

**PRE-ANNEXATION AGREEMENT**  
**Miller Funding Group, LLC**  
**City of Moab, Utah**

THIS AGREEMENT is made and entered into this 11<sup>th</sup> day of October, 2011, between the CITY OF MOAB, a Utah municipal corporation ("the City"), acting through its City Council, and Miller Funding Group (formerly Intermountain Capital Group), ("Owners"):

**RECITALS:**

A. Miller Funding group, LLC, with offices at 510 South 200 West #250, Salt Lake City, UT 84101, owns a certain parcel of real property situated in Grand County, Utah consisting of a total 9.024 acres, more or less, and more particularly described on attached Exhibit A ("Property") and as depicted on the copy of the Official Annexation Map attached as Exhibit B.

B. The Property is located in an unincorporated area of Grand County, Utah. Owners intend to develop the Property in accordance with City of Moab regulations.

E. Owners have submitted a petition for annexation ("**Annexation Petition**") seeking to annex the Property into the City of Moab on terms and conditions mutually agreeable and acceptable to Owners.

F. In connection with the Annexation of the Property, Owner seeks to design, develop, construct and operate the Property, in tandem with adjacent properties, as a mixed use residential and commercial community, consisting of: (a) deed restricted affordable housing (b) residential lots and structures; (c) commercial lots and structures and (e) infrastructure, which development will generally occur consistent with the uses and arrangements described and depicted in the Moab Municipal Code.

G. Owners intend to agree to the Annexation of Property into City limits according to the terms and conditions of this agreement and Moab City Code.

H. The City of Moab Planning Commission and the Moab City Council, being fully advised as to the situation and having considered the matters at duly noticed public meetings, have concluded that it is in the best interests of the City of Moab to enter into this Agreement and have made all necessary findings of fact and conclusions of law in support thereof.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, Owners and the City of Moab agree as follows:

**SECTION ONE**  
**WATER AND SEWER SERVICES**

- 1.1 The parties agree that said Property is currently within the boundaries of the Grand Water and Sewer Service Agency (GWSSA). The parties agree that water and sewer services will be provided by said Agency before and after annexation of the Property into City limits. The City hereby assumes no responsibility or liability for the provision of water and sewer service, or the maintenance of the water and sewer system servicing the Property.

## **SECTION TWO OTHER AGREEMENTS**

- 2.1 Owners agree to develop the Property in accordance with a proposed development plan as submitted in the future and approved by the City. Said development plan shall be followed with all conditions of approval as may be identified by the Moab Planning Commission.
- 2.2 In order for development plans to be approved, appropriate measures must be taken to address storm water drainage during and after construction. The property owner/developer shall use City of Moab standards when developing storm water management plans. If a development will be discharging into a Grand County storm water management facility or structure, the more stringent of City of Moab and Grand County storm water management standards shall apply.
- 2.3 Construction activities that disturb one or more acres of land must be authorized under the Utah Pollutant Discharge Elimination System (UPDES) General Permit for Construction Activities. Construction documents shall include appropriate Best Management Practices. A Storm Water Pollution Prevention Plan shall be prepared, approved, kept on the construction site at all times, and fully adhered to during the construction process per the requirements of the UPDES General Permit for Construction Activities.
- 2.4 All development shall incorporate storm water management plans designed to manage and control water discharges at or below historic levels and safely convey storm water flow from Moab Rim through the property. All onsite storm water management facilities shall be privately owned and maintained.

## **SECTION THREE ANNEXATION**

- 3.1 Owners and its successors, grantees and assigns irrevocably consent to and petition for annexation of the Property and release any right of protest or opposition to any future annexation of the Property, or any portion thereof, pursuant to the terms of this Agreement. Contemporaneous with the signing of this agreement, Owners agrees to

submit a petition for annexation to the City.

