

RESTATED AND AMENDED SUBDIVISION IMPROVEMENTS AGREEMENT

For

MAPS the Subdivision, Phase II

The City of Moab, a Utah municipality (hereinafter “CITY”), and the MAPS Senior Living LLC, a Utah limited liability company (“MAPS” or “SUBDIVIDER”) mutually referred to as the “Parties,” enter into the following Subdivision Improvements Agreement (the “Agreement”), pursuant to Moab Municipal Code (hereinafter: “City Code”) Section 16.20, to cover the installation of subdivision improvements required by law and applicable land use approvals.

I. RECITALS.

- A. On February 22, 2018 the City Planning Commission recommended approval of the final plat for the MAPS Subdivision to the Moab City Council.
- B. The Moab City Council, as the land use authority for subdivision final plat approval, approved the final [lat for the MAPS Subdivision, Phase II (hereafter “the Subdivision” or “the Plat”) at its regular City Council meeting on March 12, 2019. The Plat was subsequently modified and is now recorded as Maps Subdivision, Phase II, Reception No. 534983, Book 885, Page 510 of the Grand County land records.
- C. Subdivider has submitted to City for its review construction plans and specifications entitled MAPS SENIOR HOUSING (sheets C0.0–C4.6 inclusive, dated 1-9-2019, and approved by the City Engineer), having been prepared by Goff Engineering and bearing the stamp of Robert Sean Harries, a licensed Professional Engineer (hereinafter: the “Construction Plans”). Said plans show in sufficient detail the Required Improvements for the Subdivision.
- D. The Construction Plans have been reviewed and approved subject to such modifications as may have been specified by each of the following entities:
 - (i) The City Engineer with respect to site grading, pathway, street, and storm water drainage improvements,
 - (ii) The City Public Works Director with respect to culinary water improvements if provided by the City, storm water drainage improvements, parking improvements, and access improvements.
- E. The Housing Authority of Southeastern Utah was formerly a party to a Subdivision Improvements Agreement, dated March 12, 2019, with the City for the MAPS Subdivision. That agreement is hereby terminated and superseded by this Agreement, and Maps Senior Living, LLC assumes all such obligations as the owner of the Subdivision and the successor in title.

II. AGREEMENT

IN CONSIDERATION OF THE ABOVE RECITALS, THE PARTIES AGREE AS FOLLOWS:

1. Covered Property. The real property subject to this Agreement (the “Property”) is described as follows:

PARCELS 1 and 2, MAPS SUBDIVISION Phase II, LOCATED IN THE NW 1/4 OF SECTION 1, T26S, R21E, SLB&M, ACCORDING TO THE OFFICIAL PLAT THEREOF, Reception 534983, Book 885, P. 510.

2. Payment of Fees; Approved Land Uses. Subdivider agrees to pay all in-effect City fees applicable to the Subdivision, including but not limited to, impact fees, connection fees, building permit fees, and applicable inspection fees. Applicable fees shall be calculated and paid according to City policy.

- a. The uses permitted in the Subdivision shall correspond with the uses authorized for the R-4 Zone under the Moab Municipal Code and other applicable ordinances. The configuration of the Subdivision and the uses therein shall conform to the Construction Plans, Exhibit 1 attached, and the Final Plat, as set forth in Exhibit 2, attached.

3. Required Improvements. Subdivider shall construct all of the improvements to the property shown on the Construction Plans, and as described in the Subdivision Improvement Schedule attached as Exhibit 1 (the “Required Improvements”). Required Improvements shall include the public improvements shown on the Construction Plans, including but not limited to the following:

- (a) Site clearing and removal of obstructions
- (b) General site grading
- (c) Site utilities including but not limited to culinary water and sanitary sewer, gas, and electrical power
- (d) Streets, curb & gutter, and sidewalks
- (e) Street signage and lighting
- (f) Storm water drainage facilities.

4. Improvements to be Completed in Conformance with Construction Plans. Improvements shall be completed in conformance with the approved Construction Plans. All changes to the Construction Plans must be authorized in writing by the City Engineer. In addition, all improvements shall be completed in conformance with the City of Moab Public Improvement Specifications and all state and federal regulations as applicable. Where discrepancies occur between the Construction Plans and the listed reference standards, the reference standard shall prevail.

