Resolution # 19-2004

A RESOLUTION ADOPTING AN AGREEMENT PROVIDING FOR PARKING AND OTHER IMPROVEMENTS ON WEST CENTER STREET BY AND BETWEEN THE CITY OF MOAB AND UTAH DESERT INVESTMENTS/WILLIAM D PETTY

WHEREAS, an Agreement providing for parking and other improvements on West Center Street by and between the City of Moab and Utah Desert Investments/William D Petty has been presented to this meeting of the Moab City Council, and

WHEREAS, the Agreement contemplates the donation of property by Utah Desert Investments/William D Petty for purposes of constructing a public parking lot, and

WHEREAS, said property must be duly subdivided prior to the donation of the property,

NOW, THEREFORE, we, the Governing Body of the City of Moab do hereby approve the attached agreement in substantially the form presented to this meeting of the Moab City Council, and authorize the appropriate officials to sign and execute said agreement, pending approval of the subdivision of the property, and to execute all documents and procedures necessary to fully execute said agreement

This resolution shall take effect immediately upon passage

Passed and adopted by action of the Governing Body of the City of Moab in open session this 7th day of September, 2004

CITY OF MOAB

By

David L. Sakrison
Mayor

Attest

Rachel Ellison
City Recorder
AGREEMENT

PROVIDING FOR PARKING AND OTHER IMPROVEMENTS
ON WEST CENTER STREET
BY AND BETWEEN THE CITY OF MOAB AND UTAH DESERT INVESTMENTS
INC/WILLIAM D. PETTY

This Agreement is made and entered into this 7th day of September 2004 by and between the City of Moab ("City") and Utah Desert Investments Inc/William D. Petty

RECITALS

WHEREAS, the City desires to improve West Center Street to provide for pedestrian amenities, landscaping and public parking, and

WHEREAS, the City has allocated funds to pay for limited improvements to meet these goals, and

WHEREAS, Utah Desert Investments Inc/William D. Petty owns property on West Center Street, shown in Exhibit A, and

WHEREAS, Utah Desert Investments Inc/William D. Petty desires to provide for future development and parking for said property, as well as for an aesthetically pleasing streetscape, and

WHEREAS, Utah Desert Investments Inc/William D. Petty owns property shown in Exhibit A that he is willing to donate to the City for a parking lot in exchange for parking space credit for future development, and

WHEREAS, Utah Desert Investments Inc/William D. Petty has funds available to pay the City to pay for a portion of the cost to construct said parking lot and street improvements along West Center Street and

WHEREAS, Section 17 09 230 of the Moab Municipal Code authorizes off-site parking agreements between affected land owners

AGREEMENT

The parties agree as follows.

In consideration of the terms of this agreement and contemporaneous with the execution of this agreement

1 Utah Desert Investments Inc/William D. Petty agrees to convey Lot 5 of the property shown in Exhibit A and more particularly described in Exhibit B to the City by general warranty deed, free and clear of encumbrances
2 Utah Desert Investments Inc /William D Petty agrees to pay the City $150,000, payable within 10 days following the execution of this agreement. Said funds shall be applied only toward construction and project expenses for the on-street and off-street parking and road improvements specified in Section 3 and 4 herein.

3 The City agrees to perform improvements on West Center Street according to the conceptual site plan shown in Exhibit C. The City agrees to allocate at least $62,500 in city funds and $75,000 in funds contributed by Utah Desert Investments Inc /William D Petty toward the street improvements shown in Exhibit C. Project costs shall include engineering, design, and construction. Said street improvements shall be complete within two years from the date of this agreement. Any funds contributed by Utah Desert Investments Inc /William D Petty for said street improvements that are not spent by the City within two years of the date of this agreement shall be refunded to Utah Desert Investments Inc /William D Petty. The parties hereby agree that any substantial deviation from the conceptual site plan shown in Exhibit C shall be approved in writing by Utah Desert Investments Inc /William D Petty.

