CITY OF MOAB RESOLUTION NO. 14-2024

A RESOLUTION APPROVING THE RED ROCK FLATS II AMENDED PRE-ANNEXATION AGREEMENT FOR PROPERTY LOCATED AT 1410 SOUTH HWY 191, MOAB, UT 84532.

WHEREAS, The following describes the intent and purpose of this resolution:

Applicant, Ellen Weinstein, on behalf of Shamrock Properties XX, LLC, has requested approval of the Red Rock Flats II Pre-Annexation Agreement, for property located at 1410 South Hwy 191, Moab, UT 84532.; and

a. The Applicant submitted to the City of Moab the appropriate application materials and documents for review and consideration of the Pre-Annexation Agreement; and

b. The property is 1.83 acres located in the Grand County Highway Commercial Zone and Rural Residential Zone with a High-Density Overlay; and

c. The Applicant desires to annex into the City of Moab and develop 54 Apartment Multi-Household dwelling units, restricting 27 units as AEH, and 50% AEH for units developed that are greater than 54 total units; and

d. The Moab City Council reviewed the Pre-Annexation Agreement and considered the recommendations in the associated staff report materials; and

e. Following the consideration of the technical aspects of the pertinent code sections, the Moab City Council, pursuant to Resolution 05-2024, hereby finds, that the Pre-Annexation Agreement and associated restrictive covenant provisions are acceptable; and

NOW, THEREFORE, BE IT RESOLVED BY THE MOAB CITY COUNCIL, the Red Rock Flats II Pre-Annexation Agreement is hereby APPROVED.

PASSED AND APPROVED in open City Council by a majority vote of the Governing Body of Moab City Council on May 14, 2024.

SIGNED: _____
Joette Langianese, Mayor

ATTEST: _____
Sommar Johnson, Recorder

WHEN RECORDED RETURN TO:

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

Parcel No. 02-0007-0007

PRE-ANNEXATION AGREEMENT REGARDING 1410 SOUTH HIGHWAY 191

THIS PRE-ANNEXATION AGREEMENT ("**Pre-Annexation Agreement**") is entered by and among SHAMROCK PROPERTIES XX, LLC ("**Property Owner**"), a Utah limited liability company, and the CITY OF MOAB, a municipality and political subdivision of the State of Utah (the "**City**"). Property Owner and the City are hereinafter sometimes referred to individually as a "**Party**" or collectively as the "**Parties**."

RECITALS

A. Property Owner owns one parcel totaling approximately 1.83 acres of real property that are currently located in Grand County at approximately 1410 South Highway 191, Grand County, Utah, as more fully described in **Exhibit A** (the "**Shamrock Property**").

B. The Shamrock Property is unincorporated and is designated as "Highway Commercial" in the Grand County Land Use Code 2.10 and is identified in Grand County's use table as being approved for "Household Dwelling, multi-family" use, which use is "permitted by right."

C. The Parties have been in discussions regarding the Shamrock Property annexing into the City.

D. It is the intent of this Pre-Annexation Agreement to provide a clear understanding of the zoning for the use and future development of the Shamrock Property in accordance Chapter 17.27 of the Moab Municipal Code, C-4 General Commercial Zone, and to comply with the other provisions of the Moab Municipal Code and other applicable land use regulations (collectively "**Land Use Regulations**").

E. It is also the intent of this Pre-Annexation Agreement to provide a clear understanding of the legal requirements and procedures that would govern the annexation of the Shamrock Property, including but not limited to Chapter 1.32 of the Moab Municipal Code and UTAH CODE § 10-2-401, *et seq.*

F. The City, acting pursuant to its authority under UTAH CODE § 10-9a-101, *et seq.*, has made certain determinations with respect to the Shamrock Property, and in the exercise of its legislative discretion, has elected to approve this Pre-Annexation Agreement in accordance with all necessary and required procedures.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of Recitals. The recitals and exhibits are hereby incorporated by reference as part of this Pre-Annexation Agreement.

