

FIRST AMENDED AND RESTATED
AGREEMENT FOR DEVELOPMENT OF LAND
(ADL)

Dated the day of ~~July, 2008~~ April, 2018

By and Between the Redevelopment Agency of the City of Holladay, a Utah community development and renewal agency (~~Agency~~); the City of Holladay, a Utah municipal corporation (~~City~~); and Cottonwood Mall, LLC, a Delaware limited liability company ~~(and Ivory Development, LLC (each a Developer))~~ or together as Co-Developers)

COTTONWOOD MALL URBAN RENEWAL PROJECT AREA
located in Holladay, Utah

FIRST AMENDED AND RESTATED

AGREEMENT FOR DEVELOPMENT OF LAND (ADL)

COTTONWOOD MALL URBAN RENEWAL PROJECT AREA
HOLLADAY, UTAH

THIS **FIRST AMENDED AND RESTATED AGREEMENT FOR DEVELOPMENT OF LAND** (the “**Agreement**”) is entered into as of the ___ day of ~~July, 2008,~~ between April, 2018, among the REDEVELOPMENT AGENCY OF THE CITY OF HOLLADAY, a community development and renewal agency under the laws of the State of Utah (the “**Agency**”), the CITY OF HOLLADAY, a municipal corporation under the laws of the State of Utah (the “**City**”), and COTTONWOOD MALL, LLC, a Delaware limited liability company ~~(the “**Developer**”), a wholly owned subsidiary of General Growth Properties, Inc.,~~ together with IVORY DEVELOPMENT, LLC, a Utah limited liability company (each a “**Developer**” and sometimes referred to herein together as “**Co-Developers**”). The aforementioned are sometimes referred to in this Agreement as a “**Party**”, or collectively as the “**Parties.**”

WITNESSETH:

(1) In furtherance of the objectives of the former Utah Redevelopment Agencies Act and the current Utah Community Development and Renewal Agencies Act, Title 17C, Chapters 1 through 4, Utah Code Annotated (the “**Act**”), the Agency has undertaken a program for the development of a certain geographic area known as the “Cottonwood Mall Urban Renewal Project Area” located in the City of Holladay, Salt Lake County, Utah (the “**Project Area**”); and

(2) The Agency has prepared, and the City Council through the adoption of an Ordinance No. 08-01 dated the 7th day of February 2008 and published on the 16th day of February 2008, has approved, an urban renewal project area plan (as hereinafter defined, the “**Plan**”) providing for the urban renewal and development of real property located in the Project Area and the future uses of such land, which Plan has been filed with both the City of Holladay and the Agency; and

~~(3) The Agency has prepared a~~ (3) On June 15, 2011 the Agency, and the Taxing Entity Committee for the Agency, approved amendments to the Project Area Budget known as the “Cottonwood Mall Urban Renewal Project Area Budget” (as more particularly defined below, the “**Project Area Budget**”) and the Agency and the Taxing Entity Committee have approved the Project Area Budget providing a multi-year, cumulative financial budget relating to the development of the Project Area; and herein, the “**Project Area Budget**”) by passing Resolution TEC 2011-01.

(4) On October [REDACTED], 2017 the Agency approved Agency Resolution No. 2017-06 expressing the continuing interest of the Agency in facilitating the utilization of tax increment funding as a mechanism to benefit the community at large and the fiscal integrity of the City; and

(5) The Parties acknowledge that with the passage of time and with modifications to the development plans for a significant portion of the Project Area, the revenues projected in the Project Area Budget are not likely to be realized. As a result, this Agreement provides updates and revisions to reflect these changes and to impose new and additional requirements on the Developer with respect to the obligations to be fulfilled before obtaining any of the Subsidy [defined below] described in the Project Area Budget; and

(4) To enable the Agency to achieve the objectives of the Plan, and particularly to encourage the urban renewal and development of the land within the Project Area by private enterprise for and in accordance with the uses specified in the Plan, the Agency desires to enter into this Agreement; which Agreement amends, restates and replaces in whole the original Agreement for the Development of Land entered into as of July 30, 2008 by and among some of the Parties hereto (the “Original ADL”); and

(5) The Agency believes that the urban renewal and development of the Site pursuant to the provisions of the Plan and this Agreement are in the vital and best interests of the Agency and in the best interest of the health, safety and welfare of City residents, and in accord with the public purposes and provisions of the applicable State laws and requirements under which the Project Area and its urban renewal and development are undertaken and are being assisted by the Agency; and

(6) On the basis of the foregoing and the undertakings of the Developer pursuant to this Agreement, and to enable the Agency to achieve the objectives of the Plan, the Agency is willing, in the manner set forth herein, to assist the Developer in the development of the Site for the purpose of accomplishing the provisions of the Plan, and the provisions of this Agreement; and

(7) The urban renewal and development of the Site by the Developer shall be in accordance with the public purposes and provisions of applicable State laws and requirements; and

(8) The City is a party to this Agreement for the purpose of entering into certain agreements with the Developer on matters that would normally be set forth in a development agreement between the Developer and the City.

NOW, THEREFORE, each of the Parties for and in consideration of mutual promises and other good and valuable consideration, does covenant and agree as set forth herein.

ARTICLE 1- DEFINITIONS

The following capitalized terms have the meanings and content set forth in this Article 1, wherever used in this Agreement. Some contractual terms and provisions are included within the definitions set forth below and are binding upon the Parties.

1.1 Affiliate

The term “**Affiliate**” shall mean any entity controlled by, under common control with or controlling another entity, directly or indirectly, through one or more intermediaries.

1.2 Agency

The term “**Agency**” means the Redevelopment Agency of the City of Holladay, a public body, exercising its functions and powers and organized and existing under the Utah Community Development and Renewal Agencies Act or any successor or replacement law or act (the “Act”), including any successor public agency designated by or pursuant to law. The principal office of the Agency is located at 4580 South 2300 East, Holladay, Utah 84117.

1.3 Agreement

The term Agreement shall mean this First Amended and Restated Agreement for the Development of Land and shall be considered an amendment, restatement and replacement of the Original ADL.

1.4 Assessed Taxable Value

The term “**Assessed Taxable Value**” for any Tax Increment Year means: with respect to the Site and all other property in the Project Area, the assessed taxable value as equalized and shown on the records of the Salt Lake County Assessor’s Office for that Tax Increment Year for such property, including the land, Improvements (as defined below) and other improvements and all personal property located thereon.

1.5 Available Property Tax Increment

The term “**Available Property Tax Increment**” means 75% of all property tax increment from the Project Area for the Subsidy Period, to the extent that such tax increment is actually received by the Agency pursuant to the Project Area Budget, less:

- (A) 20% of the property tax increment received by the Agency until said 20% allocation to the Agency equals \$500,000 (in total, and not on an annual basis), which \$500,000 of tax increment shall be received and retained by the Agency and allocated for affordable housing purposes as required and permitted by the Act and the ~~TECH~~TEC Resolution; and
- (B) an additional 2.5% of the property tax increment received by the Agency for each Tax Increment Year, which is to be received and retained by the Agency for administrative purposes.

The Parties recognize that the Agency is entitled to receive 75% of the property tax increment generated from the Project Area pursuant to the terms and conditions of the TECH Resolution. For avoidance of doubt, the Parties understand and agree that the 75% of tax increment to be paid by the Agency to the Developer, as described above and subject to all of the other terms and conditions for the receipt of such funds, represents 100% of the tax increment to be received by the Agency from the Project Area during the Subsidy Period pursuant to the Project Area Budget (less the amounts described in subparagraphs (A) and (B) above), rather

than 75% of the amount to be received by the Agency. “Available Property Tax Increment” also includes any replacement funding provided by legislative action to adjust for property tax increment lost through legislative action as provided in Section 6.5(A), below.

1.6 Available Sales Tax Proceeds

The term “**Available Sales Tax Proceeds**” means 75% of the City’s share of local point-of-sale sales tax increment (the one-half of one percent sales tax allocated to the City based upon point-of-sale sales) actually received by the City for the Subsidy Period that are attributable to sales by businesses located within the Project Area, but only to the extent such sales tax proceeds are in excess of the City’s share of local point-of-sale sales taxes received by the City from the Project Area for calendar year 2007 (the base year established by the ~~above-referenced~~ TEC Resolution) and that are actually received by the Agency from the City pursuant to the applicable interlocal cooperation agreement between the Agency and the City dated July 15, 2008 (the “**Interlocal Agreement**”). “Available Sales Tax Proceeds” also includes any replacement funding provided by legislative action to adjust for sales tax proceeds lost through legislative action as provided in Section 6.5(A), below. For avoidance of doubt, the Parties understand and agree that 75% of the above-referenced City’s share of sales tax increment generated from the Project Area is 100% of the sales tax proceeds to be received by the Agency for the Subsidy Period pursuant to the TEC Resolution and the Interlocal Agreement.

1.7 Available Tax Increment

The term “**Available Tax Increment**” means the sum of the Available Property Tax Increment and the Available Sales Tax Proceeds which the Agency actually receives from the Project Area for the Subsidy Period.

1.8 Certificate of Occupancy

The term “**Certificate of Occupancy**” means (1) with respect to a residential building or unit, a temporary or permanent certificate of occupancy for the building or unit that is issued by the City, and, (2) with respect to a commercial building (whether office or retail improvements) a permanent certificate of occupancy issued by the City.

1.9 City

The term “**City**” means the City of Holladay, a political subdivision of the State of Utah.

1.10 Co-Developers

The term “**Co-Developers**” means Cottonwood Mall, LLC, a Delaware limited liability company and Ivory Development, LLC, a Utah limited liability company when referred to together. If either of the Co-Developers acquires the interests of the other in the Project, then the term Co-Developers shall mean the successor Developer.

1.11 County

The term “**County**” means Salt Lake County, Utah.

1.12 Developer

The term “**Developer**” means Cottonwood Mall, LLC, a Delaware limited liability company with its principal offices located at ~~110 North Wacker Drive, Chicago, Illinois 60606~~the address provided in Section 9.3 below or Ivory Development, LLC, a Utah limited liability company with its principal offices located at 978 East Woodoak Lane, Salt Lake City, UT 84117

1.13 Improvements

The term “**Improvements**” means the improvements contemplated under this Agreement to be constructed and installed by the Developer on the Site, as more particularly described or referred to in Attachment No. 1.

1.14 Minimum Investment Amount

The term “**Minimum Investment Amount**” means ~~Two One Hundred Twenty Six Fifty Million Dollars (\$226,150,000,000)~~One Hundred Twenty Six Fifty Million Dollars (\$24,000,000). ~~The “Parties stipulate that the amount of Twenty-Four Million Dollars (\$24,000,000) has been spent to date by Developer and that such amount shall be credited towards Developer’s satisfaction of the Minimum Investment Amount” does not.~~ The “**Minimum Investment Amount**” may include land value, personal property or tenant improvements paid by third parties.

