PRE-ANNEXATION AGREEMENT
City of Moab, Utah
(Lionsback Resort)

THIS PRE-ANNEXATION AGREEMENT ("Agreement") is made and entered into as of 28th day of October, 2008 ("Effective Date") between the City of Moab, a Utah municipal corporation, acting through its City Council ("City") and LB Moab Land Company, LLC, a Colorado limited liability company ("Company").

RECEITALS:

A. 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-1" ("Property"). SITLA has authorized and empowered Company to submit and pursue the annexation of the Annexation Property into the City of Moab and has joined in and consented to the Annexation Petition. SITLA constitutes more than one-third of all owners of private property within the area proposed for annexation into the City of Moab pursuant to the Petition. By consenting to this Agreement, SITLA is not assuming any duties or obligations hereunder and the Parties agree that they shall not look to SITLA to perform any duties or obligations arising in connection with this Agreement.

B. SITLA is also the owner of certain adjoining property more particularly described on attached Exhibit "A-2" ("Adjoining Property").

C. The Property and the Adjoining Property are each currently located in the unincorporated portion of Grand County, Utah.

D. Company and SITLA have entered into a certain Development Agreement and Ground Lease concerning the Property and the Annexing Property dated as of June 6, 2006 ("SITLA Lease and Development Agreement"), by which Company is authorized and empowered to seek and obtain development approvals from the City, including the entitlements described herein. SITLA has joined in this Agreement to evidence its consent to the terms and conditions of this Agreement.

E. Company has submitted its petition for annexation ("Annexation Petition") seeking to annex the Property ("Annexation") into the City of Moab ("City of Moab") on terms and conditions mutually agreeable and acceptable to Company and the City and, thereupon, to develop the Property in accordance with the applicable codes, laws and regulations of the City of Moab ("City Code") and applicable laws of the State of Utah ("Utah Law"). The terms City Code and Utah Law are sometimes collectively referred to as the "Applicable Laws".

F. Contemporaneous with the execution of this Pre-Annexation Agreement, Company shall submit a separate annexation petition and pursue the annexation of the Adjoining Property into the City, it being agreed that the City's consideration of the annexation shall be deferred until such time as the Adjoining Property is eligible for annexation pursuant to the Applicable Laws.

G. The Parties recognize and agree that the Annexation Petition covers and concerns the Property, not the Adjoining Property. Nothing herein or in the Annexation Petition being evaluated by the City is intended to nor shall it be construed as annexing the Adjoining Property into the City or obligating the City to annex the Adjoining Property into the City.

H. In connection with the Annexation of the Property, Company seeks to design, develop, construct and operate the Property (as well as the Adjoining Property at such time as it may be annexed...
into the City, if at all, subject to the Applicable Laws) as a mixed use resort community, consisting of: (a) the Lionsback Resort Lodge and Spa facility, inclusive of an associated meeting/conference center, commercial elements, management elements and back of house components; (b) residential lots and structures; (c) workforce housing units; (d) storage and service elements; and (e) infrastructure, generally and collectively referred to as Lionsback Resort ("Project"), which development will generally occur consistent with the uses and arrangements described and depicted on "Lionsback Resort Preliminary Master Planned Development" attached as Exhibit "B". The Property (as well as the Adjoining Property at such time as it may be annexed into the City, if at all, subject to the Applicable Laws) will be subdivided into separately platted "Lots", each platted and zoned to accommodate the particular development for the Project contemplated by the Lionsback Resort Preliminary Master Planned Development. The Lionsback Preliminary Master Planned Development may be modified by appropriate procedure and mutual assent of the Parties, prior to final approval of the Annexation by the City.

I. Company has submitted applications for a Conceptual Master Planned Development and a Preliminary Master Planned Development, each consistent with the City of Moab Municipal Code.

J. The City, following duly noticed meetings, has approved the Conceptual Master Planned Development and a Preliminary Master Planned Development, subject to conditions.

K. The Project will be platted and developed in various phases (each a "Phase"), which is addressed in the Development and Phasing Agreement for the Project (defined and described below).

L. In connection with the approval of the Preliminary Master Planned Development, the Parties will execute a certain "Development and Phasing Agreement", which reflects various terms and conditions of the City's approval of the Preliminary Master Planned Development. The Development and Phasing Agreement also establishes that various Phases for the Project and the sequencing of the particular onsite and offsite infrastructure improvements, consisting of certain Subdivision Improvements (defined below), required to be undertaken by the Company to accommodate the Project.

M. Company's obligation to construct the Subdivision Improvements will also be undertaken in accordance with certain Subdivision Improvement Agreements (defined below).

N. Vehicular access to and from the Project and the City is intended to be provided by way of Sand Flats Road, which is currently a Grand County – Class B Road as determined by Grand County pursuant to Grand County Resolution No. 2834. Grand County and the City have executed or are expected to execute a certain Public Right of Way Transfer Agreement ("Sand Flats Road Transfer Agreement") by which Grand County is conveying all of its rights and interests in Sand Flats Road to the City and, thereafter, Sand Flats Road would be classified as a Class C Road, owned and managed by the City of Moab. The Sand Flats Road Transfer Agreement will be reviewed and acted upon by the City of Moab Council ("City Council") following a duly noticed public meeting.

O. Company shall connect the Property (as well as the Adjoining Property at such time as it is annexed into the City) and the Project to the City Water System (defined below) and the City Sanitary Sewer System (defined below) and pay all construction costs associated with these extensions.

P. The City and Company desire to enter into an agreement concerning the annexation of the Property, the extension of utilities to and within the Property, the construction of certain public improvements, the granting of the Lionsback Resort land use entitlements and the development of the Property ("Development Approvals"), and the provision of municipal services thereto and therein.

Q. The City, in the course of a duly noticed meeting of the City Council, will review and act upon the Annexation Petition in compliance with the Applicable Laws.
R. The City of Moab Planning Commission and the City of Moab Council, being fully advised as to the situation and having considered the matters at duly noticed public meetings, have concluded that it is in the best interests of the City to enter into this Agreement and have made all necessary findings of fact and conclusions of law in support thereof.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained, the City and Company hereby agree as follows:

1. **Finding and Conclusions.**
   
   1.1 The Project is under active preliminary development studies, which are believed to be mutually acceptable to the Parties and consistent with the City of Moab Code.
   
   1.2 Desirable open space areas are being retained and important trails and recreational resources are being preserved.
   
   1.3 The Project is expected to generate substantial tax revenues for the City.
   
   1.4 The Company has voluntarily committed to cause the Project Association to establish and pay to the City a portion of the RETA (defined below), which will generate funding for affordable housing and trail resource preservation for the use by the City of Moab.
   
   1.5 The design, construction and maintenance of required Subdivision Improvements for the Project (defined below) shall be undertaken and/or funded in whole or in part by the Company and/or the Project Association (defined below) through certain infrastructure Funding Mechanisms (defined below).
   