5. Timeline for Completion. Construction of all Required Improvements for Property shall be completed within two (2) years from the date of this Agreement. A reasonable extension of time for the completion of improvements may be granted, at the discretion of the City Council, upon a showing by the Subdivider that there is good cause for an extension and that the work has been diligently prosecuted from the date of this Agreement.
6. Acceptance of Improvements, Warranty. All work shall be subject to quality assurance testing and inspection as specified in the Construction Plans and/or applicable reference standards. Subdivider or Subdivider's authorized representative shall provide 48 hours minimum notification to City as applicable when inspection is required. The costs associated with such testing and inspection shall be the responsibility of Subdivider.
 - (a) Upon satisfactory completion of improvements as evidenced by inspection and testing as applicable, all water and sewer mains and all street and public pathway improvements shall be dedicated to City.
 - (b) Subdivider warrants that all public improvements dedicated to City shall be constructed in a workmanlike manner and in accordance with approved plans and specifications, and that all such improvements shall be free of defects in materials and workmanship for a period of one (1) year from the date of acceptance by City.
 - (i) Subdivider shall promptly repair or replace any defective work following receipt of written notice under this warranty from the City.
 - (ii) Subdivider additionally warrants that all public improvements shall be delivered free and clear of all liens or encumbrances.
7. Performance Guarantee. Contemporaneous with the execution of this Agreement, the Subdivider's lender, Key Bank, shall deliver to the City a validly executed construction loan Set-Aside Agreement, in a form substantially complying with Exhibit 4, attached, for the use and benefit of the City. The Set Aside Agreement shall be in an amount of TWO HUNDRED FIVE THOUSAND TWO HUNDRED EIGHTYTWO DOLLARS which equals one hundred ten percent (110%) of the estimated cost of all Public Improvements. Said cost estimate shall be approved by the City Engineer and is shown in Exhibit 3 hereto.
8. Partial Releases of the funds secured by the Set Aside Agreement may be made for the purpose of paying for labor, materials, or construction services provided in the installation of the Public Improvements. Partial releases of the Set Aside Agreement funds may be jointly authorized by the City and the Subdivider, in writing.
9. Final Release of Set Aside Agreement. Upon completion of all Required Improvements in accordance with the approved Construction Plans, Subdivider may request that the Set Aside Agreement be released.
 - (a) In order for Subdivider to receive final release, the following shall be

presented to City:

- (i) A completed Final Release Form supplied by City and signed by Subdivider. Said form shall include Subdivider's certification of warranty for the completed improvements.
- (ii) Copies lien waivers/releases from all contractors who performed work on the project and all suppliers who supplied materials that were incorporated into the work.
- (iii) Written certification by Subdivider that all outstanding charges for the Improvements have been paid and that there are no liens, encumbrances, or other restrictions on the Improvements.

(b) Upon acceptance of a complete request for final release, the City shall verify that all Required Improvements are complete and in accordance with the approved Construction Plans and Final Plat.

10. City's Use of Set Aside Agreement upon Default. Upon written certification by the City Manager that the Subdivider has failed to perform its obligations under this Agreement, within the time period set forth in this Agreement, and if City intends to proceed with the task of installing any or all of the Required Improvements covered by this Agreement, the City may elect to declare a default pursuant to this Agreement. The City may then proceed to draw on the Set Aside Agreement and apply the funds towards completion of the Public Improvements.

11. Zoning Compliance. Certificates of Occupancy for structures within the Property shall only be issued upon satisfactory completion and acceptance of all Required Improvements as required by this Agreement. In no case shall a Certificate of Occupancy be issued, nor shall any structure be occupied, prior to the completion of all Required Improvements and the satisfaction of zoning requirements for a given lot. The occupying of any structure without a Certificate of Occupancy shall constitute Default as provided for herein.

12. Default, Remedies, Lapse of Plat. All provisions of this Agreement are material and any violation is grounds for declaration of Default. Prior to invoking any remedies for Default under this Agreement City shall deliver written notice to the Subdivider describing the act, event, or omission constituting same, and allowing Subdivider a period of not less than thirty (30) days in which to cure or abate the violation. Cure within that period reinstates this Agreement.

