

CITY OF MOAB RESOLUTION NO. 06-2024
A RESOLUTION APPROVING THE BISCO PROPERTIES, LLC PRE-ANNEXATION
AGREEMENT FOR PROPERTY LOCATED AT 486 RIVER SANDS ROAD, GRAND COUNTY,
UTAH.

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

Applicant, Bisco Properties, LLC (Ben Byrd Construction, LLC), has requested approval of a Pre-Annexation Agreement for property located at 486 River Sands Road, Grand County, Utah; 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 1.381 acres located in Grand County's Rural Residential Zone (2.5), where single-family, two-family, townhouse, and manufactured home uses are permitted by right; and
- c. The property currently includes commercial buildings used for storage and a contract laundry facility, as well as two trailers used for workforce housing; and
- d. The Applicant desires to annex the property into the City of Moab and subdivide it into two parcels:
 1. A **Commercial Parcel** containing the existing commercial buildings, to be zoned as "C-2 Commercial-Residential" by the City of Moab;
 2. A **Residential Parcel** containing the workforce housing trailers, to be zoned as "R-3 Multi-Household Residential" by the City of Moab; and
- e. The Moab City Council reviewed the Pre-Annexation Agreement and considered the recommendations in the associated staff report materials; and
- f. Following the consideration of the technical aspects of the pertinent code sections, the Moab City Council hereby finds that the Pre-Annexation Agreement and associated provisions are acceptable;

NOW, THEREFORE, BE IT RESOLVED BY THE MOAB CITY COUNCIL, the Bisco Properties, LLC 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 September 24, 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. [03-0035-0035]

PRE-ANNEXATION AGREEMENT FOR THE BYRD PROPERTIES

THIS PRE-ANNEXATION AGREEMENT (“**Pre-Annexation Agreement**”) is entered by and among Bisco Properties, 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**” as the context may require.

RECITALS

A. Property Owner is the Owner of one parcel totaling approximately 1.38 acres of real property that is currently located in Grand County and is not located in the City at approximately 486 River Sands Road, Grand County, Utah, as more fully described in **Exhibit A**, which is attached hereto and incorporated by this reference (the “**Property**”).

B. The Property’s current zoning designation in Grand County is “Rural Residential” in the Grand County Land Use Code 2.5 and is identified at 3.1 use table as an approved for Household Dwelling, as a single-family, two-family, townhouse or manufactured home use, and that such use is “permitted by right”.

C. The Property currently includes existing commercial buildings that are used for storage and a contract laundry facility for a property management company, as well as two trailers that are used for workforce housing.

D. If the City annexes the Property, the Property Owner desires to subdivide the Property into two parcels: (1) one parcel encompassing the existing commercial buildings that would be subject to the City’s “C-2 Commercial-Residential Zone” (the “**Commercial Parcel**”); and (2) a second parcel where the trailers are located which would be subject to the City’s “R-3 Multi-Household Residential Zone” (the “**Residential Parcel**”).

E. The Parties have been in discussions regarding the Property Owner annexing the Property annexing into the City and have agreed that if the City annexes the Property, 100% any residential development that may take place within the Residential and Commercial Parcels will be subject to the City’s Actively Employe Household (“**AEH**”) requirements as set forth in Chapter 17.64 of the Moab Municipal Code.

F. 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 Property in accordance with Chapter 17.21 of the Moab Municipal Code, C-2 Commercial Residential Zone and to be in compliance with the

provisions of the Moab Municipal Code and other applicable land use regulations (collectively “**Land Use Regulations**”).

G. This Pre-Annexation Agreement is also intended to provide a clear understanding of the legal requirements and procedure that governs the annexation of the Property, including but not limited to Chapter 1.32 of the Moab Municipal Code and Utah Code § 10-2-401, *et seq.*

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

AGREEMENT

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

1. **Incorporation of Recitals.** The Recitals and Exhibits are hereby incorporated by reference as part of this Pre-Annexation Agreement.
2. **Annexation to City of Moab.** Utah law encourages development to take place within the boundaries of cities and towns where land is within a city’s annexation declaration area. The Property is 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.** The 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 (collectively, the “**Annexation Process**”) in seeking annexation of the Property. Upon receipt of a complete Petition that complies with all applicable legal requirements, the City shall complete its review process in accordance with the Annexation Process.
4. **Decision on Petition.**
 - 4.1. The City shall use all reasonable efforts to either approve or reject the Property 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 City Council votes to annex. Property Owner agrees it shall not withdraw the petition prior to the City Council rendering a final decision/vote.
 - 4.2. The Parties agree and acknowledge that the proposed annexation will leave unincorporated islands if the City approves the proposed annexation and that Section 1.32.030.C.1.d of the Moab Municipal Code states that annexations “must not create unincorporated islands

within the boundaries of the City.” The Parties further recognize, however, that Section 1.32.030.C of the Moab Municipal Code states that any additional imposed by the City shall be “together” with the criteria established by State law. Utah Code § 10-2-402 allows municipalities located in “specified counties,” such as Grand County, to approve annexation petitions that would leave an unincorporated island if: (1) the area is within the municipality’s expansion area; (2) the specified county in which the area is located and the annexing municipality agree to the annexation; (3) the area is not within the area of another municipality’s annexation policy plan; and (4) the annexation is for the purpose of providing municipal services to the area. The City makes no guarantee that the proposed annexation will satisfy these requirements and the City is under no obligation to secure an agreement with Grand County to allow the annexation under Utah Code § 10-2-402(1)(b)(iii)(C).