- 3.2 The City agrees to initiate annexation proceedings for the Property at such time the Property meets all legal requirements for annexation. At such time, Owners agrees to execute any supplemental documents necessary to give effect to this Agreement and facilitate the lawful annexation of the Property. The parties agree that the ultimate decision to annex shall rest in the discretion of the City Council. At such time as an annexation ordinance is adopted, the Property shall be entitled to all rights, and shall be subject to all responsibilities, applicable generally to other persons and Property within the City municipal limits, e.g., sales taxation, police protection, code enforcement and the like, except that water and sewer services shall be supplied as provided in this Agreement.
- 3.3 Upon annexation, Owners agree to dedicate any public roads within the Project and on the Property to the City of Moab. Said dedication shall be in the form of a special warranty deed.
- 3.4 Upon annexation, the parties expressly agree that the Property shall be subject to the provisions of the zoning district approved for the Property upon annexation, including compliance with all use restrictions of the zone as generally applied to other Property within the same zoning district.
- 3.5 Upon annexation, Owners agree that the Property will be subject to review and approval of flood elevation data and that any development contemplated after annexation shall be required to meet National Flood Plain Insurance Program rules for such development.
- 3.6 Contemporaneous with the execution of this Agreement, Owners agrees to execute a restrictive covenant in the form contained in Exhibit D, which covenant shall bind the property and inform all successors and assigns that the property is subject to annexation when legally feasible. The covenant shall be recorded in the Grand County land records.
- 3.7 The effectiveness of this agreement is contingent upon the designation of the property under C-4 General Commercial Zoning as established in Moab Municipal Code Chapter 17.27. Moreover, the effectiveness of this agreement is contingent upon the Owners' receiving subsequent approval from the City for a Master Planned Development that includes the components as described in Recital F, herein.

#### **SECTION FOUR GENERAL PROVISIONS**

- 4.1 This Agreement shall be binding on and inure to the benefit of the successors and assigns of the Project and Property. The Agreement may be transferred, provided that Owners shall obtain an assumption by the transferee of future commercial development obligations under this Agreement, and Owners shall be released from any further obligations under this Agreement as to the parcel so transferred.

- 4.2 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 any other right it may have hereunder.
- 4.3 This Agreement, including the exhibits hereto, constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement shall not be modified or amended except in writing, mutually agreed to and accepted by both parties.
- 4.4 Should any party hereto employ an attorney for the purpose of enforcing this Agreement, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party reimbursement for all attorney's fees and all costs and expenses.
- 4.5 All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

To the City of Moab:

City of Moab  
217 East Center Street  
Moab, Utah 84532  
Attn: City Manager

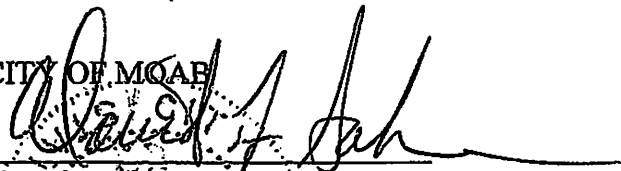
To Owner:

Richard H. Miller, Manager  
Miller Funding Group, LLC  
510 South 200 West #250  
Salt Lake City, UT 84101

- 4.6 This Agreement is entered into pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.
- 4.7 This Agreement does not create any third party beneficiary rights. It is specifically understood by the parties that; (a) the Project is a private development; (b) the City of Moab has no interest in, responsibilities for, or duty to third parties concerning any improvements to the Property, unless the City accepts the improvements pursuant to this Agreement; and (c) Owners shall have full power and exclusive control of the Property, subject to the conditions of this Agreement.
- 4.8 Any default, dispute, difference or disagreement hereunder shall be referred to a single mediator agreed upon 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.

- 4.9 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 it is held invalid, shall not be affected thereby.
- 4.10 In the event of any protest or similar legal or administrative challenge to any annexation under this Agreement, Owners shall cooperate with the City in providing necessary information or testimony to support the annexation.
- 4.11 Upon annexation, the Property shall be entitled to all rights and benefits, and be subject to all legal obligations to the same extent as all other City of Moab residents, except as is provided otherwise by the express terms of this agreement.


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 Owners, as of the date(s) specified below.

