

WHEN RECORDED RETURN TO:
Grand County Recorder

**DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF MOAB AND BLUE BISON DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is entered into this ____ day of _____, 2021 (the “Effective Date”), by and between JSATT CORP, a Utah corporation d/b/a BLUE BISON DEVELOPMENT (“Developer”) and the CITY OF MOAB, a municipality and political subdivision of the State of Utah (the “City”). Developer and the City are hereinafter sometimes referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

A. Developer is or will soon be the owner of approximately 9.98 acres of real property located within the boundaries of the City as more particularly described in Exhibit A (the “Property”).

B. Developer has made application to the City for a general plan map amendment and zoning map amendment to rezone a portion of the Property as shown on Exhibit B (the “Rezone Section”) as R-3 Multi-Household Residential for the purpose of constructing a multi-family residential development consisting of 175 residential units and other related improvements on such portion of the Property (the “Project”).

C. The intent of this Agreement is to facilitate the consideration of a rezone of the Rezone Section from RA-1 Agricultural-Residential Zone to the R-3 Multi-household Zone (the “Rezone Request”) to provide for the inclusion of a specified number of residential units within the Project that are available for occupancy only by Actively Employed Households (defined below).

D. The City, acting pursuant to its authority under UTAH CODE ANN. §§ 10-9a-101, *et seq.*, has made certain determinations with respect to the Property and the Project and, in the exercise of its legislative discretion, has elected to process and approve this Agreement prior to final action on the Rezone Request.

AGREEMENT

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 hereby agree as follows:

1. **Incorporation of Recitals.** The Recitals and Exhibits are hereby incorporated by reference as part of this Agreement.
2. **Conditions Precedent.**

2.1. Closing of Property Transactions. As a condition precedent to the obligations of the Parties hereunder, this Agreement is contingent upon and shall only become effective at such time, and in the event that, Developer closes on the sale of the Property. In the event that the sale fails to close, this Agreement shall be of no further force and effect and the Property shall revert to the pre-existing, underlying zoning districts in which the Property is currently located. The current owner of the Property, Neil Bruce Johnson, shall have no vested rights pursuant to this Agreement.

2.2. Approval of Zoning by City Council. As a second and additional condition precedent to the obligations of the Parties hereunder, this Agreement is contingent upon and shall only become effective at such time, and in the event that, the Moab City Council, in the independent exercise of its legislative discretion, elects to approve the proposed rezoning of the Rezone Section to the R-3 Zone. This Agreement is not intended to and does not affect or in any way bind or supersede the independent exercise of legislative discretion by the City Council in deciding whether to approve or deny the application for the rezoning of the Rezone Section.

3. Specific-Development Standards.

(a) The capitalized terms set forth below shall have the indicated meanings:

“Active Employment Household” means a household with at least one adult who meets one of the following criteria; provided, however, where there are unrelated individuals living together in one household, at least 50 percent of all the adults comprising the household shall meet one of the following criteria: (1) a full-time (aggregate of 30 hours of employment per week) employee of an entity or entities located within the City of Moab or Grand County; or (2) an owner or owner’s representative of a business or entity with a primary place of business within the City of Moab; or (3) a full-time (aggregate of 30 hours of employment per week for nine months out of each calendar year) worker who is self-employed or works out of their home must provide their entire list of clients/workload so that it can be verified that a minimum of 75 percent of their work/clients are based within the City of Moab; or (4) a person who is unable to work or does not have a work history required under subsections 1 through 3 above due to a disability; or (5) a retiree with a work history required under subsections 1 through 3 above for the five years prior to retirement.

“Active Employment Unit” means a dwelling in the Project that is required to be occupied by an Active Employment Household as defined above.

“Daily Rate” initially means One Hundred Dollars (\$100.00) per day, which Daily Rate shall increase by the amount of three percent (3%) per annum, commencing on January 1, 2022 and on January 1st of each calendar year thereafter.