2. Annexation to City of Moab. Utah law encourages development to take place within the boundaries of cities and towns when the land to be developed is located within a city's annexation declaration area. The Shamrock Property is located within the "General Plan annexation area boundary description" identified in the Moab Municipal Code 1.32.030 of the City's declaration area. See **Exhibit B**.

3. Petition. Property Owner shall follow the applicable laws, regulations, and ordinances, including but not limited to UTAH CODE § 10-2-401, *et seq.* and Moab Municipal Code Chapter 1.32 and Section 17.72.100(A) (collectively, the "**Annexation Process**") in seeking annexation of the Shamrock Property. Upon receipt of a complete Petition that complies with all applicable legal requirements (the "**Petition**"), the City shall complete its review process in accordance with the Annexation Process.

4. Decision on Petition. The City shall use all reasonable efforts to either approve or reject the Petition as soon as reasonably practicable and without undue delay in accordance with the requirements of the Annexation Process. If reasonable circumstances require additional time (such as Property Owner's failure to provide legally required information, third party protest, or state or local mandated notice provisions), both Parties shall continue to cooperate to expedite the review to the extent the Annexation Process allows. Property Owner shall provide at least 14 days written notice of its intent to withdraw the Petition unless the Moab City Council (the "**Council**") votes to annex. Property Owner agrees it shall not withdraw the Petition prior to the Council rendering a final decision/vote. Nothing in this Pre-Annexation Agreement requires the City Council to approve the Petition.

5. Development Requirements. If the City grants the Petition, the following shall be express conditions of the annexation in addition to any other requirements set forth in applicable law, regulation, and ordinance:

5.1. *Zoning Upon Annexation.* It is agreed that upon the issuance of a Certificate of Annexation by Lieutenant Governor the Shamrock Property shall be placed in the "C-4 General Commercial Zone".

5.2. *Site Plan.* Property Owner shall develop a multi-household project as set forth in the site plan attached hereto as **Exhibit C** hereto (the "**Project**").

5.3. *Restrictive Covenant Agreement.* Upon completion of the Project and during its operation, Property Owner shall execute a restrictive covenant agreement to be recorded against the Shamrock Property that shall require fifty (50%) percent of the Project's units be leased to (i) "Active Employment Households" ("**AEH**") as that term is defined in Section 17.06.020 of the

Moab Municipal Code; or (ii) to students, faculty, or long-term visitors (more than 30 days) of any institution of higher education that is listed with the U.S. Department of Education eligible to participate in the Title IV federal student aid programs where the person attends the institution from within Grand County ("**Title IV Program**"). The restrictive covenant agreement shall have a term of fifty (50) years and shall be in substantially the same form as set forth **Exhibit D**. If the owner of record of the Shamrock Property provides the City with written evidence showing that a lender has foreclosed upon and acquired the Shamrock Property, the City shall execute all documents that may be needed to terminate the restrictive covenant agreement.

5.4. *AEH Requirements*. The Parties acknowledge that it is the intent of Property Owner to construct fifty-four (54) units, of which 50% or twenty-seven (27) units shall qualify as AEH units in accordance with Chapter 17.64 of the Moab Municipal Code. The Parties further agree that it is a condition precedent of this Pre-Annexation Agreement for Property Owner to construct a minimum of twenty-seven (27) units that satisfy the AEH requirements of Chapter 17.65 of the Moab Municipal Code. If Property Owner reduces the number of proposed units to comply with development standard requirements or for any other reason, Property Owner shall construct twenty-seven (27) AEH units regardless of the number of other units Property Owner constructs. If Property Owner expands the number of units in accordance with applicable development standards, 50% of the total number of units Property Owner constructs shall qualify as AEH units in accordance with Chapter 17.64 of the Moab Municipal Code. If Developer constructs twenty-seven (27) units or less, 100% of such units shall qualify as AEH units under Chapter 17.65 of the Moab Municipal Code.

