FIRST AMENDED DEVELOPMENT AGREEMENT

THIS FIRST AMENDED DEVELOPMENT AGREEMENT ("**First Amendment**") is made and entered into as of the ___ day of _____, 2016 (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:

A. The City acknowledges that RVU's acquisition of the property located in Ivins City consisting of 30.35 +/- acres designated as Washington County Tax Parcel No. I-SB-16-A-1-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").

B. The parties also acknowledge that an initial Development Agreement for the Property was approved by the Ivins City, and was effective as of, November 19, 2015. Except to the extent the initial Development Agreement is expressly modified by this First Amendment, the terms and conditions of that Agreement still govern and control the rights and obligations of the Parties concerning the development of the Property, as well as 400 East street and the storm drain therein.

C. The parties further acknowledge that a Special Exception for height on the Student Housing buildings was granted by the Ivins City council on May 19, 2016 to allow the mechanical equipment and screening parapet on top of the Student Housing buildings to extend 8 to 10 feet above the normal 35 foot height restriction, while the height of the primary buildings themselves will be within the normal height restriction.

D. The purpose of this First Amendment is to more specifically address the development of the Student Housing referenced in the initial Development Agreement. The Parties, as well as any permitted successors and assigns, agree to be bound by the terms and conditions of this First Amendment 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 First Amendment.

2. **Development of the Property**. The Property shall be developed as authorized under the Conditional Use Permit for development of the Student Housing, approved by the Ivins City Planning Commission on May 17, 2016. All development and use of the Property shall be subject to the conditions of the Conditional Use Permit, which include the representations, presentation materials and design plans submitted as part of the CUP application and approval process, as well as the terms and conditions of this First Amendment and all applicable City Ordinances.

3. **Phasing.** The phasing for the Student Housing related improvements is set forth on Exhibit "A" attached hereto and incorporated herein by this reference. However, the clubhouse shown as part of Phase 1 may or may not be developed. There is nothing in the City Code that requires a clubhouse for student housing. RVU intended to include one as an amenity to its students but initial construction costs are extensive and if this amenity is installed it will be at some future date.

4. **Required Parking.** The parties agree that only a portion of the parking required for the Phase 1 Student Housing will have to be installed during Phase 1 and that in lieu thereof RVU will allow the use of its student parking to count as part of the required Phase 1 Student Housing parking. However, in the event the occupancy of the Phase 1 Student Housing drops below students occupying at least 50% of the rental units, or if the Phase 1 buildings are sold to an unrelated third party that markets any of the Phase 1 buildings to the public as multi-family, non-student housing, or in any event within 10 years from the effective date of this First Amendment, all of the required parking for Phase 1 must be installed and completed as per City Code for multi-family.

5. **Impact Fees.** RVU acknowledges that all impact fees for the Student Housing buildings and other related improvements will be due and payable to the City at time of application for the applicable building permits. Such calculations will include all of the required parking areas, including all of the area for the Phase 1 required parking. The City's Ad Hoc Committee has agreed to the calculation methods and resulting impact fees for Phase 1.. The same methods of calculation of impact fees will also be used for Phase 2.

6. **Building Colors.** The coloring of the Student Housing buildings included in Phase 1 shall be consistent with the requirements of Ivins City Design Guidelines, as well as the color pallets and colored renderings (Exhibit "B") submitted as part of the updated Presentation Materials which are included herein by this reference.

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 First Amendment.

8. **Default**. In the event any party fails to perform its obligations hereunder or to comply with the terms of this First Amendment, 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.

9. **Assignment**. The parties acknowledge that the provisions of this First Amendment and the City's decision to enter this First Amendment are specifically based on RVU being the initial user of the Project. Therefore, RVU shall not assign its obligations under this First Amendment 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 First Amendment as a condition precedent to the assignment. No party shall transfer, assign, sell, lease, encumber, or otherwise convey its rights and obligations under this First Amendment separate from that party's interest in the Property except for the sale of lots or lease of buildings within the Project.

10. **Other Agreements**.

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

(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:

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 First Amendment 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 First Amendment, 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 First Amendment, together with the Exhibits attached hereto, documents referenced herein and the original Development Agreement, 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 First Amendment 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 First Amendment 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 First Amendment and the construction of its terms, the parties acknowledge that both participated in the drafting of this First Amendment 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 First Amendment.

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

(i) Binding Effect. This First Amendment 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 First Amendment 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 First Amendment, or in the event RVU does not comply with the provisions of this First Amendment, the City shall have the right, but not the obligation, at the sole discretion of the City, to terminate this First Amendment. 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 First Amendment and may terminate the same by written notice to RVU.

(k) Governing Law and Jurisdiction. The provisions of this First Amendment shall be governed by and interpreted in accordance with the laws of the State of Utah. The parties to this First Amendment agree that any judicial action associated with the First Amendment 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 First Amendment 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 First Amendment 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 First Amendment 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 First Amendment and those of any document referred to herein, this First Amendment shall govern.