   1.6 The Project is compatible with the development plans of the City of Moab and is substantially consistent with zoning classifications, characterizations, densities and uses authorized by the Land Use Code.
   
   1.7 The Project is in an area that the City has determined is appropriate for Annexation into the City of Moab.
   
   1.8 The Project is expected to provide substantial economic benefits to the City.

2. **Annexation and Planning Process.**

   2.1. **Annexation Process.**

   2.1.1. This Agreement is intended to set forth the Parties’ understanding and agreement as to the Project proposed for the Property, and as to the annexation of the Property pursuant to Applicable Law. This Agreement shall not be construed as approval of any particular level, scope, density, or type of development on the Property, provided however, that the City, by executing this Agreement, acknowledges that in concept the proposed general level of uses and density of development expressed in the Lionsback Resort Preliminary Master Planned Development is acceptable to the City.

   2.1.2. Company shall prepare and submit the necessary petitions, applications and documentation ("Project Development Applications") (consistent with the general densities and land uses described in this Agreement set forth therein), and the City agrees in good faith to undertake the necessary and proper processes, public notices, notifications, and public hearings required by the City of
Moab Code in order to determine whether to approve the Lionsback Resort Land Use Entitlements, to annex, zone, subdivide, and preserve the Property as applied for and in accordance with this Agreement.

2.2. **Land Use and Planning Processes.**

2.2.1. The Parties agree to process the Project Development Applications for the Property and Project as the same are being sought by Company. The Parties recognize that certain legislative, judicial, or quasi-judicial acts by the City may be necessary to effectuate the approvals described herein. It is not the intent of this Agreement to bind the City to undertake or make such municipal acts or to limit public participation in hearings or remedies regarding such acts. Nothing in this Agreement, including any remedies specified herein, shall be construed to abrogate or impair the police powers possessed by the City under applicable law. The Parties expressly agree they will fully perform this Agreement, to the extent it is consistent with the law.

2.2.2. It is the intent of this Agreement to describe certain municipal processes and the desired results currently anticipated by Company, in order to facilitate the process of procuring the desired Lionsback Resort Land Use Entitlements for the Property.

2.2.3. Company proposes to develop or preserve, and have the City zone the Property substantially in accordance with the Lionsback Resort Preliminary Master Planned Development Plan.

2.2.4. In connection with its action on the Annexation Petition, the Company is requesting that the City classify the Property in the Sensitive Area Resort Zone (SAR), which zone the Company contends is the suitable zone to classify the Property to achieve appropriate Lionsback Resort land use entitlements for the Property.

2.2.5. The lodge and spa component, meeting/conference facilities, commercial facilities and related facilities and features and the employee housing units will initially be owned, developed and constructed by Company.

2.2.6. The owners of each of the residential dwellings will have the right, but not the obligation, to include their unit in a rental program managed and operated by the management company for the Lionsback Resort Lodge and Spa facility.

2.2.7. The City acknowledges that this flexibility of use is appropriate for the particular location and the right to nightly rentals of the units is a substantial and permanent property right. The final configurations will be shown on Final Plats, may vary from that shown, within the limitations of the development standards, building code, height restrictions and setbacks.

2.2.8. This Agreement is contingent upon Annexation of the Project, the classification of the Property within the SAR Zone as provided for in the City of Moab Code and the approval of a Final Master Planned Development for the Project, all on terms and conditions acceptable to Company.

2.2.9. The Project will be subject to the provisions of the City of Moab Code.

2.3. **Subdivision Improvements.**

2.3.1. The required onsite and offsite infrastructure improvements ("Subdivision Improvements") for the development in the Project have been identified by the Parties and consist of those Subdivision Improvements designated in the Lionsback Resort Preliminary Master Plan.
Planned Development, in particular Sheet C1 and Sheet C2. The Parties will execute a "Development and Phasing Agreement" for the Project establishing the timing for the construction of the Subdivision Improvements within six (6) months of the approval of the Preliminary Master Planned Development or such later date if extended pursuant to the City of Moab Municipal Code. The Company shall not be deemed to be in default hereunder if Company has submitted its Development and Phasing Agreement to the City and the City has not approved it for reasons not related to delays attributable to Company within six months of the approval of the Preliminary Master Planned Development. In the event that the City fails or refuses to approve the Development and Phasing Agreement and the Final Master Planned Development for the Project on terms and conditions acceptable to Company, Company may invoke the remedies as specified in Section 9.4.4. Nothing herein shall obligate the City to approve the Development and Phasing Agreement and the Final Master Planned Development for the Project.

2.3.2. The Subdivision Improvements include certain onsite roads, sidewalks and trails, water service facilities (including the onsite Water Tank), sewer service facilities, storm water drainage facilities, electrical, natural gas, telephone, and cable television. The Subdivision Improvements also include certain offsite improvements, including certain improvements to Sand Flats Road and the installation of certain lines and facilities relating to the City Water System and the City Sanitary Sewer System as well as certain other necessary utility extensions to service the Property and Project.

2.3.3. The attached "Table of Subdivision Improvements", a copy attached as Exhibit "C", lists the scope of the Subdivision Improvements as well as the respective Party responsible for the design, construction/installation, ownership, operation, management and maintenance of each Subdivision Improvement and the Party responsible for the associated costs.

2.3.4. The Company will grant easements to the City to accommodate the placement, use and operation of the Onsite Water System Facilities and the Onsite Sanitary Sewer System Facilities and to enable the City to gain access to the Onsite Water System Facilities and the Onsite Sanitary Sewer System Facilities to enable it to perform its functions contemplated hereunder.

2.3.5. The Company will grant easements to each particular utility provider to accommodate the placement, use and operation of the particular utility and to enable the utility provider to gain access to the particular utility to perform its functions contemplated hereunder.

2.3.6. The Development and Phasing Agreement will establish the phases by which the Company will plat and develop the Project ("Phases"). The Development and Phasing Agreement will establish the particular onsite and offsite Subdivision Improvements required for each Phase of the Project.

2.3.7. At the time of final platting of each Phase, the Company and City will execute a subdivision improvement agreement for that Phase of the Project (each an "SIA"). Each SIA will: (a) identify the particular onsite and offsite Subdivision Improvements required for that Phase of the Project as established by the Development and Phasing Agreement; (b) establish the schedule for completion of the applicable Subdivision Improvements which will occur after the recordation of the final plat; and (c) insure the timely completion of the applicable Subdivision Improvements by requiring the Company to post a bond, letter of credit, cash or other mutually acceptable security in the amount of one hundred fifty percent (150%) of the estimated costs required to complete the required Subdivision Improvements for that Phase, which financial security may be transferred from one SIA to a different SIA for another Phase, provided that all improvements for each phase are completed and accepted by the City. Each SIA will be executed in connection with the recordation of the Final Plat for that Phase. The SIAs for the Project shall provide for the proportionate reduction of the balance of any required security as the Subdivision Improvements are constructed by Company and accepted by the City, and for cost recovery associated with facilities that are designed for use by other Parties.
2.3.8. The Parties agree that Company will have no obligation to construct, install or undertake any other onsite or offsite Subdivision Improvements, except for those onsite or offsite Subdivision Improvements necessary to serve the Project and the Property as provided for in the Development and Phasing Agreement and this Agreement. The foregoing will not preclude the inclusion of the Property in an impact fee ordinance established to undertake other municipal improvements as are determined to be necessary in the discretion of the City and uniformly applied to all similarly situated property.

