

**ZONING STATUS AGREEMENT
(Lionsback Resort)**

THIS ZONING STATUS AGREEMENT (“Agreement”) is entered into and made effective as of December 13, 2016 (“**Effective Date**”) by and between the City of Moab, a Utah municipal corporation, acting through its City Council (“**City**”); LB Moab Land Company, LLC, a Colorado limited liability company (“**Developer**”); and the State of Utah, acting by and through the School and Institutional Trust Lands Administration (“**SITLA**”). The City, the Developer and SITLA are collectively referred to herein as the “**Parties**”.

RECITALS

A. The State of Utah, through 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 in the Development Agreement (defined below) (“**Property**”).

B. The State of Utah, through SITLA, is also the owner of certain adjoining property more particularly described in the Development Agreement (“**Adjoining Property**”).

C. Capitalized terms included herein and not otherwise defined shall have the meaning ascribed to the term in the Development Agreement.

D. State trust lands managed by SITLA are not subject to municipal planning and zoning regulation pursuant to Utah Code Ann. 10-9a-304, absent consent by SITLA, which may be granted, withheld or withdrawn by SITLA in its discretion.

E. Developer and SITLA have entered into a certain SITLA Lease and Development Agreement, as amended, by which Developer is authorized and empowered to seek and obtain development approvals from the City, including the entitlements described herein.

F. Use and development of the Property may occur in accordance with and as provided for in the Moab City Code (“**City Code**”) as well as all other applicable laws and regulations of the City of Moab (“**Moab City Laws**”), subject to the provisions of the Utah Municipal Land Use, Development and Management Act, Utah Code Ann. § 10-9a-101 et seq, including section 10-9a-304 thereof.

G. Developer has pursued certain planning and zoning approvals with the City of Moab (“**City**”) concerning the Property, which SITLA has authorized and granted its consent from time to time

H. The planning and zoning approvals include the annexation of the Property (“**Annexation**”) into the City, which occurred in accordance with the Moab City Laws and applicable provisions of Utah law, as more specifically described in Exhibit “A”. The planning and zoning approvals for the Property also included the zoning of the Property (“**Rezoning**”) in the City’s Sensitive Area Resort Zone (“**SAR**”) as provided for in the City Code and the Moab City Laws.

I. The planning and zoning approvals for the Property also included reviews and approvals for a Mixed Use Master Planned Development (“**MPD**”) for the Lionsback Project, a mixed use project (“**Project**”), as also more specifically described in Exhibit “A”.

J. The approvals granted by the City, including, the Annexation, the Rezoning, and the MPD Approvals, which are collectively referred to as the “**City Approvals**,” authorized the development of the Project as such approvals were reflected by and described in the City Approvals. As further reflected in the Development Agreement and the Pre-Annexation Agreement, the City approved a period of extended

vested rights (“**Vested Rights**”) for the development approvals granted for the Project and Property which ran for 15 years from the date of the Preliminary MPD, through July 27, 2024.

K. The Development Agreement further provided that Developer may submit separate development applications associated with the Final MPD for each Phase of the Project (“**Final Plat**”) and with such filing, the Developer is required to submit a Final Plat and a Subdivision Improvement Agreement (“**SIA**”) for the Lots, Parcels and associated onsite and offsite Subdivision Improvements (described in the Development Agreement) to be constructed for the particular Phase, which will be consistent with the Lionsback Phasing Plan. The required onsite and offsite infrastructure improvements (“**Subdivision Improvements**”) for the development in the Project are described in the Development Agreement.

L. Developer and SITLA seek to amend elements of the City Approvals granted for the Project, as provided for herein (“**City Approvals Amendments**”). Developer and SITLA submitted their application dated June 30, 2016 (“**City Approvals Amendments Application**”) seeking approval of the City Approvals Amendments. The City Approvals Amendments Application remains pending with the City.

