SUBDIVISION IMPROVEMENT AGREEMENT
(Lionsback Resort – Phase 1 – 34 Casitas)

THIS SUBDIVISION IMPROVEMENT AGREEMENT (“Agreement”) is made and entered effective as of the ____ day of _______________, 2021 (“Effective Date”), by and between the City of Moab, a Utah municipal corporation, acting through its City Council (“City”), and LB Moab Owner, LLC, a Colorado limited liability company (“Developer”), as successor in interest to LB Moab Land Company, LLC. City and Developer are individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

A. The State of Utah, acting by and through the School and Institutional Trust Lands Administration (“SITLA”) is the owner of a certain parcel of real property situated in Grand County, Utah consisting of 139.95 acres, more or less, more particularly described on attached Exhibit “A” (the “Property”).

B. SITLA is also the owner of certain adjoining property more particularly described on attached Exhibit “B” (the “Adjoining Property”). The Property and the Adjoining Property collectively comprise 175 acres, more or less.

C. The Property has been annexed into the City of Moab and the Adjoining Property is currently located in the unincorporated portion of Grand County, Utah.

D. Developer and SITLA have entered into a certain Development Agreement and Ground Lease concerning the Property and the Adjoining Property dated as of June 6, 2006, as amended and restated by that certain Amended and Restated Development Agreement, Payment Agreement and Ground Lease dated as of January 1, 2018 (collectively the “SITLA Lease and Development Agreement”) by which Developer is authorized and empowered to seek and obtain development approvals from the City.

E. Developer has annexed the Property into the City pursuant to and in accordance with the following documents:

i. The City of Moab Ordinance No. 2008-20 (the “Annexation Ordinance”) dated December 9, 2008 and recorded on February 23, 2009 in Book 744, Page 407-423, Reception No. 490726 with the Clerk and Recorder for Grand County, Utah (“Official Records”);

ii. The Pre-Annexation Agreement dated October 28, 2008 and recorded on December 11, 2008 at Book 741, Page 749 in the Official Records (the “Pre-Annexation Agreement”); and

iii. The Annexation Map recorded on February 23, 2009 in Book 744, Page 424, Reception No. 490727 in the Official Records (the “Annexation Map”).
F. Pursuant to the Pre-Annexation Agreement, Developer and City subsequently entered into that certain Development and Phasing Agreement made effective as of July 28, 2009 (the “Development and Phasing Agreement”).

G. The Pre-Annexation Agreement and the Development and Phasing Agreement each contemplate that City and Developer would enter into separate subdivision improvement agreements for each phase of development of the Property (as well as the Adjoining Property at such time as it is annexed into the City) in connection with the development of the mixed use resort project known as “Lionsback Resort” (the “Project”).

H. The originally-agreed onsite and offsite infrastructure improvements for the Project are set forth in Exhibit E to the Development and Phasing Agreement (the “Subdivision Improvements Schedule”). The Parties desire to enter into this Agreement to: (i) reflect changes in the phasing of the Project, as permitted by the Development and Phasing Agreement; (ii) update the Subdivision Improvements Schedule for the Project to reflect additional commitments made by the Developer at the request of the City; and (iii) set forth the process for construction of onsite for the development of Phase 1 of Project, which is anticipated to include 34 single-family casitas developed for individual sale.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals cited hereinabove and the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the Parties hereto agree as follows:

1. Improvements. The Subdivision Improvements Schedule is updated in its entirety, as set forth in Exhibit “C”, which is attached hereto and incorporated herein by this reference. Developer shall furnish and install, at its own expense, the Phase 1 improvements (the “Improvements”) described in the Subdivision Improvements Schedule.

1.1 Design and Construction. Construction of the Improvements shall be in conformance with the plans to be prepared by Developer and reviewed and accepted by the City’s engineer and with all policies, standards, and specifications adopted by the City in connection with the Final Master Planned Development (MPD) approval for the Project. The City’s engineer’s review and acceptance of the plans shall not limit or affect Developer’s responsibility for design and construction.

1.2 Testing. Developer shall employ, at its own expense, a qualified testing company, previously approved by the City, to perform all standard testing of materials or construction typically required by the City, and shall furnish copies of test results to the City’s engineer.