CITY OF MOAB  


Mayor David L. Sakrison

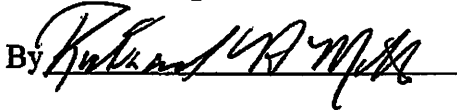
2.29.12  
 Date

ATTEST:

  
 Rachel Ellison Danielle Guerrero

Acting City Recorder

Richard Miller, Manager for Miller Funding Group, LLC:

By 

2/24/12  
 Date

State of Utah                    )  
   §  
 County of Grand                )

On the 24<sup>th</sup> day of February, 2012, personally appeared before me Richard H. Miller, who being duly sworn, did say that he is the Managing Member of Miller Funding Group, LLC, a

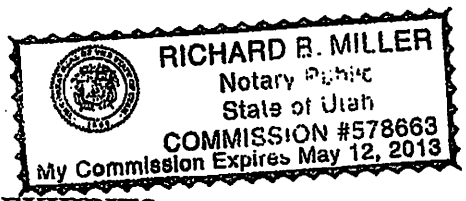
Utah limited liability company, and that said instrument was signed in behalf of said company by authority of its by-laws, and said person acknowledged to me that said company executed the same.

Witness my hand and official seal



Notary Public  
Residing in: SALT LAKE County

My Commission Expires:  
5/12/2013



**SCHEDULE OF EXHIBITS**

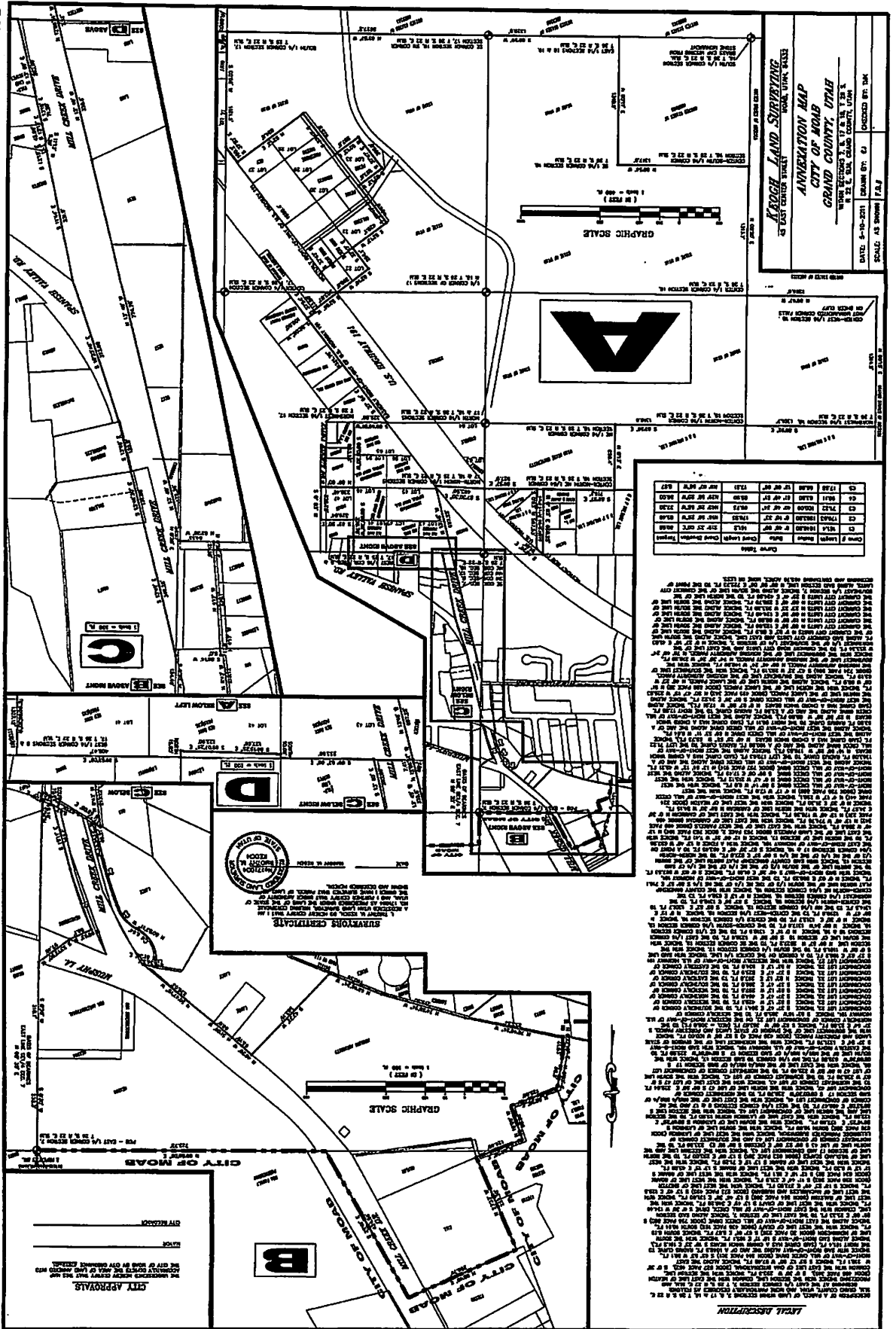
- Exhibit A - Legal Description of the Property
- Exhibit B - Copy of the Official Annexation Map
- Exhibit C- Not Applicable
- Exhibit D- Restrictive Covenant Form

