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Attorneys for Applicant Kane Creek Preservation and Development, LLC

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF KANE CREEK PRESERVATION AND DEVELOPMENT, LLC FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY TO OPERATE AS A PUBLIC UTILITY RENDERING SANITARY SEWER SERVICE	DOCKET NO. 23-2639-01 APPLICATION
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Applicant Kane Creek Preservation and Development, LLC (“**Kane Creek**”) respectfully submits this Application for a Certificate of Convenience and Necessity (“**Application**”) to construct and operate a public utility sewage system in Grand County, Utah which will collect, treat, and discharge treated effluent under permits issued by the Utah Division of Water Quality.

I. INTRODUCTION

Kane Creek is developing approximately 180 acres of real property (the “**Project**”) in unincorporated Grand County, situated approximately two miles west of Moab, Utah, adjacent to the Colorado River. The Project will include lodging and dining including lodging that will be sold to the public. The Project will provide an opportunity to live, visit, and recreate, among the

spectacular red rocks and cliffs and the iconic Colorado River. A map depicting the area where the Project will be located is attached as **Exhibit A**.

II. BACKGROUND

Currently, no sanitary sewer service or connections are available or feasible to serve the Project because of the distance from, and rugged intervening terrain, that separates the Project from existing sewer systems, including canyons and plateaus. Due to the inability to obtain sewer service from any provider in the general area, Kane Creek has, by necessity, planned and designed its own sewage system (the “**System**”) that will be independent of other providers in Grand County and will serve only the Project.

This independent approach is necessitated by the local geography and land ownership, where the Colorado River runs the length of the Project and it is otherwise surrounded primarily by BLM and Utah State property. Those lands will not have any development activity that would bring the existing systems from the Moab area within a reasonable range of the Project. For all practical purposes, the Project is an isolated island off the grid when it comes to sewer services.

Kane Creek’s subdivision and development plan for the Project has been in process with Grand County for over two years. The only remaining item before the Project’s preliminary and final plat can be approved by Grand County is evidence of the ability to provide sanitary sewer service to the Project.

Ultimately, the dwelling units within the Project will be sold to members of the public as owners who will be the public served by the System. It is Kane Creek’s understanding and agreement, in part through commitments to the Utah Division of Public Utilities, that the System will be regulated by the Public Service Commission of Utah (“**Commission**”) and subject to Commission jurisdiction once it begins operations for buyers of the units. Prior to the

commencement of service to the public, Kane Creek will apply for and obtain a Tariff approved by the Commission.

The Applicant will assume responsibility for providing sewer service to the Project and has already completed system design and begun off-site engineering and manufacturing. The timing for on-site installation is pending final approvals and manufacturing timelines of the System. In the short term, the Applicant intends to continue owning and controlling all portions of the Project at least until the System is operational. For the long term, the Applicant anticipates operating the System in accordance with the Commission's regulations and any applicable Tariffs. Once Kane Creek has constructed the System, it may consider transferring the operations of the System to a special purpose entity created exclusively for that purpose.

The proposed System will not conflict with or adversely affect the operations of any existing certificated public utility, development of the System will not constitute an extension of any such existing utility.

III. PUBLIC INTEREST

Approval of the Certificate of Public Convenience and Necessity is in the public interest for several reasons, including:

- a. There are no alternatives for sewer service in the area, making it impossible to make economically viable use of the land within the service area of the System.
- b. For many years, camping along the Colorado River has occurred within the proposed service area including tents, trailers, and motorhomes, for extended periods without adequate sanitary sewer service. This has degraded water quality and fostered unhealthy and unsanitary conditions. The introduction of the System will help alleviate this problem.