2.3.9. The Company may be obligated to oversize the Subdivision Improvements, provided that the City agrees to a reasonably acceptable mechanism that provides for the reimbursement to Company of a proportionate share of the excess costs and expenses incurred by Company in designing, permitting and installing/constructing the facility. To the extent that the City requests that any portion or aspect of the Onsite Water System Facilities and the Onsite Sanitary System Facilities for the Project should be oversized to accommodate other needs of the City, the cost of such over-sizing (including without limitation any additional trenching required and the additional costs necessary as a result of the larger pipe) shall be paid by the City to Company and/or acceptable arrangements have been made for other projects tapping into such oversized facilities reimburse Company for costs incurred in extending such facilities. The mechanism for installing the Required Water Storage Tank shall be as provided for in Section 4.4 herein.

2.4. Building Permits: Upon recordation of the final plats and the execution of SIA documents and financial guarantees for each phase of the Project, the City will promptly process building permit applications at which time it will charge, on a unit by unit basis, the same building permit fees and other impact fees charged for like construction elsewhere in the City of Moab, provided that water and sewer impact fees shall be paid at the time of connection, and provided that any applicable credits provided for in this Agreement shall be applied at the time of connection.

2.5. Vested Property Rights.

2.5.1. Vesting. The City acknowledges that Company seeks an extended vesting period for the Project and agrees in concept with this objective in order to accommodate Company’s phasing schedule for the Project. The annexation of the Property shall be conditioned upon the City’s prompt approval of the MPD in conformity with this Agreement, and the granting of vested property rights in accordance therewith for a period of fifteen (15) years from the date of Preliminary Master Planned Development approval, provided that Company has submitted its Development and Phasing Agreement as required in Section 2.3.1. The City Council may authorize an extension of the Vesting Period for an additional reasonable time if Company has diligently pursued the development of the Project and has been delayed from completion because of events not reasonably within the control of Company, such as market conditions. If the City should fail or refuse to grant approval of the MPD as specified herein, then the Company may invoke those remedies as specified in Section 9.4.4.

2.5.2. Nature of Vesting. The City and Company agree that the execution of this Agreement, the approval of the Lionsback Resort Preliminary Master Planned Development, the approval of the Development and Phasing Agreement, and the adoption of the annexation ordinance grants and vests in Company all rights necessary to develop the Project. The rights granted to Company under this Agreement are both contractual and as provided under the common law concept of “Vested Rights”.

2.5.3. Duration. The Vested Development Rights may not be removed or diminished by future changes or amendments to the General Plan, Zoning Overlays, Ordinances or other administrative or legislative action of the City, unless it becomes necessary to modify a development
standard to protect the public health and safety, in which case such modification will be only as necessary for that purpose. In the event the Development Rights or Development Standards approved by this Agreement, or any particular aspect thereof, are or come to be at variance with any regulation or ordinance of the City, current or future, the development rights and standards herein shall be permitted as (a) non-conforming allowed use(s).

2.6. **Common Interest Community.**

2.6.1. The use and development of the Property, including the component Lots and parcels that will comprise the Project, will be developed consistent with applicable provisions of the City Code governing condominium development, if any, as well as any applicable provisions of the Utah Condominium Ownership Act and/or under a scheme for a Utah planned unit development community. Prior to or upon the recordation of the final plat for the initial phase of the Project, the Company will cause to be prepared a comprehensive set of documents, including certain plats, declarations, design guidelines, rules and regulations, bylaws, articles of incorporation and the like ("Project Governing Documents") which will govern the use and ownership of the Property and the component Lots and parcels established in the MPD process.

2.6.2. The homeowners association ("Project Association") for the Project will administer the Project Governing Documents.

3. **Water Service and Sanitary Service.**

3.1. **Water Service**. The City owns and operates the water system for Moab ("City Water System"). The City states and affirms that there is capacity in the City Water System to accommodate full development of the Project. Annexation pursuant to this Agreement is a precondition to the City providing culinary water service to the lands subject to this Agreement. The City acknowledges that it will provide water service to any portion of the Project immediately upon Company making a written request for such service and making the payment of applicable standard-in-City connection charges and impact fees, which will be assessed and collected at the time service is established at each lot or parcel, subject to any impact fee credits as provided herein. Company is responsible for designing and installing any onsite and offsite water line extensions and mains, pump stations and other facilities necessary to allow the Project to connect to the City Water System, including the Water Tank serving the Project ("Water System Facilities"). All Water System Facilities, excluding Service Lines, will be owned and maintained by the City, the cost of which will be defrayed by the imposition of periodic customary water user service fees and charge customarily charged to all other City residents, which charges will be billed to and collected from each owner of a Lot by the City. Company, after consultation with the City, shall design, purchase, and install all elements of the Water System Facilities water service lines, both onsite and offsite, in accordance with plans and specifications reviewed and approved by the City.

3.2. **Sanitary Sewer Service**. The City owns and operates the sewer system for Moab ("City Sanitary Sewer System"). Annexation pursuant to this Agreement is a precondition to the City providing sewer service to all or any portions of the lands subject to this Agreement. The City states and affirms that there is capacity in the City Sanitary Sewer System to accommodate full development of the Project. The City acknowledges that it will provide sewer service to any portion of the Project immediately upon Company making a written request for such service and making the payment of applicable standard-in-City connection charges and impact fees, which will be assessed and collected at the time that service is established at each lot or parcel. Company is responsible for designing and installing any onsite and offsite line extensions, lift stations and other facilities necessary to allow the Project to connect to the City Sanitary Sewer System ("Sanitary Sewer System Facilities"). All Sanitary Sewer System Facilities, excluding service lines, will be owned and maintained by the City, the
cost of which will be defrayed by the imposition of periodic customary sewer user service fees and charges customarily charged to all other City residents, which charges will be billed to and collected from each owner of a Lot by the City. Company, after consultation with the City, shall design, purchase, and install all elements of the Sanitary Sewer System Facilities, sewer service lines, both onsite and offsite, in accordance with plans and specifications reviewed and approved by the City.

3.3. **Service Lines.** For purposes of this Agreement, the term “Service Lines” is deemed to be those water or sewer lines extending from the residence over a lot and connecting into a distribution line owned by the City. The owner of the Lot and residence upon which the Service Line is located and to which the Service Line is connecting and providing water or sewer services is responsible for maintaining the Service Line over their Lot. Any repairs and maintenance should be coordinated with the City and completed in accordance with any direction provided by the City.