5. **Zoning Upon Annexation.** It is agreed that upon the issuance of a Certificate of Annexation by Lieutenant Governor that the Commercial Parcel shall be zones as “C-2 Commercial-Residential” and the Residential Parcel shall be zoned as “R-3 Multi-Household Residential Zone” subject to the provisions of Chapters 17.21 and 17.48 of the Moab Municipal Code, respectively.

6. **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:

6.1. **Site Plan.** The Residential Parcel shall be developed into a 20-unit multi-family development as forth in the attached site plan attached hereto as **Exhibit C** hereto (the “**Project**”).

6.2. **Compliance with Laws.** The Property Owner agrees to comply with all laws, regulations, and ordinances in subdividing and developing the Property, including but not limited to limited to Titles 16 and 17 of the Moab Municipal Code.

6.3. **Minor Subdivision Process.** The Parties agree and acknowledge that:

6.3.1. Section 16.08.020 of the Moab Municipal Code allows for the sale of lots in subdivisions of less than five lots (“**Minor Subdivisions**”) after the recording of a final plat if certain conditions are met;

6.3.2. It is the Property Owner’s intent to subdivide the Property pursuant to the Minor Subdivision process set forth in Section 16.08.020 of the Moab Municipal Code; and

6.3.3. If the City annexes the Property, it will process the subdivision of the Property in accordance with the Minor Subdivision process if the subdivision satisfies the conditions of Section 16.08.020 and any other applicable portions of the Moab Municipal Code. The City shall be under no obligation to process the subdivision as Minor Subdivision if the subdivision does not qualify as Minor Subdivision.

6.4. **AEH Requirements and Restrictive Covenant Agreement.** The Parties agree that any annexation of the Property the City may approve shall be subject to the express condition that 100% of any residential units constructed within the Residential Parcel or the Commercial Parcel shall be

subject to the City's AEH requirements as set forth in Chapter 17.06 of the Moab Municipal Code. Upon completion of the Project and during its operation, the Property Owner shall execute a restrictive covenant agreement to be recorded against the Property in substantially the same form as **Exhibit D**.

7. Vested Rights.

7.1. Vested Rights. If the City approves a petition to annex the Property:

7.1.1. The Property will be subdivided into two parcels, with the Commercial Parcel qualifying for annexation into the "C-2 Commercial Residential Zone" and the Residential Parcel qualifying for annexation into the "R-3 Multi-household Residential Zone" as set forth in Chapters 17.21 and 17.48 of the Moab Municipal Code; and

7.1.2. The Property Owner shall have vested rights to develop the Property in accordance with and subject to compliance with the terms and conditions of the City's Land Use Regulations in effect when the Property Owner submits a complete land use application pursuant to Utah Code § 10-9a-509 or applicable successor statute.

7.2. Commercial Parcel Uses. The Parties agree and acknowledge that the existing storage facility and laundry facility as currently located and operated on the Commercial Parcel are legal non-conforming uses under the City's "C-2 Commercial-Residential Zone" As legal non-conforming uses, the Parties agree and acknowledge that the uses can continue as is if the City annexes the Commercial Parcel into the C-2 Zone but that any improvements or changes to the existing storage and laundry facility must comply fully with the City's ordinances and regulations

7.3. Residential Zoning. The Parties agree and acknowledge that the "R-3 Multi-household Residential Zone" will allow for private property development of roughly 20 detached dwelling units, stick built construction, which will be rented as workforce housing under single ownership management (Multi-Household Apartment/Court Apartment concept, detached).

7.4. Reserved Legislative Powers. The Parties agree and acknowledge that nothing in this Agreement requires the City to approve any annexation petition the Property Owner may file and that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City those police powers that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of the Property Owner under the terms of this Pre-Annexation Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed legislative changes affecting the vested rights of the Property Owner under this Pre-Annexation Agreement shall be of general application to all development activity in the City; and, unless the City declares an emergency, Property Owner shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Property under the compelling, countervailing public interest exception to

the vested rights doctrine.

8. Successors and Assigns.

8.1. 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 Property.

8.2. 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.

9. Default.

9.1. 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.

