

**DEVELOPMENT AND PHASING AGREEMENT
(Lionsback Resort)**

THIS DEVELOPMENT AND PHASING AGREEMENT (“Agreement”) is entered into and made effective as of July 28, 2009 (**“Effective Date”**) by and 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”**). The City and the Company are collectively referred to herein as the **“Parties”**.

RECITALS

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”** (**“Property”**).

B. SITLA is also the owner of certain adjoining property more particularly described on attached **Exhibit “B”** (**“Adjoining Property”**).

C. The Property has been annexed into the City of Moab and the Adjoining Property is 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 Adjoining 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 annexed the Property into the City of Moab (**“Moab”**) pursuant to and in accordance with the following documents:

- (1) The 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, Reception No. 490726 with the Clerk and Recorder for Grand County, Utah (**“Official Records”**);
- (2) The Pre-Annexation Agreement dated October 28, 2008 and recorded on February 23, 2009 in Book 744, Page 407, Reception No. 490726 in the Official Records (**“Pre-Annexation Agreement”**); and
- (3) The Annexation Map recorded on February 23, 2009 in Book 744, Page 424, Reception No. 490727 in the Official Records (**“Annexation Map”**).

F. Company intends to develop the Property (as well as the Adjoining Property at such time as it may be annexed into the City) and Project in accordance with the applicable laws and regulations of the City of Moab (**“Moab City Laws”**).

G. Company desires to plat and develop the Property (as well as the Adjoining Property at such time as it is annexed into the City) as a mixed use resort project known as **“Lionsback Resort”** (**“Project”**), consisting of residential, lodging, commercial, retail, recreational and open space uses. The

Property will be divided into a series of lots (“**Lots**”) and parcels (“**Parcels**”) to accommodate the use and development of the Project.

H. Company has submitted its applications with the City (“**Development Applications**”) seeking necessary entitlements to develop the Property and the Adjoining Property as the Project, which Development Applications conform to and have been made in accordance to the City of Moab Laws, in particular, the provisions of the Sensitive Area Resort Zone (“**SAR**”) and in accordance with the terms and provisions of the Mixed Use Master Planned Development (“**MPD**”) review processes.

I. 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.

J. 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**”).

K. At a duly noticed and conducted public hearing/meeting, the City Council reviewed and approved the Development Application 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).

L. After receiving and reviewing the evidence concerning the Development Application, the Planning Commission and the City Council respectively found that: (i) the Property as well as the Adjoining Property and the Project achieves the applicable purposes contained in the City of Moab Laws and relevant to the review and approval of a Mixed Use MPD developing under the SAR zone; and (ii) the resulting development will be consistent with the provisions of the applicable sections of the City of Moab Laws and relevant to the review and approval of a Mixed Use MPD developing under the SAR zone. The approvals granted by the City are referred to as the “**Development Approvals**”.

M. The “**Lionsback Development Plan**” reflected in the Development Approvals is on file with the City.

N. As indicated in the Development Application associated with the Preliminary MPD, the Company has proposed and the City Council has approved a Phasing Plan for the Property as well as the Adjoining Property and Project. Company contemplates that the Project will consist of five phases (each a “**Phase**”). A copy of the “**Lionsback Phasing Plan**” is attached as **Exhibit “D”**. A breakdown of the units and development in each Phase is summarized on attached **Exhibit “C”**. The Lionsback Phasing Plan depicts the Phases for the Project and establishes the Lots, Parcels, uses and Subdivision Improvements (defined below) for the Project.

O. The Parties agree that Company may submit separate Development Applications associated with the Final MPD for each Phase of the Project (“**Final Plat**”). The City and Company will submit a Final Plat and a Subdivision Improvement Agreement (“**SIA**”) for the Lots, Parcels and associated onsite and offsite Subdivision Improvements (defined below) to be constructed for the particular Phase, which will be consistent with the Lionsback Phasing Plan.

P. The required onsite and offsite infrastructure improvements (“**Subdivision Improvements**”) for the development in the Project include certain onsite roads, sidewalks and trails,

water service facilities (including the onsite Water Tank), sewer service 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. Details of the Subdivision Improvements are further described and defined in the Pre-Annexation Agreement and such descriptions and definitions are incorporated in this Agreement.

Q. Company has met all of the requirements and has addressed all conditions concerning the Development Approvals.

R. The Parties desire to enter into this Agreement to reflect certain of their agreements concerning the development of the Property and Project in accordance with the City Approvals.

S. 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.

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. **Phasing Plan.**

1.1. City and Company acknowledge and agree that Company intends to implement the Development Approvals and develop the Project in five separate “**Phases**”, consistent with the Lionsback Phasing Plan, which Phases may be further divided, combined, sequenced or otherwise modified by agreement of the Parties, which approval shall not be unreasonably withheld.