**EXHIBIT A**

**Miller Funding Group**

**LOTS 45, 46 AND 55 SECTION 17, T 26 S, R 22 E, SLB&M.**

Exhibit B





**WHEN RECORDED MAIL TO:**

**City of Moab  
115 West 200 South  
Moab, Utah 84532**

## **EXHIBIT D**

### **RESTRICTIVE COVENANT FOR ANNEXATION**

**WHEREAS, Miller Funding Group, LLC, (“Declarant”), is the owner of certain lands, more particularly described in Attachment A, which property is located in the unincorporated area of Grand County, Utah.**

**WHEREAS, Declarant and the City of Moab (the “City”) have entered into a Pre-Annexation Agreement providing for the annexation of said Property.**

**NOW THEREFORE, the Declarant, and the City stipulate and agree as follows:**

- 1. All of the property described in Attachment A is subject to a Pre-Annexation Agreement with the City of Moab.**
- 2. Declarant, its successors, and assigns, irrevocably consents to annexation and waives protest of annexation for the lands described herein consistent with the terms of the Pre-Annexation Agreement. Declarant shall execute supplementary documents, including an annexation petition as provided in the Pre-Annexation Agreement.**
- 3. Except as provided in the pre-annexation agreement, the City shall provide municipal services to the Property.**
- 4. Annexation shall be committed to the discretion of the City and may only occur in conformity with the provisions of state law.**
- 5. This covenant shall not be construed to obligate the City to appropriate funds or otherwise engage in capital facilities contraction. The decision to extend, replace, enlarge, or otherwise construct capital facilities shall be committed to the sole discretion of the City.**
- 6. In the event that Declarant should fail or refuse to execute necessary documents, or otherwise cooperate in annexation as provided herein, the City may specifically enforce this covenant in a court of competent jurisdiction. In any legal proceeding to enforce this covenant the prevailing party shall be entitled to recover its reasonable attorney fees and court costs.**

**RESTRICTIVE COVENANT FOR ANNEXATION**

- 7. The covenant shall attach to, and run with the lands described, and shall bind any grantees or successors in interest. This covenant shall terminate automatically upon the completion of annexation for all of the lands described herein.

Approved and accepted on the date set forth below.

**Declarant:**

Richard Miller, Manager for Miller Funding Group, LLC

By: [Signature]

Date: 2/29/12

STATE OF UTAH )  
 ) §  
COUNTY OF SALT LAKE )

On the 24 day of FEBRUARY, 2012, personally appeared before me Richard H. Miller, who being duly sworn, did say that he is the managing member of Miller Funding Group, LLC, a Utah limited liability company, and that said instrument was signed in behalf of said company by authority of its by-laws, and said person acknowledged to me that said company executed the same.

Witness my hand and official seal

[Signature]

Notary Public  
Residing in: SALT LAKE County

My Commission Expires:

5/12/2013

City of Moab  
By: [Signature]  
Mayor David L. Sakrison

Attest:  
[Signature]  
By: [Signature]  
Rachel Ellison, City Recorder  
Danielle Guzman