1.15 Permitted Uses

The term “**Permitted Use**” or “**Permitted Uses**” shall be limited to the uses permitted by the SDMP (as defined below).

1.16 Plan

The term “**Plan**” means the Plan entitled the “Cottonwood Mall Urban Renewal Project Area Plan,” adopted by the City Council through the adoption of Ordinance No. 08-01 dated the 7th day of February 2008 and published on the 16th day of February 2008. The Plan is incorporated herein and made a part hereof as if set forth in full.

~~1.16~~1.17 Project Area

The term “**Project Area**” means the Cottonwood Mall Urban Renewal Project Area, as more fully described in the Plan.

~~1.17~~1.18 Project Area Budget

The term “**Project Area Budget**” means ~~the Project Area Budget revised budget attached as Attachment No. 3 which was prepared by the Agency and approved on January 18, 2008~~the Project Area Budget revised budget attached as Attachment No. 3 which was prepared by the Agency and approved on June 15, 2011 by the Taxing Entity Committee; and adopted on February 7, 2008 by set forth in the Agency. A copy of the Project Area Budget is attached hereto as Attachment No. 3TEC Resolution.

1.18 1.19 Public Improvements.

The term “**Public Improvements**” means the public improvements to be constructed and installed by the City and paid for by the Developer, which are described in Attachment No. 4.

1.19 1.1 Plan

~~The term “**Plan**” means the Plan entitled the “Cottonwood Mall Urban Renewal Project Area Plan,” adopted by the City Council through the adoption of Ordinance No. 08-01 dated the 7th day of February 2008 and published on the 16th day of February 2008. The Plan is incorporated herein and made a part hereof as if set forth in full.~~

1.20 SDMP

The term “**SDMP**” means the Amended Site Development Master Plan for the Site ~~that has been~~ approved by the City on , 2018, as it may be amended from time to time upon the proposal of the Developer and approval of the City. The Parties acknowledge that the SDMP is consistent with, and complies with, the Plan.

1.21 Site

The term “**Site**” means the real property situated in the Project- Area described in the Site Legal Description, Attachment No. 2 hereto. The Site is currently owned by the Developer- and under contract to be acquired by the other Co-Developer.

1.22 Subsidy

The term “**Subsidy**” means and includes the sum of the Available Property Tax Increment and Available Sales Tax Proceeds actually received by the Agency for the Subsidy Period, subject to the Maximum Aggregate Subsidy (defined below). The maximum amount of property tax increment that could be received by the Agency pursuant to the Project Area Budget is \$96,331,107 and the projected (but not maximum) Available Sales Tax Proceeds are estimated to be \$26,166,068, for a total of \$122,497,175. Pursuant to the TEC Resolution, if the Available Sales Tax Proceeds are greater than projected, then the amount of property tax increment paid to the Agency pursuant to the Project Area Budget shall be reduced in a corresponding amount. Nevertheless, the parties recognize and agree that the Maximum Aggregate Subsidy shall not change as the result of any change in the Available Sales Tax Proceeds. From the property tax increment received by the Agency pursuant to the Project Area Budget, the Agency shall be entitled to retain the sum of \$500,000 to be used for residential housing as described in Section 1.4(A), plus 2.5% for Agency administration as described in Section 1.4(B) (which, at the maximum property tax increment amount of \$96,331,107 would be \$2,408,278), leaving a balance of \$119,588,897 [$\$122,497,175 - 500,000 - 2,408,278 = \$119,588,897$]. In no event shall the total amount of all payments of the Public Subsidy to the Developer exceed \$119,588,897 (the “**Maximum Aggregate Subsidy**”); and provided, further that the Maximum Aggregate Subsidy is subject to limitations and downward adjustments pursuant to other terms and provisions of this Agreement depending upon performance of certain requirements by the Developer.

1.23 Subsidy Period.

Pursuant to the approved Project Area Budget, the first calendar year of the Project Area Budget may be a calendar year no earlier than 2011 and no later than 2013, as selected by the Agency. ~~Unless otherwise agreed by the Agency and the Developer in writing, the Agency will set as and~~ the first Tax Increment Year of the Project Area Budget ~~the first full calendar year after the completion of the Improvements at least equal to the Minimum Investment Amount, or the calendar year 2013, whichever is earlier.~~ 2017 as previously selected by the Agency. The Subsidy Period shall end on the last day of the calendar year that is the earlier of (a) 20 years following the commencement of the Subsidy Period, or (b) the year in which the aggregate amount of Available Tax Increment, plus the amounts retained by the Agency under Subparagraphs 1.4(A) and (B), received by the Agency reaches the sum of \$122,497,155. ~~The first calendar year of the “Subsidy Period” shall be the same year as the first calendar year of said Project Area Budget, and the Subsidy Period shall end simultaneously with the expiration of the Project Area Budget in accordance with the conditions established by Subparagraphs 2(b) and (c) of the TEC Resolution attached hereto as Attachment No. 6.~~ The **“Subsidy Period”** shall coincide with the term of the Project Area Budget.

1.24 Tax Increment Year

The term **“Tax Increment Year”** means a calendar year of the Project Area Budget beginning January 1 (the “tax lien date” when real property is deemed to be assessed for purposes of taxation by the Office of the Salt Lake County Assessor pursuant to law) and ending December 31 of the same calendar year.

1.25 Taxing Entity Committee

The term Taxing Entity Committee, or sometimes TEC, means the committee comprised of taxing entities participating in the Project Area.

1.26 TEC Resolution

The term **“TEC Resolution”** means the Taxing Entity Committee Resolution dated ~~January 18, 2008, as amended on June 23, 2008~~ June 15, 2011, approving the Project Area Budget and ~~other issues~~ setting forth criteria for revisions thereto, a copy of which is attached hereto as Attachment No. 6.

**ARTICLE 2- CONDITIONS PRECEDENT TO THE PAYMENT OF THE
SUBSIDY INCENTIVE BY THE AGENCY TO THE DEVELOPER**

2.1 Conditions Precedent

As express conditions precedent to the Agency’s obligation to pay, and the Developer’s eligibility to receive, the Subsidy, or payments of the Subsidy to the Developer for each year of the Subsidy Period, as more fully described in Article 6, the Developer must have met each of the following conditions precedent:

(A) Minimum Investment Amount. At least the Minimum Investment Amount must have been expended for the construction and installation of the Improvements on the Site.

(B) Completion of the Improvements. The Developer shall have timely completed, to the reasonable satisfaction of the Agency, the remaining Improvements on the Site as described and defined in Attachment No. 1.

(C) Other Terms and Conditions of this Agreement. The Developer shall have timely performed each and every material term, covenant and condition of this Agreement to be performed by Developer as of the time each Subsidy payment is to be made, including but not limited to the timely commencement and completion of construction and installation of the Improvements and payment of the costs for constructing and installing the Public Improvements, and the timely payment of all ad valorem taxes on the Site, and personal property taxes related thereto, when due.

2.2 Developer's Failure to Meet the Conditions Precedent or Eligibility Requirements.

~~General Failure to Satisfy.~~—In the event that the Developer fails to perform any term, covenant or condition precedent described in Section 2.1 during any Tax Increment Year (“**Default Year**”), or fails to meet eligibility requirements of this Agreement for receipt of Subsidy payments, then the Agency shall give notice of such failure to the Developer, detailing what the Developer must do to satisfy the conditions or requirements for the Subsidy, and the Agency shall retain and deposit into a separate interest-bearing account (“**Retention Account**”) the Subsidy payments available for such Tax Increment Year. At such time thereafter ~~(but, with respect to the Phase One Requirements, as defined below, no later than the last day of the eighth Tax Increment Year)~~ that the Developer meets all of the conditions precedent described in Section 2.1, then the Agency shall immediately pay to the Developer all amounts in the Retention Account, including all interest earned thereon.

(A) ~~Failure to Satisfy Phase One Requirements.~~ Notwithstanding the provisions of Subparagraph (A), until the Developer has complied with the requirements of Subparagraphs (A), (B) and (C) of Section 2.1 (“**Phase One Requirements**”), only a partial Subsidy amount shall be deposited by the Agency in the Retention Account for possible later payment to the developer. The amount to be deposited shall be calculated by multiplying the full Subsidy available for the Tax Increment Year in question by a fraction, the numerator of which is the aggregate amount that the Developer has expended for the construction and installation of Improvements on the Site as of the last day of such Tax Increment Year and the denominator of which is the Minimum Investment Amount. The amount determined through the application of such formula shall be referred to as a “**Partial Subsidy Payment**”. All Partial Subsidy Payments shall be deposited into the Retention Account. The amount by which the full Subsidy generated in any Tax Increment Year exceeds the Partial Subsidy Payment for such Tax Increment Year (“**Forfeited Subsidy**”) shall be forfeited by the Developer and retained by the Agency. Upon the Developer satisfying the Phase One Requirements by the end of the eighth Tax Increment Year, all of the Partial Subsidy Payments, and the interest earned thereon, shall be paid from the Retention Account to the Developer. If the Developer fails to comply with the Phase One Requirements by the end of the eighth Tax Increment Year, the Developer shall not be entitled to

~~any of the Subsidy, and the Agency shall have the right, as its sole and exclusive remedy (notwithstanding Section 8 or any other provisions herein to the contrary), to terminate this Agreement and retain any Subsidy to which the Developer would otherwise have been entitled.~~

~~(B) Example. The following example is intended to illustrate the application of the application of the provisions of Section 2.2(B). Assume the cumulative amount invested by the Developer as of the end of Tax Increment Years 3-5 is \$150,000,000, \$200,000,000 and \$235,000,000, respectively, with a Minimum Investment Amount of \$226,000,000, and a potential Subsidy for Tax Increment Years 3-5 of \$1,000,000, \$2,000,000 and \$3,000,000, respectively. In such event the Partial Subsidy Payments and Forfeited Subsidy for such years would be calculated as follows:~~

~~Tax Increment Year 3:~~

~~———— Partial Subsidy Payment: $\$1,000,000 \times 150,000,000 / 226,000,000 = \$663,717$~~

~~———— Forfeited Subsidy: $\$1,000,000 - 663,717 = \$336,283$~~

~~Tax Increment Year 4:~~

~~———— Partial Subsidy Payment: $\$2,000,000 \times 200,000,000 / 226,000,000 = \$1,769,912$~~

~~———— Forfeited Subsidy: $\$2,000,000 - 1,769,912 = \$230,088$~~

~~For Tax Increment Years 3 and 4 a total of \$2,433,629 of Partial Subsidy Payments [$\$663,717 + 1,769,912 = \$2,433,629$] would be retained by the Agency in the Retention Account for the benefit of the Developer. In Tax Increment Year 5, because the aggregate amount invested of \$235,000,000 exceeds the Minimum Investment Amount (and assuming that all of the other requirements of Section 2.1(A)-(C) have been satisfied) the Developer would be entitled to the full Subsidy for such year (\$3,000,000), as well as payment from the Retention Account of the Partial Subsidy from all prior years (\$2,433,629 for Years 3 and 4, plus all Partial Subsidy Payments for any prior years), plus the interest earned thereon.~~

~~2.3 Forfeited Subsidy Reduces Maximum Aggregate Subsidy.~~

~~In the event of a Forfeited Subsidy, as described in Section 2.2, above, then the amount of the Forfeited Subsidy shall be subtracted from the applicable Maximum Aggregate Subsidy to be paid to the Developer and the remainder shall be the new or reduced Maximum Aggregate Subsidy. For example, if the Developer had initially qualified for the Maximum Aggregate Subsidy of \$119,588,897, and if there was \$10,000,000 of Forfeited Subsidy, then the Maximum Aggregate Subsidy would be reduced by subtracting the sum of \$10,000,000 from the Maximum Aggregate Subsidy of \$119,588,897, and the new or reduced Maximum Aggregate Subsidy would be the sum of \$109,588,897 (i.e., $\$119,588,897 - \$10,000,000 = \$109,588,897$).~~

~~2.4 Subsidy Period.~~

~~Subject to the satisfaction of the conditions precedent described in Subparagraphs (A), (B) and (C) of Section 2.1, and subject to compliance with all other requirements set forth in this~~

Agreement, the Developer shall only be eligible for the Subsidy payments during the Subsidy Period.