(a) Upon declaration of Default, City may exercise any remedies for violation available under City ordinances or Utah statutes, including, without limitation: withholding building permits or certificates of occupancy; commencing an action for specific performance or to enjoin or abate zoning violations or violations of this Agreement; an action for recovery of damages; and/or taking any other remedies available at law or equity. Injunctive relief may be obtained upon a showing of a violation of this Agreement, and without the necessity of the applicant posting a bond.

13. General Provisions. This Agreement shall be binding on and inure to the benefit of the successors and assigns of Subdivider in the ownership or development of all or any portion of the Property. Assignment of this Agreement shall require the mutual approval of the City and the proposed assignee, in writing.
- (a) This Agreement is the product of mutual bargaining. All terms shall be construed in accordance with their plain meaning, regardless of the extent to which either party participated in the drafting.
 - (b) Failure of a party to exercise any right under this Agreement shall not be deemed a waiver of any such right, nor shall any course of dealing or previous action or inaction be deemed a waiver of any rights or claims arising with respect to later or subsequent breaches, acts or omissions.
 - (c) The term “Agreement” includes this Improvements Agreement, all exhibits hereto, the Final Plat/Plan for the subdivision, and all related design drawings, which documents shall constitute the sole and complete Agreement between the parties. The Agreement shall supersede all prior Agreements or representations, however evidenced. No modifications to any of the terms of this Agreement shall be binding, unless reduced to writing and lawfully executed by both parties.
 - (d) The place of performance of this Agreement is Grand County, Utah. In the event of any legal dispute concerning the subjects of this Agreement, the parties agree that the exclusive venue in the Seventh Judicial District Court, Grand County, Utah. In any such proceeding arising under this Agreement, regardless of the denomination of the legal claims, the parties waive trial to a jury on all claims and agree that the action shall be tried to the court.
 - (e) In any legal proceeding concerning the terms of this Agreement the substantially prevailing party shall be entitled to recover its reasonable attorney fees and court costs in addition to any other relief authorized herein.
 - (f) This Agreement shall be governed by Utah law.
 - (g) This Agreement does not create any third-party beneficiary rights. It is specifically understood by the parties that:
 - (i) the Project is a private development;
 - (ii) the City of Moab has no interest in, responsibilities for, or duty to third parties concerning any improvements to the Property, unless/until the City accepts dedication of public improvements pursuant to this Agreement; and
 - (iii) except as otherwise provided herein, Subdivider shall have full power and exclusive control of the Property.
 - (h) The provisions of this Agreement are severable, and if any portion should be held to be invalid or unenforceable, then the remainder of this Agreement shall be construed to be in full force without reference to the invalid

provision.

- (i) In the event of any legal dispute concerning this Agreement neither party shall be liable to the other for consequential damages, lost profits, or delay related damages of any kind.
- (j) All notices under this Agreement shall be given in writing by first class or certified mail, postage prepaid, and delivered to the following addresses:

To the City of Moab:
City of Moab
217 East Center Street
Moab, Utah 84532
Attn: City Manager

To SUBDIVIDER:
MAPS Senior Living, LLC
321 East Center Street
Moab, Utah 85432

- (k) Notice may be delivered to such other parties or addresses as the parties may designate in writing from time to time.
- (l) Nothing in this Agreement shall be deemed to waive any governmental or other immunity to which the City is entitled under applicable law.

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This Agreement has been executed by the City of Moab, acting by and Through the Moab City Council, which has duly authorized execution, and by Subdivider as of the date(s) specified below.

CITY OF MOAB:

By: _____ Date _____
Mayor Emily S. Niehaus

ATTEST:

By: _____ Date _____
Sommar Johnson
City Recorder

SUBDIVIDER:
Maps Senior Living, LLC

By: _____ Date _____
Title: _____

STATE OF UTAH)
)§
COUNTY OF GRAND)

The foregoing agreement was executed before me by MAPS Senior Living, LLC, acting by and through _____, this ____ day of _____, 20___. Witness my hand and official seal. My commission expires: _____.

Notary Public, State of Utah

Address: _____

ACKNOWLEDGMENT

The Housing Authority of Southeastern Utah, as party to the former Subdivision Improvements Agreement with the City of Moab, dated March 12, 2019, hereby consents to the termination of the agreement of that date, which shall be superseded by this Agreement.

THE HOUSING AUTHORITY OF SOUTHEASTERN UTAH:

By: _____
Benjamin Riley, Executive Director

Date