4 Utah Desert Investments Inc /William D Petty agrees to perform improvements indicated as performed by Utah Desert Investments Inc /William D Petty in the conceptual site plan shown in Exhibit C. Utah Desert Investments Inc /William D Petty agrees to install trees and other landscaping within the planting strip within 30 days of completion of the work to be done by the City as described in Section 3 herein, or April 15, 2005, whichever is later. Utah Desert Investments Inc /William D Petty agrees to install the sidewalk indicated as performed by Utah Desert Investments Inc /William D Petty in the conceptual site plan shown in Exhibit C within five years of the date of this agreement.

5 The City Council recognizes that Petty hopes to construct a covered pedestrian arcade up to 12 feet wide over the public sidewalk on the City's right of way. The covering would take the form of awnings and balconies constructed of wood and other hard materials which would be attached to the private buildings to be developed along the sidewalk and supported on piers or columns placed in the public right of way. All piers, columns and other aspects of the design shall be placed in a way that is master planned and does not impede the free flow of pedestrian traffic, and all specifications for such covered pedestrian arcade must be approved by the City prior to installation. Both Petty and the City acknowledge that current building codes may not allow this arcade to be built in the form desired by Petty. The City hereby expresses and willingness to consider this plan for the West Center Street right of way, and agrees to initiate the appropriate process to modify the applicable section of the International Building Code to allow for a covered pedestrian arcade of the above described nature, if such modifications to the code are determined to be necessary. In no way shall this agreement be construed to constitute an exception to the applicable building codes.
6 The City Council hereby gives approval to Utah Desert Investments Inc /William D. Petty to locate supports for awnings/canopies to be constructed by Utah Desert Investments Inc /William D. Petty within the sidewalk right of way. The awning/canopies and supports will meet all applicable building codes and shall be located in such a manner as to not impede the free flow of pedestrian traffic.

7 The City agrees to construct and maintain a public parking lot on property shown in Exhibit A and more particularly described in Exhibit B. The City agrees to construct said parking lot as funds become available. The City agrees to set aside and use $75,000 of the funds contributed by Utah Desert Investments Inc /William D. Petty to construct said parking lot. Should any of the $75,000 contributed by Utah Desert Investments Inc /William D. Petty not be spent on the street improvements as provided for herein, any remaining funds shall be refunded to Utah Desert Investments Inc /William D. Petty after completion of the improvements. Funds contributed by Utah Desert Investments Inc /William D. Petty for construction of the parking lot that are not spent by the City within four years of the date of this agreement shall be refunded to Utah Desert Investments Inc /William D. Petty. The parties agree that the City shall have a period of four years from the effective date of this agreement to construct the parking lot. The parties agree that Utah Desert Investments Inc /William D. Petty may in the future construct an extension of said parking lot on Utah Desert Investments Inc /William D. Petty’s property, and that additional parking credits may be accrued by such extension, subject to approval by the City and the approval by both parties of a parking easement providing for such credits.

8 The City agrees to grant Utah Desert Investments Inc /William D. Petty and any future owner(s) of the property shown in Exhibit A a parking space credit of 32 parking spaces that shall be available for future development of retail, office or restaurant uses. Said credits shall be credited toward any parking space requirements for said uses only. Parking space credits shall not be available for hotel/motel or overnight accommodation uses. Parking space credits may be used toward on-street or off-street parking. Said credits shall be recorded as a Parking Easement, which shall be attached to this agreement as Exhibit D. The parties hereby agree that existing uses do not require additional parking, unless said uses are modified or expanded.

9 The parties agree that Municipal Code Section 17.09.220Q allows for special exceptions to the minimum parking requirements and that Section 17.09.220R allows the Planning Commission to allow on-street parking spaces to be counted toward the minimum off-street parking requirements of a development. This agreement shall not be construed as a waiver of the minimum parking requirements for the affected lots at the time they are developed, nor shall this agreement be construed as a special exception to the minimum requirements. Nothing in this agreement shall be construed to prohibit Utah Desert Investments Inc /William D. Petty from applying for a special exception to the minimum...
minimum requirements of the parking requirements, as allowed for by the Moab Municipal Code

10 In the event that the parties are unable to carry into effect the provisions of this agreement, in whole or in part, for reasons beyond the reasonable control of either party, then the sole remedy shall be rescission of this agreement and the restoration of the property and funds which remain unused for the purposes intended in this agreement. In the event of rescission, this agreement shall terminate and both parties shall be released of any further obligation.