(b) Developer agrees that not less than thirty-three percent (33%) of the number of dwellings eventually approved as part of a Site Plan process for the Project shall be deed restricted to be

Active Employment Units. The Active Employment Units shall be: (1) roughly proportional by number in type (e.g. studio, one bedroom, two bedroom) and size (square footage) to the free market units; and (2) of a quality, both aesthetically and with respect to the standard of construction, that is not materially different from the free market units. Satisfaction of the proportionality requirement shall be determined by the Planning Commission as part of the Site Plan approval process for the Project. Prior to preliminary and final plat approvals for any phase of the Project the Active Employment Units shall be identified on the preliminary and final plat for such phase.

(c) The Active Employment Units shall be ready for occupancy no later than the date of the initial or temporary occupancy of any free market units within the Project or applicable phase thereof. If the free market units are developed in phases, then the Active Employment Units may be developed in proportion to the phasing of the free market units, e.g. not less than 33% of the units developed for occupancy in any phase shall be Active Employment Units.

(d) Except as otherwise agreed to by the City and the Developer, or its successors and assigns, Active Employment Units shall only be occupied by households who qualify as Active Employment Households. Active Employment Units shall be occupied by Active Employment Households a minimum of nine (9) months per calendar year.

(e) Developer intends, declares and covenants, on behalf of itself, all future owners of the project subject to the Rezone Request, and all parties that obtain any interest in any dwelling within the Project, that this Agreement and the covenants and restrictions set forth herein regulating the use and occupancy of the Active Employment Units shall be covenants running with the portion of land requesting rezone, and the land and improvements constituting the Active Employment Units, and, for the benefit of the City, shall encumber the Rezone Section and such Active Employment Units, and shall be binding upon the Developer, all subsequent owners of the Active Employment Units, and any other party with an interest in any portion of an Active Employment Unit or the Rezone Section prior to the creation of the Active Employment Units required hereunder. Developer agrees, prior to the issuance of a building permit for the construction of the Project, or any phase thereof, to record a restrictive covenant on each Active Employment Unit to be constructed (or to be constructed in the applicable phase) reflecting the use and occupancy restrictions applicable to such Active Employment Unit in form and substance acceptable to the City.

(f) The restrictive covenant shall extend for a period of not less than 99 years from the date of recording and, at a minimum, recognize the following default conditions and impose the following penalty. It will be a default of the restrictive covenant if the Active Employment Unit is occupied by any household that is not an Active Employment Household, if, 30 days after written notice from the City, the Active Employment Unit is not occupied by an Active Employment Household. Likewise, it will be a default of the restrictive covenant if the Active Employment Unit is not occupied by an Active Employment Household for more than ninety (90) days in any calendar year, if, 30 days after notice from the City, the Active Employment Unit is not occupied by an Active Employment Household. In the event of default, monetary penalties may be assessed by the City against the Active Employment Unit owner in an amount equal to the number of days that the Active Employment Unit is not occupied by an Active Employment Household multiplied by

the Daily Rate, commencing on the date of the City's written notice of default and continuing thereafter until the date that the default is cured. The City reserves the right to seek specific performance of the restrictive covenant and judicial enforcement of the foregoing penalties, including seeking a judgment lien and foreclosure.

4. **Site Plan Approval.** Developer shall develop the Rezone Section generally in accordance with the site-specific land uses allowed and the development standards set forth in the Moab City Code (the "Code") and applicable to the R-3 Zone. This Agreement is not intended to and does not affect or in any way bind the City to approve any Site Plan proposed by Developer that does not comply with Section 17.67.060 of the Code or relieve Developer of complying with Chapter 17.67.

5. **Approval Process for Development Applications.** The City shall process applications for development of the Project in accordance with the provisions of the Code. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve it of the obligation to comply with all of the applicable requirements for approval of preliminary and final subdivision plats, or preliminary and final site plans, as applicable, for the proposed development of the Project consistent with the terms and conditions of this Agreement and the applicable provisions of the Code.

6. **Phasing.** Developer may develop the Project in several phases as market conditions dictate as long as (1) each phase provides for the logical extension of infrastructure and utilities as approved by the City and in compliance with the terms of this Agreement and the applicable provisions of the Code, and (2) not less than 33% of the dwellings in each phase shall be Active Employment Units. All phasing decisions for the Project shall constitute minor modifications. Developer agrees to proceed with construction of the Project with reasonable diligence consistent with a site plan for the Project, which site plan must be approved by the City pursuant to the City's site plan approval process.