4. **Utilities, Roads, Land Dedications, RETA Fund and Related Project Matters.**

4.1. **Utilities to the Project.** Company shall be responsible for arranging for physical extension to and within the Property of all gas, electric, telephone, and cable TV utilities, including the upgrade of any existing facilities, to the extent necessary to serve the development of the Property. All such utilities shall be underground within and immediately outside of the boundaries of the Property and shall be constructed to City specifications or to accepted engineering standards as approved by the City engineer after consultation with Company. The timing of the construction of such infrastructure improvements shall be phased in accordance with the Development and Phasing Agreement.

4.2. **Fees and Dedications.** The Parties acknowledge that no fees or dedications for water, utility service, park or open space dedication, or any other matter related to development of the Project have been paid to the City, except as otherwise specifically set forth or provided for herein. Any and all such fees or dedications, if any, shall be paid or made as required by this Agreement, the applicable annexation agreement and the laws, ordinances, rules, regulations, and policies in effect in the City at the time that a final plat is recorded, building permits are issued, or connections to City services are approved for each segment of the Project, as appropriate.

4.3. **Roads and Parking.**

4.3.1. **Internal Streets.** The streets and parking areas within the Project will all be designed and constructed to the City of Moab Code and construction standards, subject to the granting of any mutually agreeable and desirable waivers and standards, but shall be owned and operated as a private road, to be owned, managed and maintained by the Project Association. The Parties agree that the location of these private roads will be reviewed during the MPD process. The Project Association shall grant and convey necessary and appropriate easements to the City and such other police, fire and emergency response bodies providing services to the Property and Project as may be necessary.

4.3.2. **Hells Revenge.** Company shall maintain a 20 foot wide corridor to accommodate the Hells Revenge Jeep Trail at a site acceptable to Company. The City shall not be responsible for the ownership, management and/or operation of the Hells Revenge Jeep Trail.

4.3.3. **Offsite Roads.**

4.3.3.1. **Ownership of Sand Flats Road.** Access to the Project will be by Sands Flat Road, which is a public road, currently owned, managed and operated by Grand County. The Parties understand that Grand County will transfer its rights, title and interests in Sand Flats Road to the City in accordance with the Sands Flat Road Transfer Agreement, to be executed prior to the
effectiveness of the Annexation of the Property into the City. Following such conveyance, the City will own, manage and operate Sand Flats Road.

4.3.3.2. **Improvements to Sand Flats Road.**

A. The Company will construct and install improvements to Sand Flats Road in conformity with plans and specifications approved by the City consistent with the improvements to Sand Flats Road identified in the Lionsback Resort Preliminary Master Planned Development, in particular Sheet C1 and Sheet C2 and as may be further described in the Development and Phasing Agreement.

B. The costs of undertaking such Sand Flats Road improvements are to be paid for by the Company. The Sand Flats Road improvements will be identified and may be completed in phases as provided for in the Development and Phasing Agreement.

C. The City will not otherwise require Company or any other party to acquire right-of-way to accommodate the proposed Subdivision Improvements.

4.3.3.3. **Maintenance of Sand Flats Road.** The costs of undertaking recurring operations, maintenance and repair of Sand Flats Road will be undertaken by the City and funded by the proceeds of assessments placed upon Lots in the Project and the Adjoining Property (if annexation occurs) pursuant to an Assessment Area ordinance to be enacted by the City, pursuant to U.C.A. § 11-42-101 et seq., for maintenance of Sand Flats Road. The Company will cooperate and execute all necessary reasonable consents or supplemental documents to allow for the creation of an assessment area covering the parcels to be created within the Property and the Adjoining Property and shall assist the City in developing the Assessment Area, which will be established by the Parties prior to the recordation of the final plat for the initial phase of the Project.

4.3.3.4. **Upgrades to Sand Flats Road.** The costs of undertaking future upgrading of Sand Flats Road ("Future Sand Flats Road Upgrades") may also be funded by the proceeds of additional assessments placed upon the Lots in the Project and each of the Adjoining Property, provided that each of the following occur or are true:

A. The Future Sand Flats Road Upgrades are necessary because of material impacts attributable to the uses and activities occurring in the Project;

B. All other developed or undeveloped lands which may be benefited by Future Sand Flats Road Upgrades or which may otherwise generate material impacts to Sand Flats Road contributing to the need for the Future Sand Flats Road Upgrades are likewise included in the Assessment Area and assessed in a proportionate manner similar to the Lots in the Project.

C. If the Future Sand Flats Road Upgrades are caused in whole or part by uses and activities occurring on adjacent or near by state or federally owned lands and the owners of the impacting public land do not contribute to the cost of the Future Sand Flats Road Upgrades, the costs that would be proportionately allocated to such public lands will not be reallocated to or otherwise collected from the Lots in the Project and would be paid by other revenues.

### 4.4. Water Tank

4.4.1. **Required Water Storage.** Company acknowledges and agrees that it needs to create additional water storage capacity for the City Water System to accommodate the water storage and service needs of the Project, anticipated to range between 235,000 and 280,000 gallons ("Required Water Storage Capacity"). The ultimate determination of actual Project generated water
storage demands will be reasonably calculated by the City Engineer, based upon the information and input provided by the engineer for Company. The City Engineer will only consider the anticipated Project generated demands and not other factors in determining the Required Water Storage Capacity.

4.4.2. **Required Water Storage Tank.** Company acknowledges and agrees that it needs to construct a water tank to accommodate the Required Water Storage Capacity as reasonably determined by the City Engineer pursuant to Section 4.4.1 ("Required Water Storage Tank"). The Required Water Storage Tank, at the election of Company, may either occur: (a) onsite on a portion of the Property ("Onsite Water Tank"); or (b) offsite at a mutually agreeable location that will continue to accommodate the Required Water Storage Capacity needs of the Project ("Offsite Water Tank").

4.4.3. **Onsite Water Tank.** In the event that Company elects to construct the Onsite Water Tank, the Parties agree to proceed as follows:

4.4.3.1. The Company will design and construct the Onsite Water Tank at its sole cost and expense on a portion of the Property as indicated in the Preliminary Master Plan or such other location, if any, mutually acceptable to the Parties.

4.4.3.2. The Company will install the Onsite Water Tank as part of the initial phase of the Project.

4.4.3.3. The design and construction of the Onsite Water Tank shall be undertaken in accordance with plans and specifications approved by the City.

4.4.3.4. Upon completion and acceptance of the construction, the City shall own and operate the Onsite Water Tank and shall be granted necessary easements to enable the City to monitor, manage and maintain the Onsite Water Tank.