1.2. It is further understood that each Phase may be further divided into individual “**Filings**”.

1.3. Company is authorized to submit and record separate Final Plats for each Phase of the Project and need not record a Final Plat for the entire Project at one time. Company is further authorized to submit and record a separate Final Plat for one or more individual Filings within a Phase and need not record a Final Plat for the entire Phase at one time.

1.4. City and Company recognize that large open space parcels/tracts may be divided into smaller parcels/tracts as boundaries for Phases are established and subsequently included on a Final Plat, provided that such division is not being undertaken for new or additional uses or purposes which have not been authorized by the Development Approvals. For instance, and not by way of limitation or exclusion, Company may record Final Plats in separate Phases. Company is authorized to record such Final Platting and divide such open space parcels/tracts into smaller parcels/tracts and convey them to designated parties.

1.5. The Phasing Plan is a guide for use by Company and City and the Company may submit and record Final Plats that deviate from the Phasing Plan, with the development of any portion and/or phase of the Lionsback Resort being advanced in time or delayed, provided that the Final Plat

otherwise is in compliance with the Development Approvals and applicable law and that Company has demonstrated to the satisfaction of the City that a SIA covering all necessary Subdivision Improvements for the property then being platted has been reviewed and approved by the City and executed and recorded by Company with the filing of the Final Plat.

1.6. The use and development of the Adjoining Property shall be undertaken in the manner provided for in Section 7 of the Pre-Annexation Agreement and the Development Approvals.

2. Subdivision Improvements.

2.1. City and Company acknowledge and agree that Company will need to construct various Subdivision Improvements to serve the Project, which are generally described in the narrative attached as **Exhibit “E”** (“**Subdivision Improvements Narrative and Schedule**”) and on the “**Table of Subdivision Improvements**” listed on attached as **Exhibit “F”**. The Table of Subdivision Improvements lists the party responsible for the design, construction/installation, ownership, operation, management and maintenance of each Subdivision Improvement and the party responsible for the associated costs.

2.2. Portions of the Subdivision Improvements are required to be constructed to serve most or all of the development in the Project and are so indicated on the Subdivision Improvement Schedule (“**Project-wide Subdivision Improvements**”). The timing and scheduling for the Project-wide Subdivision Improvements are so indicated on the Subdivision Improvement Schedule. Some portions of the Subdivision Improvements are required to be constructed to serve development in individual Phases in the Project and are so indicated on the Subdivision Improvement Schedule (“**Phase Specific Subdivision Improvements**”).

2.3. Given the scale of the Project and the recognition that the Project will be implemented and developed in Phases over time, the City and Company have expressed their mutual desire to establish an orderly plan to insure that required Subdivision Improvements are being constructed in a timely and orderly manner and are coordinated to be undertaken as Final Plats for Phases are being approved and recorded.

2.4. The design, construction and maintenance of the required Subdivision Improvements shall be funded as provided for herein and in the Pre-Annexation Agreement.

2.5. The water tank serving the Lionsback Resort shall be designed, constructed and funded in the manner provided for in the Pre-Annexation Agreement. Water Tap Credits will be made available to Company as provided for in the Pre-Annexation Agreement.

2.6. 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 Pre-Annexation Agreement. The foregoing will not preclude the inclusion of the Property in a broad, regionally based impact fee area established to undertake other required municipal improvements affected and necessitated by the Project.

2.7. The Company will not be obligated to oversize the Subdivision Improvements unless agreed upon by the Company and provided that the City and Company agree 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.

2.8. 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, piping, valves, pumps and the like that are required for the upgrade and the additional costs necessary as a result of the larger facilities) 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 (as defined in the Pre-Annexation Agreement) shall be as provided for in the Pre-Annexation Agreement.

2.9. It is recognized and agreed that no improvements associated with the Project shall be undertaken until the final plat for the Phase covering the particular improvement has been recorded.

2.10. Pursuant to the Development Approvals and the City of Moab Laws, Company shall execute an SIA with the City in which the Company commits to construct the required Subdivision Improvements for each Phase of the Project within an established and approved timeframe and that the Company posts security to insure its full and timely completion of such required Subdivision Improvements.

2.11. The City and Company agree that the Company shall submit an SIA for a particular Phase or Filings for that portion of the Project for which the Company seeks approvals to record a Final Plat and for which Subdivision Improvements are required and have not been constructed. The SIA shall cover those Phase Specific Subdivision Improvements and those Project-wide Subdivision Improvements, if any, that are indicated as being made applicable to the property being final platted on the Subdivision Improvement Schedule. Each SIA will be executed in connection with the recordation of the Final Plat for that Phase.