2.5 Satisfaction of Certain Housing Obligations.

(A) Developer's Housing Allocation. As described in Section 1.20, the maximum property tax increment that could be received by the Agency pursuant to the Project Area Budget is \$96,331,107. Twenty percent (20%) of the property tax increment received by the Agency, which at a maximum would be \$19,266,221, shall be used for housing purposes. The first \$500,000 of this amount shall be retained by the Agency to be used for housing purposes, as described below. The remainder of \$18,766,221 shall be referred to herein as "**Developer's Housing Allocation**". Developer's Housing Allocation is included in the Maximum Aggregate Subsidy and shall be used by the Developer within the Project Area for housing related uses as described in Subsections 17C-1-412(1)(a)(i), (ii) and (iii) of the Act and in Attachment No. 1 to this Agreement. To qualify as moderate income housing, a residential unit is to be affordable to households with 80% of AMI (area median income for Holladay City) or below, or Developer or its Affiliate shall subsidize the sales or rental price of residential units in order to make such units affordable to households with the foregoing maximum income ("Moderate Income Housing"). In receiving Developer's Housing Allocation, Developer shall not utilize the Subsidy for costs incurred by Developer in locating residential buildings in the "Restricted District" defined and depicted in the SDMP, provided, however, that Developer may utilize the Subsidy for costs incurred in locating improvements and enhancements, including to Big Cottonwood Creek, which pass through the Restricted District and continue on to "Limited District" and "Open District" all as defined and depicted in the SDMP.

~~(B) Minimum Residential Requirement. Until such time as at least 134 residential units are constructed on the Site, the Developer shall not receive any portion of Developer's Housing Allocation. The Housing Allocation shall be placed in an interest bearing account per Section 2.5 (C) until such time as the 134 unit minimum is satisfied. If Developer has not constructed a minimum of 134 units by the last day of the eighth Tax increment Year, then the Maximum Aggregate Subsidy shall automatically be reduced by \$18,766,221. In such event the dollar amount of tax increment to be paid to and retained by the Agency for housing purposes shall automatically be increased from \$500,000 to \$19,266,221, which increased amount, plus all interest earned thereon, the Agency will receive and use at its discretion for housing purposes as required by the Act. In such event, it is intended that the Agency will be able to receive and retain the full 20% of tax increment required by law to be allocated for housing purposes.~~

~~(C) Progress Payments of Developer's Housing Allocation. Each year twenty percent (20%) of the property tax increment received by the Agency is designated for Developer's Housing Allocation (after one time payment of \$500,000 to the Agency for housing purposes). Provided Developer has constructed at least 134 residential units on the Site, until 300 residential units have been constructed on the Site the Developer shall receive a portion of the Developer's Housing Allocation for each Tax Increment Year calculated by multiplying the Developer's Housing Allocation for such year by a fraction, the numerator of which is the number of residential units constructed on the Site and the denominator of which is 300 ("**Housing Allocation Fraction**"). The remainder of the Developer's Housing Allocation that is not paid to the Developer in any Tax Increment Year shall be retained by the Agency in an interest bearing~~

~~account (“Housing Allocation Account”). For example, if at the end of the seventh Tax Increment Year 175 residential units were constructed and the Developer’s Housing Allocation for such year was \$800,000, the amount of Developer’s Housing Allocation paid to the Developer would be \$466,667 [$\$800,000 \times 175/300$], and the amount paid into the Housing Allocation Account would be \$333,333 [$\$800,000 - 466,667 = \$333,333$]. At the end of each Tax Increment Year there shall also be released to Developer certain funds from the Housing Allocation Account so that the aggregate amount of Developer’s Housing Allocation received by the Developer from the commencement of the Subsidy Period through the end of the Tax Increment Year in question is equal to the aggregate amount of Developer’s Housing Allocation for such period (both the amounts paid to Developer and the amounts paid into the Housing Allocation Account) multiplied by the Housing Allocation Fraction. In order for Developer to receive the full amount of Developer’s Housing Allocation, 300 residential units must be constructed on the Site by the end of the fifteenth Tax Increment Year. Upon the completion of the 300th residential unit constructed on the Site prior to the end of the fifteenth Tax Increment Year, any and all funds remaining in the Housing Allocation Account shall be paid to the Developer. If at least 300 residential units have not been constructed on the Site by the end of the fifteenth Tax Increment Year, the remaining balance in the Housing Allocation Account shall be released to the Agency, and Developer shall have no right or interest in or to such amounts. In such event throughout the remainder of the Subsidy Period, the Developer shall only be entitled to the share of each year’s Developer’s Housing Allocation determined by multiplying the amount of the Developer’s Housing Allocation for such year by the Housing Allocation Fraction. If, for example, only 250 residential units have been constructed on the Site by the end of the sixteenth Tax Increment Year, and the amount of the Developer’s Housing Allocation for the sixteenth year was \$1,000,000, the Developer would only be entitled to a payment of Developer’s Housing Allocation for such year equal to \$833,333 [$\$1,000,000 \times 250/300 = \$833,333$]. The remainder of the Developer’s Housing Allocation for such Tax Increment Year [$\$1,000,000 - 833,333 = \$166,667$] would be retained by the Agency as Forfeited Subsidy. For the purposes of this Section 2.5, a residential unit shall be deemed constructed upon the issuance of a Certificate of Occupancy for such unit. Developer’s obligation to construct residential units may be satisfied by Developer or by another developer selected by Developer to construct residential units on the Site or any portion thereof (subject to the Agency’s approval rights, unless the other developer is a taxable REIT subsidiary or another Affiliate of the Developer, in which case no approval shall be required).~~

(D) Progress Payments of Developer’s Housing Allocation. To be eligible for the entire Developer’s Housing Allocation, Developer must construct Moderate Income Housing within the Open District described in the SDMP equal to ten percent of all multifamily residential units constructed in the Open District. By way of example, and not limitation, if Developer builds eight hundred fifty (850) multifamily units within the Open District, then Developer must build eighty five (85) multifamily units qualifying as Moderate Income Housing within the Open District in order to receive the entire Developer’s Housing Allocation. By way of further example, if Developer builds six hundred (600) multifamily units within the Open District but elects only to locate thirty (30) multifamily units qualifying as Moderate Income Housing, then Developer shall only be entitled to fifty percent (50%) of the total available Developer’s Housing Allocation. Developer may request progress payments from Agency upon the completion of each multifamily unit qualifying Moderate Income Housing. Such portions of

Developer's Housing Allocation that have not been distributed to Developer shall be retained by the Agency in an interest bearing account until disbursement in accordance with this Agreement.

**ARTICLE 3- CONSTRUCTION AND INSTALLATION OF IMPROVEMENTS,
PAYMENT FOR PUBLIC IMPROVEMENTS, PAYMENT OF TAXES, PROHIBITION
AGAINST CERTAIN PARCEL SPLITTING, ETC.**

3.1 Permits and Fees

The Developer shall have the sole responsibility for obtaining all necessary permits and approvals to construct and install the Improvements and shall make application for such permits and approvals directly to the City Building Department and other appropriate agencies and departments. Developer shall pay to the City all applicable building permit fees relating to the Improvements. The Developer and the City agree that the Developer shall pay in full all impact fees relating to public safety (police and fire) as referred to in Attachment No. 5, and that other impact fees relating to Developer's project on the Site will be paid by Developer in reduced amounts or credited, as shown and described in Attachment No. 5.

3.2 Site Preparation, Grading and Construction and Installation of Improvements

(A) Improvements Generally. The Developer is the owner of the Site. ~~The Developer shall undertake and perform all preparation of the Site, and the grading of the Site, necessary for the construction and installation of the Improvements. The Developer shall promptly begin and diligently prosecute to completion the development of the Site through the construction and installation of the Improvements thereon commencing no later than December 31, 2008, and shall construct and install the Improvements at least equal to the Minimum Investment Amount. In any event the Developer shall timely commence and thereafter diligently pursue and shall by the last day of the eighth Tax Increment Year complete the construction and installation of the Improvements equal or exceeding the Minimum Investment Amount, unless such date is extended by the Agency, or the Developer is unable to timely undertake or complete the Improvements because of any of the reasons set forth in Section 8.2, Enforced Delay Beyond Party's Control. The Developer understands and agrees that time is of the essence of this Agreement. Unless the Improvements are timely constructed, installed and completed, some of the tax increment to be paid to the Agency pursuant to the Project Area Budget may not materialize as herein described. The Developer shall construct and install all of the Improvements without expense to the Agency. The Developer shall prepare the Site for construction and installation of the Improvements, and construct and install the Improvements.~~ The Developer has undertaken many preparations of the Site, including the grading of the Site and most of the necessary Improvements as described Attachment No. 1. Agency acknowledges that the value of work performed through execution of this Agreement is stipulated at \$24,000,000. The Developer shall construct and install the remaining Improvements defined in Attachment No. 1 without expense to the Agency. The Developer shall install the remaining Improvements in such a manner that the development shall meet applicable parking, landscaping and all other requirements of the City's laws and regulations. All

Improvements shall comply with the City's zoning ordinances, and with the City-approved SDMP as it exists at the time of the issuance of the relevant building permit(s).