4.4.3.5. The City recognizes and agrees that the installation of the Onsite Water Tank will fully accommodate the water storage needs for all of the units contemplated for the Project, and since this will allow the Project to have no impact on the City’s existing water storage capacity, Company will be entitled to a water impact fee offset for all units served by the Onsite Water Tank. Pursuant to Moab Municipal Code Section 13.25.040, the offset granted by this agreement with the City shall attach to and run with the lands included within the approved Final Master Planned Development and subject to impact fees. Offsets shall be valid for a period not to exceed ten (10) years from the date of approval of the final plat for phase one of Project or the date of the issuance of the last certificate of occupancy for units within the Project, whichever occurs first.

4.4.4. **Offsite Water Tank.** The City has indicated that it is considering placing a water tank on other property not owned by Company. Provided that the City makes an election to utilize the Offsite Water Tank and in the further event that the Company elects to participate with the City in funding and constructing such Offsite Water Tank, the Parties agree to proceed as follows:

4.4.4.1. The Parties shall mutually agree upon an offsite location for the Offsite Water Tank that will continue to serve the Required Water Storage Capacity needs of the Project.

4.4.4.2. The election to pursue the joint development of the Offsite Water Tank must occur prior to the time that Company has submitted its application for its Final Master Development Plan seeking to plat the initial phase of the Project.

4.4.4.3. Unless the Company enters into an agreement to purchase real property from an adjacent property owner for the siting of a an Off Site Water Tank as provided in
Section 4.4.4.6(C), the City agrees, at its sole cost and expense, to secure all required property interests (fee simple and/or easement interests) necessary to enable the City and Company to gain access to, stage, site, construct/install, operate, maintain and repair the Offsite Water Tank and all lines, utilities, access roads and other necessary facilities required to operate the Offsite Water Tank, including providing service to the Project, prior to the time that Company has submitted its application for its Final Master Development Plan seeking to plat the initial phase of the Project.

4.4.4.4. Company agrees to design and construct the Offsite Water Tank with a capacity of 500,000 gallons. The Parties agree that the additional capacity constructed by the Company above the Required Water Storage Capacity necessary for the Project shall be considered the "Increment of Capacity Upsize". The Required Water Storage Capacity plus the Increment of Capacity Upsize shall equal the Total Upsized Water Tank Capacity.

4.4.4.5. The Parties agree that since the installation of the Offsite Water Tank will fully accommodate the water storage needs for all of the units contemplated for the Project, and since this will allow the Project to have no impact on the City’s existing water storage capacity, Company will be entitled to a water impact fee offset for all units served by the Onsite Water Tank. Pursuant to Moab Municipal Code Section 13.25.040, the offset granted by this agreement with the City shall attach to and run with the lands included within the approved Final Master Planned Development and subject to impact fees. Offsets shall be valid for a period not to exceed ten (10) years from the date of approval of the final plat for phase one of Project or the date of the issuance of the last certificate of occupancy for units within the Project, whichever occurs first.

4.4.4.6. Since construction of the Offsite Water Tank will include an Increment of Capacity Upsize, the City agrees to contribute toward the cost of constructing said Increment. The cost of constructing the Increment of Capacity Upsize shall be determined by first calculating the price per gallon of constructing the 500,000 gallon water tank ("Unit Price/Gallon"). This Unit Price/Gallon shall be calculated based upon the actual cost of designing, transporting, excavation, installing and constructing the Offsite Water Tank and related facilities, together with all actual associated permitting fees, labor and material costs and fees, equipment fees, contractor fees, utility fees, and other costs and expenses paid to construct the Offsite Water Tank and related facilities. The Unit Price/Gallon shall then be multiplied by the Increment of Capacity Upsize, yielding the cost of constructing the Increment of Capacity Upsize ("Upsize Cost"). The amount of the contribution for the Upsize Cost to be paid by the City shall be determined by the application of the following calculation, whichever is applicable:

A. Should the Company elect to construct the 500,000 gallon Offsite Water Tank but not elect to construct the water lines necessary to connect the Offsite Water Tank to the City Water System, the City hereby agrees to pay the lesser of either: (1) seventy five percent (75%) of the Upsize Cost; or (2) one hundred seventy six thousand dollars $176,000.00. The City agrees to fund its share of the Upsize Cost from the City’s Water Impact Fee Fund. The City will reimburse Company this amount promptly when the Offsite Water Tank has been constructed.

B. Should the Company elect to construct the 500,000 gallon Offsite Water Tank and elect to construct the water lines necessary to connect the Offsite Water Tank to the City Water System, the City hereby agrees to pay the lesser of either: (1) one hundred percent (100%) of the Upsize Cost; or (2) two hundred thirty one thousand dollars ($231,000.00). The City agrees to fund its share of the Upsize Cost from the City’s Water Impact Fee Fund. The City will reimburse Company this amount promptly when the Offsite Water Tank has been constructed.

C. The parties acknowledge that the Company is currently
negotiating with an adjacent property owner for the purchase of real property for the siting of the Off Site Water Tank. Provided that Company is successful in securing all necessary property interests, including fee simple title to the Off Site Water Tank site and all necessary easements for access and pipelines, then the City agrees that the total dollar contribution of the City for the 500,000 gallon Offsite Water Tank pursuant to sub-subsections (A) and (B) of this subsection 4.4.4.6 shall be increased by the sum of fifty thousand dollars ($50,000.00), provided that Company shall transfer all property interests in said real property to the City upon completion of construction of the offsite water tank.

4.5. **Trash.** The City will provide routine and customary trash removal services to lots in the Project as provided by City ordinances. The City will bill charges for this service to each owner of a Lot following issuance of a certificate of occupancy.

4.6. **Land Dedication.**

4.6.1. **Open Space.** Upon annexation of the Property, and Final Master Planned Development approval for Phase I, those portions of land indicated on the Lionsback Resort Preliminary Master Planned Development Plan as “Open Space” shall either be dedicated to the Project Association (“Project Open Space”) or included in the yard area of individual lots in the Project as indicated on the Preliminary Master Planned Development Plan to meet minimum open space requirements necessary under the SAR zone and the MPD review process, which Project Open Space will be owned, managed and administered by the Project Association. The Project Open Space shall be designated as either Passive or Active as provided for in the City Code. Company shall place a conservation easement or other suitable restriction on the Property benefitting the City, restricting its usage to Passive or Active Open Space uses, provided that the covenant will enable a reasonable shifting of the designation of open space between Active and Passive. The use of the Project Open Space will be restricted as open space and may be used recreational, trail and other natural habitat or other natural open space areas. The use restrictions shall be included in the Project Governing Documents and such provisions may be enforced by Company, Project Association and/or the City. Any potential use that is not a permitted use shall require the consent of the City and the Company or its successors and assigns. The Company and the Project Association shall determine the nature and extent of any public use of the Project Open Space. The Parties recognize and agree that portions of the Project Open Space are located on the Adjoining Property and are subject to the provisions of Section 7. The required conservation easement shall be recorded with the final plat for the Final Master Planned Development Plan for the Project.