1.3 Inspection. At all times during construction of the Improvements, the City shall have the right, but not the duty, to inspect materials and workmanship, and all materials and work shall conform to the accepted plans and specifications. Any material or work not conforming to the accepted plans and the City’s published Standards and Specifications (the “Standards and Specifications”) shall promptly be removed or replaced to the satisfaction of the City’s engineer at the Developer’s expense. The Parties
acknowledge that, as approved in the Preliminary MPD, internal streets within the Project will be private streets designed to de-emphasize vehicular traffic, and as such will not meet typical City standards, but instead will be governed by the final MPD approval.

1.4 **Utilities.** Developer shall furnish proof that proper arrangements have been made for the installation of water, sanitary sewer, stormwater, electric, telecommunications, and natural gas (in the event that Developer elects to provide natural gas).

1.5 **Completion of Improvements.** The obligations of the Developer provided for in this Section 1, including all Subsections hereof, shall generally be performed in accordance with the timeframes set forth in the Subdivision Improvements Schedule in Exhibit “C”, provided that such timeframes are not intended to be absolute and represent likely timeframes based on current market conditions and infrastructure phasing. No Improvements shall be deemed to be completed until the City’s engineer has certified, in writing, that the Improvement has been completed in general conformance with the plans therefor and have been accepted by the City.

1.6 **Fees.** Developer is responsible for all permit fees associated with the construction or installation of the improvements. These fees include but are not limited to building permit fees, grading permit fees, water license fees, water tap and meter fees and contractor license fees.

2. **Rights-of-Way and Easements.** Before commencing the construction of any Improvements herein agreed upon, the Developer shall acquire at its own expense good and sufficient title to any necessary easements, free and clear of any liens or encumbrances, across all third-party (non-SITLA) lands traversed by the proposed Improvements.

3. **Engineering Services.** Developer shall furnish, at its own expense, all engineering services required for the Property and the Improvements.

3.1 Engineering services shall be performed by a professional engineer licensed in the State of Utah. Such engineering services shall conform in all respects to the Standards and Specifications.

3.2 Engineering services shall consist of, but not be limited to, survey, designs, plans and profiles, estimates, construction supervision, and the furnishing of necessary documents in connection therewith. All engineering plans shall be submitted for review by and be subject to the stamped acceptance by the City’s engineer. The City’s engineer’s review and acceptance does not relieve Developer or Developer’s engineer of the responsibility for design and construction.

4. **Acceptance.** Upon written request of Developer, accompanied by documents required by the Standards and Specifications, the City shall accept the Improvements in accordance with then-applicable procedures, which acceptance shall not be unreasonably withheld, conditioned or delayed. Upon acceptance, said Improvements shall become public facilities and property of the City, except as provided in Section 4.3. Until acceptance by the City’s Engineer, the Developer shall bear all risk of loss, damage, or failure to any of the Improvements. Pursuant
to the Development and Phasing Agreement, paragraph 2.14, the Developer agrees to provide a two year warranty for all on and off-site utilities until the day of acceptance by the City’s Engineer.

4.1 If requested by Developer, portions of the Improvements may be placed in service when completed, but such use shall not constitute an acceptance. Until the Improvements are accepted by the City, Developer shall be solely liable for any repairs or replacements which, in the opinion of the City’s engineer, shall become necessary. The City will not impose charges for construction water transported through the offsite water improvements prior to acceptance.

4.2 The City may, at its option, issue building permits for construction on lots for which the Improvements detailed herein have been started, but not completed. The City shall not issue certificates of occupancy or install water meters for lots unless the Improvements serving those lots are completed and placed in service. Any waiver of the terms of this Agreement by the City in any particular instance shall not be deemed a waiver of such terms in any subsequent instance. No delay in enforcement of the terms of this Agreement by the City shall be deemed a waiver of the City’s rights hereunder.

4.3 Streets within the Project Area will be designed and constructed to City of Moab construction standards, subject to any mutually agreeable waivers of such standards, but shall be owned and operated as private roads, to be owned, managed and maintained by Developer and a to-be-formed Project Association. The Parties acknowledge, in furtherance of development of the Project as a pedestrian-friendly walkable community, that private roads within the Project will be narrower than standard City streets, as permitted by mutual agreement pursuant to Section 4.3.1 of the Pre-Annexation Agreement.

5. Warranty. The Developer shall, at its own expense, make all needed repairs or replacements to any Improvements that are to be dedicated to the City which, in the opinion of the City’s engineer, shall become necessary during the two (2) year warranty period. If, within thirty (30) days after Developer’s receipt of written notice from the City requesting such repairs or replacements, the Developer shall not have undertaken with due diligence to make same, the City may make such repairs or replacements at the Developer’s expense and shall be entitled to draw upon the performance guarantee described in Section 6 either before undertaking to make such repairs or at any time thereafter.