(B) Affordable Housing. Not later than two years prior to the City's deadline under the TEC Resolution to provide 100 affordable housing units, the Developer (or an Affiliate) shall expend at least \$1,500,000 for residential units on the Site that are affordable to households with 80% of AMI (area median income for ~~the County~~Holladay City) or below, or to subsidize the sales or rental price of residential units in order to make such units affordable to households with the foregoing maximum income. Any portion of the \$1,500,000 that has not been expended for affordable housing by the deadline set forth above shall be paid by the Developer to the City: from the Developer's Housing Allocation. All residential units constructed, acquired or provided to satisfy the above requirement shall be subjected to a deed restriction or other restrictive covenant to assure that such units continue to meet the affordable housing criteria for a period of at least forty (40) years following construction, or following the date acquired or provided. ~~The parties acknowledge that the Developer intends to convey to a taxable REIT subsidiary, or its legal equivalent, owned or controlled by an Affiliate the Developer ("TRS") those portions of the Site that are to be improved with residential improvements, and that the TRS shall cause, control and pay for all residential improvements to the Site.~~

3.3 Access to Site

The Improvements on the Site and the work of the Developer shall be subject to inspection by representatives of the City and the Agency. The Developer shall permit access to the Site by the City and the Agency for purposes of inspection, and, to the extent necessary, to carry out the purposes of this and other sections or provisions of this Agreement. Inspections shall be made during reasonable business hours and shall be made in accordance with standard inspection and project safety guidelines. Except for Building Department inspections which are regulated by other City ordinances, City and Agency personnel will provide reasonable notice to Developer prior to visiting the Site.

3.4 Payment for Public Improvements

The City shall contract for the design, construction and installation of the Public Improvements, and shall be solely responsible for the supervision of such activities. The Developer shall have no liability whatsoever for the design and construction of the Public Improvements. Developer's sole responsibility with respect to the Public Improvements shall be to pay or reimburse the City for all of the City's costs and expenses incurred for the design, construction and installation of the Public Improvements. In order to protect the interests of the Developer in keeping the cost of the Public Improvements to reasonable amounts, the Developer shall have the right to review the plans to verify that they are consistent with Attachment 4. Further, if the total projected cost of the Public Improvements exceeds \$5,000,000, then City and Developer shall cooperate to jointly review and, if appropriate, revise the plans and specifications for the Public Improvements in an effort to identify available cost savings, so long as all applicable City codes and construction standards are satisfied. The City may bill the Developer periodically as costs and expenses for the Public Improvements are incurred. Developer shall make payments to the City for the costs of the Public Improvements to the extent Developer has received payments of the Subsidy in an amount which exceeds the costs incurred

by the City, in which case Developer shall pay such costs of the Public Improvements incurred within thirty (30) days following receipt of an invoice from the City for such work.

3.5 City Certificates of Occupancy and Agency Certificate of Completion.

Upon completion of each building, Developer shall obtain from the City a Certificate of Occupancy for the completed building. After Developer has obtained Certificates of Occupancy for all of the buildings included in the Improvements, and provided construction and installation of all of the Improvements has been completed and Developer has made all required payments for the Public Improvements, the Agency shall issue a Certificate of Completion to the Developer acknowledging that all of the Improvements have been constructed and installed ~~and that Developer's payments for the Public Infrastructure have been received.~~ This Subsection 3.4 shall be of no further force or effect after the Improvements are complete and Developer has built vertical improvements in excess of the residential, office and retail minimums set forth in Attachment No. 1.

3.6 Developer's Payment of Ad Valorem Taxes; First Tax Increment Year.

(A) The Developer shall timely pay, or cause to be paid, all ad valorem taxes for the portions of the Site still owned by Developer, based on the Assessed Taxable Value and in accordance with current laws and ordinances.

~~(B) The following examples assume that the Agency has triggered the taking of tax increment under the Project Area Budget such that Tax Increment Year 2011 is the first Tax Increment Year of the Project Area Budget. Pursuant to the Project Area Budget, the Agency may set the first Tax Increment Year as 2011, 2012 or 2013. The Developer understands that in order for Improvements constructed and installed on the Site during calendar year 2010 to be included on the final tax assessment rolls of Salt Lake County for Tax Increment Year 2011, and to generate a tax increment for Tax Increment Year 2011, the Improvements on the Site must be constructed, installed and completed on or before December 31, 2010. Improvements constructed, installed and completed during calendar year 2011 will appear on the 2012 tax assessment roll having a tax lien date of January 1, 2012. Tax increment resulting from property taxes paid on November 30, 2011, will be received by the Agency from the County in the spring of 2012; when the County Treasurer pays to the Agency the tax increment monies which are available for distribution.~~

~~(C) Notwithstanding the Agency's right as set forth in the Project Area Budget to set the first Tax Increment Year as any year between 2011 and 2013, Developer and Agency agree that, unless otherwise agreed by them in writing, the Agency will set as the first Tax Increment Year of the Project Area Budget the first full calendar year after the completion of the Improvements at least equal to the Minimum Investment Amount, or the calendar year 2013, whichever is earlier.~~

(D) According to the TEC Resolution, the first Tax Increment Year is 2017.

3.7 Restriction Against Parcel Splitting

Until one full calendar year after the end of the Subsidy Period, the Developer shall not, without the prior written approval of the City and the Agency: (a) convey the Site, or a portion of the Site, or any real property acquired by the Developer within the Project Area, in such a way that the parcel of real property would extend outside the Project Area as shown on the County's tax identification system for numbering individual parcels of real property; (b) construct or install or allow to be constructed or installed any building or structure on the Site, or on any portion of the Project Area, in such a way that the building or structure would extend outside the Project Area as shown on the County's tax identification system for numbering individual parcels of real property. The Developer understands that the purpose and intent of this prohibition is to avoid the "splitting" of any parcels of real property within the Project Area or the "joining" of any parcels of real property within the Project Area with those outside the Project Area, or construction or installation of buildings, in such a way that the County Assessor or County Auditor could no longer identify, by distinct parcels, the periphery boundaries of the Project Area described in the Plan, or the buildings or structures included within the Project Area, and would be required to "apportion" tax increment monies between a parcel of real property, or a building or structure, located in part within the Project Area and located in part outside the Project Area. The Developer understands the importance of honoring the Project Area boundaries and agrees to take no action in the construction or installation of buildings or structures or in the conveyance of real property located within the Site or the Project Area that would result in the "splitting" or "joining" of a parcel of real property or the improvements thereon, or would make it difficult for the County Assessor or County Auditor to calculate the amount of tax increment in the Project Area.

3.8 Deannexation (Disconnection)

The Developer agrees that it will not cooperate with any person, group, or municipality in any effort to remove, deannex, disconnect or disincorporate the Site or any portion thereof from the municipal boundaries of the City until at least ten (10) years after the end of the Subsidy Period. The Developer further agrees that until ten (10) years after the end of the Subsidy Period it will not give consent to remove, deannex or disincorporate the Site in whole or in part from the City by any existing or future municipality or county.

3.9 Payment of Taxes And Assessments

(A) Subject to the Developer's or a current owner's right to protest or appeal as provided below, for each Tax Increment Year during the Subsidy Period, all ad valorem taxes and assessments levied or imposed on the Site, any of the Improvements, and any personal property on the Site shall be paid annually by the Developer or current owner on or before the due date which is currently set by law as November 30th.

(B) The Developer or current owner (as applicable) shall have the right to protest or appeal the amount of Assessed Taxable Value and taxes levied against the Site by the County Assessor, State Tax Commission or any lawful entity authorized by law to determine the ad valorem assessment against the Site, the Improvements, personal property on the Site, or any portion thereof in the same manner as any other taxpayer as provided by law. The Developer shall, however, notify the Agency in writing within thirty (30) calendar days following the Developer's filing of any protest or appeal to such assessment determination or taxes and provide

a copy to the Agency of any protest or appeal of such assessment and information submitted as part of the protest or appeal. In addition, the Developer shall give to the Agency written notice at least fifteen (15) calendar days prior to the time and date that such protest or appeal is to be heard. Notwithstanding the foregoing, the Agency recognizes that certain of Developer's tenants on the Site (typically those considered to be "anchor tenants", but potentially other tenants as well) may have the right to protest or appeal property taxes for which they are directly or indirectly liable and that end users of a housing lot or housing unit on the Site shall also have the right to protest or appeal property taxes. In such event, Developer will make reasonable efforts to notify the Agency of such protests or appeals, but Developer shall not be in default hereunder for failing to provide notice of any protests or appeals filed by third parties having an interest in some portion of the Site or the improvements thereto. The Agency shall have the right, without objection by the Developer, to appear at the time and date of such protest or appeal and to present oral or written information or evidence in support of or objection to the amount of assessment or taxes which should or should not be assessed against the real or personal property of the Site and the amount of the Agency's Project Area existing or future obligations.

3.10 Annual Fundraiser for Local Schools

Developer will work with the City to hold an annual fundraiser for the benefit of local public schools, beginning in the first year of the Subsidy Period and continuing each year thereafter.

ARTICLE 4- LAND USES

4.1 Covenants

The Developer covenants and agrees for itself, and its successors and assigns to or of the Site or any part thereof, that the Developer, and such successors and assigns shall, subject to the terms and conditions contained in this Agreement:

(A) Devote the Site to, and only to and in accordance with, the uses specified in the Plan, the SDMP and this Agreement, as hereafter amended and extended from time to time.

(B) Except as to portions of the Site conveyed by Developer to others as authorized in this Agreement, pay when due, or cause to be paid when due, and on or before the tax payment date, all ad valorem taxes or assessments on or relating to the Site or any part thereof, and on any property located on the Site or any part thereof.