4.6.2. Prior to recordation of the final plat for the Final Master Planned Development Plan for the Project, Company and the City shall reach an agreement as to the construction and maintenance of any and all trails dedicated by Company to the City as part of the land use approval process.

4.6.3. The land dedications described in this Section 4.4 shall satisfy any and all dedication requirements required by the City pursuant to the City of Moab Code.

4.7. **RETA Fund.** The Project Governing Documents will establish a certain Real Estate Transfer Assessment ("RETA"), which will be assessed and collected at the time of the sale of individual property interests in the Project. The Project Governing Documents will provide that a portion of the RETA equal to 0.5% will be assessed, collected and paid to the City by the Project Association, which shall be held and used in a City account dedicated to the provision of affordable housing and recreational trails in the City. The Parties state and affirm that the imposition and payment of a portion of the RETA to the City is a voluntary commitment on the part of the Company and is not an obligation imposed upon Company by the City. The City agrees to hold the RETA funds paid to the City in a City account dedicated to the provision of affordable housing and recreational trails in the City. The Project
Governing Documents shall establish the mechanism for collecting the RETA and the circumstances by which the Project Association may grant exemptions from the payment of the RETA. The Project Association shall interpret and enforce the Project Governing Documents with respect to the collection of the RETA and the granting or withholding of an exemption from the RETA. All such proceeds will be paid by the Association to the City within 30 days of each closing. The City agrees to use the RETA proceeds paid by the Project Association in accordance with this agreement only for: (a) the purpose of creating affordable employee housing for employees in the Moab region; and/or (b) the purpose of acquiring, constructing, maintaining and/or repairing trails in the Moab region. The Project Association agrees to provide to the City an accounting substantiating all RETA income on an annual basis. The City agrees to provide to the Project Association an accounting substantiating the expenditures of all RETA proceeds paid by the Project Association consistent with the uses authorized by this Agreement.

5. Workforce/Employee Housing.

5.1. Company is seeking authority to construct certain onsite workforce/employee housing units as part of the Project (“workforce/employee housing units”). The workforce/employee housing units are primarily intended to accommodate workers in the Project. The workforce/employee housing units would initially be owned by Company and, thereafter, are expected to be owned and/or managed by a company owning and operating the resort. The workforce/employee housing units would be rented to employees in the Project on reasonable terms and conditions determined by the Company after consultation with the City.

5.2. If Company determines that some or all of the workforce/employee housing units are not necessary for use in the Project to serve employees of the Project, then Company agrees that each such excess workforce/employee housing unit would be available for lease or sale to other workers in the Moab region pursuant to contractual provisions which qualify the workforce/employee housing units as “affordable housing,” which shall be defined to mean units to be occupied by persons with a gross household income equal to or less than eighty percent (80%) of the Area Median Income of the City of Moab/Grand County for households of the same size. Company can determine whether the excess workforce/employee housing units would be rented or sold.

5.3. Company agrees not to use or include the workforce/employee housing units in the Project’s short-term accommodations rental program contemplated for use in connection with the free market units in the Project. The workforce/employee housing units will be occupied and used only by workers of the Project or other local employees in the Moab region consistent with the terms of this Section 5. The Project Governing Documents will establish provisions implementing this Section 5, and the City shall be named in the Project Governing Documents as a party authorized to enforce this provision.

5.4. Parties recognize and agree that the workforce/employee housing is located on the Adjoining Property, the development of which is subject to the provisions of Section 7.


6.1. City Review of the Project Development Applications. Contemporaneously with execution of this Agreement, the City shall have completed its review and approval of the Project Development Applications, which have been granted on terms and conditions acceptable to Company. Final Plats for the Project have not yet been submitted or approved and will occur in phases, which will be submitted by Company and reviewed by the City consistent with Applicable Laws.

6.2. Statement of Intent. It is the express intent of Company and the City to cooperate and diligently work to implement annexation, zoning, land use review processes, and such
other processes that are necessary or appropriate under the City of Moab Code in connection with the approval and implementation of the development of the Project in conformance with the terms and conditions of this Agreement.

6.3. **Other Governmental Permits.** The City shall cooperate with Company 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 Company, 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.

6.4. **Cooperation in the Event of Legal Challenge.** 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. This Agreement shall not be interpreted to create any third party rights, and no person who is not a party to this Agreement shall have any rights or standing, whether as an alleged third party beneficiary or otherwise, to enforce or seek interpretation of the terms of this Agreement.

7. **Status of Adjoining Property.**

7.1. In the event that the Adjoining Property becomes eligible for annexation into the City, the City shall send written notice of such occurrence to Company. Upon receipt of such notice, Company shall execute all necessary documents and shall undertake all reasonable efforts to initiate and complete an annexation of the Adjoining Property into the City within one year of the notice. Nothing herein shall obligate the City to approve an annexation of the Adjoining Property into the City.

7.2. If the City fails or elects not to annex the Adjoining Property into the City within three (3) years of the Effective Date or at such time as Company elects to record the final plat the Phase including the Adjoining Property, unless waived or extended by the Parties, Company, with the cooperation and assistance of the City, will use reasonable efforts to seek and obtain necessary land use approvals and entitlements from Grand County to allow the Adjoining Property to be used and developed consistent with the uses and activities contemplated for the Adjoining Property in the Lionsback Resort Land Use Entitlements ("Conforming Development of the Adjoining Property").

7.3. In the event that Company secures approvals from Grand County authorizing development of Conforming Development of the Adjoining Property, the City agrees:

7.3.1. To enter into agreements with Company by which the City will authorize the Conforming Development of the Adjoining Property to connect to the City Water System (defined below) and the City Sanitary Sewer System (defined below). Company will be required to pay any water and/or sewer connection and impact fees charged for City connections and shall be entitled to utilize any water and/or sewer impact fee credits that may have been extended to the Company by the City for the Project; and

7.3.2. That it will not require the Company to undertake any additional or further Subdivision Improvements in connection with its development of the Conforming Development of the Adjoining Property beyond the Subdivision Improvements provided for in this Agreement and the Development Agreement.

7.4. In the event that Company secures approvals from Grand County authorizing development of Conforming Development of the Adjoining Property, Company agrees that it will
develop the Adjoining Property only for the Conforming Development of the Adjoining Property and that it will record covenants and restrictions in form and content reasonably acceptable to the City limiting development to only the Conforming Development of the Adjoining Property, including areas and uses of Active Open Space and Passive Open Space, as well as infrastructure improvements, consistent with the Lionsback Resort Land Use Entitlements, which covenants will be for the benefit of the City.