6. Vested Rights.

6.1. *Vested Rights*. Property Owner shall have the vested right to develop the Shamrock Property as a multi-household project in the "C-4 General Commercial Zone" as set forth in Chapter 17.27 of the Moab Municipal Code, in accordance with and subject to compliance with the terms and conditions of this Pre-Annexation Agreement and the City's Land Use Regulations then in effect.

6.2. *Reserved Legislative Powers*. The Parties acknowledge that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City those police powers that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of Property Owner under the terms of this Pre-Annexation Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed legislative changes affecting the vested rights of Property Owner under this Pre-Annexation Agreement shall be of general application to all development activity in the City; and, unless the City declares an emergency, Property Owner shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Shamrock Property under the compelling, countervailing public interest exception to the vested rights doctrine.

7. Successors and Assigns.

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

7.2. *Assignment.* Neither this Pre-Annexation Agreement nor any of its provisions, terms or conditions may be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Pre-Annexation Agreement and without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such request for assignment may be made by letter addressed to the City as provided herein and the prior written consent of the City may also be evidenced by letter from the City to Property Owner or their successors or assigns. Any such assignment shall require the assignee to sign a form of acknowledgement and consent agreeing to be bound by the terms of this Pre-Annexation Agreement.

8. Default.

8.1. *Notice.* If Property Owner or the City fail to perform their respective obligations hereunder or to comply with the terms hereof, the Party believing that a default has occurred shall provide notice to the other Party as provided herein. If the City believes that the default has been committed by Property Owner, then the City shall also provide a courtesy copy of the notice to Property Owner.

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

8.2.1. Claim of Default. Specify the claimed event of default;

8.2.2. Identification of Provisions. Identify with particularity the provisions of any applicable law, rule, regulation, or provision of this Agreement that is claimed to be in default;

8.2.3. Specify Materiality. Identify why the default is claimed to be material.

8.3. *Meet and Confer.* Upon the issuance of a Notice of Default, the Parties shall meet within ten (10) business days and confer in an attempt to resolve the issues that are the subject matter of the Notice of Default.

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

8.4.1. Legal Remedies. The rights and remedies available at law and in equity, including, but not limited to injunctive relief, specific performance, and termination, but not including damages or attorney's fees.

8.4.2. Enforcement of Security. The right to draw on any security posted or provided in connection with the development of the Shamrock Property and relating to remedying the particular default.

8.4.3. Withholding Further Development Approvals. The right to withhold all further reviews, approvals, licenses, building permits and/or other permits for development of the Shamrock Property on those properties owned by the defaulting Party.

8.5. *Public Meeting.* Before the City may impose any remedy in subparagraph 8.4, Property Owner shall have the right to attend a public meeting before the Council and address the Council regarding the claimed default.

8.6. *Emergency Defaults.* Anything in this Agreement notwithstanding, if the Council finds on the record that a default materially impairs a compelling, countervailing interest of the City and that any delays in imposing such a default would also impair a compelling, countervailing interest of the City then the City may impose the remedies of subparagraph 8.4 without meeting with Property Owner as required under subparagraph 8.5. The City shall give the best notice practicable to Property Owner of any public meeting at which an emergency default is to be considered and the allegedly defaulting Party shall be allowed to address the Council at that meeting regarding the claimed emergency default.

8.7. *Extended Cure Period.* If any default cannot be reasonably cured within sixty (60) days then such cure period may be extended as needed, by agreement of the Parties for good cause shown, so long as the defaulting Party is pursuing a cure with reasonable diligence.

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

10. Force Majeure. All time period imposed or permitted pursuant to this Agreement shall automatically be extended and tolled for: (a) period of any and all moratoria imposed by the City or other governmental authorities in any respect that materially affects the development of the Shamrock Property; or (b) by events reasonably beyond the control of Property Owner including, without limitation, inclement weather, war, strikes, unavailability of materials at commercially reasonable prices, and acts of God, but which does not include financial condition of Property Owner or their successors.

11. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be sent via email, certified mail (return receipt requested and postage prepaid), or personal service upon the Party for whom intended at the addresses shown below. Notice shall be deemed to be given on the date issued to the following addresses:

Shamrock Properties XX LLC
c/o Ellen Weinstein
6415 S 3000 E, Ste 140
Salt Lake City, Utah 84121
weinstein@shamrock-communities.com

City of Moab
Attn: City Recorder
217 E Center Street
Moab, UT 84532
sommar@moabcity.org

Any Party may change its address or notice by giving written notice to the other Parties in

accordance with the provisions of this paragraph.

Agreement to Run with the Land. This Agreement shall constitute covenants running with the Property, as defined in the recitals above and the exhibits attached, shall act as a burden thereon, binding every successor and assign of the Grantor and any other person having a fee, leasehold, or other interest in any portion of the Property at any time or from time to time, and shall inure for the benefit of Grantee for the term set forth herein.

12. Entire Agreement. This Pre-Annexation Agreement, together with the exhibits hereto, integrates and constitutes all the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the Parties hereto with respect to the subject matter hereof. Any amendments hereto shall be in writing and signed by the respective Parties hereto.

13. Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

14. Non-Liability of City Officials or Employees. No officer, representative, agent, or employee of the City shall be personally liable to Property Owner, or any successor-in-interest or assignee of Property Owner, in the event of any default or breach by the City or for any amount which may become due to Property Owner, or its successors or assignees, for any obligation arising out of the terms of this Pre-Annexation Agreement.

15. No Third-Party Rights. The obligations of the Parties set forth in this Pre-Annexation Agreement shall not create any rights in or obligations to any persons or parties other than to the City and Property Owner. The City and Property Owner alone shall be entitled to enforce or waive any provisions of this Pre-Annexation Agreement to the extent that such provisions are for their benefit.

16. Severability. Should any portion of this Pre-Annexation Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions, and the same shall be deemed in full force and effect as if this Pre-Annexation Agreement had been executed with the invalid portions eliminated.

17. No Waiver. No waiver of any of the provisions of this Pre-Annexation Agreement shall operate as a waiver of any other provision regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving Party.

18. Survival. All agreements, covenants, representations, and warranties contained herein shall survive the execution of this Pre-Annexation Agreement and shall continue in full force and effect throughout the term of this Pre-Annexation Agreement.

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

20. Governing Law and Venue. This Agreement shall be construed in accordance with the

laws of the State of Utah, and any actions between the Parties arising out of the relationship contemplated by this Agreement shall be brought in Salt Lake County, Utah.

21. **Counterparts.** This Agreement may be executed in multiple counterparts which shall constitute one and the same document.

22. **Legal Review.** The Parties represent and agree that they had full opportunity to review this Agreement and that they accept the terms hereof. The rule that such Agreement is to be construed against its drafter shall not apply to this Agreement.

23. **Governmental Immunity Act of Utah.** The Parties agree and understand that the City is a governmental entity entitled to the protections and safeguards of the Governmental Immunity Act of Utah, UTAH CODE § 63G-7-101 et. seq. Except as may be provided in UTAH CODE § 63G-7-301(1)(a) (i.e., waiver as to the City's contractual obligations under this Pre-Annexation Agreement), the City neither waives nor relinquishes any applicable provision or protection of that Act.

24. **Interpretation**. In this Agreement, unless the context requires otherwise:

24.1. Use of the singular, plural, or a gender shall include the other.
24.2. The word "may" is permissive;
24.3. The words "shall not" are prohibitive;
24.4. The word "shall" is mandatory or required; and
24.5. The present tense includes the future tense, unless otherwise specified.