IV. APPLICATION

1. **Applicant Name:** Kane Creek Preservation and Development, LLC, a Delaware limited liability company
2. **Address:** 10466 North Iverson Lane, Highland, UT 84003
3. **Service Area:** The Applicant's service area will be the Applicant's project boundaries as shown on the plat attached as **Exhibit A**.
4. **Legal Status:** Applicant is a limited liability company duly created and existing under the laws of the state of Delaware, with foreign registration on record with the Utah Division of Corporations. The Applicant's sewer system will be a public utility, a sewerage corporation, subject to regulation by the Commission. *See* UCA § 54-4-25.
5. **Governance and Management.** The Applicant is a manager-managed entity governed by a three-person board with relevant experience in the development and operation of sewage systems. Copies of the narrative biographies of the board are attached as **Exhibit B**.
6. **Sewerage Capacity and Assets.** The Applicant is or will be the owner of a sufficient sanitary sewer capacity and operational knowledge to enable the Applicant to reliably provide sanitary sewer service to all of the Applicant's customers, when applicable. The design and specifications of the System are the Applicant's property.
7. **Finances.** The Applicant will solely fund the construction of the System, except as grants or other public funding mechanisms are identified. The Applicant will fund ongoing operations by charging usage fees as indicated in a yet-to-be-submitted or -approved Tariff.

8. **Necessary and Convenient Service.** The Applicant's provision of sanitary sewer services in its service area is both necessary and convenient. In 2022, Grand County declined to provide sewer services to the Kane Creek area. Also in 2022, the Grand Water & Sewer Service Agency declined to provide sewer services in the Kane Creek Area. There are no sewer service providers that could feasibly extend their service area to the development.
9. **No Adverse Effect or Conflict with Existing Utility.** Pursuant to Utah Code § 54-4-25(4)(b) Kane Creek also states that any proposed line, plant, or system will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory certificated to the existing fixed public utility. There is no sewer service in the area of the Project of any kind.
10. **Required Permits.** The only required permit to construct the System is a Construction Permit issued by the Utah Division of Water Quality pursuant to Utah Division of Water Quality Rule R317-1-2.1(E). Kane Creek has applied for and is in the process of obtaining this Permit in accordance with Utah Code § 54-4-25(4)(a). All of the lands within the proposed service area are within unincorporated Grand County and owned by Kane Creek or an affiliate thus no franchise is required. The Project is "use by right" and is in the process of perfecting the entitlements and obtaining building permits from Grand County.

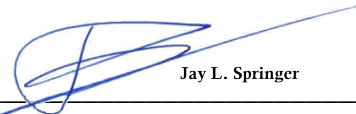
V. CONCLUSION

The Applicant requests that the Commission issue a Certificate of Convenience and Necessity for the Applicant to construct a sanitary sewer system and provide sanitary sewer

services within the Applicant's service areas as described in this application. The Applicant intends to begin constructing the sanitary sewer system as soon as practicable, pending final approvals from the Division of Water Quality and Grand County. The Applicant has initiated off-site manufacturing.

DATED this 17th day of February, 2023.

SMITH HARTVIGSEN, PLLC



Jay L. Springer

J. Craig Smith
Jay L. Springer
Attorneys for the Applicant

Certificate of Service

I certify that on this 17th day of February, 2023, a true and correct copy of the foregoing APPLICATION was emailed to the following:

Chris Parker
Division of Public Utilities
chrisparker@utah.gov

Patricia Schmid
Assistant Attorney General
pschmid@agutah.gov

Public Service Commission Filing Email
psc@utah.gov

/s Jay L. Springer
Jay L. Springer

Exhibit List

Exhibit A — Project Plat

Exhibit B — Biographies for Management

Exhibit A

Project Plat

§ R-MIXED USE refers to a commercial building with upper story residential

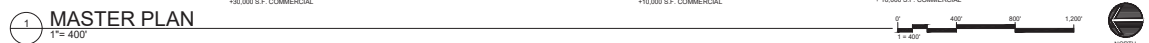


Exhibit B

Biographies for Management

Exhibit B.1 (Craig Weston Narrative)

Craig Weston is one of the General Partners of Kane Creek Preservation and Development LLC, KCPD the developer and owner of a 177-acre master planned residential community situated along the banks of the Colorado River in Moab Utah.

Craig Weston has a degree in construction and facilities management from BYU and is a seasoned executive with years of experience in technology, healthcare and real estate development. Weston was the original purchaser of the land and has brought on partners who share a similar vision and passion for this unique community. Weston is responsible for the local representation and leads many of the day-to-day activities. He has spent close to five years shepherding the Kane Creek project through land acquisition, planning, engineering, permitting and negotiations with local, state, national governmental agencies.

