laws, to enter into this Agreement.

D. The purpose of this Agreement is to reduce to writing the respective agreements and understandings of the parties regarding as to the costs that the City will be covering as the development of the acquisition of right of way, 400 East Road, the Detention Basin and the Pedestrian Crossing and also to put in place an impact fee deferral benefit for RVU, all in conformance with the ordinances, rules and regulations adopted by the City and all applicable, standards, specifications, regulations and codes (collectively hereinafter referred to as the "**City Ordinances**"). The City and RVU, as well as any permitted successors and assigns, agree to be bound by the terms and conditions of this Agreement as more particularly set forth herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals**. The above Recitals are hereby incorporated into this Agreement.

2. **Development of the Property**. The Property shall be developed as authorized under the Conditional Use Permit, filed with the City on November 2, 2015 and approved by the Ivins City Planning Commission on November 17, 2015. All development and use of the Property shall be subject to the conditions of the Conditional Use Permit as well as the terms and conditions of this Agreement and all applicable City Ordinances.

3. **Acquisition of Rights of Way**. RVU shall convey certain portions of the North Parcel as right of way to accommodate construction of 400 East Street and also the Traffic Roundabout at the southeast corner of the North Parcel. A more specific description is attached hereto in a map provided by the City Engineer, Chuck Gillette (Exhibit A). The property to be acquired by the City relating to the 400 East Street is shown as the 400 East 60' ROW (.13 acres), and also the 400 East Roundabout (.27 acres) as designated on the map. All other rights of way designated on the map are already under easement for the existing trail system that run along Center Street and 200 East on the map but shall nevertheless be conveyed as rights of way pursuant to this Agreement.

4. **Costs of 400 East Road, Detention Basin and Pedestrian Crossing**. In consideration of the City being granted the necessary right of way for 400 East and the roundabout, the City has agreed to the cover the costs of construction of certain improvements that may otherwise be the responsibility of the landowner as follows:

(a) 400 East Street: all sidewalk, curb and gutter, asphalt and storm drain (understood to be a 36'pipe) for 400 East. The installation of the storm drain facilities in 400 East is entirely at the City's expense. Ivins City will either reimburse RVU for, or separately contract and pay for, the installation costs of curb, gutter, sidewalk, pavement, and any storm drain inlets and pipes needed for the 400 East half street improvements in accordance with City Specifications. If the City is able to make an arrangement with

landowners on the east side length of 400 East Street for the installation of the same improvements from that side of the road, the same shall be included in this Agreement.

(b) Detention Basin: the City will pay its pro rata share (54.5%) of the cost for the construction of the Detention Basin and also the costs of the flood control device or pipeline from 400 East Street to the Detention Basin. This allocation is based upon current estimates, but the Parties agree that each party will pay its pro rata share of costs for construction of the Detention Basin. RVU shall provide the layout and design of the Detention Basin as well as granting an easement to the City for such basin. In exchange, and the City will maintain the Detention Basin until such point that RVU is ready to incorporate the Detention Basin into an open space feature of the on the Property.

(c) Center Street Pedestrian Crossing**:** The City will also cover the full cost of the pedestrian crossing and related caution devices at the point reference in between the North and South Parcels in Recital B above.

5. **Installation and Method of Payment:** Other than the pedestrian crossing, the City may contract with RVU, through its general contractor, to install all other 400 East improvements. In that event, RVU shall be reimbursed by the City for all such construction work charged to it by its general contractor in a timely manner upon inspection of the work and approval of invoices on a timely basis by the City. Approval by the City shall be by the City Engineer both prior to installation and after and the City will pay for amounts that are reasonably consistent with the City Engineer's estimates. Any such payment shall be made first in the form of a credit against the City's Storm Drain Impact Fee and new Transportation Impact Fee due to the City with regard to the First Phase of the project. To the extent that the invoice exceeds the impact fees credit then the City shall pay cash to cover such amount. In the event construction of the eastern portion of 400 East Street is arranged between the City and landowners along the east length of the street, the City and RVU shall in good faith determine a deposit amount by the City to RVU for that construction by RVU of that portion of the street, except for any 400 East improvements for which the City used an independent contractor to install.

6. **Deferral of Impact Fees.** RVU would normally be required to pay 100% of the impact fees payable to the City at the time a Building Permit is issued. However, the City acknowledges that the RVU project is a phased development and also that as a medical school, the number of students and users of the Property will develop incrementally over time and accordingly the City agrees to defer the payment of the impact fees payable to the City over a four year period. Under this deferral arrangement, RVU would pay 25% of the total impact fees payable to the City at the time of the issuance of a Building Permit for the College of Osteopathic Medicine with the balance to be paid in three more annual payments of 25% each due on or about the anniversary date the Building Permit was issued. RVU may elect to have 100% of the Storm Drain Impact Fee and/or the new Transportation Impact Fee credited at the time a Building Permit is issue rather than deferring such credits. The City further agrees that the calculation of the Transportation Impact Fee will be based upon RVU's traffic counts/study rather than the City's normal schedules for commercial development.

