

WHEN RECORDED RETURN TO:

City of Moab  
Attn: City Recorder  
217 E Center Street  
Moab, UT 84532

**PRE-ANNEXATION AGREEMENT  
FOR THE LBH PROPERTIES**

THIS PRE-ANNEXATION AGREEMENT (“Pre-Annexation Agreement”) is entered into this \_\_\_ day of November, 2019, by and among LIONS BACK HOLDINGS, LLC (“Property Owner”) and the CITY OF MOAB, a municipality and political subdivision of the State of Utah (the “City”). Property Owner and the City are hereinafter sometimes referred to individually as a “Party” or collectively as the “Parties.”

**RECITALS**

A. Property Owner is the Owner of approximately 3.12 acres of real property that is currently located in Grand County and is not located in the City at approximately 938 and 940 South Main, Moab, Utah 84532 as more fully described in Exhibit A which is attached hereto and incorporated by this reference (the “LBH Properties”).

B. The LBH Properties current zoning designation in Grand County is “General Business” in the Grand County Land Use Code 2.9.2 and is identified at 4.6.3 as an approved - OAO Districts as a “OAO\_Hotel/Motel” on the official Grand County Zoning Map, which makes it clear that a “hotel or motel” is a use that is “permitted by right”.

C. The parties have been in discussions regarding the LBH Properties annexing into the City.

D. It is the intent of this Pre-Annexation Agreement to provide a clear understanding of the zoning for the use and future development of the LBH Properties in accordance City of Moab Ordinance #2019-18 and to be in compliance with the provisions of the Moab Municipal Code and other applicable land use regulations (collectively “Land Use Regulations”).

E. The City, acting pursuant to its authority under Section 10-9a-101, *et seq.* has made certain determinations with respect to the LBH Properties, and in the exercise of its legislative discretion, has elected to approve this Pre-Annexation Agreement after all necessary public hearings and procedures have been conducted.

**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 Pre-Annexation Agreement with annexation into the boundaries of the City within two (2) years of the execution of this agreement.

**2. Zoning Upon Annexation.** It is agreed that upon the issuance of a Certificate of Annexation by Lieutenant Governor that the LBH Properties will be placed in the “C-4 General Commercial Zone” and for the purposes of the City of Moab Ordinance #2019-18 the LBH Properties shall be meet the definition of “Overnight Accommodations, Established” and shall be recognized that Overnight Accommodations are an existing legal use and shall be identified on the Established Overnight Accommodations Map as such.

**3. Section 4 of Ordinance 2019-18 Agreement.**

**3.1. Goals of the Ordinance.** Section 4 of City of Moab Ordinance #2019-18 makes it clear that the City is engaging in drafting and eventually adopting performance standards for new overnight accommodations. Those performance standards are concern desirable density and aesthetic criteria, landscaping, energy efficiency, buffering, the mixing of office, retail, and residential uses, water carrying capacity, existing infrastructure capacity, contribution to cumulative traffic, connectivity/contribution to non-motorized/micro vehicle transportation network, height and viewshed with future overnight accommodations development.

**3.2. Project Standards.** The parties understand and agree that mutually satisfactory performance standards consistent with the following goals are desirable for the hotel project:

<b>Project Standard Category</b>	<b>Standard</b>
<b>Energy</b>	The project will utilize as much on-site renewable energy sources (such as solar) as is feasible, and the balance of electric use provided via RECs or renewable power purchase agreements. The project will employ a hotel-wide energy management system for all guest rooms. The project will utilize high performance exterior envelope methods. The thermal envelope will meet or exceed federally approved energy modeling software standards. Electric motor vehicle charging stations will be made available. The project will employ daylighting for common areas and public spaces.
<b>Water</b>	The project will install a rainwater catchment system and use the water for beneficial on-site uses, such as reducing the use of culinary water for landscaping irrigation. The project will have a maximum of 10% of their landscaped area covered in turf grass. The project will utilize water-wise and xeriscape landscaping design standards. The project will utilize bio-retention and bio-infiltration systems to manage storm water runoff. The project will utilize dual flush toilets to reduce water usage.
<b>Transportation</b>	The project will provide bicycle storage and a maintenance area. The project will provide free metro bike usage. A shuttle will be available.

<b>Building Design</b>	Subject to final approval, the project’s façade facing the roadway will utilize a minimum of 5 ft shift in vertical and horizontal façade for each 30 linear feet. The building design will vary between vertical facade divisions and from adjacent buildings by the type of dominant material or color, scale, or orientation of that material and at least two of the following: (i) the proportion of recesses and projections; (ii) the location of the entrance and window placement, unless storefronts are utilized; and (iii) roof type, plane, or material, unless otherwise agreed by the Parties. Blank wall limitations will be considered for all facades facing the primary street. No rectangular area greater than 30% of a story’s facade, as measured from floor to floor will be windowless, and no horizontal segment of a story’s facade greater than 15 feet in width will be windowless, unless otherwise agreed to by the Parties. Air conditioning units and similar mechanical equipment will be avoided on rooftop locations, and fully screened from view when unavoidable.
<b>Materials and Colors</b>	Interior materials will not be used if they are found on the RED list (livingfuture.org). As to color, the project will utilize earthtone colors that are complementary to the surrounding landscape and visual backdrops. Plastic or vinyl awnings will not be used. Awning types and colors for each building face will be coordinated. If installed, shutters, whether functional or not, will be sized for the windows. If closed, the shutters will not be too small for complete coverage of the window.
<b>Interior Lighting</b>	Interior lighting located in rooms with windows visible from any property line boundary shall have their fixtures directed to the interior of the room as to minimize light pollution.
<b>Dark Skies</b>	Exterior lighting shall be in compliance with the City of Moab Dark Skies requirements as passed in Ordinance 2019-03 on August 13, 2019.
<b>Workforce Housing</b>	Property owner shall comply with the City of Moab Assured Workforce Housing requirements in Ordinance 2018-20 on November 13, 2018.