~~(C) Commence promptly, by December 31, 2008, the construction and installation of the Improvements on the Site referred to Attachment No. 1, that are reasonably estimated to at least equal the Minimum Investment Amount and prosecute diligently the construction and installation of such Improvements to completion, and complete the construction and installation of the Improvements at least equal to the Minimum Investment Amount, on or before the last day of the eighth Tax Increment Year, subject to Section 8.2, Enforced Delay Beyond Party's Control.~~

~~(D) Except as set forth below, prior to the completion of the Improvements that are at least equal to the Minimum Investment Amount and the issuance of the applicable temporary~~

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certificates of occupancy for such portion of the Improvements constituting residential or housing units, and permanent certificates of occupancy for such portion of the Improvements constituting commercial or retail buildings, the Developer shall not convey the Site, or any part thereof, without the prior written consent of the Agency. The Developer may, however, convey the Site, or any part thereof, prior to the completion of the Improvements and the issuance of the applicable certificate of occupancy, without the prior written consent of the Agency to: (1) a mortgagee or trustee under a mortgage or deed of trust permitted by this Agreement to obtain funds necessary to construct and install the Improvements; or (2) as security for obtaining financing permitted by this Agreement for the purposes of construction and installation of certain buildings, structures, or other Improvements; or (3) to an end user of a housing lot or housing unit on the Site, or to an end user of a pad or commercial unit or commercial lot of the Site which end user of a pad or commercial unit or commercial lot is obligated pursuant to the terms of the conveyance of the pad, or commercial unit or commercial lot of the Site to construct thereon its own building as a part of the Improvements; or (4) to a builder or other developer of one or more of the ~~four single family building lots~~ attached or detached residential lots or parcels to be created on the Site, and the subsequent sale of such lot, unit or home to an end user thereof; or (5) as authorized in Section 5.2 of this Agreement. In addition, as provided immediately below, with the consent of the Agency, the Developer may convey the Site or any portion thereof to a new proposed developer of all or any portion of the Site pursuant to a development contract containing the applicable terms and conditions of this Agreement binding upon the new proposed developer in conformance with and subject to the approval of the Agency. ~~It is likely that the TRS shall acquire and develop all portions of the Site that are to be improved for residential purposes. Consequently, and notwithstanding~~ Notwithstanding the foregoing provisions of this paragraph, or any other provision of this Agreement to the contrary, the Developer shall have the right, without any obligation to seek or obtain the consent of the Agency or the City, to transfer the Site or any portion thereof or interest therein, to ~~the TRS~~ (y) a Co-Developer or to any other an Affiliate of the Developer or (z) Woodbury Corporation or an Affiliate of Woodbury Corporation. In the event of such a transfer, the transferee shall be bound to all of the terms and provisions of this Agreement applicable to the property or interest transferred, and all of the conditions to Developer's eligibility to receive Subsidy payments and Developer's Housing Allocation shall continue to apply. ~~The Developer shall provide prompt written notice to the Agency of any such transfer~~ Developer's entitlement to Subsidy payments and Developer's Housing Allocation may only be assigned in writing and notice of any such assignment shall be delivered to the Agency.

As provided above and elsewhere in this Agreement, subject to the exceptions set forth in the immediately preceding paragraph above, until Improvements at least equal to the Minimum Investment Amount are completed and certificates of occupancy therefor are issued by the City, the Developer shall obtain the written consent of the Agency before conveying the Site or any part thereof. The Agency may withhold such consent at its reasonable discretion, and in addition, as a condition of granting such written consent, the Agency may require that any proposed transferee who wishes to purchase all or part of the Site prior to the completion of Improvements at least equal to the Minimum Investment Amount and the issuance of certificates of occupancy for such Improvements enter into a written agreement with the Agency to assume the obligations of the Developer under this Agreement and become a developer of all or a portion of the Improvements described on Attachment No. 1 and to be bound by the terms of this Agreement

and to become the successor in interest to the Developer under this Agreement with respect to the Site or portion thereof to be conveyed.

(E) Not discriminate against any person or group on any unlawful basis in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any improvements erected or to be erected thereon, or any part thereof.

4.2 Enforcement of Covenants

(A) It is intended and agreed that a memorandum or other notice of this Agreement shall be recorded in the Office of the Salt Lake County Recorder within thirty (30) days following the adoption of this Agreement by the Agency and the City, and that the agreements and covenants provided in this Article 4 shall be covenants running with the land and without regard to technical classification or designation, legal or otherwise, be to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the Agency against the Developer, its successors and assigns, to or of the Site or any part thereof or any interest therein, and any party in possession or occupancy of the Site or any part thereof other than end users of a housing lot or housing unit on the Site; provided, however, any such end user shall nevertheless remain obligated to pay all ad valorem taxes or assessments attributable to such end users property on or before the tax payment date. The Parties agree that the Agency shall be deemed a beneficiary of the agreements and covenants provided in Section 4.1 of this Article, both for and in its own right and also for the purposes of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefit these agreements and covenants have been provided. The memorandum or other recorded notice of this Agreement shall specify that the purchasers or other end users of housing lots and housing units shall have no obligations under this Agreement, other than the legal obligation to pay ad valorem taxes and assessments attributable to such property.

(B) The covenant and agreement contained in covenant numbered Section 4.1 (A) shall terminate upon the expiration of the Subsidy Period, except that the termination of the covenant numbered 4.1 (A) shall in no way be construed to release the Developer, or its permitted successors, from the obligation to comply with the applicable zoning or other ordinances or regulations of the City.

(C) The covenants and agreements contained in covenants numbered 4.1 (~~CB~~) and (~~DC~~) shall terminate as to a particular parcel of real property of the Site on the date the City has issued the certificate or certificates of occupancy as to the particular parcel of real property on the Site, or as to a particular phase of construction or installation of the Improvements, on the date that the City has issued the certificate(s) of occupancy to the Developer. The certificate(s) of occupancy shall be evidence that the Improvements or a particular portion of construction or installation of the Improvements on the Site have been completed. The covenant numbered 4.1 (~~ED~~) shall not terminate.

ARTICLE 5- ANTI—SPECULATION AND ASSIGNMENT PROVISIONS

5.1 Representation as to Development

The Developer represents and agrees that its use of the Site, and the Developer's other undertakings pursuant to this Agreement, are and shall be only for the purpose of development of the Site and not for speculation in land holding. The Developer represents to the Agency that the Developer has not made or created, and that it will not, prior to the proper completion of the Improvements, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease (other than with respect to financing or transfer to an Affiliate of Developer, as anticipated in this Agreement, and other than to an end user of a building or other portion of the Improvements and as otherwise provided in Section 4.1(DC) of this Agreement), or any trust or power, or transfer in any other mode or form of or in respect to this Agreement or the Site, or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the Agency.

5.2 Prohibition Against Transfer and Assignment

(A) The Developer further agrees, in view of (1) the importance of the development of the Site to the general welfare of the community; and (2) the fact that a change in the controlling ownership of the Developer may have the same practical effect as a transfer or disposition of the property owned by the Developer; that, except as otherwise provided below, and in Sections 4.1(D) and 5.4, no change in the ownership of the Site, or change in the majority ownership or control of the Developer, or with respect to the identity of the parties in control of the Developer, shall be permitted without the express written consent of the Agency until the time that Improvements at least equal to the Minimum Investment Amount have been constructed and installed on the Site. The Agency's decision to approve or disapprove of a transfer or assignment shall be at the Agency's reasonable discretion, and based upon the Agency's reasonable evaluation of the ability of the proposed successors to construct, install, maintain and operate the Improvements on the Site and to pay for the Public Improvements, as described in this Agreement. The Agency may require as conditions to any such approval of a transfer or assignment before construction and installation of Improvements at least equal to the Minimum Investment Amount that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by the Agency, necessary and adequate to fulfill the obligations undertaken pursuant to this Agreement by the Developer (which qualifications and financial resources may be less than those possessed by Developer, but still sufficient);

(2) Any proposed transferee, by instrument in writing, shall have expressly assumed all of the obligations of the Developer under this Agreement with respect to that portion of the Site acquired by such transferee and agreed to be subject to all of the conditions and restrictions to which the Developer is subject with respect to such property; provided, that there has been submitted to the Agency for review, and the Agency has reasonably approved, all instruments and other legal documents involved in

effecting transfer that are reasonably necessary for the Agency to determine that such agreement has been obtained;

(3) The Developer and any subsequent transferee shall comply with such other conditions as the Agency reasonably determines are needed in order to achieve and safeguard the purposes of the Act, the Plan, and the benefits to the Agency under this Agreement, including but not limited to, the construction and installation of the Improvements and payment for the Public Improvements, or any of the obligations with respect thereto. In the event of a transfer to an Affiliate of the Developer other than a TRS, the Developer shall remain fully liable for the performance of all of the duties and obligations of the Developer hereunder. In the event of a transfer to a third party (other than a TRS or Affiliate) approved by the Agency, unless specifically agreed otherwise by the Agency in writing, which agreement shall not be unreasonably withheld, Developer shall continue to be obligated for the performance of all duties and obligations hereunder with respect to the property transferred.

(B) Notwithstanding the provisions of this Section 5.2, a transfer of the entire or a portion of the Site is permitted under the following circumstances: (i) a transfer by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer, or its permitted successor in interest, to perform its obligations with respect to making the Improvements under this Agreement, or (ii) a transfer to any Affiliate of the Developer. No consent of the Agency shall be required for any transfer under this Section 5.2(B)

(C) Also, the Developer may transfer a portion or portions of the Site that is/are designated for housing/residential development, to (i) a TRS or other Affiliate of the Developer, which shall not require Agency approval, or (ii) another developer approved by the Agency, provided such other developer is contractually bound to the Agency to timely construct and install the residential/housing units on the portion of the Site that Developer intended to or is obligated to construct under this Agreement. The Agency's approval of such other developer shall not be unreasonably withheld and shall be given if the conditions of this subparagraph are met and the proposed developer has the qualifications and financial responsibility, as reasonably determined by the Agency, necessary and adequate to fulfill the obligations regarding the timely construction of the housing/residential units. Notwithstanding any transfer by the Developer of a portion of the Site to a party other than a TRS or Affiliate, for construction of housing/residential units, unless specifically agreed otherwise by the Agency in writing, which consent shall not be unreasonably withheld, Developer shall continue to be obligated and responsible for the construction of such housing/residential units in accordance with this Agreement, and the conditions to Developer's eligibility to receive Subsidy payments and Developer's Housing Allocation shall continue to apply.

(D) The provisions of this Section 5.2 shall terminate upon the issuance of the Certificates of Completion by the Agency for the payments for the Public Improvements and the completion of the Improvements representing the Minimum Investment Amount.

5.3 Assignment for Financing

Notwithstanding anything to the contrary herein, the Developer shall have the right, without obtaining the Agency's or the City's consent, to assign its rights and interest in this Agreement to one or more lenders, as collateral for one or more loans or other arrangements for the financing of any improvements to be made by ~~the~~ the Developer ~~or a TRS~~ to the Site. The City and the Agency shall cooperate in the Developer's activities to obtain financing for the development of the Site and comply with any commercially reasonable requests for notices, consents and other documentation and information as may be reasonably required by any lenders or investors. Without limiting the generality of the foregoing, the Agency and the City shall, upon the written request of the Developer, promptly execute and deliver to lenders or investors designated by the Developer estoppel certificates, confirming the enforceability of this Agreement, confirming the status of the Developer's performance hereunder (i.e., that there are no defaults, or detailing the nature of any defaults hereunder) and including such other information as the Developer or such lender or investor may reasonably require.