11 The terms of this agreement shall not be abrogated following the closing, and shall remain enforceable between the parties. Until such time as the parking lot and street improvements described herein are constructed, the terms of the agreement, including Section 7, shall control over the Parking Easement contained in Exhibit D. Upon completion of the parking lot and street improvements, this agreement shall terminate and the Parking Easement shall control.

CITY OF MOAB

By [Signature]
Mayor, David L. Sakrison

Date

15 Oct 2004

Attest

[Rachel Ellison, City Recorder]

Date

10-15-04

UTAH DESERT INVESTMENTS INC

By [Signature]
Secretary

[Signature]
Utah Desert Investments Inc

Date

28 Oct 2004

State of UTAH

County of GRAND

On the 28 day of OCTOBER, 2004, personally appeared before me WILLIAM D. PETTY, SECRETARY who duly acknowledged to me that they executed the same
WILLIAM D. PETTY

By William D. Petty

28 Oct 2004

State of UTAH

County of GRAND

On the 20th day of OCTOBER, 2004, personally appeared before me

WILLIAM D. PETTY, who duly acknowledged to me that they executed

the same

My Commission Expires DEC 3, 2007

Notary Public
Residing in Grand County

My Commission Expires DEC 3, 2007

Notary Public
Residing in Grand County
Exhibit B

BLOCK 16 PARKING LOT

A PARCEL OF LAND WITHIN BLOCK 16 OF THE MOAB TOWNSITE, SECTION 1, T 26 S, R 21 E, S L M, MOAB CITY, GRAND COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Beginning at a point on the West line of Block 16 of the Moab Townsite, Section 1, T 26 S, R 21 E, S L M, said point bears N 0°17'E 147 50 ft from the SW Corner of said Block 16, and proceeding thence with the West line of said Block 16 N 0°17'E 16 11 ft, thence S 89°47'E 73 45 ft, thence along the arc of a 8 50 ft radius curve to the left 13 35 ft (said curve has a chord which bears N 45°14'E 12 02 ft), thence N 0°17'E 31 38 ft, thence along the arc of a 26 0 ft radius curve to the right 34 91 ft (said curve has a chord which bears N 35°41'E 32 35 ft), thence N 0°17'E 18 70 ft to the South line of McCarrow, thence with said line S 89°47'E 129 02 ft to the SE Corner of McCarrow, thence S 0°17'W 14 50 ft to the SW Corner of the Hauer Parcel, thence with the South line of Hauer S 89°47'E 79 0 ft to the NE Corner of the Petty Parcel, thence S 0°17'W 39 50 ft, thence N 89°47'W 16 0 ft, thence S 0°17'W 61 75 ft, thence with a line 0 5 ft Northly of the North wall of an existing building N 89°37'W 39 40 ft thence S 24°08'W 10 77 ft, thence S 0°17'W 122 01 ft to the South line of said Block 16, thence with the South line of Block 16 N 89°47'W 16 00 ft, thence N 0°17'E 120 47 ft, thence N 89°47'W 152 24 ft, thence N 0°17'E 18 66 ft, thence along the arc of a 8 46 ft radius curve to the left 13 30 ft (said curve has a chord which bears N 44°47'W 11 96 ft), thence N 89°47'W 73 59 ft to the point of beginning and containing 28,975 sq ft, more or less.
PARKING EASEMENT

For valuable consideration, the City of Moab ("City") hereby grants and conveys a nonexclusive parking easement to Utah Desert Investments Inc./William D. Petty, their successors and assigns in title ("Utah Desert Investments Inc./William D. Petty"), as set forth herein.

I. RECITALS.

1 The City and Utah Desert Investments Inc./William D. Petty have entered into an agreement whereby Utah Desert Investments Inc./William D. Petty has agreed to convey a parcel of real property to the City, and the City has agreed to construct a public parking lot on that property.

2 In partial consideration for the conveyance, the City has agreed to grant Utah Desert Investments Inc./William D. Petty a parking easement on the lands conveyed, together with credit toward satisfaction of City ordinances regarding off-street parking, which credit will apply to adjacent undeveloped real property retained by Utah Desert Investments Inc./William D. Petty.