7.5. In any event that the City is unable to annex the Adjoining Property into the City and Company is not able to obtain approval by Grand County for entitlements for the Conforming Development of the Adjoining Property within six (6) years of the Effective Date, unless waived or extended by the Parties, Company agrees to record covenants and restrictions in form and content reasonably acceptable to the City limiting development to only Active Open Space and Passive Open Space, as well as infrastructure improvements, consistent with the Lionsback Resort Land Use Entitlements, which covenants will be for the benefit of the City.

8. **Drinking Water Source Protection**

8.1. **General.** The Parties acknowledge that portions of the Property and other lands covered by this Agreement are situated within or adjacent to areas which are subject to drinking water source protection zones, as established in Chapter 13.26 of the Moab Municipal Code. It is agreed that all drinking water source protection zones shall be clearly identified and demarcated on the Final Master Development Plan and each subsequent plat for each phase of the Project under this Agreement and that the Company will adhere to Zone Two Drinking Water Source Protection Standards, as defined by Chapter 13.26 of the Municipal Code, for the entirety of the Property and the Adjoining Property. All such standards will be finalized in conjunction with the approval of the Final Master Development Plan. A plat note shall be appended specifying that all development within such zones shall comply with Zone Two design standards and mitigation measures as may be required by the City to comply with Chapter 13.26 and assure no degradation of existing ground water sources.

8.2. **Source Protection Plan.** The materials submitted with the Final Master Plan Development Plan shall include a site specific Drinking Water Source Protection Plan for the Project (excluding the uses and activities associated with Hells Revenge, which is not the responsibility of Company) containing, at minimum, the following elements:

A. A compilation of all hydrologic information pertaining to the Project site, including maps, well information, geotechnical reports, and the like;

B. A list of new Potential Contamination Sources that may be created by the development, including any temporary sources that may be associated with construction;

C. A description of all proposed mitigation measures, including: 1) construction housekeeping practices for all contractors; 2) specifications for sewer line construction; 3) description of storm water best management practices to be applied to the site; 4) detailed inspection, maintenance, and operations plans for all mitigation measures; and 5) other control measures, including covenant declarations, etc.;

D. A sample informational brochure for homeowners explaining drinking water source protection measures, potential contaminants, proper handling procedures, emergency contact information, and reference sources;

E. A detailed action plan covering a potential contamination occurrence;
F. An identification of the responsible party for the Company's drinking water source protection program; and

G. A record keeping section with appropriate report forms for use by City staff in monitoring compliance with the plan.

8.3. **Utility Specifications.** In addition to all other applicable standards and requirements, the sewer collection system for the Project shall comply with the standards for sewer lines within water protection areas as set forth in U.A.C. R309-515-6(4). In the case of conflicting requirements, the more stringent requirement shall apply.

8.4. **Stormwater Management.** In addition to all other applicable standards and requirements, the stormwater collection system for the Project shall incorporate applicable best management practices that reduce or eliminate the potential for contaminant infiltration into groundwater beneath or adjacent to the Project, as specified in the Stormwater BMP Database (http://www.bmpdatabase.org/).

9. **Miscellaneous.**

9.1. **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.

9.2. **Term.** The term of this Agreement shall commence upon the date hereof and shall extend until all of the commitments hereunder are satisfied. Company may terminate this Agreement, and may withdraw its applications for annexation and other development approvals as provided in Section 9.4.4.

9.3. **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.

9.4. **Default and Remedies.**

9.4.1. 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 9.4 within which time the alleged violation should be cured ("Cure Completion Date").

9.4.2. 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).

9.4.3. In addition to the foregoing remedies, in the event the Company has failed to cure a Cure Event that is (a) material to the terms and conditions of this Agreement and/or the City’s approval of Annexation Petition; and (b) the occurrence of which will unreasonably delay or prevent Company from completing its duties and obligations under this Agreement and/or the City’s approval of Annexation Petition (which material events include, by way of illustration and not exclusion, the filing of a bankruptcy by the Company and no accompanying plan for reorganization to complete the Project, the occurrence of an event), the City may record documents evidencing the suspension or termination of the Annexation of the Property and the Development Approvals and it 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.

9.4.4. In addition to the foregoing remedies, in the event the City does not approve: a) the SAR zoning; b) the Development and Phasing Agreement or c) the Final Master Planned Development for the Project; then Company shall have the option to terminate this Agreement and all of the respective rights, duties and obligations of the Parties under the Agreement shall expire and in such event the City shall have no further right to annex the Property, except as may otherwise be provided by law. Alternatively, if annexation has been completed, and if any of the approvals described in this Section 9.4.4 should fail to occur, then upon request of Company the City shall immediately commence proceedings to disconnect the Property from the City.

9.4.5. 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.

9.4.6. 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.

9.4.7. Each Party expressly waives its right to bring such action in or to remove such action to any other court whether state or federal.

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

9.6. **Waiver of Jury Trial.** Each Party hereto waives its right to a jury trial in the event of any litigation arising out of this Agreement.

9.7. **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.

9.8. **No Joint Venture or Partnership.** The City and Company 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 Company joint venturers or partners.

9.9. **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>LB-Moab Land Company, LLC</th>
<th>City of Moab</th>
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</thead>
<tbody>
<tr>
<td>100 West 200 South</td>
<td>217 East Center Street</td>
</tr>
<tr>
<td>Moab, Utah 84532</td>
<td>Moab, Utah 84532</td>
</tr>
<tr>
<td>Phone: 970-728-5474</td>
<td>Attention: City Manager</td>
</tr>
<tr>
<td>Fax: 970-728-6217</td>
<td>Phone: 435-259-5121</td>
</tr>
<tr>
<td>Email: <a href="mailto:mbadger@aol.com">mbadger@aol.com</a></td>
<td>Fax: 435-259-4135</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:donna@moabcity.org">donna@moabcity.org</a></td>
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</tbody>
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<thead>
<tr>
<th>With a Copy to</th>
<th>With a Copy to</th>
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<tbody>
<tr>
<td>Thomas G. Kennedy, Esquire</td>
<td>Christopher G. McAnany</td>
</tr>
<tr>
<td>P.O. Box 3081</td>
<td>Dufford, Waldeck, Milburr &amp; Krohn, LLP</td>
</tr>
<tr>
<td>Telluride, CO 81435</td>
<td>744 Horizon Court, Suite 330</td>
</tr>
<tr>
<td>Phone: (970) 728-2424</td>
<td>Grand Junction, CO 81506</td>
</tr>
<tr>
<td>Fax: (970) 728-9439</td>
<td>Phone: (970) 241-5500</td>
</tr>
<tr>
<td>Email: <a href="mailto:tom@tlklaw.net">tom@tlklaw.net</a></td>
<td>Fax: (970) 243-7738</td>
</tr>
<tr>
<td></td>
<td>Email: <a href="mailto:mcanany@dwmk.com">mcanany@dwmk.com</a></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>And a copy to</th>
<th></th>
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<tbody>
<tr>
<td>State of Utah, acting by and through the School and Institutional Trust Lands Administration</td>
<td></td>
</tr>
<tr>
<td>675 East 500 South, Suite 500</td>
<td></td>
</tr>
<tr>
<td>Salt Lake City, Utah 84102-2818</td>
<td></td>
</tr>
<tr>
<td>Attention: Assistant Director -- Development</td>
<td></td>
</tr>
</tbody>
</table>

9.10. **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. Company shall have the right to assign or transfer all or any portion of its interests, rights or obligations under this Agreement to Utah Special Districts, homeowners associations, 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 agree to be bound to applicable provisions of this Agreement.
9.11. **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 facsimile.