2.12. Company's obligation to undertake the Subdivision Improvements shall be as provided for in the SIA. It is contemplated that there will likely be multiple SIA's, one for each Phase and/or Filing of the Project. Each SIA will: (a) identify the particular onsite and offsite Subdivision Improvements required for that Phase of the Project as established by the Pre-Annexation Agreement, the Development Approvals and this Agreement; (b) establish the schedule for completion of the applicable Subdivision Improvements which will occur after the recordation of the final plat for the Phase covered by the particular SIA; 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 150% of the estimated costs required to complete the required Subdivision Improvements for that Phase, as verified by the City, which financial security may be transferred from one SIA to a different SIA for another Phase. The duration of the financial security shall be equivalent to the time deadlines specified in the SIA, which, in any case shall not exceed twenty-four months from the date of approval, unless approved by the Parties. Continuing compliance with all material terms of the SIA improvements agreement and the Development Approvals within the timeframes established in the SIA s and the Development Approvals shall be a prerequisite to the ability of Company to obtain a building permit for individual dwellings in the Project and/or a certificate of occupancy for structures in the Project. The foregoing shall not preclude Company from applying for or receiving a building permit or certificate of occupancy for structures within the Project while Company is undertaking the required Subdivision Improvements consistent with the SIA.

2.13. Upon certification of completion of the required Subdivision Improvements by the City Public Works Director and Zoning Administrator, which will not be unreasonably delayed,

conditioned or withheld and acceptance of the Subdivision Improvements to be owned and maintained by the City, which will be conveyed to the City free and clear of all liens and encumbrances, the City shall execute a written acceptance and release of the financial security. Partial releases of the financial security are authorized as Subdivision Improvements are completed and accepted in accordance with the Lionsback Phasing Plan. The SIA's for the Project shall provide for the proportionate reduction of the balance of any required financial security as the Subdivision Improvements are constructed by Company and accepted by the City, and for cost recovery associated with Subdivision Improvements that are designed to be oversized and available for use by other Parties, as provided for in this Agreement.

2.14. The SIA shall further provided that Company shall warrant the completed Subdivision Improvements for a period of two years from completion and final acceptance of the Subdivision Improvements for a Phase and shall post financial security in a reasonable amount, not to exceed 10% of the cost of constructing the Subdivision Improvement during the warranty period. The financial security for the warranty period will be to indemnify the City against any repairs or corrections to the Subdivision Improvements that may become necessary because of defective workmanship or materials used therein. The financial security for the warranty period shall be promptly released when the warranty period expires.

2.15. The Company shall not be obligated to execute SIA's and/or to provide security mechanisms for purposes of maintaining Subdivision Improvements assigned to Company or the Project Association.

3. **Grading.** All grading and soil disturbance undertaken in connection with the development of the Project shall be in conformance with Appendix J of the adopted edition of the International Building Code (IBC). A permit shall be obtained as required by IBC Section J103 from the City and include, at a minimum, the required reports, plans, and documents. The appropriate application fee, in an amount corresponding to the fee schedule adopted by resolution of Council, shall be submitted with the grading permit application. All grading and soil disturbance shall be conducted in a manner that will minimize disturbance to those areas not scheduled for immediate development. In the event grading exceeds those phases scheduled for immediate development, the City, as a condition of the grading permit, may require that the Company post adequate security to assure compliance with all permit conditions. Any security required by this section shall be an amount, as determined at the reasonable discretion of the City, reasonably calculated to cover anticipated costs that will be adequate to satisfactorily stabilize and/or reclaim soils that have been disturbed but not developed and include restoration, soil stabilization, landscaping, drainage improvements, or any other permit condition. The bond shall be in a form approved by the City Manager. All best management practices for control of erosion and pollutant discharge elimination shall be in accordance with the UPDES permit issued by the State of Utah Department of Environmental Quality and a copy of said permit shall be submitted to the City with the application for the Grading Permit.

4. **Approved Land Uses.** Subject to the conditions herein, the Property, including the Adjoining Property, has been authorized for the following uses and activities:

APPROVED LAND USES FOR THE PROPERTY AND ADJOINING PROPERTY:

Usage/Density	Acreage	Percentage of Project Acreage
188 Residential Lots/Units	26.84	15.32
50 Lodge/Commercial Lots/Units	6.37	3.64
18 Employee/Work Force Housing Units	1.19	.68
Service Facility	.27	.15

Storage Units	.58	.33
Open Space	128.45	73.35
Natural		
Passive		
Active		
Water Tank	.21	.12
Streets, Roads, Trails, Cell Tower	11.22	6.41
Total Acreage	175.12	100

5. **City Approval.** The City hereby approves this Development Agreement.

6. **Vested Property Rights.** The City acknowledges and agrees that a period of extended vested rights (“**Vested Rights**”) has been granted for the Project and Property as provided for in Section 2.5 of the Pre-Annexation Agreement. The Vested Rights are intended to apply to the Development Approvals and this Development Agreement.

7. **Company’s Compliance with Development Approvals.** Company agrees to comply with the terms, conditions, requirements and obligations placed upon Company in the Development Approvals.