7. **Payment of Fees.**

7.1. **Development Application and Review Fees.** Developer shall pay to the City all of the fees, including, but not limited to, application fees, impact fees and connection fees for review and approval of development of any and all phases of the Project in the amounts set forth in the City's Master Fee Schedule.

7.2. **Other Fees.** The City may charge other fees in existence as of the date of this Agreement, including, without limitation, standard building permit review, and inspection fees for improvements to be constructed on improved parcels that are generally applicable to other developments within the City.

7.3. **Reservation of Right to Challenge Fees.** Notwithstanding any provision of this Agreement, the Developer does not waive Developer's rights under any applicable law to challenge the reasonableness or legality of the amount or imposition of any fees.

8. Vested Rights.

8.1. Vested Rights. If the Rezone Request is approved and once a specific Site Plan Approval has been approved, Developer shall have the vested right to develop and construct the Project in accordance with and subject to compliance with the terms and conditions of this Agreement, the R-3 Zone, Site Plan requirements and other applicable provisions of the Code as of the Effective Date. If no substantial construction has been initiated as part of the Project within two (2) years of the date of this Agreement plus any period of force majeure, the City may consider rezoning the property to revert back to the zoning districts that existed prior to the approval of the R-3 Zone. To the extent that there is any conflict between the text portion of this Agreement and the Exhibits, the more specific language or description, as the case may be, shall control. Where any conflict or ambiguity exists between the provisions of the Code and this Agreement (including the Exhibits to this Agreement), this Agreement shall govern. Notwithstanding the foregoing, the rights vested as provided in this Agreement are not exempt from the application of the Code and to subsequently enacted ordinances to the extent, but only to that extent, that failure to apply such subsequently enacted ordinance would impair the City's reserved legislative powers in Section 8.2.

8.2. Contingency. If the City Council does not approve the Rezone Request, this agreement shall be considered null and void.

8.3. Reserved Legislative Powers. The Parties acknowledge that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City those police powers that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify any development standards that are applicable to the Project under the terms of this Agreement based upon policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine of the State of Utah. Any such proposed legislative changes shall be of general application to all development activity in the City; and, unless the City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

9. Infrastructure and the Provision of Municipal Services.

9.1. Construction of Necessary Infrastructure to Service the Project. Developer shall have the obligation to construct or cause to be constructed and installed all of the public or private infrastructure, including, but not limited to, roads and utilities, which are located on and necessary to service any portion of the Property, as applicable, as part of the Project, which are the subject of an application for development approval, and any off-site improvements necessary to connect to existing utilities. All such infrastructure shall be constructed in accordance with applicable City standards. Developer may be required to enter into a Development Improvements Agreement and be required to dedicate all public infrastructure and associated property interests to the City as provided in Moab City Code 17.67.070.

9.2. Third Party Service Providers. The Parties understand and acknowledge that the Developer shall be responsible to obtain the approval and incur the costs of constructing any off-site and on-site infrastructure and improvements from third party service providers including, but not limited to, [Rocky Mountain Power, Questar Gas and [INSERT]] that are necessary to service any portion of the Property, as applicable, as part of the Project.

9.3. Maintenance of Private Roads and Improvements. Developer shall have the duty to maintain all private roads and areas designated as such on subdivision plats that are located within that portion of the Project constructed on the Property, if any.

9.4. City Provided Services. The City agrees that it shall make available to the Project (subject to completion of the Developer's construction of the improvements Developer is required to construct hereunder, and where applicable, application for service, issuance of applicable permits and payment of connection fees and applicable commodity usage rates) all City services to such properties that it provides from time to time to other residents and properties within the City at the same levels of service and on the same terms and at the same rates as provided to other similarly situated properties in the City.