5.4 Reports and Notices - Changes in Ownership

The Developer agrees that during the period between execution of this Agreement and the issuance of the Certificate of Completion by the Agency the Developer will promptly notify the Agency of any and all changes whatsoever with respect to: (1) a change in the Project Manager of the Developer; (2) a change in control, ownership, legal or beneficial of the Developer; or (3) a change or any other act or transaction involving or resulting in any change in control or the ownership of the Developer. Notwithstanding anything to the contrary contained or implied in this Agreement, neither the approval or consent of the Agency or the City shall be required for any merger, acquisition, takeover, bulk sale of assets, reorganization or other similar transaction involving ~~General Growth Properties, Inc.~~ neither of the Co-Developers.

5.5 Application to All Forms of Entities

The provisions of this Article shall apply without exception to all forms of business organization, including but not limited to, limited liability companies, corporations, sole proprietorships, joint ventures and partnerships, both general and limited.

ARTICLE 6- AGENCY OBLIGATIONS

The Agency's obligations under this Agreement are that the Agency will perform its obligations as required under and pursuant to the provisions of this Article 6:

6.1 Subsidy

In consideration of the Developer's promises and performance, including but not limited to the timely construction and installation of the Improvements ~~and payment for the Public Improvements,~~ and subject to the conditions, terms and limitations set forth in this Agreement, including those set forth in Section 6.5, Limitations On Making Payments, below, and contingent on the Developer otherwise being eligible and entitled under this Agreement, and only to the extent the Developer is entitled and eligible under the conditions, terms and provisions of this

Agreement to receive Subsidy payments, the Agency agrees to pay to the Developer the Subsidy for the Subsidy Period by payment of the following:

(A) Property Tax. Subject to Section 1.20 Subsidy and other provisions of this Agreement, 100% of the Available Property Tax Increment from each Tax Increment Year of the Subsidy Period shall be paid to the Developer until (i) the Maximum Aggregate Subsidy, as adjusted pursuant to the terms of this Agreement, has been paid, or (ii) the end of the Subsidy Period, whichever occurs first. The Agency reserves the right to amend the Project Area Budget for any reason, provided that the amendment does not adversely affect Developer's rights under this Agreement or reduce the amount, or delay the payment, of Subsidy required by this Agreement to be paid to the Developer for the Subsidy Period. The tax increment payments received each year by the Agency from the ad valorem and personal property taxes required to be paid by taxpayers to the County Treasurer by November 30 each year on the Project Area, to the extent required under this Agreement to be paid to the Developer as Subsidy, shall be paid to the Developer within sixty (60) calendar days following receipt of and final accounting of said funds by the Agency. The Agency anticipates receipt of these funds by June 1 of each year from the ad valorem and personal property taxes paid by property owners which are due the prior November 30th.

(B) Sales Tax. Subject to applicable provisions of this Agreement, 100% of the Available Sales Tax Proceeds actually received by the Agency from the City for the Subsidy Period shall be paid to the Developer, until (i) the Maximum Aggregate Subsidy, as adjusted pursuant to the terms of this Agreement, has been paid, or (ii) the end of the Subsidy Period, whichever occurs first. The Agency reserves the right to amend for any reason the Interlocal Agreement with the City pursuant to which the Agency is to receive the Available Sales Tax Proceeds, provided that the amendment does not adversely affect Developer's rights under this Agreement or reduce the amount, or delay the payment, of Subsidy required by this Agreement to be paid to the Developer for the Subsidy Period. The Agency's payments to the Developer of the sales tax portion of the Subsidy shall be made by the Agency to the Developer on a semi-annual basis, by March 31 and September 30 each calendar year.

(C) No Guarantee of Maximum Aggregate Subsidy. It is understood and agreed by the Developer that the Agency makes no representation to the Developer, or to any other party, person or entity that the Agency will actually receive the contemplated Available Tax Increment, or that the Available Tax Increment monies to be received by the Agency from the Project Area for the Subsidy Period will be an amount large enough to pay the Developer the Maximum Aggregate Subsidy or any other specific amount. The Agency has not computed, nor can it compute the exact amount of anticipated Available Tax Increment that may be available from the Project Area for the Subsidy Period. The Agency has relied upon the representations made to the Agency by the Developer that the Developer will construct and install Improvements on the Site which will create sufficient Available Tax Increment monies to be received by the Agency and distributed to the Developer as set forth herein.

6.2 Priority of Payment of the Tax Increment.

The Agency and the Developer agree that the tax increment monies received by the Agency shall be paid out according to a schedule of priorities. Each year that the Agency

receives Available Tax Increment money from the Project Area during the Subsidy Period, the Agency shall use the Available Tax Increment money in accordance with the following order of priority of payments:

First: The Agency shall have, receive and retain, in accordance with the applicable provisions of this Agreement, 20% of the Available Property Tax Increment received by the Agency until said 20% allocation to the Agency equals \$500,000, which \$500,000 of Available Property Tax Increment shall be received and retained by the Agency as a one-time payment and allocated for housing purposes as required and permitted by the Act and the Project Area Budget. The \$500,000 amount referred to in this subparagraph may be increased pursuant to applicable provisions of this Agreement, due to Developer's failure to timely construct the required number of housing units on the Site.

Second: The Agency shall have, receive and retain 2.5% of the Available Property Tax Increment received from the Project Area for each Tax Increment Year, to pay the Agency's administrative, consulting, legal and other Agency costs and expenses, and other obligations incurred or to be incurred.

Third: Subject to the terms and provisions of this Agreement regarding Developer's eligibility to receive Subsidy payments, the balance of the Available Tax Increment shall be paid as the Subsidy to the Developer as required and provided for in this Agreement.

6.3 Available Tax Increment and Available Sales Tax Proceeds Are Sole Sources of Agency's Funding for Subsidy.

The Developer understands and agrees that the only sources of monies available to the Agency to pay the Subsidy payments are the Available Property Tax Increment monies actually received by the Agency from the Project Area based upon the value of the Improvements to be constructed and installed by the Developer on the Site or by others within the Project Area, and the Available Sales Tax Proceeds actually received by the Agency from the City pursuant to the Interlocal Agreement with the City. Only the Available Tax Increment monies actually received by the Agency will be available to the Agency for use in meeting said obligations. The Agency will use reasonable diligence to collect: (A) from the County the property tax increment to which the Agency is entitled pursuant to the Project Area Budget; and (B) from the City the sales tax proceeds to which the Agency is entitled pursuant to the Interlocal Agreement.

6.4 Contingencies of Subsidy Payments: Assumption of Risks By Developer.

The Developer understands and agrees that:

(A) Based upon the Act, the Agency anticipates to be the recipient of certain tax increment monies from the Project Area which are expected to be paid to the Agency by Salt Lake County, the collector of ad valorem taxes, conditional upon several factors, one of which is the completion of the Improvements upon the Site by the Developer in a timely manner and having a sufficient amount of assessed valuation. It is anticipated that the construction or installation of the Improvements will cause the Assessed Taxable Value of the Project Area to increase to a point which is greater than the Assessed Taxable Value of the Project Area for the 2007 "base year" established at the time of the adoption of the Plan and Project Area Budget.

The Developer further understands that the Available Property Tax Increment monies can become available to the Agency only if and when the Improvements to be constructed and installed by the Developer on the Site, or improvements by others in the Project Area, are completed and have a current year Assessed Taxable Value which is greater than the “base year” Assessed Taxable Value of the Project Area.

(B) The Developer further understands and agrees that:

(1) The Agency is not a taxing entity under state law;

(2) The Agency has no power to levy a property tax on real or personal property located within the Site or the Project Area or to levy, establish or collect sales taxes;

(3) The Agency has no power to set a mill levy or rate of tax levy on real or personal property, or a tax on sales;

(4) The Available Property Tax Increment monies shall become available to the Agency only if and when improvements to the Project Area cause the Assessed Taxable Value of the Project Area to increase over its Assessed Taxable Value for the 2007 base year, and the actual amount of the Available Property Tax Increment is ~~dependant~~dependent upon the Assessed Taxable Value of the land, improvements and personal property in the Project Area;

(5) The Agency is only entitled to receive tax increment funds from the Project Area for the period established by law pursuant to the provisions of the Act, and is only entitled to receive sales taxes from the City pursuant to the terms of the Interlocal Agreement with the City; and

(6) The Agency represents that it has attempted in good faith to comply with the provisions of law for the establishment of the Plan and Project Area Budget and that, absent a claim of defect by others, the Agency will not assert against the Developer any defect in the process of establishing the Plan or Project Area Budget for the purpose of depriving the Developer of the contemplated benefits or payments under this Agreement. However, the Agency does not warrant that there are no defects in the process used to establish the Plan or Project Area Budget. The Developer has investigated the provisions of state laws governing tax funds, redevelopment agencies and tax increment and sales tax funding, and assumes all risk (subject to the Agency performing all of its duties and obligations hereunder) regarding whether:

(a) the Plan, Project Area, Project Area Budget and Interlocal Agreement with the City were properly approved and adopted;

(b) the anticipated Available Tax Increment derived from the Project Area will actually be paid to the Agency, and if paid, whether the amount of Available Tax Increment funds will be sufficient to pay the obligations or indebtedness of the Agency, according to the terms and conditions contained in this Agreement;

(c) the Available Tax Increment from the Project Area will be paid to the Agency during the entire Subsidy Period; and

(d) changes or amendments will be made by the Utah State Legislature in the provisions of the Act which would affect or impair:

(i) the Agency's right to receive tax increment monies or sales taxes and to pay the Agency's obligations;

(ii) the length of time said tax increment monies or sales taxes can be received by the Agency; or

(iii) the percentage or the amount of tax increment monies or sales taxes received or anticipated to be received by the Agency based upon the current statutes;

(7) The Utah State Legislature considers proposals which reduce the taxes which the State of Utah imposes on all real and personal property within the State, and that could affect sales taxes. Such proposals, if enacted, could materially reduce the amount of tax increment generated within the Project Area and anticipated to be paid to the Agency, or the sales taxes payable to the Agency.

(C) If one or more of the risks referred to in subparagraphs (6) or (7) above becomes a reality and adversely affects the Agency or Developer, the Developer, the City and the Agency agree that they will work together in taking all reasonable steps to remedy the cause of the problem in order to provide the Agency and the Developer with the funding and other benefits contemplated in this Agreement.