8. **Miscellaneous.**

8.1. **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.

8.2. **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, at any time upon five days written notice that, in its sole discretion, Company determines that the Project will not be approved in a form satisfactory to Company.

8.3. **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.

8.4. **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.

8.5. **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.

8.6. **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.

8.7. **Recording of Agreement.** This 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.

8.8. **Indemnity.** Except as otherwise set forth herein, the Company shall defend and hold the City harmless from and against any and all claims, demands, liabilities, actions, costs, damages, and attorney's fees that may arise out of or result directly or indirectly from the Company's actions or omissions in connection with this Agreement, including but not limited to Company's improper design or construction of the Subdivision Improvements required thereunder, or Company's failure to construct or complete the same. After inspection and acceptance by the City of the Public Improvements, and after expiration of any applicable warranty period, this agreement of indemnity shall expire and be of no future force or effect.

8.9. **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.

8.10. **Statement of Intent and Cooperation.** 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 Moab City Code in connection with the approval and implementation of the development of the Project in conformance with the terms and conditions of this Agreement. 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. 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. In the event the City and Company are unable to select mutually agreeable legal counsel to defend such action or proceeding, each Party may select its own legal counsel. This Agreement shall not be interpreted to create any third Party beneficiaries or any rights to enforcement by any person not a Party hereto.

8.11. **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.

8.12. **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.

8.13. **Default and Remedies.**

8.13.1. 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 8.13 within which time the alleged violation should be cured ("**Cure Completion Date**").

8.13.2. 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).

8.13.3. 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.

8.13.4. In addition to the foregoing remedies, in the event the City does not: a) approve the SAR zoning; or b) 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.

8.13.5. 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.

8.13.6. 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.

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

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

8.15. **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.

8.16. **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.

8.17. **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.

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

8.19. **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.

LB Moab Land Company, LLC 100 West 200 South Moab, Utah 84532 Phone: 970-728-5474 Fax: 970-728-6217	City of Moab 217 East Center Street Moab, Utah 84532 Attention: City Manager Phone: 435-259-5121
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Email: mhbader@aol.com	Fax: 435-259-4135 Email: donna@moabcity.org
With a Copy to Thomas G. Kennedy, Esquire P.O. Box 3081 Telluride, CO 81435 Phone: (970) 728-2424 Fax: (970) 728-9439 Email: tom@tklaw.net	With a Copy to 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
And a copy to State of Utah, acting by and through the School and Institutional Trust Lands Administration 675 East 500 South, Suite 500 Salt Lake City, Utah 84102-2818 Attention: Assistant Director – Development	

8.20. **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.

8.21. **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.

8.22. **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.

8.23. **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.

8.24. **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.

8.25. **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.

8.26. **Schedule of Exhibits.**

Exhibit Reference	Document Reference
Exhibit "A"	Legal Description of the Property
Exhibit "B"	Description of Adjoining Property
Exhibit "C"	Lionsback Phasing Table
Exhibit "D"	Lionsback Phasing Plan

Exhibit “E”	Subdivision Improvements Narrative and Schedule
Exhibit “F”	Table of Subdivision Improvements

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 Company, as of the Effective Date.

CITY:

City of Moab,
a Utah municipal corporation

By: David L Sakreison

Date: 12 Aug 2009

Printed Name: DAVID L SAKREISON
Title: Mayor

ATTEST:

By: Rachel E. Ellison
City Recorder

Date: 8-12-2009

State of Utah)

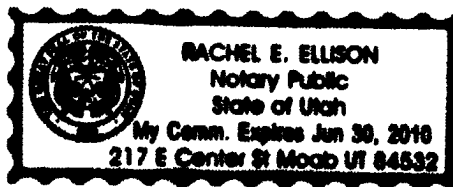
) 8:

County of Grand)

I, the undersigned notary public in and for the aforesaid state and county, do hereby certify that David L. Sakreison, Mayor personally appeared before me on August 12, 2009, 2009 and did, after being duly sworn, execute the within document in the capacity stated and for the purposes contained herein.

Rachel E. Ellison
Notary Public

My Commission Expires: 6-30-2010



COMPANY:

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

By: Michael Badger

Date: 9/11/09

Printed Name: Michael Badger

Title: MAN MEMBER

STATE OF Colorado)

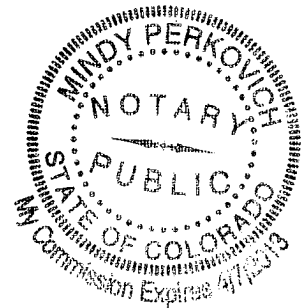
COUNTY OF San Miguel)^s

The foregoing instrument was acknowledged before me on September 11, 2009, by Michael Badger as the managing member of LB Moab Land Company, LLC.

Witness my hand and official seal.