6. Performance Guarantee. Before starting work on the Improvements and before any building permit is issued for any structure to be erected in the Property, the Developer shall furnish to the City, at Developer’s expense, financial surety in accordance with the Standards and Specifications and Utah Code Ann. § 10-9a-604.5 (2020) in the amount of one hundred percent (100%) of the estimated costs required to complete those Improvements designated in the Subdivision Improvements Schedule as onsite improvements.

6.1 Partial releases of the financial security are authorized as Improvements are completed and accepted by the City. Original bond or financial guarantee amounts will be fully released within fourteen (14) days of acceptance of the Improvements by the City.
6.2 The bond or financial guarantee shall be maintained at ten per cent (10%) of the original bond amount, as required by Utah Code Ann. § 10-9a-604.5, during the one-year repair and replacement period referred to in Section 6.

7. **Miscellaneous.**

7.1 **Covenants.** The provisions of this Agreement shall constitute covenants or servitudes which shall touch, attach to and run with the land comprising the Property and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the Property as applicable and all successors in interest to the Parties hereto.

7.2 **Term.** The term of this Agreement shall commence upon the date hereof and shall extend until all of the commitments hereunder are satisfied. Developer may terminate this Agreement, and may withdraw its applications for development and other development approvals, at any time upon five days written notice that, in its sole discretion, Developer determines that the Project will not be approved in a form satisfactory to Developer.

7.3 **Amendment of Agreement.** Except as otherwise provided herein, this Agreement may be amended from time to time by mutual consent of the original Parties or their successors in interest in writing.

7.4 **Binding Effect.** This Agreement shall extend to, be binding upon, and inure to the benefit of the Parties hereto and the successors and assigns of the respective Parties hereto. This Agreement shall, in addition to all other remedies, be enforceable by any action for specific performance in a court of competent jurisdiction. In the event that SITLA should elect to terminate the SITLA Lease and Development Agreement and resume possession of the Property, SITLA shall succeed to the rights and interests of Developer under this Agreement, including the duties and obligations imposed upon Developer hereunder.

7.5 **Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors in interest or the legal representatives of the Parties hereto. Developer shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to Developer’s affiliated companies, any homeowners or property association for the Project, a legally-constituted special district, or third Parties acquiring an interest or estate in the Property, including but not limited to purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property, provided that all such assignees agrees to be bound to applicable provisions of this Agreement.

7.6 **No Third Party Beneficiaries.** This Agreement does not create any third party beneficiary rights. It is specifically agreed by the Parties that: (a) the Project is a private development; (b) the City has no interest in, responsibilities for, or duty to third Parties concerning any improvements to the Property except to the extent the City accepts title to the Improvements pursuant to this Agreement or in connection with site plan, deed or plat approval, and as provided generally under City ordinances; (c) Developer shall have
the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement; and (d) no other persons, whether as alleged third party beneficiaries or otherwise, shall have any right to enforce or seek interpretation of this Agreement.

7.7     Recording of Agreement. This Agreement, including exhibits, shall be recorded in the Official Records of Grand County, Utah.

7.8     Indemnity. Except as otherwise set forth herein, the Developer shall defend and hold the City harmless from and against any and all claims, demands, liabilities, actions, costs, damages, and attorney’s fees that may arise out of or result directly or indirectly from the Developer’s actions or omissions in connection with this Agreement, including but not limited to Developer’s improper design or construction of the Improvements required hereunder, or Developer’s failure to construct or complete the same. After inspection and acceptance by the City of the offsite Improvements, and after expiration of any applicable warranty period, this agreement of indemnity shall expire and be of no future force or effect.

7.9     Statement of Intent and Cooperation. It is the express intent of Developer and the City to cooperate and diligently work to implement any processes that are necessary or appropriate under the City of Moab Municipal Code in connection with the approval and implementation of the development of the Project in conformance with the terms and conditions of this Agreement. The City shall cooperate with Developer in its efforts to obtain such other permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over aspects of the Project in connection with the development of or provision of services to the Project, and shall from time to time at the request of Developer, attempt with due diligence and in good faith to enter into binding agreements with any such entity necessary to assure the availability of such permits and approvals or services. In the event of any legal or equitable act, action or other proceeding instituted by a third Party, other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending said action or proceeding. In the event the City and Developer are unable to select mutually agreeable legal counsel to defend such action or proceeding, each Party may select its own legal counsel. This Agreement shall not be interpreted to create any third Party beneficiaries or any rights to enforcement by any person not a Party hereto.