25. **Successor Laws and Ordinances:** Any statutes or ordinances referred to in this Pre-Annexation Agreement shall be deemed to that statute or ordinance as amended, restated, and/or replaced from time to time, including any successor legislation or ordinance that has the same general intent and effect as the statutes and ordinances referred to in this Pre-Annexation Agreement.

(Signatures begin on following page)

IN WITNESS WHEREOF, this Agreement has been executed by the Moab City Council as the land use authority for pre-annexation agreements under Moab City Municipal Code 17.72.100(A), and by a duly authorized representative of Property Owner on this _____ day of _____, 2024.

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

By: _____

Joette Langianese, Mayor and Chair, City Council

ATTEST:

_____

Sommar Johnson, City Clerk/Recorder

SHAMROCK PROPERTIES XX LLC

By: _____
Ellen Weinstein, its Manager

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

On the _____day of _____, 2024, personally appeared before me Ellen Weinstein, who being duly sworn, did say that she is the Manager of Shamrock Properties XX LLC, and that the foregoing instrument was signed in behalf of said limited liability company and said Ellen Weinstein duly acknowledged to me that he executed the same for the purposes therein stated.

_____
NOTARY PUBLIC

EXHIBIT A

Legal Description

EXHIBIT B

General Plan Annexation Area Boundary Description

EXHIBIT C

Site Plan

EXHIBIT D

Restrictive Covenant Agreement

WHEN RECORDED RETURN TO:

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

Parcel No. 02-0007-0007

Restrictive Covenant Agreement

This Restrictive Covenant Agreement ("**Agreement**") governs the mixed-use multi-household and commercial project located at 1410 S. Highway 191, Moab, Utah, 84532 (the "**Property**"), as more particularly described in **Exhibit 1**, and is made and entered into by SHAMROCK PROPERTIES XX, LLC ("**Grantor**"), a Utah limited liability company, for and on behalf of the CITY OF MOAB, UTAH ("**Grantee**").

RECITALS

WHEREAS, Grantor is the record owner of the Property, on which Grantor intends to construct an apartment building complex (the "**Apartments**");

WHEREAS, Grantor and Grantee executed a pre-annexation agreement ("**Pre-Annexation Agreement**") on _____, 2024, that they subsequently recorded against the Property and now appears in the records of the Grand County Recorder as **[insert entry number, book number, and page number]**.

WHEREAS, the Pre-Annexation Agreement conditioned Grantee's annexation of the Property upon Grantor's execution of a restrictive covenant requiring that fifty (50%) of the units in the Property be leased to "Active Employment Households," as that term is defined in Section 17.06.020 of the Moab Municipal Code or applicable successor ordinance.

WHEREAS, Grantee granted Grantor's annexation petition on [_____], 2024 and the Grantor and Grantee desire to execute this Agreement to satisfy the requirements of the Pre-Annexation Agreement.

COVENANTS AND RESTRICTIONS

NOW, THEREFORE, in consideration of the foregoing recital and the following covenants, Grantor, for and on behalf of Grantee, submits the Property to the following covenants and restrictions:

1. Local Leasing Requirement:

a. Grantor shall lease fifty percent (50%) of the units in the Apartments to either (i) "Active Employment Households," as that term is defined in Section 17.06.020 of the Moab Municipal Code; or (ii) to students, faculty, or long-term visitors (more than 30 days) of