[Signature]
Notary Public

My commission expires: 4-7-2013



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: _____

Printed Name: _____

Title: _____

Date: _____

Approved as to Form
Mark L. Shulton
ATTORNEY GENERAL
By: _____

Exhibit "A"
(Legal Description of Property)

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

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 "B"
(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 "C"
(Lionsback Phasing Table)

Phase	Development Included in Phase
One	Hotel Facilities (50 Hotel Rooms, Café, Convention/Meeting Rooms, Health Club, Bike Shop) 34 Single-family lots Water Tank
Two	29 Single-family lots
Three	52 Single-family lots
Four	33 Single-family lots
Five	40 Single-family lots 18 Employee/Workforce Housing Units Service Facility Storage Facilities

EXHIBIT “D”
(Lionsback Phasing Plan)

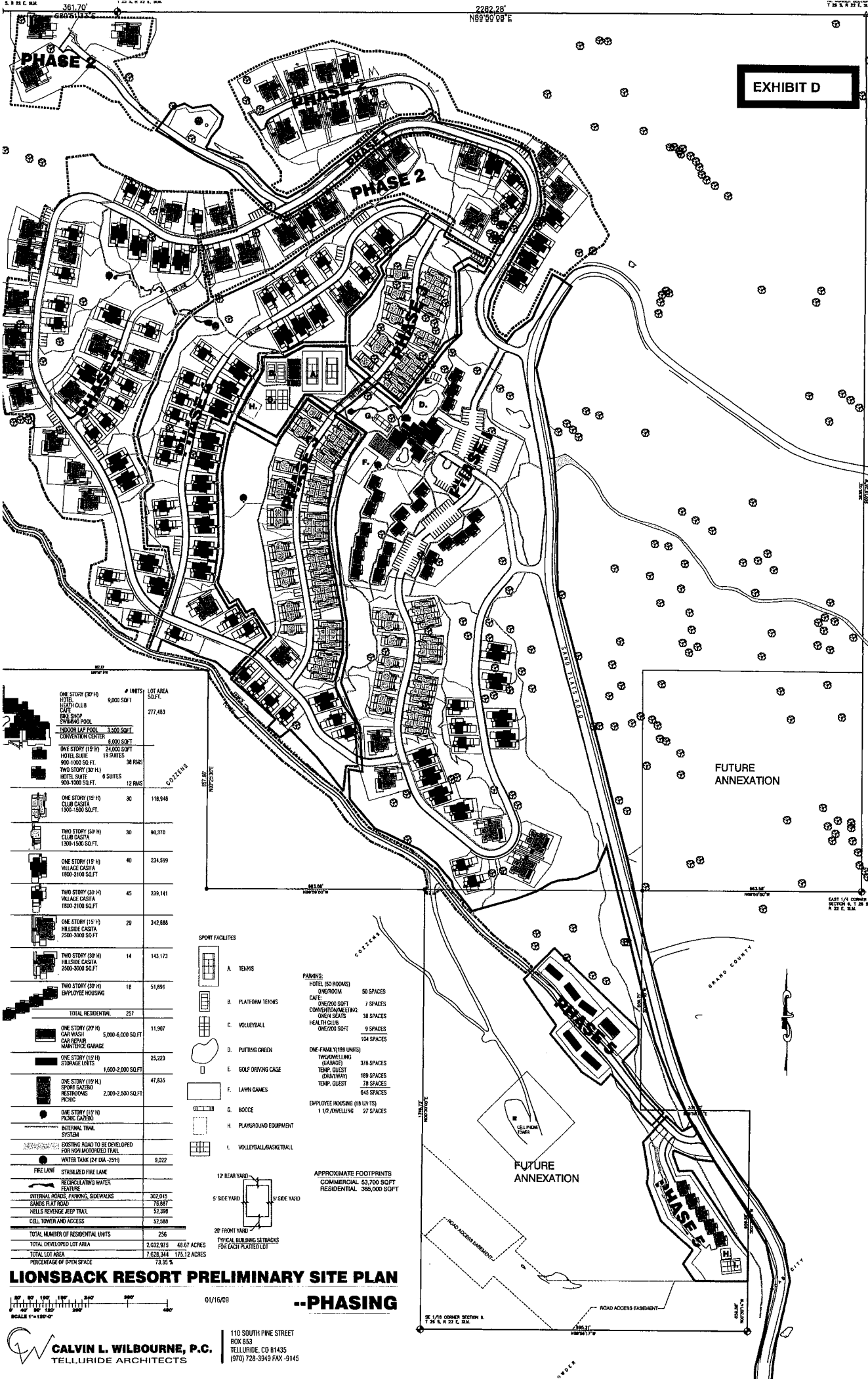


EXHIBIT “E”
(Subdivision Improvements Schedule)

General.