**4. Vested Rights.**

**4.1. Vested Rights.** Property Owner shall have the vested right to develop the LBH Properties as a hotel project in the “C-4 General Commercial Zone” as an approved “Overnight Accommodations, Established” with the effect of the LBH Properties appearing as though they were included on Exhibit A of City of Moab Ordinance #2019-18 (the Established Overnight Accommodations Map), in accordance with and subject to compliance with the terms and conditions of the City’s Land Use Regulations then in effect.

**4.2. 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 the vested rights of the Property Owner under the terms of this Pre-Annexation Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed legislative changes affecting the vested rights of the Property Owner under this Pre-Annexation Agreement shall be of general application to all development activity in the City; and, unless the City declares an emergency, Property Owner shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the LBH Properties under the compelling, countervailing public interest exception to the vested rights doctrine.

**5. Successors and Assigns.**

**5.1. Binding Effect.** This Pre-Annexation Agreement shall be binding upon all successors and assigns of Property Owner in the ownership or development of any portion of the LBH Properties.

**5.2. Assignment.** Neither this Pre-Annexation 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 Pre-Annexation Agreement and 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 Property Owner or their successors or assigns. Any such assignment shall require the assignee to sign a form of acknowledgement and consent agreeing to be bound by the terms of this Pre-Annexation Agreement.

**6. Default.**

**6.1. Notice.** If Property Owner 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 Property Owner, then the City shall also provide a courtesy copy of the notice to Property Owner.

**6.2. Contents of the Notice of Default.** The Notice of Default shall:

**6.2.1. Claim of Default.** Specify the claimed event of default;

**6.2.2. 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;

**6.2.3. Specify OMateriality.** Identify why the default is claimed to be material.

**6.3. 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.

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

**6.4.1. 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.

**6.4.2. Enforcement of Security.** The right to draw on any security posted or provided in connection with the development of the LBH Properties and relating to remedying of the particular default.

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

**6.5. 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.

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

**6.7. Force Majeure.** All time period 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 LBH Properties; or (b) by events reasonably beyond the control of Property Owner including, without limitation, inclement weather, war, strikes, unavailability of materials at commercially reasonable prices, and acts of God, but which does not include financial condition of the Property Owner or their successors.

**7. 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:

Lions Back Holdings, LLC  
c/o Paul W. Jones, Esq.  
4766 S. Holladay Blvd  
Salt Lake City, Utah 84117

City of Moab  
Attn: City Recorder  
217 E Center Street  
Moab, UT 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 Pre-Annexation Agreement shall be recorded in the Office of the Grand City Recorder against the LBH Properties 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 LBH Properties.
2. **Entire Agreement.** This Pre-Annexation 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 Property Owner, or any successor-in-interest or assignee of Property Owner, in the event of any default or breach by the City or for any amount which may become due to Property Owner, or its successors or assignees, for any obligation arising out of the terms of this Pre-Annexation Agreement.
5. **No Third-Party Rights.** The obligations of the Parties set forth in this Pre-Annexation Agreement shall not create any rights in or obligations to any persons or parties other than to the City and the Property Owner. The City and Property Owner alone shall be entitled to enforce or waive any provisions of this Pre-Annexation Agreement to the extent that such provisions are for their benefit.
6. **Severability.** Should any portion of this Pre-Annexation 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 Pre-Annexation Agreement had been executed with the invalid portions eliminated.
7. **Waiver.** No waiver of any of the provisions of this Pre-Annexation 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 Pre-Annexation Agreement and shall continue in full force and effect throughout the term of this Pre-Annexation Agreement.

9. **Public Information.** The Parties understand and agree that all documents related to this Pre-Annexation Agreement will be public documents, as provided in UTAH CODE ANN. § 63G-2-101, *et seq.*

10. **Governing Law.** This Pre-Annexation 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 Grand City, State of Utah, pursuant to Moab City Municipal Code 17.72.100, authorizing such execution, and by a duly authorized representative of Property Owner as of the above-stated date.

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

By: \_\_\_\_\_  
Emily Niehaus, Mayor and  
Chair, City Council

ATTEST:

\_\_\_\_\_  
Sommar Johnson, City Clerk/Recorder

APPROVED AS TO FORM

\_\_\_\_\_  
Laurie Simonson, City Attorney



**LIONS BACK HOLDINGS, LLC**

By: \_\_\_\_\_  
Jeremy C. Pope, its Manager

STATE OF UTAH                    )  
  :ss.  
CITY OF SALT LAKE            )

On the \_\_\_\_\_day of November, 2019, personally appeared before me Jeremy C. Pope, who being duly sworn, did say that he is the Manager of Lions Back Holdings, LLC, and that the foregoing instrument was signed in behalf of said limited liability company and said Jeremy C. Pope duly acknowledged to me that he executed the same for the purposes therein stated.

\_\_\_\_\_  
NOTARY PUBLIC