

## **ECONOMIC AND REAL ESTATE PARTICIPATION AGREEMENT**

This Economic and Real Estate Participation Agreement (the "Agreement") is entered into by and between VGC Development, LLC, VGC Triangle, LLC, and Top Gun Sales Performance, Inc. (collectively referred to as "VGC") and the City of Mason, Ohio ("Mason"), on this 30<sup>th</sup> day of August, 2016.

WHEREAS, the purpose of this Agreement is to assist in the securing of strategic real estate and to provide a business attraction tool for the City of Mason to recruit start up, entrepreneurial technology companies that can fit a certain specialized defined description in the BioHealth/Digital/IT sector; and

WHEREAS, it is anticipated that the property acquisition will be valuable during business recruitment incentive development where such property may leverage companies to make investment decisions in Mason over competition; and

WHEREAS, communicating the competitive advantages of the City of Mason within target business attraction sectors is critical to gaining economic development momentum within the CincinnatiUSA Region and nationally, and property of this nature will secure certain advantages and objectives toward that positioning.

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

1. Mason shall make funds available for VGC's use in the amount of \$500,000, for the purpose of strategic real estate acquisition and I-71 corridor property control advantages to the City's economic strategy.
2. In exchange for said contribution, Mason shall gain certain property acquisition, development, and control rights, all of which shall be subordinate to the mortgage interests of VGC' lender (the "Lender"), to the property located at 5412 Courseview Drive, Mason, Ohio 45040 (the "Property"), further described herein.

Said contribution by Mason will also be deposited in a Mason Tech Elevator Fund (MTE Fund), and to be utilized as described in a separate Mason Tech Elevator Recruitment Agreement (the "MTE Agreement").

Property rights are further described herein:

3. Required Improvements: VGC will be required to cause to happen improvements to the Property as further described in Attachment A: Intended Improvements

4. Targeted Client Placement: Mason shall have the non-exclusive right to place tenants within any building owned by VGC, or hold/reserve space at the base rent (currently targeted at \$16/SQFT Modified Gross -OR- \$9NNN + CAM) as per the MTE Agreement.
5. Use During Events: Mason shall have the right to the use of the grass areas surrounding the building on the Property appropriate for such purposes during the Tennis Tournament and AVP Events, up to 30 days a year, for parking and other mutually agreed upon uses, pursuant to the terms of a separately recordable easement. Said easement shall include language requiring Mason to repair and restore the utilized premises to its prior condition following Mason's use thereof. Top Gun/VGC's and Lender's approval shall not be unreasonably withheld.
6. Option for Permanent Land Swap: Subject to satisfying and obtaining the necessary partial or full mortgage release from Lender, Mason will have the option to acquire any section of the current Property, with the exception of the section of the Property consisting of the existing building, in exchange for a mutually agreeable, directly adjacent and contiguous parcel that is at least equal in area and value to the section of the Property being exchanged, and does not diminish the value of the Property, the building(s) thereon or cause VGC to incur unreasonable costs or loss, such swap transaction to be evidenced by a separately recordable instrument. Top Gun/VGC's and Lender's approval shall not be unreasonably withheld.
7. Signage Rights: Mason shall have the rights to the usage of the external signs on the property, as further outlined within the attached "Attachment B: Signage Package," for a minimum period of 10 years, and as set forth in a separately recordable instrument. All signage will be mutually agreed upon and neither party will unreasonably withhold their approval.
8. Rights to Construct: Mason shall have rights to construct mutually agreed upon permanent, semi-permanent, or temporary structures on the Property, at Mason's sole expense. Top Gun/VGC's and Lender's approval shall not be unreasonably withheld. All structures will be in compliance with local zoning, building and safety codes and all other applicable laws and regulations, and Mason will bear sole and full liability in the construction, maintenance, and operation of the structures.
9. First Right of Refusal on Purchase: Mason will have the right to match any legitimate written offer for the purchase of the Property, as shall be evidenced in a separately recordable instrument. This right of first refusal shall be given to Mason for the longer of: (i) so long as the Property is owned by VGC or any other entity controlled by J Steven Osborne or his immediate family and shall continue during that term or until such time as Mason exercises the right; voluntarily terminates it; or, (ii) for a period of fifteen (15) years following the execution of this Agreement. In addition, if at any time Lender forecloses on the Property, accepts a deed in lieu of foreclosure of the Property, or otherwise comes into title or possession of the Property as a result of a default, this right shall automatically terminate. In the event Mason exercises this First Right of Refusal, any funds remaining in the MTE Fund up to its original \$500,000 contributions, less any funds expended to date, and less any funds obligated in current leases, or other approved agreements/uses shall be credited as a reduction to the purchase price.
10. Rights to Call the Target Property: Mason shall have the right to purchase the Property from Top Gun/VGC at any time after two years from its initial acquisition. In the event Mason exercises this Right to Call, any uncommitted funds contributed by Mason and remaining in the MTE