The Lionsback Resort Project is being developed in five Phases. The required Subdivision Improvements for the Project will consist of certain onsite and offsite infrastructure improvements. The Subdivision Improvements will likewise consist of five separate phases (“**Subdivision Improvement Phase(s)**”) and will be tied to the development of the five Phases for the Project. The Phases of development for the Project and the associated Subdivision Improvements for the Subdivision Improvement Phases are summarized below.

Phase One

Phase One Development. Phase One of the Project will consist of the following development components:

Hotel Center. A large central building containing a portion of the hotel facility and offices for the resort, and may include a health club, cafe, bike shop, swimming pools, other outdoor sport facilities and conference center which will be open to the public.

Hotel Guest Condominium Units. 50 Hotel Guest Condominium Units will be constructed with the Hotel and will be available for sale to third party purchasers.

Residential Units. 34 single family lots each accommodating a casita will be platted. Developer may elect to construct casita’s on the lots or may sell them as vacant lots to third party purchasers for future construction of the casita on that lot.

Subdivision Improvement Phase - Phase One. The Subdivision Improvement Phase - Phase One will include the following:

1. **Internal Subdivision Roads.** The main access to the Project and the Hotel from Sand Flats Road will be constructed. Gecko Drive will create a loop road to and from the Hotel Drive to access the thirty-four single-family residential units proposed in this phase. A portion of Gecko Drive will extend from the Hotel Drive to the second entrance of this development on Lionsback Drive and may require retaining walls on both sides to span a natural drainage swale. The construction of this second entrance is also proposed in this phase.
2. **Parking.** The roadway construction will create 105 parking spaces primarily near the hotel and require four culverts.
3. **Stormwater Management.** A proposed storm drain system will be required to convey storm water through this phase from future phases. Existing culverts beneath Sand Flats Road will be upgraded to convey the one hundred year storm event as part of this phase and as part of the offsite improvements required along Sand Flats Road. Four culverts will be required along with shallow swales to convey stormwater runoff.
4. **Water System.** Connections to the City Water System will be made and a booster pump at the connection will be installed as will transmission and distribution lines to connect to and serve the Project. The transmission line will use a four inch pressurized line along Sand Flats Road and will

transport water to a water tank in the northwest corner of the Project which will then be used to distribute water to all proposed development in the Project. The water stored in the water tank will also be available to provide fire suppression for all structures in the Project, which will be sprinkled. The water system will be extended to each lot and development parcel included in Phase One.

5. **Sanitary Sewer System.** Connections to the City Sanitary Sewer System will be made and collection lines will be installed to serve the Project. A sanitary sewer lift station and holding tank will be installed and will be designed to release sewage into the City sewer system at a controlled rate to minimize the impact on municipal utilities. The sanitary sewer system will be extended to each lots and development parcel included in Phase One. A service line will be built from the internal distribution system to provide water at the Sand Flats Recreational Area gate. The amount and location has been coordinated with the BLM and exact specifications will be coordinated with the BLM with the Construction Plans.
6. **Shallow Utilities.** Electric, natural gas, cable television and telephone lines will be extended and installed along Sand Flats Road to serve Lionsback Resort, including each of the lots and development parcels included in Phase One. The existing roadway to the existing tower will continue to be utilized and may be used to improve the cellular telephone service to this development.
7. **Offsite Road Improvements**
 - A. **Sand Flats Road.** Offsite construction will include all necessary improvements to Sand Flats Road. Proposed shoulder improvements will allow for greater public safety. The portion of Sand Flats Road running North-South through the project boundary will be improved with eight and two foot shoulders on the East and West sides respectively. See Preliminary Street Plans for details. The sharp curve at the Southern end of this section will be improved by removing some of the existing pavement on the inside of the curve and installing a section of curb and gutter with breakaway delineators. This portion of construction has been coordinated with the City of Moab Engineer to improve public safety through this area. The improved and disturbed sections of Sand Flats Road will be painted with a double yellow stripe in the center and single white lane stripes on either side off set twelve feet.

Phase Two

Phase Two Development. Phase Two of the Project will consist of the following development components:

Residential Units. 29 single family lots each accommodating a casita will be platted. Developer may elect to construct casita's on the lots or may sell them as vacant lots to third party purchasers for future construction of the casita on that lot.

Subdivision Improvement Phase - Phase Two. The Subdivision Improvement Phase - Phase Two will include the following:

1. **Internal Subdivision Roads.** Development in Phase Two will be accessed from the second entrance at Lionsback Drive and Sand Flats Road, but future phases will allow for additional options. Roadways constructed in phase two will include a portion of Lionsback Drive, which will service seventeen home sites. Goshawk Drive will access the additional eight homes and a turnaround. The construction of these roads will require ten retaining walls and two culverts.
2. **Parking.** The roadway construction will create 14 parking spaces along the proposed roadways.
3. **Stormwater Management.** Two culverts will be required along with shallow swales to convey stormwater runoff.
4. **Water System.** The water distribution system will be extended to each lot and development parcel included in Phase Two.
5. **Sanitary Sewer System.** Sanitary sewer service from this phase will require a small amount of additional construction through the future phase four to tie into Phase One. The sanitary sewer system will be extended to each lots and development parcel included in Phase Two.
6. **Shallow Utilities.** Shallow utilities will be extended to serve each lot or parcel included in Phase Two.