M. SITLA has notified the City, through counsel, of its election to withdraw its consent to local planning and zoning jurisdiction pursuant to Utah Code Ann. 10-9a-304 with respect to the City’s review and action on the City Approvals Amendments Application and ongoing future City review of planning and zoning matters affecting and concerning the Property, which is acknowledged by the City. The foregoing notwithstanding, although SITLA maintains that it has the right and authority pursuant to Utah Code Ann. 10-9a-304 to make decisions concerning the use and development of its property without regard to the Moab City Laws and/or the involvement of the City, SITLA recognizes the importance of reasonably coordinating the development of its land with the City and to that end, SITLA has determined to grant its limited consent to local planning and zoning jurisdiction relating to the Property and Project with respect to the City Approvals Amendments, provided that the City review process occurs in the manner provided for herein.

N. There exists a potential dispute between the City and SITLA with respect to the extent of any zoning exemption which SITLA may enjoy, given its prior decision to submit the Property to the land use jurisdiction of the City of Moab and the execution by the Developer, with SITLA approval, of various agreements in conjunction with the City Approvals. By entering into this Agreement the City makes no admission as to the scope of any zoning exemption which may be claimed by SITLA, as described in the prefatory recitals, above.

O. The Parties desire to enter into this Agreement to reflect the manner that the City Approvals Amendments Application as well as future land use applications concerning the Property and the Project would be handled by the Parties.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals, which are hereby incorporated as part of the agreements of the Parties, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Status of City Approvals.** Notwithstanding the election by SITLA to withdraw its consent to local planning and zoning jurisdiction relating to the Property and Project pursuant to Utah Code Ann. 10-9a-304, SITLA and Developer agree to comply with the existing terms and conditions of the City Approvals, subject to the pending City Approvals Amendment Application and the other issues addressed herein. It is acknowledged and agreed by the Parties that the terms and conditions of the City Approvals in effect as of the Effective Date, shall remain in full force and effect. It is further acknowledged and agreed

that the City is fully compliant with all commitments, terms, and conditions extant in the City Approvals as of the Effective Date.

2. **City Approvals Amendments.**

2.1. An amendment to the MPD Approvals is governed by the amendment procedures set forth in Section 17.65.130 of the City Code and is handled as either a Major Amendment (which are reviewed and acted upon by the City Council and/or the City Planning Commission) or Minor Amendment (which are reviewed and acted upon by the Moab City planning department staff).

2.2. SITLA consents to the City's exercise of its local planning and zoning jurisdiction relating to the Property and Project with respect to the review and action on the City Approvals Amendment Application, provided that the City Approvals Amendments Application is deemed to be a Minor Amendment, which will be reviewed and acted upon by the Moab City planning department staff ("**City Planning Department**") by and through the City Planning Director, not to be unreasonably delayed or conditioned, and which would not require a public hearing. The City Planning Department may impose reasonable conditions upon the approval of the Amendment Application which are generally consistent with the intent expressed in the MPD Approvals, applicable ordinances, and/or the needs of the Project. SITLA and Developer agree to be bound by the results of that minor plan review process, subject to applicable appeal procedures.

2.3. Following the action by the City Planning Department on the City Approvals Amendments Application, the Parties recognize and agree that the Development Agreement must be amended to reflect the changes to the MPD Approvals resulting from the City's approval of the City Approvals Amendments, which the City agrees to cooperate and assist in drafting and executing, which will not be unreasonably delayed or conditioned. SITLA consents to the Parties execution of an appropriate amendment to the Development Agreement reflecting the approval of the City Approvals Amendment Application. A list of outstanding items related to the final MPD and Plat Approvals is attached hereto as Exhibit "B" and incorporated by reference.

3. **Provision of Water and Sewer Service to the Property and Project.** The City confirms, acknowledges and agrees that the City shall provide municipal water and sewer service to Developer to serve the Project and Property, in form and manner contemplated by the City Approvals, which service will be based upon uniform terms, conditions and specifications as well as on fees and charges uniformly charged to other persons or entities in the City.