Weston is a serial entrepreneur who prior to his involvement in Kane Creek, was the Founder and CEO of Forum Health, one of the Nation's largest providers of integrative medicine with more than 25 locations in more than 10 states. He has a long history of startups including, Estimate.com, which he founded during his sophomore year of college. Estimate.com was later sold to Homestore.com. After which, he founded BuilderFusion, Inc which in 2008, became the nation's 11th fastest-growing software company which was sold to Growthzone in 2017. Following the sale of BuilderFusion, Craig volunteered as the Chief Operating Officer and Board Member of CharityVision and helped lead the day-to-day operations, achieving a tenfold increase in donations which lead to more than 100,000 annual sight-saving surgeries. Mr. Weston earned his Bachelor of Science Brigham Young University and is married with four children.

Exhibit B.2 (Trent Arnold Narrative)

With almost 30 years of experience across a variety of investment platforms, Trent Arnold has developed a deep and varied expertise in nearly all aspects of hospitality investments and destination residential projects. Mr. Arnold's career began with a focus on hospitality finance and transactional work with Arthur Andersen and PriceWaterhouseCoopers. Mr. Arnold worked on Host Marriott's REIT restructuring and public offering in 1998, as well as the development and sale of Sea Colony, a 2200-unit residential resort community in Bethany Beach, DE. He then moved to direct investment and management roles with CNL Financial backed REIT funds (\$10B+ asset platform) including the launch of the CNL Lifestyle Properties REIT where he led investments and operations in a number of hotel and recreation focused assets including golf, ski, and outdoor recreation properties in the US and Canada.

Since 2005, Trent Arnold has served as Managing Director of North Shore Partners, LLC, specializing in investment management, strategic & financial consulting, and operations roles for a select group of investors, family offices, and private equity firms with a focus on real estate development and hospitality operating assets. In addition to consulting services, Mr. Arnold has held a number executive and operating roles with client companies including CEO of branded outdoor hospitality company, CFO and COO roles at a private hotel and residential development company (including the award-winning St. Regis Hotel and Residences Atlanta), and as a board member and advisor to a number of start-up businesses and master planned developments. More recently, Mr. Arnold has focused his time on hospitality opportunities including destination hotels and resorts, luxury glamping resorts, and highly amenitized destination residential properties.

Mr. Arnold now works exclusively with Kane Creek Preservation & Development, the developer and owner of an exclusive 177-acre master planned residential community situated along the banks of the Colorado River, where he serves as General Partner.

Mr. Arnold holds both a degree in Accounting with High Honors from Florida State University, and an MBA from the MIT Sloan School of Management.

Exhibit B.3 (Tom Gottlieb Narrative)

Tom Gottlieb is one of the General Partners of Kane Creek Preservation and Development LLC, KCPD the developer and owner of a 177-acre master planned residential community situated along the banks of the Colorado River in Moab Utah.

Prior to joining KCPD, and following a career in investment banking, Gottlieb has been involved in developing and managing hospitality and residential real estate projects for over 40 years, both in Asia and in the United States. Gottlieb served as the Co-Founder and Managing General Partner for Geolo Capital, the family office for John Pritzker, and in that role was responsible for building up and managing a portfolio of over \$2 Billion in hospitality and residential real estate assets. Projects included: Carmel Valley Ranch, a highly amenitized 500-acre master planned residential and hospitality community near Monterey California; a 700,000-sf mixed use hospitality and multi-family project in Austin, Texas; The Beekman, a luxury condominium project with hotel in New York City, and numerous other residential and mixed-use projects.

Prior to joining Geolo Capital, Gottlieb served as a founding partner and Chief Investment Officer for the InterPacific Group, a leading international investment and real estate development firm. Projects included master planned, hospitality-anchored residential projects in Australia, Thailand, Indonesia and Singapore. He also co-founded and served as Chief Executive Officer of Mandara Spa, which grew under his leadership to become the leading international luxury spa operator with over 70 spas throughout the world.

Gottlieb received a BA from the University of Michigan and an MA from Stanford University.

Gottlieb currently serves on the Board of Directors of: Ori Living, Blueground, The Ranch Malibu and Exclusive Resorts. He previously served on the Board of publicly listed Maui Land & Pineapple, owner and developer of Kapalua Resort in Maui. He is a former trustee of the Nature Conservancy in Hawaii.