Phase Three

Phase Three Development. Phase Three of the Project will consist of the following development components:

Residential Units. 52 single family lots each accommodating a casita will be platted. Developer may elect to construct casita's on the lots or may sell them as vacant lots to third party purchasers for future construction of the casita on that lot.

Subdivision Improvement Phase - Phase Three. The Subdivision Improvement Phase - Phase Three will include the following:

1. **Internal Subdivision Roads.** Roadways constructed in Phase Three will include an extension of Lionsback Drive, which will service seven home sites. Whiptail Drive will be constructed from this segment and will access thirty-one homes before ending near the tennis courts. A small section of Red Hawk Drive will be required in this phase to allow access to Ringtail Drive from Lionsback Drive. It will service one home along the way. Ringtail drive will allow access to fourteen homes and also end near the tennis courts. Whiptail and Ringtail Drives approach each other from opposite directions with an all weather emergency connection between them. The intersection of Sand Flats Road and Hells Revenge 4x4 Trail/Road will be improved to Oznog Drive, which will access the Employee/Work Force Housing Units housing area.
2. **Parking.** The roadway construction will create 29 parking spaces along the proposed roadways and 27 parking spaces at the work force/employee housing portion of this development.
3. **Stormwater Management.** Three culverts will be required along with shallow swales to convey stormwater runoff.
4. **Water System.** The water distribution system will be extended to each lot and development parcel included in Phase Three.
5. **Sanitary Sewer System.** The sanitary sewer system will be extended to each lot and development parcel included in Phase Three.
6. **Shallow Utilities.** Shallow utilities will be extended to serve each lot or parcel included in Phase Three.

Phase Four

Phase Four Development. Phase Four of the Project will consist of the following development components:

Residential Units. 33 single family lots each accommodating a casita will be platted. Developer may elect to construct casita's on the lots or may sell them as vacant lots to third party purchasers for future construction of the casita on that lot.

Vehicle Service Area. A Non-Commercial Vehicle Service Area will be constructed.

Subdivision Improvement Phase - Phase Four. The Subdivision Improvement Phase - Phase Four will include the following:

1. **Internal Subdivision Roads.** Roadways constructed in Phase Four will include an extension of Lionsback Drive, which will service four home sites. Bighorn Drive will be constructed from this segment and will access eighteen homes before ending near the sport facilities. The extension of Red Hawk Drive will service eleven homes and also end near the sport facilities. Bighorn and Red Hawk Drives approach each other from opposite directions with an all weather emergency connection between them. A portion of the existing Hells Revenge 4x4 Trail/Road will be improved from Oznog Drive to service the last storage unit.
2. **Parking.** The roadway construction will create 22 parking spaces along the proposed roadways of Phase Four.
3. **Stormwater Management.** Three culverts will be required along with shallow swales to convey stormwater runoff.
4. **Water System.** The water distribution system will be extended to each lot and development parcel included in Phase Four.
5. **Sanitary Sewer System.** The sanitary sewer system will be extended to each lot and development parcel included in Phase Four.
6. **Shallow Utilities.** Shallow utilities will be extended to serve each lot or parcel included in Phase Four.

Phase Five

Phase Five Development. Phase Five of the Project will consist of the following development components, provided that portions of the development included in Phase Five involved development of the Adjacent Property, the development of which should occur in the manner provided for in the Pre-Annexation Agreement:

Residential Units. 40 single family lots each accommodating a casita will be platted. Developer may elect to construct casita's on the lots or may sell them as vacant lots to third party purchasers for future construction of the casita on that lot.

Work Force Housing Units. 18 Employee/Work Force Housing Units will be constructed by Company.

Service Area. Public area at the terminus of Hells Revenge may be constructed to offer an area for operators to clean off their vehicle before entering the highway.

Storage Units. Storage units that will be available for owners of units in the Project will be constructed.