7.10    No Regulated Public Utility Status. The Parties agree that by this Agreement the City does not become a regulated public utility for water service and sanitary sewer service, compelled to serve other Parties similarly situated.

7.11    No Joint Venture or Partnership. The City and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.
7.12 Default and Remedies.

7.12.1 A Party ("Defaulting Party") shall “default” under this Agreement if it: (a) breaches any of its material duties and obligations contained hereunder and, (b), after receiving written notice of the breach ("Notice of Default") from the other Party (the “Notifying Party”), fails to cure the breach within: (i) 15 days after delivery of the Notice of Default if the breach is failure to pay money owed to the Notifying Party, or (ii) 30 days after delivery of the notice with respect to any other breach (or, if the breach by its nature cannot be cured within 30 days, the defaulting party must commence the cure within 30 days after delivery of the notice and thereafter diligently pursue the cure to completion). The Notice of Default contemplated by this Section shall clearly state and describe: (a) each section(s) of the Agreement which the Responding Party has allegedly violated, (b) a summary of the facts and circumstances being relied upon to establish the alleged violation, (c) the specific steps (“Cure Events”) that must be undertaken to come into compliance with the Agreement, and (d) the reasonable timeframe consistent with this Section 7.12 within which time the alleged violation should be cured ("Cure Completion Date").

7.12.2 Following a failure to cure the default following the applicable Cure Completion Date, the Notifying Party may: (a) initiate an action to compel compliance by the Defaulting Party with this Agreement, including injunctive relief and specific performance; (b) initiate an action to recover any damages resulting from the breach; (c) pursue any and all other rights and remedies available under Utah Law; (d) suspend the rights and interests of the Defaulting Party under this Agreement until such time as the Defaulting Party is in compliance with this Agreement; and/or (e) take the necessary action itself to cause the obligation(s) in default to be performed, in which case the Notifying Party may recover from the Defaulting Party all damages as well as all costs and expenses reasonably incurred to perform such obligation(s).

7.12.3 In addition to the foregoing remedies, in the event the Developer has failed to cure a Cure Event that is (a) material to the terms and conditions of this Agreement; and (b) the occurrence of which will unreasonably delay or prevent Developer from completing its duties and obligations under this Agreement (which material events include, by way of illustration and not exclusion, the filing of a bankruptcy by the Developer and no accompanying plan for reorganization to complete the Project), the City may decline to process or approve any development applications, withhold building permits, or discontinue services provided under this Agreement. This City may combine remedies in its discretion, and as may fit the applicable breach. In no event shall either party be liable to the other for remote or consequential damages derived from breach including, without limitation, lost business opportunities or income; delay related financing costs; damage to business reputation or goodwill; or the like.

7.12.4 The remedies shall be cumulative in nature and a Party may pursue some or all of its remedies. In the event of any litigation arising from this
Agreement, the substantially prevailing party shall collect its reasonable costs, expenses and fees, including reasonable expert fees and attorney’s fees.

7.12.5 Personal jurisdiction and venue for any civil action commenced by any Party to this Agreement whether arising out of or relating to this Agreement will be deemed to be proper only if such action is commenced in District Court for Grand County, Utah.

7.13 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

7.14 No Waiver. Failure of a Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or to enforce any other right it may have hereunder.

7.15 Mediation. Any default, dispute, difference, or disagreement hereunder shall be referred to a single mediator agreed on by the Parties, or if no mediator can be agreed upon, a mediator shall be selected in accordance with the mediation rules of the American Arbitration Association. Authorized representatives of the Parties shall meet with the mediator within thirty (30) days and endeavor in good faith to resolve the default, dispute, difference or disagreement by agreement of the Parties.

7.16 Protest. In the event of any protest or similar legal or administrative challenge to any development approvals under this Agreement, Developer will cooperate with the City in providing necessary information or testimony to support the contested approvals, and City will defend such approvals in any proceeding before the applicable appeal authority.