any institution of higher education that is listed with the U.S. Department of Education eligible to participate in the Title IV federal student aid programs where the person attends the institution from within Grand County. Provided, however, that the Parties acknowledge that it is the intent of Grantor to construct fifty-four (54) units, of which 50% or twenty-seven (27) units shall qualify as Active Employment Household units in accordance with Chapter 17.64 of the Moab Municipal Code. The Parties further agree that it is a condition precedent of this Agreement for Grantor construct a minimum of twenty-seven (27) units that satisfy the Active Employment Household requirements of Chapter 17.65 of the Moab Municipal Code. If Grantor reduces the number of proposed units to comply with development standard requirements or for any other reason, Grantor shall construct twenty-seven (27) Active Employment Household units regardless of the number of other units Grantor constructs. If Grantor expands the number of units in accordance with applicable development standards, 50% of the total number of units Grantor constructs shall qualify as Active Employment Household units in accordance with Chapter 17.64 of the Moab Municipal Code. If Grantor constructs twenty-seven (27) units or less, 100% of such units shall qualify as Active Employment Household units under Chapter 17.65 of the Moab Municipal Code.

b. Those units that are leased to Active Employment Households shall be deemed "Active Employment Units" and shall comply with all provisions of the Moab Municipal Code that govern such units, including but not limited to Chapter 17.64.

c. Notwithstanding subparagraph 1.b of this Agreement, the provisions of Section 17.64.020(c)(2) of the Moab Municipal Code requiring Active Employment Units to be roughly equivalent by number in type (e.g., studio, one bedroom, two bedroom, etc.) and in square footage to the non-Active Employment Units within the development shall not apply to the Apartments so long as the Apartments are not separately owned. If the Apartments or a portion of the Apartments are subsequently converted to individual residential units that are separately owned, the portion of the Apartments that are separately owned units shall be subject to the requirements of Section 17.64.020.c.2.

d. Grantor shall comply with all applicable verification procedures set forth in Chapter 17.64 of the Moab Municipal Code to ensure compliance with this Agreement, the Pre-Annexation Agreement, and the Moab Municipal Code. Grantor agrees that such verification procedures may include the filing of annual reports with the Grantee or Grantee's duly authorized agents or designees on forms the Grantee has approved.

2. **Prohibition of Nighty or Short-Term Rentals:** Grantor shall strictly adhere to the prohibition of the use of the Active Employment Units as nightly or short-term rentals.

3. **Lease Period of Active Employment Units:** The lease period for an Active Employment Unit shall be a minimum of ninety (90) days."

4. **Term:** This Agreement shall require a fifty (50) year term of compliance with the restrictive covenants set forth herein. This Agreement shall automatically expire on the completion of the term and shall have no further effect thereafter.

5. **Runs-With-The-Land:** This Agreement shall constitute covenants running with the Property, as defined in the recitals above and the exhibits attached, shall act as a burden thereon, binding every successor and assign of the Grantor and any other person having a fee, leasehold, or other interest in any portion of the Property at any time or from time to time, and shall inure for the benefit of Grantee for the term set forth herein. This Agreement is enforceable by both Parties through any appropriate legal action, or other remedies specified in Utah law, including but not limited to specific performance, injunction, reversion, and payment of attorney's fees and costs.

6. **Incorporation of Recitals and Exhibits:** The recitals and all exhibits set forth herein are deemed incorporated into this Agreement, and the Parties represent that they are true and correct.

7. **Entire Agreement:** This Agreement together with the Pre-Annexation Agreement, including exhibits, constitutes the entire agreement of the Parties and supersedes all prior understandings, representations, or agreements of the Parties regarding the subject matter in this Agreement and the Pre-Annexation Agreement.

8. **Binding Effect:** This Agreement shall be binding upon the Parties hereto and upon their heirs, successors, administrators, and assigns.

9. **Use of Singular, Plural, and Gender:** Whenever the sense of this Agreement requires, a singular number shall be construed to be plural and vice versa, and words of the masculine gender shall be construed to be feminine and vice versa.

10. **Captions:** The captions of any articles, paragraphs, or sections hereof are made for convenience only and shall not control or affect the meaning or construction of any other provisions hereof.

11. **Applicable Law and Severability:** This Agreement is made in Utah and shall be construed in accordance with the laws of the State of Utah. If any provision of this Agreement is in conflict with any statute or rule of law of Utah, or is otherwise unenforceable, the provision shall be deemed null and void only to the extent of such conflict or unenforceability and shall be deemed separate from and shall not invalidate any other provision of this Agreement.