Subdivision Improvement Phase - Phase Five. The Subdivision Improvement Phase - Phase Five will include the following:

1. **Internal Subdivision Roads.** Roadways constructed in Phase Five will include the final extension of Lionsback Drive, completing its loop from Gecko Drive to Sand Flats Road. Lionsback Drive will access thirty home sites within this phase and connect phases two and four. Tree Frog Drive will be constructed from this segment and will access ten homes before its end. Tree Frog Drive has an all weather emergency access surface connecting to Lionsback Drive. Fire Frog Drive will provide access to three home sites and the water tower proposed as part of Phase One from Lionsback Drive. A smaller lift station will be installed beneath Lionsback Drive to service forty homes in this phase.
2. **Parking.** The roadway construction will create 20 parking spaces along the proposed roadways of Phase Five.
3. **Stormwater Management.** Two culverts will be required along with shallow swales to convey stormwater runoff. Two concrete cross-pans will be constructed to convey stormwater runoff across the surface of Lionsback Drive.
4. **Water System.** The water distribution system will be extended to each lot and development parcel included in Phase Five.
5. **Sanitary Sewer System.** The sanitary sewer system will be extended to each lot and development parcel included in Phase Five. A sanitary lift station will be required as part of this development to convey sanitary waste uphill to the system already built in previous phases.
6. **Shallow Utilities.** Shallow utilities will be extended to serve each lot or parcel included in Phase Five.
7. **Hells Revenge:** The location of Hells Revenge will be relocated somewhat to the west. The road will be kept in a rough state suitable for four-wheel driving and will be kept wide enough to accommodate only one-way traffic. The perimeter of the road may be fenced to control the flow of traffic.

Exhibit “F”
(Table of Subdivision Improvements)

Subdivision Improvement	Who designs and pays for the design of this improvement	Who constructs and pays to construct this Improvement	Who maintains and pays to maintain this Improvement	Who Owns the Improvement
Offsite Roads – Sand Flats Road	Developer designs SFR. City reviews and approves. Developer pays for design	Developer constructs and pays for construction, may get reimbursements from other project down the road if annexed into the City, may also get reimbursement if developer chooses and City approves the use of public-private funding mechanisms (eg. impact fees or special district)	City to maintain SFR and City to pay to maintain SFR. The City will establish an assessment area to generate funds to provided for the maintenance cost of SFR, which district would include lots in Lionsback.	City
Offsite Roads – Hells Revenge	Developer designs and locates the center line of HR. SITLA to pursue a relocation of HR to new alignment and vacate existing alignment	Developer constructs and pays for construction.	Grand County and/or Jeep Club to maintain HR. Grand County and/or Jeep Club to pay to maintain HR.	Grand County and/or Jeep Club
Onsite Roads	Developer designs and City reviews and approves. Developer pays for design	Developer constructs and Developer pays for construction	Project Association to maintain. Project Association to pay to maintain	Project Association, subject to public access easements
Onsite Trails	Developer designs and City reviews and approves. Developer pays for design	Developer constructs and Developer pays for construction	Project Association to maintain. Project Association to pay to maintain	Project Association
Offsite Water Facilities	Developer designs and City reviews and approves. Developer pays for design	Developer constructs and Developer pays for construction. Status of Tap Fees to be determined. The city may give a credit toward the Water Tap Fees that may be due because of the Developer’s construction of the water storage tank.	City to maintain. City to pay to maintain. City to include maintenance costs as user fee to be included on monthly service bills to be issued by the City to each lot owner following connection to the system and which will be paid by the lot owner as a monthly fee.	City
Onsite Water Facilities, including Water Tank	Developer designs and City reviews and approves. Developer pays for design	Developer constructs and Developer pays for construction. Status of Tap Fees to be determined. The city may give a credit toward the Water Tap Fees that may be due because of the	City to maintain. City to pay to maintain. City to include maintenance costs as user fee to be included on monthly service bills to be issued by the City to each lot owner following connection to the system and which will be paid by the lot owner as	City

		developers construction of the water storage tank.	a monthly fee.	
Offsite Sewer Facilities	Developer designs and City reviews and approves. Developer pays for design	Developer constructs and Developer pays for construction. Typical Sewer Tap Fees will be imposed and collected.	City to maintain. City to pay to maintain. City to include maintenance costs as user fee to be included on monthly service bills to be issued by the City to each lot owner following connection to the system and which will be paid by the lot owner as a monthly fee.	City
Onsite Sewer Facilities	Developer designs and City reviews and approves. Developer pays for design	Developer constructs and Developer pays for construction. Typical Sewer Tap Fees will be imposed and collected.	City to maintain. City to pay to maintain. City to include maintenance costs as user fee to be included on monthly service bills to be issued by the City to each lot owner following connection to the system and which will be paid by the lot owner as a monthly fee.	City
Offsite Shallow Utilities (eg. telephone, power, cable, natural gas, fiber optics)	Developer designs and utility providers each to review and approve their respective utility. Developer pays for design	Developer constructs and Developer pays for construction	Utility provider to maintain. Utility provider to pay to maintain	Utility Provider
Onsite Shallow Utilities	Developer designs and utility providers each to review and approve their respective utility. Developer pays for design	Developer constructs and Developer pays for construction	Utility provider to maintain. Utility provider to pay to maintain	Utility Provider
Trash Removal			City to provide trash service and charge service fee to each lot owner, which will be included on bills to be issued by the City to each lot owner following certificate of occupancy and which will be paid by the lot owner as a monthly fee.	