

UTILITY REIMBURSEMENT AGREEMENT
WATER, SEWER AND UTILITY LINE EXTENSION

This Utility Reimbursement Agreement Water, Sewer and Utility Line Extension (“**Agreement**”) is made and entered into as of the ____ day of _____, 2015 (“**Effective Date**”), by and among LB MOAB LAND, LLC, a Colorado limited liability company, (the “**Developer**”), the CITY of MOAB, a Utah municipality (the “**City**”), and GRANITE DEVELOPMENT, LLC, a Wyoming limited liability company dully registered in Utah as foreign limited liability company under the name SAND FLATS DEVELOPMENT LLC, (the “**Sand Flats**”), individually a “**Party**” and collectively, the “**Parties**”.

RECITALS:

- A. Sand Flats is the owner of certain real property in Grand County, Utah (“**Premises**”), as shown on the site plan attached hereto as Exhibit A (“**Site Plan**”).
- B. Developer intends to develop land adjacent to the Premises (“**Development**”). Developer has requested that the City provide wet utilities: culinary water service and a sewer line (“**Sewer Line**”) as well as dry utilities: electricity, telephone, cable TV and gas (collectively the wet and dry utilities referred to as, “**Utilities**”) to the Development.
- C. Another landowner, the “**Cozzens**”, owns land adjacent to the Premises and the Development, as shown on the Site Plan.
- D. The City has agreed to provide culinary water service and sewer service to the Development and pursuant to that certain Utility Easement dated _____, the Parties have agreed that the Utilities will run partly through the Premises, through the Development and through other adjacent land.
- E. The Utilities will be constructed at a width that will meet expected demand and requirements for the Development, future development of the Premises and other adjoining land.
- F. Developer is willing to initially bear the cost of extending and enlarging water and sewer service lines to the Development, with the understanding that Developer may be reimbursed for the increment of-costs in excess of those necessary to provide minimum utility service to the Development. Reimbursement will occur over time as new development connects to the extension.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the Parties agree as follows:

AGREEMENT:

1. Project Construction. Developer agrees to construct a water main extension in accordance with the plans and specifications attached hereto as Exhibit A (the "**Water Line Extension**"). Developer shall pay for all costs of construction, including costs for engineering, material, labor, testing, and sterilization of the Water Line Extension. Developer agrees to construct a sewer main extension in accordance with the plans and specifications attached hereto as Exhibit B (the "**Sewer Line Extension**"). Developer shall pay for all costs of construction, including costs for engineering, material, labor, testing of the Sewer Line Extension.

a. Attached hereto as Exhibit C, is a non-binding estimate of the total cost to complete the construction of the Line Extensions. Notwithstanding the foregoing, Developer shall solicit bids for the construction of the Utilities (collectively, "**Line Extensions**") from licensed and reputable contractors, and shall submit to the City for approval a total cost of the project based upon the bid of the lowest mutually acceptable and responsible bidder. Developer shall certify, under penalty of perjury, that the bid is true and correct and represents the actual cost to be expended on the project. Following the completion of construction, Developer shall provide the City evidence certifying the actual amounts expended in the construction. The actual amounts expended by the Developer shall be the basis of reimbursement herein ("**Project Cost**"). Notwithstanding the foregoing, to the extent that the actual amounts expended by the Developer exceed the estimated total cost reflected in Exhibit C, the Project Cost which shall serve as the basis for reimbursement herein shall in no event exceed 125% of the estimated total cost reflected in Exhibit C attached hereto.

b. Any change to the scope of the work or the Project Cost, not identified in the bid provided to the City shall not be subject to reimbursement under this Cost Reimbursement Agreement unless a written change order is approved in advance by the City and Developer. Change orders will only be approved for changes in the scope of the work resulting from unforeseen and/or unanticipated conditions. However, notwithstanding any such written Change Orders, the Project Cost which shall serve as the basis for reimbursement herein shall in no event exceed 125% of the estimated total cost reflected in Exhibit C attached hereto.

c. A record of the Project Cost shall be maintained by the City for a period of thirty (30) years from the date of acceptance by the City of the improvements.

d. The reimbursement obligations herein shall terminate upon the occurrence of the following conditions, whichever first occurs: 1) payment in full of the Reimbursable Cost, as defined below; 2) abandonment or non-use of the improvements to be installed under this Agreement; or 3) thirty (30) years from the date of acceptance of the improvements by the City.

2. Reimbursement Calculation. The increment of the Project Cost which is subject to reimbursement (the "**Reimbursable Cost**") shall be calculated proportionately to the total number of units approved for service by the Utilities. The City has approved a total of 375 units, which are distributed among the three current land owners as follows:

LB Moab Land – 255 Units

Sand Flats Development – 25 Units
Cozzens – 100 Units

Notwithstanding the foregoing, in the event Sand Flats or Cozzens are approved for additional density above the amounts set forth above, then each such party shall be solely responsible for the cost to increase the capacity of the Line Extensions accordingly.

- a. Payment. Sand Flats shall pay its proportionate share of the Reimbursable Cost at the time the City accepts a final plat of the Premises. The City agrees to administer and collect these funds as a condition precedent to connecting to the Line Extensions. Notwithstanding anything contained herein or under applicable law which may be interpreted to the contrary, no obligation to reimburse shall be due, and nor shall any interest on any obligation to reimburse begin to accrue, unless and until such time following the acceptance and recordation of a Final Plat.
- b. Reimbursement. Reimbursement shall be made by the City to Developer no later than thirty (30) days from receipt of the funds from Sand Flats.
- c. General Provisions. Nothing in this Cost Reimbursement Agreement shall be construed to be a payment guarantee or promise on the part of the City that Developer will be repaid the total Reimbursable Cost or accrued interest. The obligation to pay shall be determined solely by demand for service from the Line Extensions.

- 3.2 Developer may assign his rights under this Cost Reimbursement Agreement, in whole or in part, to any successor in title to the Development. Prior to assigning, Developer shall first deliver written notice of same to the City.
- 3.3 This Cost Reimbursement Agreement shall not apply to collection by the City of any Connection Fees, as defined in Municipal Code §13.25.010, or any other Impact Fees otherwise applicable to new connections and not related to the Line Extensions. Reimbursement as provided herein shall apply to all Utilities.
- 3.4 If all or any portion of this Cost Reimbursement Agreement shall be declared void or unenforceable by any court of competent jurisdiction the Parties shall be released of their obligations herein to that extent.
- 3.5 The City agrees to provide advance notice of the terms of this Cost Reimbursement Agreement to property owners likely to be affected by the reimbursement obligation. A condition precedent to the enforcement of the reimbursement obligation under this agreement is the approval by the City of the plat submitted by the Developer.
- 3.6 There are no third party beneficiaries intended to have rights enforceable under this Cost Reimbursement Agreement. Title to the Line Extensions

shall vest solely in the City upon acceptance of same, free of any liens or encumbrances.

3.7 This agreement shall be construed in accordance with the laws of the state of Utah.

IN WITNESS WHEREOF, the Parties enter into this Agreement as of the Effective Date.

CITY OF MOAB:

By: _____
Mayor David L. Sakrison

ATTEST:

By: _____
Rachel Eillson, City Recorder

DEVELOPER:

LB MOAB, LLC
a Colorado limited liability company

By: _____
Michael H. Badger, Managing Member

SAND FLATS:

SAND FLATS DEVELOPMENT LLC,
a Wyoming limited liability company

By: _____
Name:
Title:

EXHIBIT A
Water Line Extension Plans

EXHIBIT B
Sewer Line Extension Plans

EXHIBIT C
Cost Estimate