10. Term of Agreement. The term of this Agreement (the "Term") shall be for a period of five (5) years following the date of its execution by all Parties, unless it is terminated earlier or its Term is modified by written amendment to this Agreement, but the terms of this Agreement shall continue to be effective as to applications that have been submitted and development that has occurred within the Project notwithstanding the termination of this Agreement.

11. Successors and Assigns.

11.1. Binding Effect. This Agreement shall be binding upon the Parties and their respective successors and assigns in so far as it pertains to the ownership or development of any portion of the Property and the Project.

11.2. Assignment. Neither this Agreement nor any of its provisions, terms or conditions may be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Any such request for assignment may be made by letter addressed to the City as provided herein and the prior written consent of the City may also be evidenced by letter from the City to Developer or its successors or assigns.

12. Default.

12.1. Notice. If Developer or the City fail to perform their respective obligations hereunder or to comply with the terms hereof, the party believing that a default has occurred shall provide notice to the other party as provided herein. If the City believes that the default has been committed by Developer, then the City shall also provide a courtesy copy of the notice to Developer.

12.2. Contents of the Notice of Default. The Notice of Default shall:

12.2.1. Claim of Default. Specify the claimed event of default;

12.2.2. Identification of Provisions. Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Agreement that is claimed to be in default;

12.2.3. Specify Materiality. Identify why the default is claimed to be material; and

12.2.4. Optional Proposed Cure. If the City chooses, in its discretion, propose a method and time for curing the default which shall be of no less than sixty (60) days duration.

12.3. Meet and Confer. Upon the issuance of a Notice of Default, the Parties shall meet within ten (10) business days and confer in an attempt to resolve the issues that are the subject matter of the Notice of Default.

12.4. Remedies. If, after meeting and conferring, the Parties are not able to resolve the default, then the Parties may have the following remedies:

12.4.1. Legal Remedies. The rights and remedies available at law and in equity, including, but not limited to injunctive relief, specific performance and termination, but not including damages or attorney's fees.

12.4.2. Enforcement of Security. The right to draw on any security posted or provided in connection with the Project and relating to remedying of the particular default.

12.4.3. Withholding Further Development Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Project on those properties owned by the defaulting party.

12.5. Public Meeting. Before any remedy in Section 12.4 may be imposed by the City, the party allegedly in default shall be afforded the right to attend a public meeting before the Council and address the Council regarding the claimed default.

12.6. Emergency Defaults. Anything in this Agreement notwithstanding, if the Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City then the City may impose the remedies of Section 12.4 without meeting the requirements of Section 12.5. The City shall give Notice to Developer and/or any applicable successor or assign of any public meeting at which an emergency default is to be considered and the allegedly defaulting party shall be allowed to address the Council at that meeting regarding the claimed emergency default.

12.7. Extended Cure Period. If any default cannot be reasonably cured within sixty (60) days then such cure period may be extended as needed, by agreement of the Parties for good cause shown, so long as the defaulting party is pursuing a cure with reasonable diligence.

12.8. Cumulative Rights. The rights and remedies set forth herein shall be cumulative.

12.9. Force Majeure. All time periods imposed or permitted pursuant to this Agreement shall automatically be extended and tolled for: (a) period of any and all moratoria imposed by the City or other governmental authorities in any respect that materially affects the development of the Project; or (b) by events reasonably beyond the control of Developer including, without limitation, inclement weather, war, strikes, unavailability of materials at commercially reasonable prices, pandemics and acts of God, but which does not include financial condition of the Developer or its successors.

13. Indemnification for Legal Costs. In the event that any third party files any litigation against the City regarding this Development Agreement, the status of the Active Employment Units, or the Rezone Request, Developer agrees to indemnify, defend, and hold the City harmless from all attorney's fees and litigation costs incurred by the City in connection with such action. In the event that litigation is filed by a third party, Developer will assume primary defense of such litigation, and the City agrees to cooperate with Developer in the defense thereof. The City shall retain legal counsel of its choosing for that defense.

14. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the Party for whom intended or if mailed be by certified mail, return receipt requested, postage prepaid to such Party at its address shown below:

To the Developer:

[INSERT]

To the City of Moab:

Moab City
Attn: City Manager
217 E. Center Street
Moab, Utah 84532

With a copy to:

Moab City Attorney's Office
Attn: City Attorney
217 E. Center Street
Moab, Utah 84532

Any Party may change its address or notice by giving written notice to the other Parties in accordance with the provisions of this Section.