12. **Amendments:** This Agreement shall not be amended or modified except in writing executed by all the Parties to this Agreement, including any successor in title to the Property or Grantee.

13. **Authority:** All Parties warrant that they are authorized to sign on behalf of and legally bind the entities for which they sign.

14. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original as against any Party whose signature appears on the counterpart. This Agreement shall become binding when one or more counterparts, individually or taken together, include the authorized signatures of all the Parties.

15. **Legal Review:** The Parties represent and agree that they had full opportunity to review this Agreement and that they accept the terms hereof. The rule that such agreement is to be construed against its drafter shall not apply to this Agreement.

16. **Costs and Attorney's Fees:** If any Party defaults in the performance of any covenant or condition contained herein, the defaulting Party agrees to pay the costs and expenses, including reasonable attorney's fees, that the non-defaulting Party incurs in enforcing this Agreement through litigation or otherwise.

17. **Governmental Immunity Act of Utah:** The Parties agree and understand that Grantee is a governmental entity entitled to the protections and safeguards of the Governmental Immunity Act of Utah, UTAH CODE § 63G-7-101 et. seq. Except as may be provided in UTAH CODE § 63G-7-301(1)(a) (i.e., waiver as to Grantee's contractual obligations under this Agreement), the Grantee neither waives nor relinquishes any applicable provision or protection of that Act.

18. **Successor Laws and Ordinances:** Any statutes or ordinances referred to in this Agreement shall be deemed to include that statute or ordinance as amended, restated, and/or replaced from time to time, including any successor legislation or ordinance that has the same general intent and effect as the statutes and ordinances referred to in this Agreement.

[execution on following page]

IN WITNESS WHEREOF, Grantor has caused this Agreement to be executed this ____ day of _____ 2024.

Shamrock Properties XX, LLC

_____
Ellen Weinstein
Its_____

Acknowledgement

State of Utah)
§
County of Grand)

On this ____ day of _____ 2024, **ELLEN WEINSTEIN**, acting in her authorized capacity as _____ of Shamrock Properties XX, LLC, personally appeared before me, whose identity has been proven on the basis of satisfactory evidence, and after being duly sworn acknowledges that she executed the foregoing **Agreement**, for the purposes stated therein, of his own voluntary will and act.

_____
Notary Public

My Commission Expires: _____ Residing at: _____

[notary seal]

IN WITNESS WHEREOF, Grantee has caused this Agreement to be executed this ____ day of _____ 2024.

City of Moab, Utah

_____
Joette Langianese, Mayor

Acknowledgement

State of Utah)
§
County of Grant)

On this ____ day of _____ 2024, **JOETTE LANGIANESE,** acting in her authorized capacity as Mayor of the City of Moab, Utah, personally appeared before me, whose identity has been proven on the basis of satisfactory evidence, and after being duly sworn acknowledges that she executed the foregoing **Agreement**, for the purposes stated therein, of his own voluntary will and act.