9.12. **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 Company under this Agreement, including the duties and obligations imposed upon Company hereunder and under the City Approvals.

9.13. **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.

9.14. **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.

9.15. **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.

9.16. **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.

9.17. **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.

9.18. **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.

9.19. **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) Company shall have the full power and exclusive control of the Property subject to the obligations of Company 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.

9.20. **No Waiver of Governmental Immunity.** To the fullest extent provided by law, nothing in this Agreement shall be interpreted or construed to be a waiver or relinquishment by the City of any immunities it possesses as a governmental entity pursuant to applicable state and federal law including, without limitation, the Utah Governmental Immunity Act.
9.21. **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.

9.22. **Protest.** In the event of any protest or similar legal or administrative challenge to any annexation under this Agreement, Company will cooperate with the City in providing necessary information or testimony to support annexation.

9.23. **Rights Upon Annexation.** Upon annexation of the Property into the City, Company shall be entitled to all rights and benefits, and be subject to all legal obligations to the same extent as all other City of Moab residents and property owners, except as specifically provided otherwise by the express terms of this Agreement.

9.24. **Recording of Agreement.** This Pre-Annexation Agreement, including exhibits, shall be recorded in the Grand County land records. Any exhibits that have been previously recorded need not be recorded again. The remaining provisions of the Agreement shall be held by the Clerk of the City of Moab.

9.25. **Filing of Annexation Petition.** Contemporaneous with the signing of this Agreement, Company agrees to file with the City a Petition for Annexation for the currently unincorporated property as shown in Exhibit “A”.

9.26. **Schedule of Exhibits.**

<table>
<thead>
<tr>
<th>Exhibit Reference</th>
<th>Document Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit “A-1”</td>
<td>Description of Property</td>
</tr>
<tr>
<td>Exhibit “A-2”</td>
<td>Description of Adjoining Property</td>
</tr>
<tr>
<td>Exhibit “B”</td>
<td>Lionsback Resort Preliminary Master Planned Development Plan</td>
</tr>
<tr>
<td>Exhibit “C”</td>
<td>Table of Subdivision Improvements</td>
</tr>
</tbody>
</table>
IN WITNESS WHEREOF, this Agreement has been executed by the City of Moab, acting by and through the City of Moab Council, which has duly authorized execution, and by a duly authorized representative of Company, as of the Effective Date.

CITY:

Mayor David L. Sakrison

30 Oct 2008

Date

ATTEST:

Rachel Ellison
City Recorder
COMPANY:

LB Moab Land Company, LLC,
a Colorado limited liability company

By: [Signature]  
Printed Name: Michael Lawler  
Title: Manager  
STATE OF (CO)  
COUNTY OF (San Miguel)  

Date: 11-12-08

I, the undersigned notary public in and for the aforesaid state and county, do hereby certify that Michael Lawler as the Manager of LB Moab Land Company, LLC, personally appeared before me on November 12, 2008 and did, after being duly sworn, execute the within document in the capacity stated and for the purposes contained herein.

Witness my hand and official seal.

[Signature]  
Notary Public  
My commission expires: 4/10/2022
THE WITHIN AGREEMENT IS CONSENTED TO BY THE UNDERSIGNED:

The State of Utah, acting by and through the
School and Institutional Trust Lands Administration

By: ________________________________ Date: ______/23/08

Printed Name: Kevin S Carter
Title: Director
STATE OF Utah
COUNTY OF Salt Lake

I, the undersigned notary public in and for the aforesaid state and county, do hereby certify that
______________ as the __________________________ of The State of Utah, acting by and through the School and Institutional Trust Lands Administration, personally appeared before me on ______________ and did, after being duly sworn, execute the within document in the capacity stated and for the purposes contained herein.

Witness my hand and official seal.

______________________________
Notary Public

My commission expires: 5/25/2010

Approved as to Form
Mark L. Shurtleff
ATTORNEY GENERAL

By: ________________________________
Lot 1 and Lot 2, both within Section 6, Township 26 South, Range 22 East, Salt Lake Base and Meridian, County of Grand, State of Utah
and,
the Southeast Quarter of the Southwest Quarter of the Northeast Quarter (SE1/4-SW1/4-NE1/4), within Section 6, Township 26 South, Range 22 East, Salt Lake Base and Meridian, County of Grand, State of Utah
and,
the Northwest Quarter of the Southwest Quarter of the Northeast Quarter (NW1/4-SW1/4-NE1/4), within Section 6, Township 26 South, Range 22 East, Salt Lake Base and Meridian, County of Grand, State of Utah
and,
the Northeast Quarter of the Southwest Quarter of the Northeast Quarter (NE1/4-SW1/4-NE1/4), within Section 6, Township 26 South, Range 22 East, Salt Lake Base and Meridian, County of Grand, State of Utah
and,
the Southwest Quarter of the Southeast Quarter of the Northeast Quarter (SW1/4-SE1/4-NE1/4), within Section 6, Township 26 South, Range 22 East, Salt Lake Base and Meridian, County of Grand, State of Utah
and,
the Northwest Quarter of the Southeast Quarter of the Northeast Quarter (NW1/4-SE1/4-NE1/4), within Section 6, Township 26 South, Range 22 East, Salt Lake Base and Meridian, County of Grand, State of Utah
and,
the Northeast Quarter of the Southeast Quarter of the Northeast Quarter (NE1/4-SE1/4-NE1/4), within Section 6, Township 26 South, Range 22 East, Salt Lake Base and Meridian, County of Grand, State of Utah
Exhibit "A-2"
(Legal Description of Adjoining Property)

FOLEY ASSOCIATES, INC.
CIVIL ENGINEERING AND LAND SURVEYING
P. O. BOX 1385
TELLURIDE, CO 81435
970-728-6153

The West Half of the Northeast Quarter of the Southeast Quarter (W1/2-NE1/4-SE1/4), within Section 6, Township 26 South, Range 22 East, Salt Lake Base and Meridian, County of Grand, State of Utah
Together with The West Half of the Southeast Quarter of the Northeast Quarter of the Southeast Quarter (W1/2-SE1/4-NE1/4-SE1/4), within Section 6, Township 26 South, Range 22 East, Salt Lake Base and Meridian, County of Grand, State of Utah
Exhibit “B”
(Lionsback Resort Preliminary Master Planned Development Plan)