Fund up to its original \$500,000 contributions, less any funds expended to date, and less any funds obligated in current leases, or other approved agreements/uses shall be credited as a reduction to the purchase price. The purchase rights hereunder will only survive until exercised by Mason, or until Mason is notified of a legitimate written offer pursuant to Section 9 hereof, at which time such right shall lapse, subject to reinstatement in the event such written offer does not proceed to a sale and transfer of the Property. The purchase price shall be the greater of the following three evaluation methods plus an additional 10%:

- 1) Most recent Warren County assessed value
- 2) The average of three professionally appraised valuations. One evaluator selected by Top Gun/VGC; one by the City of Mason; and one mutually chosen.
- 3) Cap Rate Computation – This standard commercial real estate formula determines value by taking the Net Operating Income and a set Capitalization Rate to determine the Value. Formula:  $\text{Purchase Price} / \text{NOI} = \text{CapRate}$ . The CapRate will be set at 7%. NOI will be computed by industry standard real estate operating expenses.

Notwithstanding the valuation method to be used, in no event shall the purchase price be less than the outstanding principal amount of VGC's current mortgage. Furthermore, Top Gun/VGC agrees that it will not refinance the current mortgage, obtain any additional mortgage, or otherwise encumber the Property without the Consent of Mason, which consent shall not be unreasonably withheld.

Further, Top Gun/VGC agrees that it will provide written notice to the office of the City Manager of Mason of any notice of delinquency of payment on the current mortgage within ten (10) days of receipt thereof. In the event VGC is more than ninety (90) days delinquent in its mortgage payment, Mason shall have the right, but not the obligation, to cure any such delinquency and then, in its discretion, either: (i) make demand upon VGC for reimbursement thereof or (ii) have a credit against the purchase price, in an amount equal to the greater of three (3) times the cure amount or \$200,000.00, in the event of a purchase by the City pursuant to Sections 9 or 10 of this Agreement.

11. Default and Cure. Either party's failure to comply with any of the covenants, agreements, or conditions contained in this Agreement which shall continue for a period of sixty (60) days after written notice thereof shall constitute a default. If, after the expiration of said sixty (60) day cure period, the defaulting party has failed to cure the default, the non-defaulting party shall be entitled to the remedies set forth herein.

12. This Agreement and all the terms and conditions hereof shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. Neither party may assign or otherwise transfer this Agreement hereunder to any entity without the prior written consent of the other party and any proposed assignment or other transfer without the other party's consent shall be null and void and of no legal force or effect.

13. This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio.

14. A determination that any part of this Agreement is invalid shall not invalidate or impair the force or effect of any other part thereof.

15. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties and with respect to the subject matter hereof, and may not be modified except by an agreement in writing signed by each of the parties hereto.

16. This Agreement may be executed in multiple counterparts.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by duly authorized officials as of the date and year first written above.

**CITY OF MASON, OHIO**



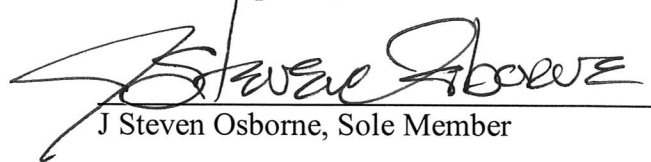
Eric Hansen, City Manager

**TOP GUN SALE PERFORMANCE, INC.**



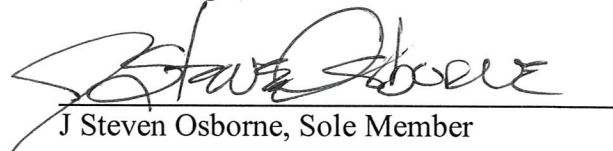
J Steven Osborne, CEO

**VGC Development, LLC**



J Steven Osborne, Sole Member

**VGC Triangle, LLC**



J Steven Osborne, Sole Member

## **Attachment A: Intended Improvements**

- Men's and Women's bathrooms upgraded on all floor with tenants
  - New tile, stall doors, counters and sink fixtures, paint or wall covering, lighting
- Common Areas:
  - First Floor: Carpet and Wall Coverings
  - Second Floor: Carpet and Wall Coverings
  - Third Floor: TBD (floor to be redone with tenant improvements)
  - Fourth Floor: Carpet and Wall Coverings, replace stained tiles
- HVAC Improvements
  - Multiple VAV Units require maintenance, installation, replacement
  - Missing / disconnected ventilation ductwork
- Infrastructure:
  - New network cabling, Fiber optic upgrades
- Exterior:
  - Landscaping upgrades
  - Replacement of fencing around dumpster
  - Concrete repairs

## **Attachment B: Signage Package**

This section is TBD mutually by Top Gun/VGC and the City of Mason

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