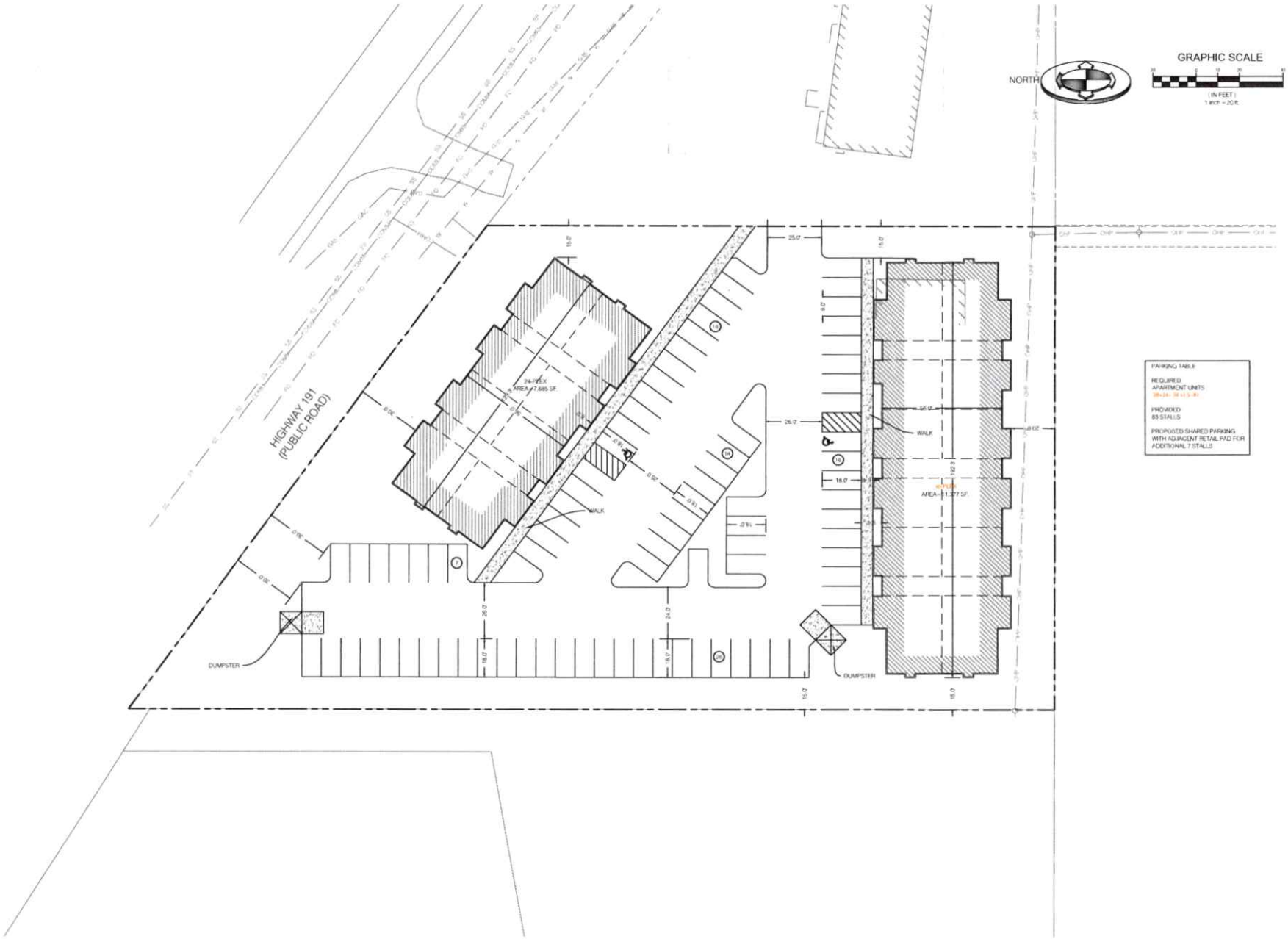
_____
Notary Public

My Commission Expires: _____ Residing at: _____

[notary seal]

EXHIBIT 1

Legal Description for 1410 S. Highway 191



PROJECT NUMBER
24-08

REVISIONS

SHEET TITLE
CONCEPT
SITE PLAN

PROJECT/OWNER
RED ROCK FLATS
PHASE II
1480 SOUTH
HIGHWAY 191
MOAB, UTAH
SHAMROCK PROPERTIES

ARCHITECT

NICHOLS • NAYLOR
A R C H I T E C T S
10459 SOUTH 1300 WEST SUITE 201
SOUTH JORDAN, UTAH 84095 (801) 487-3330

DATE
6 FEBRUARY 2024

SHEET NUMBER
AS1