

WHEN RECORDED RETURN TO:

City of Mesa (Beth Hughes-Ornelas)
55 North Center Street
Mesa, AZ 85201

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into _____, 2015, by and between VACC, LLC, an Arizona limited liability company ("Owner") and the CITY OF MESA, an Arizona municipal corporation (the "City"). Owner and City are collectively referred to herein as the "Parties," or individually as the "Party."

RECITALS:

A. Owner owns the property located at 1367 South Country Club Drive, and legally described in Exhibit A and depicted in Exhibit B (the "Property") within the City of Mesa, AZ.

B. The Parties desire to enter into this Agreement for the purpose of memorializing the agreed terms surrounding (1) the re-platting and subsequent development of the Property, and (2) certain construction work involving the utility lines that serve the Property. The Parties intend this document to be a "Development Agreement" within the meaning of A. R. S. § 9-500.05.

C. The development of the Property will result in the high-quality redevelopment of a bypassed parcel in an aging area of the City. Owner will resolve existing development uncertainty based on prior platting and development activities.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties state, confirm and agree as follows:

1. Owner's Duties and Obligations. Owner, its successors and assigns agree that the obligations set forth in this Agreement are covenants running with the land that are binding and enforceable upon Owner, its successors and assigns.

2. Final Plat and Subsequent Development. Owner will submit a final subdivision plat to subdivide the Property (the "Final Plat"). The Final Plat will be in substantially the same form as the copy of the final plat attached hereto as Exhibit C. The Final Plat will meet all of the requirements of State law and the Mesa City Code, including Title 9, Chapter 6.

2.1 Simultaneously with recording of the Final Plat, Owner will record separate instruments showing the approval and ratification of all current owners of existing units on the Property. The simultaneously-recorded instruments will be in the form attached as Exhibit D.

2.2 Owner shall subdivide Tracts K, L, M, N and O on the Final Plat at a later time. All subsequent platting will follow usual City processes and be subject to the customary City reviews and fees.

2.3 Owner shall accomplish the later platting of Tracts K, L, M, N and O in a single platting process. Owner agrees not to seek multiple lot line adjustments or platting corrections through affidavit in connection with the development of the Property.

2.4 Owner shall develop Tracts K, L, M, N and O with buildings, finishes, landscaping and elevations are similar to those already developed on the Property that shall meet all the requirements of, and shall follow the conditions and stipulations associated with Zoning Case Z04-076, including project narrative and the site plan, which was approved by the Mesa City Council on November 1, 2004 or as such case may be amended from time to time.

3. Utilities. Pursuant to the following provisions in this Section 3, Owner shall re-construct, construct and install sewer infrastructure on the Property that complies with the Mesa Title 4 Technical Codes, and the City's Terms & Conditions for the Sale of Utilities (the "Plumbing Construction").

3.1 Owner shall prepare an as-built inspection report (the "Plumbing Inspection Report") identifying which existing sewer lines on the Property cross lot lines on the Final Plat. The Plumbing Inspection Report shall depict the as-built condition of all sewer lines connected to buildings on the Property. Owner will submit the Plumbing Inspection Report to the City, within fifteen (15) days of the execution of this Agreement, and the Plumbing Inspection Report will be sealed by a registered civil engineer.

3.2 For lots where sewer lines cross lot lines depicted on the Final Plat ("Lots"), Owner shall submit for review construction documents identifying and detailing all required demolition/construction work and obtain all required permits to complete the

Plumbing Construction on said Lots so that sewer lines are not crossing property lines. The City shall follow its standard and customary procedures in reviewing and approving construction documents and issuing related permits. All construction shall be inspected pursuant to the City's Special Inspection process and procedures by a registered design professional designated by the Owner. Completed Special Inspection Certificate shall be provided to the City Inspector as part of the permit closeout process.

3.3 Owner shall complete the Plumbing Construction on said Lots (1) before the issuance of the fifteenth (15th) building permit on the Property, or (2) ninety (90) calendar days after the execution of this Agreement, whichever first occurs. City will collaborate with Owner to ensure notification of non-compliance related to the Plumbing Construction and to assist Owner in meeting the requirements in this paragraph. If Owner fails to complete the Plumbing Construction on said Lots in the time required by this Section 3.3, no further permits shall be issued or final inspections provided until the Plumbing Construction is complete and approved by the City.

4. Term/Termination. This Agreement shall become effective on the date this Agreement is recorded and shall continue in full force and effect until April 1, 2025.

5. General Provisions.

5.1 Recordation. This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona, not later than ten days after its full execution by the Parties.

5.2 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

The City: City of Mesa
20 East Main Street, Suite 750
Mesa, Arizona 85211
Facsimile: 480-644-2175
Attn: City Manager

With copy to: Mesa City Attorney's Office
20 East Main Street, Suite 850
Mesa, Arizona 85211
Facsimile: 480-644-2498
Attn: Deborah J. Spinner, Esq.

Owner: VACC, LLC
7600 East Doubletree Ranch Road
Suite 120
Scottsdale, Arizona 85295

With copy to: Beus Gilbert PLLC
701 North 44th Street
Phoenix, Arizona 85008
Facsimile: 480-429-3100
Attn: Paul E. Gilbert, Esq.