II. EASEMENT.

3 Easement Property. The real property subject to this easement is a tract of land within the municipal limits of the City of Moab, County of Grand, and State of Utah, more particularly described in the attached Attachment A.

4 Benefited Parcels. The real property benefited by this easement is the tract(s) owned by Desert Land Investments/William D. Utah Desert Investments Inc./William D. Petty in the County of Grand, State of Utah shown in Attachment B.

5 Purpose. The City grants an easement to Utah Desert Investments Inc./William D. Petty for the purpose of off-street motor vehicle parking, ingress, egress, and associated pedestrian access in a public parking lot to be constructed within the lands described in Exhibit A. The parking easement shall be for the purpose of providing reasonable off-site parking to the patrons of businesses which will occupy the lands described in Attachment B. No overnight parking shall be permitted, and the Easement Property shall not be used for long-term vehicle storage or the parking of commercial vehicles owned by the owners of the Benefited Parcels. Commencement of parking pursuant to this easement shall occur upon completion of construction of the parking lot by the City, which shall be controlled by a contemporaneous written agreement between the City and Utah Desert Investments Inc./William D. Petty. The terms of that agreement shall control over this Parking Easement until such time as the performances contained in the agreement are...
6 **Credit Toward Municipal Parking Requirements.** This Parking Easement shall entitle Utah Desert Investments Inc./William D. Petty to claim a credit totaling thirty two (32) parking spaces for purposes of satisfying City ordinances for mandatory parking ("Parking Credit"). The Parking Credit may be allocated among the Benefited Parcels in any way Utah Desert Investments Inc./William D. Petty sees fit, in light of planned uses and development. Nothing in this Parking Easement shall be construed to be a waiver or special exception to parking requirements established by City ordinance, and the Benefited Parcels shall each be required to comply with all applicable parking ordinances at such time as they are developed. The Parking Credit shall be applied to retail, office, restaurant, or similar uses, but shall not be available for any future hotel, motel, or other overnight accommodation uses. Nothing in this Parking Easement shall be construed to prohibit the use of parking credits for use in a shared parking agreement duly approved by the City.

7 **Nonexclusive Use.** The Easement Property shall be developed as a public parking lot. The uses authorized by this easement shall be non-exclusive, meaning that all parking spaces shall be available to the public and may not be reserved or controlled for the use of any one person, business, or lot owner.

8 **Modification, Termination.** This easement shall run with the lands in perpetuity. Any renewal or modification of the easement during its term shall be in writing, properly executed by the parties, and recorded in the Grand County land records.

9 **Parties, Venue, Controlling Law.** The sole parties to this agreement are the City, Utah Desert Investments Inc./William D. Petty, and the successors in title to the Easement Property and the Benefited Parcels, if any. Venue for any dispute concerning this easement shall be in the Seventh Judicial District Court, Grand County, Utah. The easement is governed by Utah law.

10 **Enforcement.** Prior to commencing any action to enforce this easement, the affected party shall serve upon any party alleged to be in breach a written notice providing a period of not less than thirty (30) days in which to cure or abate the offending condition. In any judicial proceeding to enforce this easement remedies shall include injunctive/declaratory relief, damages, or both, together with reasonable attorney fees and court costs to the substantially prevailing party. In no event shall any party be liable to the other for consequential damages.
Approved and accepted on the date(s) set forth below

STATE OF UTAH
COUNTY OF GRAND
CITY OF MOAB

Mayor David Salmson

Executed before me by the City of Moab, Mayor David Salmson, this 15th day of October, 2004. Witness my hand and official seal. My commission expires June 3, 2006.

RACHEL E. ELLISON
Notary Public/City Recorder

STATE OF UTAH
COUNTY OF GRAND
UTAH DESERT INVESTMENTS, INC.

By

On the 20th day of October, 2004, personally appeared before me WILLIAM D. PETTY, SECRETARY who duly acknowledged to me that they executed same.

SOMMAR JOHNSON
Notary Public
State of Utah
Address: MOAB, UTAH

STATE OF UTAH
COUNTY OF GRAND
WILLIAM D. PETTY

BLOCK 16 PARKING LOT

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ALSO DESCRIBED AS LOT 5, BLOCK 16 SUBDIVISION