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

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

(t) Amendment. This First Amendment 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 First Amendment 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.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment 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

PHASING **PLAN**



PROJECT DATA

RESIDENTIAL	
TYP. BUILDING	
GROUND FLOOR	9,855 GSF
UPPER FLOORS	9,855 GSF
TOTAL	29,565 GSF
PHASE 1	
3 BUILDINGS	
TOTAL	88,695 GSF
PHASE 2	
2 BUILDINGS	
TOTAL	59,130 GSF
RETAIL	
PHASE 1	
4 BUILDINGS	
RETAIL 01	3,700 GSF
RETAIL 02	10,400 GSF
RETAIL 03	3,700 GSF
RETAIL 04	3,700 GSF
TOTAL	21,500 GSF
OVERALL	
RESIDENTIAL	
5 BUILDINGS	
TOTAL	147,825 SF
RETAIL	
4 BUILDINGS	
TOTAL	21,500 GSF
GRAND TOTAL	169,325 GSF

EXHIBIT "A"

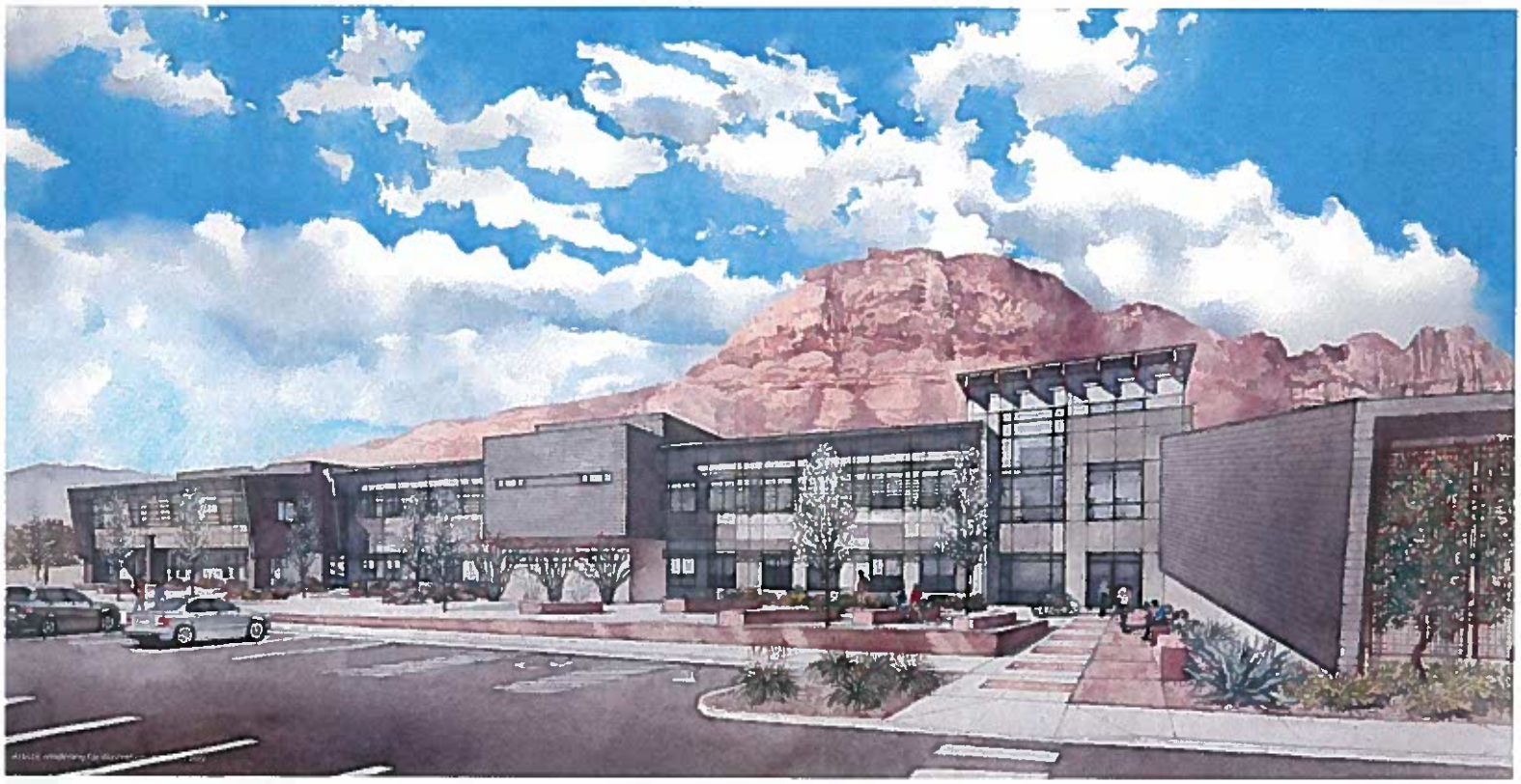


EXHIBIT
"B"



EXHIBIT
tabbies
"B"



EXHIBIT
"B"