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

5.3 Choice of Law, Venue and Attorneys' Fees. The laws of the State of Arizona shall govern any dispute, controversy, claim or cause of action arising out of or related to this Agreement. The venue for any such dispute shall be Maricopa County, Arizona, and each Party waives the right to object to venue in Maricopa County for any reason. Neither Party shall be entitled to recover any of its attorneys' fees or other costs from the other Party incurred in any such dispute, controversy, claim, or cause of action, but each Party shall bear its own attorneys' fees and costs, whether the same is resolved through arbitration, litigation in a court, or otherwise.

5.4 Default. In the event a Party fails to perform or fails to otherwise act in accordance with any term or provision hereof (the "Defaulting Party") then the other Party (the "Non-Defaulting Party") may provide written notice to perform to the Defaulting Party (the "Notice of Default"). The Defaulting Party shall have 30 days from receipt of the Notice of Default to cure the default. In the event the failure is such that more than 30 days would reasonably be required to cure the default or otherwise comply with any term or provision herein, then the Defaulting Party shall notify the City of such and the timeframe needed to cure such default, so long as the Defaulting Party commences performance or compliance or gives notice of additional time needed to cure within said 30-day period and diligently proceeds to complete such performance or fulfill such obligation; provided further, however, that no such cure period shall exceed 90 days. Any written notice shall specify the nature of the default and the manner in which the default may be satisfactorily cured, if possible.

5.5 Good Standing; Authority. Each Party represents and warrants that it is a duly formed and legally valid existing entity under the laws of the State of Arizona with respect to Owner, or a municipal corporation within Arizona with respect to the City and that the individuals executing this Agreement on behalf of their respective Party are authorized and empowered to bind the Party on whose behalf each such individual is signing.

5.6 Assignment. The provisions of this Agreement are binding upon and shall inure to the benefit and burden of the Parties, and all of their successors in interest and assigns.

5.7 Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties. No term or provision of this Agreement is intended to, or shall be for the benefit of any person, firm or entity not a party hereto, and no such other person, firm, or entity shall have any right or cause of action hereunder.

5.8 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver of any breach shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant, or condition of this Agreement. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

5.9 Further Documentation. The Parties agree in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

5.10 Fair Interpretation. The Parties have been represented by counsel in the negotiation and drafting of this Agreement and this Agreement shall be construed according to the fair meaning of its language. The rule of construction that ambiguities shall be resolved against the Party who drafted a provision shall not be employed in interpreting this Agreement.

5.11 Computation of Time. In computing any period of time under this Agreement, the date of the act or event from which the designated period of time begins to run shall not be included. The last date of the period so completed shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. The time for performance of any obligation or taking any action under this Agreement shall be deemed to expire at 5:00 p.m. (Phoenix, Arizona time) on the last day of the applicable time period provided herein.

5.12 Conflict of Interest. Pursuant to A.R.S. § 38-503 and § 38-511, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate

in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to the terms of A.R.S. § 38-511.

5.13 Entire Agreement. This Agreement, together with the following Exhibits attached hereto (which are incorporated herein by this reference) constitute the entire agreement between the Parties:

- Exhibit A: Legal Description of the Property
- Exhibit B: Depiction of the Property
- Exhibit C: Copy of Final Plat
- Exhibit D: Form of Ratification and Approval for current owners

All prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are superseded by and merged in this Agreement.

5.14 Time of the Essence. Time is of the essence in this Agreement and with respect to the performance required by each Party hereunder.

5.15 Severability. If any provisions of this Agreement is declared void or unenforceable, such provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect.

5.16 Owner's Release. Owner hereby waives and releases all claims, liabilities, causes of action, demands, rights or actions of any kind, and any and all damages, that in any manner arise out of, or on account of, any City communications or approvals, including but not limited to permitting, zoning and land planning approvals related to the Property.

5.17 Proposition 207 Waiver. Owner hereby waives and releases the City from any and all claims under A.R.S. § 12-1134 et seq., including any right to compensation for reduction to the fair market value of the Property, as a result of the City's approval of this Agreement. The terms of this waiver shall run with the land and shall be binding upon all subsequent landowners and shall survive the expiration or earlier termination of this Agreement.

5.18 E-Verify. To the extent applicable under A.R.S. § 41-4401 and 23-214, Owner represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements of A.R.S. 23-214(A). Breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by City. The City retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws.

5.19 Prior Appropriation. Pursuant to ARS § 42-17106, the City is a governmental agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. City represents that it intends to pay all monies due under this Agreement if such funds have been legally appropriated. City agrees to actively request funding for future fiscal periods in order to satisfy the terms of this Agreement. However, in the event that an appropriation is not granted and operating funds are not otherwise legally available to pay the monies due or to become due under this Agreement, City shall have the right to terminate the Agreement without penalty on the last day of the fiscal period for which funds were legally available. In the event of such termination, City agrees to provide a minimum of thirty (30) calendar days' advance written notice of its intent to terminate.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above:

“City”

CITY OF MESA, an Arizona municipal corporation

By: _____
Its: CITY MANAGER

ATTEST:

Linda Crocker, City Clerk

APPROVED AS TO FORM

Deborah J. Spinner, City Attorney

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Christopher J. Brady, the City Manager for the CITY OF MESA, an Arizona municipal corporation.

Notary Public

My commission expires:

"Owner"

VACC, LLC, an Arizona limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, the _____ of VACC, LLC, an Arizona limited liability company, on behalf of the company.

Notary Public

My commission expires:

EXHIBIT A
TO DEVELOPMENT AGREEMENT

[Legal Description of the Property]

See following pages

EXHIBIT B
TO DEVELOPMENT AGREEMENT
DEPICTION OF THE PROPERTY