4. **Special Districts.** Developer may elect to form a special tax district or improvement district to finance and fund the cost and expense of the installation, operation, repair and maintenance of any and all privately operated water, sewer, road and utilities serving the Property and Project, which are to be paid for by Developer. City agrees to cooperate and assist Developer in connection with the formation of any such district. It is agreed that the City Approvals shall be modified to provide that all wastewater treatment service lines and equipment within the Property shall be privately owned, operated, and maintained, with the City to assume collection, maintenance, and treatment obligations at a point mutually agreed, as designated on the final utility plan approved in connection with Phase One of the Project.

5. **Traffic Studies and Related Improvements.** Developer, SITLA, and the City agree to confer in good faith with respect to traffic impacts which will be generated in connection with the Amendment Plan which is currently under review, and with respect to traffic improvements (including off-site improvements) which may be necessitated by the Amendment Plan and/or future phases of the

Project. An updated traffic impact study prepared by a licensed engineer shall be submitted to the City no later than six (6) months from the date of the issuance of a certificate of occupancy for the hotel comprising Phase One of the Project. SITLA and Developer agree that the City may require Developer to install additional traffic related improvements: a) in conjunction with future phases of development on the Property; or b) if traffic impacts from Phase One result in unacceptable or dangerous vehicular or pedestrian traffic conditions on roads providing access to the Property. Any additional traffic related improvements which may be required by the City and installed by the Developer in conjunction with the Amendment Plan and/or future phases of the Project must be reasonable and proportional to traffic impacts generated by the development of the Property, as identified by the updated traffic study.

6. **Engineer Review By City.** The Parties agree that any engineer reviews to be conducted by the City in connection with the review and approval of plans, plats and other documents submitted by Developer to the City from time to time may be handled by a duly qualified engineer mutually agreed to by the City, Developer and SITLA, which reviews shall occur in a reason manner, not to be unreasonably delayed.

7. **Review of Final Plats and Permits.** SITLA consents to the City's exercise of its local planning and zoning jurisdiction with respect to future final plats, permits and other reviews required to be undertaken by the City pursuant to the City Code, which the City agrees will occur administratively by the City Planning Department, without a requirement for a public hearing. The Parties acknowledge and agree that development of improvements on lots in the Project will comply with all applicable building codes as uniformly applied to similar property in the City.

8. **Future Amendments to City Approvals.** In the event that Developer and SITLA seek to pursue other amendments to the City Approvals and/or to pursue new approvals for the Property and Project, including the Adjoining Property, the Parties shall meet and confer in good faith and discuss the nature and extent of the City review requirements. The City Planning Department may impose reasonable conditions upon the approval of future amendments and new approvals which are generally consistent with the intent expressed in the MPD Approvals, applicable ordinances, and/or the needs of the Project. Such approvals shall not be unreasonably delayed or conditioned, and shall be subject to applicable appeal procedures.

9. **Miscellaneous.**

9.1 **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.

9.2 **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Utah. The exclusive venue for any dispute arising under this Agreement shall be the courts of Grand County, Utah.

9.3 **Performances.** Time is of the essence of this Declaration and for the performance of each of the duties and obligations provided herein.

9.4 **Severability.** Wherever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Declaration shall be found invalid or unenforceable, this shall not affect the validity of the remaining provisions of this Declaration, and the remaining provisions shall remain in full force and effect.

9.5 **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.

9.6 **Parties' Representations.** In entering into this Agreement, the Parties acknowledge and agree and represent and warrant to each other as follows: (a) that they will perform their duties and obligations in a commercially reasonable and good faith manner and that this commitment is being relied upon by each other Party; and (b) that the Party has actual and express authority to execute this Agreement, has taken all actions necessary to obtain such authorization, the Agreement constitutes a binding obligation of the Party and the person signing below is duly authorized and empowered to execute this Agreement.