9.2. Contents of the Notice of Default. The Notice of Default shall:

9.2.1. **Claim of Default.** Specify the claimed event of default; and

9.2.2. **Identification of Provisions.** Identify with particularity the provisions of any applicable law, rule, regulation or provision of this Pre-Annexation Agreement that is claimed to be in default; and

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

9.3. 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.

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

9.4.1. **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.

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

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

9.5. **Public Meeting.** Before any remedy in Section 9.4 may be imposed by the City, the party allegedly in default shall be afforded the right to attend a public meeting before the City Council and address the City Council regarding the claimed default.

9.6. **Emergency Defaults.** Anything in this Pre-Annexation Agreement notwithstanding, if the City 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 Section 9.4 without meeting the requirements of Sections 9.1, 9.2 or 9.3. The City shall give Notice to Property Owner and/or any applicable successor or assign 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.

9.7. **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.

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

11. **Force Majeure.** All time period imposed or permitted pursuant to this Pre-Annexation 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 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 the Property Owner or their successors.

12. **Notices.** Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the Party for whom intended or if mailed be by certified mail, return receipt requested, postage prepaid to such Party at its address shown below:

Ben Byrd Construction, LLC
3244 Rim Vista Cir.
Moab, UT 84532

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

Any Party may change its address or notice by giving written notice to the other Parties in accordance with the provisions of this Section.

13. **Agreement to Run with the Land.** This Pre-Annexation Agreement shall be recorded in the Office of the Grand County Recorder against the Property and is intended to and shall be deemed to run with the land and shall be binding on all successors in the Ownership and development of any portion of the Property.

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

15. **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.

16. **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.

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

18. **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.

19. **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.

20. **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.

21. **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.*

22. **Governing Law.** This Pre-Annexation Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

23. **Counterparts.** This Pre-Annexation Agreement may be executed in multiple counterparts

which shall constitute one and the same document.

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

- 24.1. The captions and paragraph headings used in this Agreement are for descriptive purposes only and do not limit, define, or enlarge the terms of this Agreement.
- 24.2. Unless otherwise indicated by the context, use of the singular, plural, or a gender shall include the other, and the use of the words "include" and "including" shall be construed to mean "without limitation" or "but not be limited to."
- 24.3. The word "may" is permissive;
- 24.4. The words "may not" are prohibitive;
- 24.5. The words "will" and "shall" are mandatory or required; and
- 24.6. The present tense includes the future tense, unless otherwise specified.

25. **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.

26. **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.

(Signatures begin on following page)

IN WITNESS WHEREOF, this Pre-Annexation 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 _____, 2023.

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

APPROVED AS TO FORM

Nathan Bracken, City Attorney

EXHIBIT A

Legal Description



EXHIBIT B

General Plan Annexation Area Boundary Description

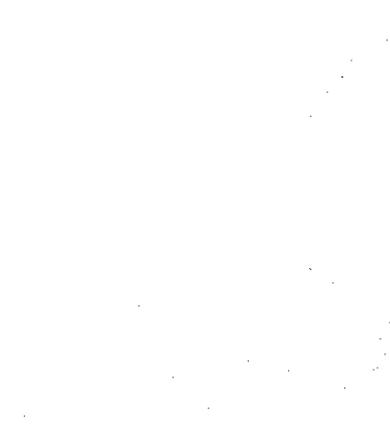


EXHIBIT C

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. [insert parcel number]

Restrictive Covenant Agreement

This Restrictive Covenant Agreement (“**Agreement**”) governs the mixed-use multifamily and commercial project located at 488 River Sands Road, Utah, 84532 (the “**Property**”), as more particularly described in Exhibit 1 attached hereto, and is made and entered into by BEN BYRD CONSTRUCTION, LLC (“**Grantor**”), an 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;

WHEREAS, Grantor and Grantee executed a pre-annexation agreement (“Pre-Annexation Agreement”) on [redacted], 2023, 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 100% 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 [redacted], 2023 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:** Grantor shall lease 100% of the units in the Property to either (i) Active Employment Households,” as that term is defined in Section 17.06.020 of the Moab Municipal Code or applicable successor ordinance 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. Those units that are leased to Active Employment Households shall be deemed “Active Employment Units.”
- 2. Prohibition of Nightly 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 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, 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.
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 may 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

Commented [NB1]: Is this what we want?

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.

[Signature Pages Follow]

IN WITNESS WHEREOF, Grantor has caused this Agreement to be executed this ____ day of _____ 2023.

BEN BYRD CONSTRUCTION, LLC

Ben Byrd

Its _____

Acknowledgement

State of Utah)
 §
County of Grand)

On this ____ day of _____ 2023
, **BEN BYRD**, acting in his authorized capacity as _____ of BEN BYRD CONSTRUCTION, 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]

DRAFT

IN WITNESS WHEREOF, Grantee has caused this Agreement to be executed this ____ day of _____ 2023.

City of Moab, Utah

Joette Langianese, Mayor

Acknowledgement

State of Utah)
 §
County of Grant)

On this ____ day of _____ 2023, **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]