GENERAL TERMS AND CONDITIONS

1. **Agreement to Run with the Land.** This Agreement shall be recorded in the Office of the Grand County Recorder against the Property and is intended to and shall be deemed to run with the land and shall be binding on all successors in the ownership and development of any portion of the Property. This Agreement shall not be recorded before Developer purchases the Property.
2. **Entire Agreement.** This Agreement, together with the Exhibits hereto, integrates and constitutes all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the Parties hereto with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the respective Parties hereto.
3. **Headings.** The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.
4. **Non-Liability of City Officials or Employees.** No officer, representative, agent, or employee of the City shall be personally liable to Developer, or any successor-in-interest or assignee of Developer, in the event of any default or breach by the City or for any amount which may become due to Developer, or its successors or assignees, for any obligation arising out of the terms of this Agreement.
5. **No Third-Party Rights.** The obligations of the Parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to the City and Developer. The City and Developer alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit.
6. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions, and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.
7. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving Party.
8. **Survival.** All agreements, covenants, representations, and warranties contained herein shall survive the execution of this Agreement and shall continue in full force and effect throughout the term of this Agreement.
9. **Public Information.** The Parties understand and agree that all documents related to this agreement will be public documents, as provided in UTAH CODE ANN. § 63G-2-101, *et seq.*

10. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

11. **Counterparts.** This Agreement may be executed in multiple counter-parts which shall constitute one and the same document.

(Signatures begin on following page)

IN WITNESS WHEREOF, this Agreement has been executed by the City of Moab, acting by and through the Moab City Council, Grand County, State of Utah, pursuant to Resolution No. ____ - ____, authorizing such execution, and by a duly authorized representative of Developer as of the above-stated date.

CITY OF MOAB, a Utah municipality and political subdivision of the State of Utah.

By: _____
Mayor Joette Langianese

ATTEST:

Sommar Johnson, Moab City Recorder

APPROVED AS TO FORM:

_____, City Attorney

JSATT CORP, a Utah corporation
d/b/a **BLUE BISON DEVELOPMENT**

By: _____
Its: _____

STATE OF UTAH)
 :ss.
COUNTY OF GRAND)

On the _____ day of _____, 2021, personally appeared before me _____, who being duly sworn, did say that he/she is the _____ of JSATT CORP, a Utah corporation, and that the foregoing instrument was signed in behalf of said corporation and said _____ duly acknowledged to me that he executed the same for the purposes therein stated.

NOTARY PUBLIC

Exhibit A
To
Development Agreement

(Legal Description of Property)

BEG AT A PT WHICH BEARS N 144 FT± FROM THE SE COR NW¼SW¼ SEC 1 T26S R21E; TH N 478 FT± ALONG THE W SIDE OF NE¼SW¼; TH E ALONG THE N SIDE OF SW¼NE¼SW¼ A DIST OF 639.6 FT TO A PT ON A FENCE; TH S 00°55'W 164.8 FT ALONG THE FENCE; TH S 49°38'W 102.4 FT ALONG FENCE; THENCE S 72°46'W 81.3 FT ALONG FENCE; TH S 37°05'W 22.1 FT ALONG FENCE; TH S 18°05'W 104.3 FT ALONG FENCE; TH S 31°09'E 245.1 FT ALONG FENCE; TH S 17°29'E 28.6 FT ALONG FENCE; TH S 70°39'E 85.7 FT ALONG FENCE; TH S 09°29'E 142.5 FT ALONG FENCE TO A PT WHENCE THE S¼ COR SEC 1 T26S R21E BEARS S 29°35'E A DIST OF 1295.8 FT; TH S 69°36'W 240.7 FT ALONG FENCE; TH S 89°37'W 211.8 FT ALONG FENCE; TH N 0°03'W 400.1 FT ±; TH N 84°12'W 226.7 FT ± TO BEG

Tax Parcel No. 01-0001-0173