6.5 Limitations on Making Payments

The following additional provisions regarding limitations and reductions regarding the Developer's entitlement to and eligibility to be paid or to receive the Subsidy shall govern and shall be applied in addition to any other term or provision of this Agreement:

(A) It is the intention of the Parties that the Developer shall only be paid the Subsidy from the Available Sales Tax Proceeds, if any, which are paid to the Agency by the City, and the Available Property Tax Increment monies, if any, which are paid to the Agency as a direct result of the value of the improvements (including the value of both the real property and personal property) constructed or installed in the Project Area. The Developer understands that if, for any reason, any component of the Available Tax Increment anticipated to be received by the Agency for the Project Area is reduced, curtailed, or limited in any way by enactments, initiative referendum, or judicial decree or other reasons, the Agency's ability to pay the Subsidy to the Developer as described in this Agreement, would likewise be reduced, curtailed, or limited. The Agency shall have no obligation to pay the Subsidy to the Developer from other sources or monies that the Agency has or might hereafter receive from other project areas or from sources other than from the Available Tax Increment monies that the Agency actually receives for the Project Area. Notwithstanding the foregoing, in the event the Utah State Legislature enacts changes to the applicable laws that have the effect of reducing any component of the Available

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Tax Increment to be paid to the Agency and the effect is to reduce the contemplated net benefit to the Developer, and the Legislature also provides for replacement funding, and provided that the Agency is authorized to so use the replacement funding, then to the extent of the replacement funding actually received by the Agency, the Agency will use the replacement funding to pay the Developer to the extent needed to provide the full funding to the Developer contemplated in this Agreement. It is the express intent of the Parties that the Developer shall not receive a windfall (i.e. greater funding than the Developer would have received under this Agreement absent such legislative action) by reason of the operation of this provision.

(B) Subject to the limitations in this Agreement, the Subsidy shall be paid by the Agency to the Developer only during the Subsidy Period, conditional, however, upon the Developer being eligible and entitled thereto under the provisions of this Agreement and the Developer having met all of the conditions precedent.

(C) The Agency's obligations to make payments to the Developer pursuant to this Agreement are limited obligations and are payable solely from the Available Tax Increment actually received by the Agency. The Subsidy payments to be made by the Agency to the Developer are secured solely by a pledge of the Agency of the agreed upon percentage of the Available Property Tax Increment the Agency actually received for the Project Area for the Subsidy Period and the Available Sales Tax Proceeds actually received by the Agency from the City pursuant to the Interlocal Agreement, and other agreements with other taxing entities. The Developer shall have no other recourse to the Agency or the City for payment of the Subsidy other than the Agency's pledge.

ARTICLE 7 - CITY OBLIGATIONS

The City's obligations under this Agreement are that the City will perform its obligations as required under and pursuant to the provisions of this Article 7:

7.1 Design, Construction and Installation of Public Improvements.

The City shall timely design and complete the construction and installation of the Public Improvements by the times set forth in Attachment No. 4. In order to protect the interests of the Developer in keeping the cost of the Public Improvements to reasonable amounts, the Developer shall have the right to review the plans to verify that they are consistent with Attachment 4. Further, if total projected cost of the Public Improvements exceeds ~~\$5,000,000~~ \$_____ then City and Developer shall cooperate to jointly review and, if appropriate, revise the plans and specifications for the Public Improvements in an effort to identify available cost savings, so long as all applicable City codes and construction standards are satisfied.

7.2 Payment of Interest to Developer on Amount Paid for Public Improvements in Excess of \$5,000,000- \$_____ . [[NTD: To be completed when amount is determined]]

If the Developer and the City agree under the provisions of Section 7.1 to spend more than ~~\$5,000,000~~ \$_____ for the Public Improvements, then the following shall apply:

Prior to the end of the Subsidy Period the City shall repay to the Developer, from the City's general fund, interest only on the Excess Amount, [[NTD: need to define]], from

the date(s) paid to the City, at the annual percentage rate of 7% per annum. The City may pay the amount due to the Developer under this Section 7.2 at any time during the Subsidy Period, with no prepayment penalty. The amount of such prepayment shall be the present value of the projected interest payments, based on the 7% interest rate and a term extending to the end of the Subsidy Period. The City shall not be obligated to repay the principal amount of any payments by the Developer for Public Improvements in excess of \$5,000,000.\$_____.

7.3 Limited Indemnification of Developer.

The Parties agree that it is not intended that Developer be liable to third parties for claims relating to the Public Improvements solely because of Developer having paid to the City the costs and expenses incurred for the design, installation and construction of the Public Improvements. The City agrees to indemnify and hold the Developer harmless against all claims of third parties relating to the design, installation and construction of the Public Improvements.

7.4 Impact Fees.

The City agrees that, other than impact fees for police and fire which Developer shall pay in full, impact fees relating to the Developer's project on the Site will be paid by the Developer in reduced amounts or credited, as shown and described in Attachment No. 5.

7.5 County's Affordable Housing Requirement.

The City agrees to satisfy the County's condition to the Project Area Budget as set forth in subparagraph (2)(d) of the TEC Resolution, to the effect that the City will provide or cause to be provided within the Holladay city limits 100 units of affordable housing at or below 80% Area Median Income (AMI) by the end of the ten (10) year period required by the TEC Resolution. The TEC Resolution is attached hereto as Attachment No. 6. In the event that the 100 units have not been constructed by the beginning of the eighth (8th) year of such ten (10) year period, the Developer shall have the right, but absolutely no obligation, upon written notice to the City, to construct or otherwise acquire or provide some or all of the additional residential units necessary to satisfy the 100-unit requirement. Any funds expended by the Developer to acquire land outside of the Site, plan for and construct, or otherwise acquire, any such affordable residential units within the Holladay city limits (including without limitation all "hard" and "soft" costs of acquisition, renovation and development) shall be repaid by the City to the Developer within a reasonable period following written notice from the Developer, together with interest from the date expended by Developer until repaid by the City at the rate of ten percent (10%) per annum. Any such notice shall include invoices, check copies and other reasonable verification of the amounts expended or incurred. In addition, the City shall indemnify and hold the Developer harmless from and against all claims, losses and damages experienced by the Developer in the event that the City fails to satisfy its obligations pursuant to this Section 7.5 and Attachment No. 6, even if the Developer engages in activities to construct or otherwise acquire or provide some of the residential units required. Without limiting the generality of the foregoing, regardless of whether the Developer engages in any effort to contribute to the satisfaction of the City's affordable housing obligation (and so long as the Developer or any Affiliate makes its own required ~~contribution~~ expenditure of \$1.5 million to affordable housing

as required by Section 3.2(~~b~~B)) if the Subsidy received by the Developer is reduced due to the City's failure to meet its obligations under the TEC Resolution, the City shall be liable to Developer for the full amount of such reduction.

7.6 Construction Easements.

The City agrees to provide to Developer reasonably needed temporary construction easements (for access, staging and other construction-related purposes) and perpetual utility easements on City owned property for the purpose of allowing Developer to perform the following work in connection with Developer's project on the Site: (A) the relocation and ~~placement~~ underground modifications of electrical power lines; (B) reinforcement and stabilization of retaining walls along Murray Holladay Road; and (C) work on utilities and landscaping within rights of way.

ARTICLE 8 - REMEDIES

8.1 General Remedies; Agency and Developer

Subject to the other provisions of this Article 8, in the event of any default or breach of this Agreement or any of its terms, covenants or conditions by any Party hereto, such Party shall, upon written notice from another Party, proceed immediately to cure or remedy such default or breach, and in any event, do so within thirty (30) calendar days after receipt of such notice or if such default or failure is of a type that cannot reasonably be cured within such thirty (30) day period, within ninety (90) days, provided that such cure is commenced within a thirty (30) day period and diligently pursued to completion, unless a longer period of time is specifically set forth in this Agreement or is agreed to by the Parties pursuant to Section 8.3. In case such action is not taken, or diligently pursued, or the default or breach shall not be cured or remedied within the time periods provided above, the aggrieved Party may institute such proceedings as may be necessary or desirable, at its option, to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations. In the event of any default in or breach of this Agreement by the Developer or the Agency which is not cured within the time limits contained in this Agreement, the non-defaulting Party may, at its option, take such action as allowed by law, in equity and/or provided for in this Agreement. Any delay by a Party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article shall not operate as a waiver of such rights. Provided Developer has provided pursuant to Section 9.3(A) below a written request for notice of default to be sent to a lender, and written notice of the name and address of its lender, the Agency will send a copy of any notice of default issued by it to said lender. In addition, a default by Developer may be cured by Developer, Co-Developer, or its lenders for the Project.

8.2 Enforced Delay Beyond Party's Control

A Party shall not be considered in breach of or default in its obligations hereunder, including but not limited to, with respect to the preparation of the Site for development, or the beginning and completion of construction and installation of the Improvements or Public Improvements, or progress in respect thereto, in the event of delay in the performance of such obligations due to causes occurring beyond its control and without its fault or negligence,

including acts of God, or of the public enemy or terrorists, wrongful acts of another Party, fires, floods, earthquake, epidemics, quarantine restrictions, strikes, freight embargoes, wars or unusually severe weather, or delays of subcontractors or material suppliers due to such causes. The purpose and intent of this provision is that in the event of the occurrence of any such delay, the time or times for performance of the obligations of a Party with respect to the preparation of the Site for development or the construction and installation of the Improvements or the Public Improvements, as the case may be, can be extended for the period of the delay: Provided, that in order to obtain the benefit of the provisions of this Section, a Party, within sixty (60) calendar days after becoming aware of any such delay, shall have notified the other Party thereof in writing stating the cause or causes for the delay.

8.3 Extensions by Agency

The Agency may in writing extend the time for the Developer's performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as may be mutually agreeable to the Parties provided, however, that any such extension or permissive curing of any particular default shall not operate to release any of the Developer's obligations nor constitute a waiver of the Agency's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement. Developer may submit a request for an extension to the Agency for its reasonable consideration.

8.4 Remedies Cumulative/Non-Waiver

The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by a Party. No waiver made by any Party with respect to the performance, or manner or time thereof, or any obligation of a Party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the Party making the waiver with respect to the particular obligation of another Party or condition to its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of another Party.

ARTICLE 9 - MISCELLANEOUS PROVISIONS

9.1 Conflict of Interest - Agency

No member, official, employee, consultant, or agent of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

9.2 No Personal Liability - Agency

No member, official, employee, consultant, agent or representative of the Agency shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the Agency for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

9.3 Notices

A notice or communication under this Agreement, by a Party to another Party, shall be effective upon personal service or three (3) days after mailing, and shall be sufficiently given or delivered, if given in writing by personal service, express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such Party as follows:

- (A) In the case of a notice or communication to the Agency:

Chairperson
Redevelopment Agency of the City of Holladay
4580 South 2300 East
Holladay, Utah 84117

With copies to:

~~Craig Hall
Chapman & Cutler
201 Todd J. Godfrey
Hayes Godfrey Bell, PC
2118 East 3900 South Main Street, Suite 2000, Ste 300
Salt Lake City, Utah 84111~~

~~Randall S. Feil
Oswald & Feil, P.C.
3748 Bountiful Blvd.
Bountiful, Utah 84010-3316
Holladay, UT 84124~~

- (B) In the case of a notice or communication to the City:

City Manager
City of Holladay
4580 South 2300 East
Holladay, Utah 84117

With copies to:

~~Craig Hall
Chapman & Cutler
201 Todd J. Godfrey~~

[DEVELOPER DRAFT 4/12/18, FOR DISCUSSION PURPOSES]

Hayes Godfrey Bell, PC
2118 East 3900 South Main Street, Suite 2000, Ste 300
Salt Lake City, Utah 84111

[DEVELOPER DRAFT 4/12/18, FOR DISCUSSION PURPOSES]

Holladay, UT 84124

(C) In the case of a notice or communication to the Developer:

Ivory Development, LLC
978 Woodoak Lane
Salt Lake City, UT 84117
Attn: President
Snell & Wilmer
15 West South Temple, Suite 1200
Salt Lake City, UT 84101
Attn: Wade Budge

With copies to:

Cottonwood Mall, LLC
35 Century Park Way
Salt Lake City, Utah 84115
One Galleria Tower 22nd Floor
13355 Noel Road
Dallas, TX 75240
Attn: Vice President Development

With copies to:

Thomas G. Bennett
Ballard Spahr Andrews & Ingersoll, LLP
201 So. Main St., Suite 800
Salt Lake City, Utah 84111

General Growth Properties, Inc.
110 North Wacker Drive
Chicago, Illinois 60606 Attn: General Counsel

Any Party may modify the foregoing notice information by giving written notice to another Party as provided in this Section.