7. **Governmental Immunity**. The parties acknowledge that the City retains all governmental immunity protection applicable to the City's plan review and inspection activities. The parties however do not intend for governmental immunity to bar a claim by RVU based on the City's alleged failure to perform within the time frames and under the terms of this Agreement.

8. **Payment of Fees**. The City agrees that the City will incur all expenditures for fees related to the construction of the storm drain facilities in 400 East Street the Pedestrian Crossing at Center Street, possibly costs of the construction of the east portion of 400 East Street pursuant to its agreement with other landowners and any other item that would reasonably constitute city improvements and that RVU shall not be liable for any such fees. The City is currently in the process of amending its Transportation Impact Fee; the Transportation Master Plan has already been completed and only the Impact Fee Facilities Plan and Impact Fee Analysis remain uncompleted at this time. The City agrees that if the 400 East street improvements do not commence until after the adoption of the new Transportation Impact Fee, then RVU will only owe the lesser of the current Impact Fee or the new Impact Fee. Furthermore, RVU will then be eligible to use both the Storm Drain Impact Fee and the Transportation Impact Fee as credits towards improvements to 400 East and the Detention Basin. The City agrees to reimburse RVU for the balance incurred for all City improvements installed by RVU or will contract and pay for those costs separately if the City uses an independent contractor to install same.

9. **Funding**. The City understands that RVU may commence construction as early as mid-January 2016 and accordingly represents and warrants that it will have sufficient funds to pay for the City's portion of 400 East improvements agreed to under this Agreement by the time it completes the process of adopting a new Transportation Impact Fee and RVU is ready to have pavement installed within the Project, on 200 North and on 400 East.

10. **Time Frames and Deadlines**. Nothing in this Agreement is intended to extend or waive any applicable time frame or deadline as set forth in applicable City Ordinances.

11. **Default**. In the event any party fails to perform its obligations hereunder or to comply with the terms of this Agreement, the non-defaulting party shall provide the defaulting party written thirty (30) day cure period; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period., then the defaulting party shall have such additional time as is reasonably necessary to cure such default, provided that the defaulting party commences to cure such default within such thirty (30) day period and proceeds to cure such default with diligence and continuity. All notices of default shall be provided in accordance with the Notice provisions set forth below. In the event the defaulting party does not cure the default within the cure period or enter into a written agreement with the non-defaulting party for curing the default within a reasonable time, acceptable to the non-defaulting party in its reasonable discretion, the non-defaulting party may, at its election, have the following remedy or remedies:

(a) All rights and remedies available at law and in equity, including, but not limited to, injunctive relief, specific performance and/or damages.

(b) The right to withhold all further approvals, licenses, permits or other rights associated with the particular parcel or building to which the default is applicable until such default has been cured.

(c) The rights and remedies set forth herein above shall be cumulative.

12. **Assignment**. The parties acknowledge that the provisions of this Agreement and the City's decision to enter this Agreement are specifically based on RVU being the initial user of the Project. Therefore, RVU shall not assign its obligations under this Agreement or any rights or interests herein without giving prior, express written notice to consent of the City. The City may withhold its consent in the event a proposed assignee does not demonstrate the same potential financial benefit to the City as RVU is projected to provide; provided, however, the City may not withhold its consent if the assignee is an affiliate of RVU (i.e., an entity that controls, is controlled by or is under common control with RVU). Any future assignee shall consent in writing to be bound by the terms of this Agreement as a condition precedent to the assignment. No party shall transfer, assign, sell, lease, encumber, or otherwise convey its rights and obligations under this Agreement separate from that party's interest in the Property except for the sale of lots or lease of buildings within the Project.

13. **Other Agreements.**

(a) Ownership. RVU hereby warrants and represents that it has full authority to enter into the terms of this Agreement.

(b) Notice. All notices required or desired to be given hereunder shall be in writing and shall be deemed to have been provided on the date of personal service upon the party for whom intended or upon receipt if mailed, by certified mail, return receipt requested, postage prepaid, and addressed to the parties at the following addresses:

To the City:

Ivins City,
55 North Main Street
Ivins, Utah 84738
Attention Dale Coulam, City Manager/City Attorney

To RVU:

Chuck Flood, Project Manager
RVU, Utah Project
8401 S. Chambers Rd.
Parker, Colorado 80134

With copies to:

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Timothy B. Anderson
Jones Waldo Holbrook & McDonough PC
301 North 200 East Suite 3A
St. George, Utah 84770

Any party may change its address for notice under this Agreement by giving written notice to the other party in accordance with the provisions of this paragraph.