7.17 Notices. All notices required or permitted under this Agreement shall be given by registered or certified mail, postage prepaid, return receipt requested, or by hand delivery or recognized overnight delivery service, or by telecopy (so long as the original follows by regular mail or other form of delivery permitted hereunder within five business days) directed to the persons at the address indicated below. Any notice delivered by mail in accordance with this Section shall be deemed to have been duly given on the date upon which the return receipt is executed by a representative of the Party to whom such notice is to be given at the address specified herein. Any notice which is hand delivered shall be effective upon receipt by the Party to whom it is addressed. If sent by overnight courier, all notices shall be deemed delivered one business day after deposit with a recognized overnight courier service. Any notice which is delivered by telecopy shall be effective upon receipt by the sending Party of written confirmation of receipt by the receiving telecopy machine at the numbers shown above. Either Party, by notice given as above, may change the address or telecopy numbers to which future notices should be sent.

<table>
<thead>
<tr>
<th>Jon Dwight</th>
<th>City of Moab</th>
</tr>
</thead>
<tbody>
<tr>
<td>LB Moab Owner, LLC</td>
<td>217 East Center Street</td>
</tr>
<tr>
<td>3858 Walnut Street, Suite 104</td>
<td>Moab, Utah 84532</td>
</tr>
<tr>
<td>Denver, CO 80205</td>
<td>Attention: City Manager</td>
</tr>
</tbody>
</table>
7.18 **Integration, Disclaimer of Other Duties.** This Agreement supersedes and controls all prior written and oral agreements and representations of the Parties and is the total, integrated agreement among the Parties. The Parties each disclaim any duties not expressly set forth in this Agreement or other written agreements executed in conjunction herewith.

7.19 **Force Majeure.** No Party shall be held liable for a failure to perform hereunder due to wars, strikes, acts of God, natural disasters, or other similar occurrences outside the reasonable control of that Party. Unless otherwise mutually agreed-, performance by the Parties shall resume promptly upon the cessation of any act or event constituting force majeure.

7.20 **Authority.** By signing this Agreement, the Parties acknowledge and represent to one another that all procedures necessary to validly contract and execute this Agreement have been performed and that the persons signing for each of the Parties have been duly authorized so to do.

7.21 **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

7.22 **Severability.** If any provision of this Agreement, or the application of such provisions to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which is held invalid, shall not be affected thereby.

7.23 **Counterparts; Facsimile.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. This Agreement may be executed by electronic signature or facsimile.
7.24 **Schedule of Exhibits.**

<table>
<thead>
<tr>
<th>Exhibit Reference</th>
<th>Document Reference</th>
</tr>
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<tbody>
<tr>
<td>Exhibit “A”</td>
<td>Legal Description of the Property</td>
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<tr>
<td>Exhibit “B”</td>
<td>Description of Adjoining Property</td>
</tr>
<tr>
<td>Exhibit “C”</td>
<td>Schedule of Improvements</td>
</tr>
</tbody>
</table>

[Remainder of Page Intentionally Blank; Signatures Follow]
IN WITNESS WHEREOF, 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 a duly authorized representative of Developer, as of the Effective Date.

CITY:

CITY OF MOAB,
a Utah municipal corporation

_________________________________

ATTEST:

Emily Niehaus, Mayor

______________________________

Sommar Johnson, City Recorder

Approved as to form:

______________________________

Laurie Simonson, City Attorney
ACKNOWLEDGMENT

STATE OF UTAH

County of

On this ____ day of _______________, 2021, before the undersigned notary public in and for the said state, personally appeared Emily Niehaus, known or identified to me to be the Mayor of the City of Moab, who executed the foregoing instrument on behalf of said City and acknowledged to me that said City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

__________________________
Notary Public for Utah

[Signatures Continue on Following Page]
DEVELOPER:

LB Moab Owner, LLC,
a Colorado limited liability company

By: _____________________________
Name: Jon W. Dwight
Its: Authorized Signatory

ACKNOWLEDGMENT

STATE OF UTAH )
County of )
: ss.

On this ____ day of _______________, 2021, before the undersigned notary public in and for the said state, personally appeared ____________________, known or identified to me to be the ________________ of LB Moab Owner, LLC, a Colorado limited liability company, who executed the foregoing instrument on behalf of said company and acknowledged to me that said company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

______________________________
Notary Public for Utah
Exhibit “A”
(Legal Description of Property)
Exhibit “B”
(Legal Description of Adjoining Property)
Exhibit “C”
(Schedule of Improvements)