9.7 **Notices.** The contact addresses of the Parties are as follows:

LB Moab Land Company, LLC Post Office Box 967 Moab, UT 84532 Cell 970-708-1896 Email: badgermoab@gmail.com	City of Moab 217 East Center Street Moab, Utah 84532 Attention: City Manager Phone: 435-259-5121 Fax: 435-259-4135 Email: _____	State of Utah, acting by and through the School and Institutional Trust Lands Administration 675 East 500 South, Suite 500 Salt Lake City, Utah 84102 Attn. Development Group
<u>With a Copy to</u> Thomas G. Kennedy, Esquire P.O. Box 3081 Telluride, CO 81435 Phone: (970) 728-2424 Fax: (970) 728-9439 Email: tom@tklaw.net	<u>With a Copy to</u> Christopher G. McAnany Dufford, Waldeck, Milburn & Krohn, LLP 744 Horizon Court, Suite 300 Grand Junction, CO 81506 Phone: (970) 241-5500 Fax: (970) 243-7738 Email: mcanany@dwmk.com	<u>With a Copy to</u>

9.8 **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.

9.9 **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, which may be transmitted by canned/email or facsimile signature pages.

IN WITNESS WHEREOF, this Agreement has been executed by the City of Moab, acting by and through the Moab City Council, which has duly authorized execution, and by a duly authorized representative of Developer, as of the Effective Date.

CITY:

City of Moab,
a Utah municipal corporation

By: _____

Date: _____

Printed Name: _____

Title: _____

SITLA

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

By: _____

Date: _____

Printed Name: _____

Title: _____

COMPANY:

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

By: _____

Date: _____

Printed Name: _____

Title: _____

EXHIBIT A
(Annexation and Planning/Zoning Approvals)

The Annexation of the Property occurred pursuant to and in accordance with the following documents:

- (i) City of Moab Ordinance No. 2008-20 (“**Annexation Ordinance**”) dated December 9, 2008 and recorded on February 23, 2009 in Book 744, Page 407-423 with the Clerk and Recorder for Grand County, Utah (“**Official Records**”);
- (ii) The Pre-Annexation Agreement dated October 28, 2008 and recorded on February 23, 2009 in Book 744, Page 407-423 in the Official Records (“**Pre-Annexation Agreement**”); and
- (iii) The Annexation Map recorded February 23, 2009 in Book 744, Page 424 in the Official Records (“**Annexation Map**”);

The Property has received the following planning and zoning approvals (“**MPD Approvals**”):

- (i) **Concept MPD.** At a duly noticed and conducted public hearing/meeting, the City of Moab Planning Commission (“**Planning Commission**”) reviewed and approved the Development Application associated with the Concept Plan/Master Planned Development (“**Concept MPD**”), subject to conditions stated in the document reflecting the Concept MPD approval.
- (ii) **Preliminary MPD.**
 - (a) At a duly noticed and conducted public hearing/meeting, the Planning Commission reviewed and recommended approval of the Development Application associated with the Preliminary Plan/Master Planned Development (“**Preliminary MPD**”) to the City of Moab City Council (“**City Council**”).
 - (b) At a duly noticed and conducted public hearing/meeting, the City Council reviewed and approved the Development Application for the “**Lionsback Development Plan**” associated with the Preliminary MPD, subject to conditions stated in the document reflecting the Preliminary MPD approval (a copy of which is on file with the City).
 - (c) The City, Developer and SITLA executed a certain Development and Phasing Agreement for Lionsback Resort dated July 28, 2009 (“**Development Agreement**”). The Development and Phasing Agreement, among other things, included the “**Lionsback Development Plan**” as reflected in the Development Approvals is on file with the City, approved the proposed land use and phasing plan for the Project and noted the allocation of infrastructure improvements required for the Project.
 - (d) The Development Agreement incorporated an approved Phasing Plan for the Property as well as the Adjoining Property and Project. Developer contemplates that the Project will consist of five phases (each a “**Phase**”). The Lionsback Phasing Plan depicts the Phases for the Project and establishes the Lots, Parcels, uses and Subdivision Improvements (defined below) for the Project.