(c) Attorneys Fees**.** Each party agrees that should it default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorneys fee which may arise or accrue from enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah, whether such remedy is pursued by filing a lawsuit or otherwise, and whether such costs and expenses are incurred with or without suit or before or after judgment.

(d) Entire Agreement. This Agreement, together with the Exhibits attached hereto and documents referenced herein, contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior promises, representations, warranties, inducements or understandings between the parties which are not contained in such agreements, regulatory approvals and related conditions.

(e) Headings. Headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

(f) Construction of Agreement. This Agreement shall be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits, and protecting any compelling countervailing public interest. For purposes of this Agreement and the construction of its terms, the parties acknowledge that both participated in the drafting of this Agreement and neither shall be considered the drafter.

(g) Non-Liability of City Officials, Employees and Others. No officer, representative, agent or employee of the City shall be personally liable to RVU or any successor in interest or assignee of RVU in the event of any default or breach by the City, or for any amount which may become due RVU, or its successors or assigns, or for any obligation(s) arising under the terms of this Agreement.

(h) No Third Party Rights. Unless otherwise specifically provided herein, the obligations of RVU and the City set forth in this Agreement shall not create any rights in or obligations to any other persons or third parties.

(i) Binding Effect. This Agreement shall be binding upon the parties hereto and their respective officers, agents, employees, successors and assigns, as permitted herein.

(j) Termination. In addition to any other enforcement right or remedy provided herein, and notwithstanding anything in this Development Agreement to the contrary, it is hereby agreed by the parties hereto that in the event the Project is not completed within two (2) years of the date of this Agreement, or in the event RVU does not comply with the provisions of this Agreement, the City shall have the right, but not the obligation, at the sole discretion of the City, to terminate this Agreement. Any termination may be effected by the City by giving written notice of intent to terminate to RVU at its last known address, as set forth herein. Whereupon RVU shall have sixty (60) days during which RVU shall be given the opportunity to correct any alleged deficiencies and to take appropriate steps to commence and/or complete the Project. In the event RVU fails to correct the alleged deficiencies or to take appropriate steps to commence or complete the Project as provided herein, the City shall be released from any further obligations under this Agreement and may terminate the same by written notice to RVU.

(k) Governing Law and Jurisdiction. The provisions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah. The parties to this Agreement agree that any judicial action associated with the Agreement shall be taken in the Utah state or federal court of competent jurisdiction.

(l) No Waiver. Any party's failure to enforce any provision of the Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

(m) Severability. If any portion of this Agreement is held to be unenforceable by court of competent jurisdiction, any enforceable portion thereof and the remaining provisions shall continue in full force and effect.

(n) Exhibits. Exhibit A and B attached hereto are hereby incorporated herein by this reference.

(o) Time of Essence. Time is expressly made of the essence with respect to the performance of each and every obligation hereunder.

(p) Knowledge. The parties have read this Agreement and have executed it voluntarily after having been apprised of all relevant information and risks and having had the opportunity to consult with legal counsel of their choice.

(q) Supremacy. Other than the conditions of the Conditional Use Permit, in the event of any conflict between the terms of this Agreement and those of any document referred to herein, this Agreement shall govern.

(r) No Relationship. Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship between the parties.

(s) Priority. This Agreement shall be recorded against the Property senior to any protective covenants and any debt security instruments encumbering the Property.

(t) Amendment. This Agreement may be amended only in writing signed by the parties hereto.

(u) Force Majeure. Neither party hereto shall be liable for any delay or failure in the keeping or performance of its obligations under this Agreement during the time and to the extent that any such failure is due to acts of God, acts of the United States Government or the State of Utah, fires, floods, or other casualties or causes beyond the reasonable control and without the fault or negligence of the party obligated to perform hereunder; provided the party seeking relief under the provisions of this Section: (1) notifies the other party in writing of a force majeure event within fifteen (15) days following the affected party's knowledge of the occurrence of the claimed force majeure event, and (2) promptly resumes the keeping and performance of the affected obligations after such cause has come to an end. Each party shall make every reasonable effort to keep delay in performance as a result of such a cause to a minimum.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

CITY:

IVINS CITY

By _____
Name: _____
Mayor Chris Hart

By _____
Name: _____
City Recorder Kari Jimenez

RVU:

ROCKY VISTA UNIVERSITY, LLC

By: _____
Name: _____
Dr. Clinton Adams
Its President and CEO

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