(D) Notwithstanding the foregoing, the Agency may make inquiries from time to time regarding the schedule of the Project to one or both of the following persons: ~~Vice President of Development (currently Kris Longson) or Senior Director of Development (currently Kathy Olson)~~. Chris Gamvroulas and Kris Longson.

9.4 Attachments/Recitals

All Attachments referred to in this Agreement as being attached hereto, and the Recitals, are incorporated herein and made a part hereof as if set forth in full and are binding upon the Parties to this Agreement.

9.5 Headings

Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

9.6 Successors and Assigns of Developer

This Agreement shall be binding upon the Developer and its successors and assigns. Where the term “Developer” is used in this Agreement, it shall mean and include the successors and assigns of the Developer, subject to the approval requirements set forth elsewhere herein.

9.7 Attorneys Fees

In the event of a default hereunder, the defaulting Party agrees to pay all costs incurred by the other Party(ies) in enforcing this Agreement, including reasonable attorney’s fees, whether by in-house counsel or outside counsel and whether incurred through initiation of legal proceedings or otherwise.

9.8 Governing Law

This Agreement shall be interpreted and enforced according to the laws of the State of Utah.

9.9 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.10 Time

Subject to the provisions of Section 8.2 and 8.3, time is of the essence of this Agreement and its Attachments.

[Remainder of page left blank.]

DEVELOPER DRAFT 4/12/18, FOR DISCUSSION PURPOSES

IN WITNESS WHEREOF, the Agency has caused this Agreement to be duly executed in its behalf; and the Developer has caused the same to be duly executed in its behalf, on or as of the day and year first above written.

REDEVELOPMENT AGENCY OF THE CITY OF
HOLLADAY

By: _____
~~Grant Orton~~ Lynn Pace, Chairperson

ATTEST:

Randy Fitts, _____, Executive Director

Approved as to form:

~~Randall S. Feil~~ Todd J. Godfrey, Agency Special Counsel

CITY OF HOLLADAY

By: _____
~~Dennis Webb~~ Robert M. Dahle, Mayor

ATTEST:

Stephanie Carlson, City Recorder

Approved as to form:

~~Craig Hall~~ Todd J. Godfrey, Holladay City Attorney

[DEVELOPER DRAFT 4/12/18, FOR DISCUSSION PURPOSES]

DEVELOPER:
CO-DEVELOPERS:

IVORY DEVELOPMENT, LLC, a Utah limited liability company

By: _____
Its: _____

COTTONWOOD MALL, LLC, a Delaware limited liability company

By: _____
Its: _____

ATTACHMENT NO. 1

DESCRIPTION OF IMPROVEMENTS AND DEADLINES FOR CONSTRUCTION AND INSTALLATION OF IMPROVEMENTS

The Improvements with a Minimum Investment Amount of \$~~226,150,000,000~~ and consisting of a mixed use regional commercial center including a mix of retail, office and residential uses permitted in the Regional Mixed Use (RMU) Zone and all related parking, landscaping, utilities and other site improvements, shall be constructed and installed on the Site by Developer as described below. ~~By the end of the eighth Tax Increment Year the Developer shall construct and install all of the following as approved by the Agency and in accordance with the SDMP:~~

Developer has completed the following:

Site and Infrastructure Improvements (all of which are related to housing):

- 1) Relocation of the Cottonwood Creek;
- 2) Raising of the Site as needed to bring the Site out of the flood plain;
- 3) Replacement of the bridge structures on the Site;
- 4) New utilities, including dry and wet utilities for the first phase of vertical construction (first phase is what is described below under Vertical Improvements);

By the end of the eighth Tax Increment Year the Developer shall construct and install all of the following as approved by the Agency and in accordance with the SDMP: ~~5) Underground construction~~

- 5) Relocation of the transmission lines on the east perimeter of the project;
- 6) Construction of new parking decks and facilities, including replacement of the existing ~~Macy's Parking Structure~~ parking structure, as well as construction of additional parking as required by SDMP; and
- 7) ~~Addition~~ Construction of roads, curbs, gutters, internal drive lanes, sidewalks, open space, landscaping and green space.

Vertical Improvements:

Residential: At least 134 residential units.

Office: At least ~~78,137~~ 100,000 square feet of office space.

Retail: At least ~~455,066~~ 60,000 square feet, ~~which shall be comprised of the existing Macy's space of 206,350 square feet, and new retail construction shall be at least 248,716 square feet.~~

ATTACHMENT NO. 2

SITE LEGAL DESCRIPTION [TO BE CONFIRMED]

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF MURRAY-HOLLADAY ROAD, SAID POINT BEING SOUTH 00°03'51" EAST ALONG THE SECTION LINE 658.03 FEET TO THE CENTER LINE OF SAID MURRAY-HOLLADAY ROAD AND NORTH 89°47'36" WEST ALONG SAID CENTER LINE 632.67 FEET AND SOUTH 54°39'59" EAST 83.42 FEET FROM THE NORTHEAST CORNER OF SECTION 9, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE EASTERLY ALONG SAID SOUTHERLY LINE THE FOLLOWING (2) COURSES: (1) NORTH 54°39'59" WEST 26.07 FEET, (2) SOUTH 89°47'36" EAST 127.55 FEET TO THE WESTERLY LINE OF THE UTAH POWER AND LIGHT PARCEL; THENCE ALONG SAID UTAH POWER AND LIGHT PARCEL THE FOLLOWING (4) COURSES: (1) SOUTH 21°59'01" WEST 42.15 FEET, (2) SOUTH 03°30'59" EAST 72.00 FEET, (3) SOUTH 06°38'59" EAST 127.12 FEET, (4) NORTH 78°59'01" EAST 179.90 FEET TO THE WESTERLY LINE OF THE SPRING FORTH INVESTMENTS PARCEL; THENCE ALONG SAID SPRING FORTH INVESTMENTS PARCEL THE FOLLOWING (2) COURSES: (1) SOUTH 02°59'59" EAST 8.99 FEET, (2) NORTH 78°59'01" EAST 167.85 FEET, MORE OR LESS, TO THE WESTERLY LINE OF MEMORY LANE; THENCE SOUTHERLY ALONG SAID WESTERLY LINE THE FOLLOWING (2) COURSES: (1) SOUTH 00°00'59" EAST 38.90 FEET, (2) SOUTH 44°45'59" EAST 929.25 FEET, MORE OR LESS, TO THE NORTHERLY LINE OF ARBOR LANE, AS PER DEDICATION PLAT RECORDED WITH THE OFFICE OF THE SALT LAKE COUNTY RECORDER IN BOOK N OF PLATS ON PAGE 1; THENCE ALONG SOUTHWESTERLY ALONG SAID NORTHERLY LINE THE FOLLOWING (10) COURSES: (1) SOUTH 46°48'01" WEST 200.20 FEET TO A POINT OF CURVATURE, (2) SOUTHWESTERLY ALONG THE ARC OF A 127.34 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 81°03'00" A DISTANCE OF 180.13 FEET (CHORD BEARS SOUTH 06°16'31" WEST 165.49 FEET), (3) SOUTH 34°14'59" EAST 64.50 FEET TO A POINT OF CURVATURE, (4) SOUTHEASTERLY ALONG THE ARC OF A 1121.28 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 18°38'00" A DISTANCE OF 364.65 FEET (CHORD BEARS SOUTH 24°55'59" EAST 363.05 FEET) TO A POINT OF COMPOUND CURVATURE, (5) SOUTHWESTERLY ALONG THE ARC OF 225.79 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 49°37'00" A DISTANCE OF 195.53 FEET (CHORD BEARS SOUTH 09°11'31" WEST 189.48 FEET) TO A POINT OF COMPOUND CURVATURE, (6) SOUTHWESTERLY ALONG THE ARC OF A 821.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 19°35'00" A DISTANCE OF 280.61' FEET CHORD BEARS SOUTH 43°47'31" WEST 279.25 FEET), (7) SOUTH 36°24'59" EAST 8.50 FEET TO A POINT ON THE ARC OF A 214.51 FOOT NON-TANGENT RADIUS CURVE TO THE RIGHT (CENTER BEARS NORTH 36°24'59" WEST), (8) SOUTHWESTERLY ALONG THE ARC OF SAID 214.51 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 41°24'00" A DISTANCE OF 155.00 FEET (CHORD BEARS SOUTH 74°17'01" WEST 151.65 FEET), (9) NORTH 85°00'59" WEST 351.80 FEET, (10) SOUTH 00°36'39" EAST 40.93 FEET TO A POINT ON THE WESTERLY LINE OF HIGHLAND DRIVE; THENCE NORTHWESTERLY ALONG SAID EASTERLY LINE THE FOLLOWING (8) COURSES: (1) NORTH 56°10'59" WEST 151.55 FEET, (2)

NORTH 39°48'39" WEST 1124.58 FEET TO A POINT OF SPIRAL CURVATURE, (3) NORTHWESTERLY ALONG THE ARC OF SAID SPIRAL CURVE, SAID CURVE BEING CONCENTRIC WITH AND 50.00 FEET RADially DISTANT EASTERLY FROM A 200.00 FOOT TEN-CHORD SPIRAL FOR A 4° CURVE TO THE RIGHT, 196.50 FEET, MORE OR LESS, TO A POINT OF CURVATURE OF A 1381.83 FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS NORTH 54°11'10" EAST), (4) NORTHWESTERLY ALONG THE ARC OF SAID 1381.83 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 30°02'13" A DISTANCE OF 724.42 FEET (CHORD BEARS NORTH 20°47'43" WEST 716.15 FEET), MORE OR LESS, TO A POINT OF SPIRAL CURVATURE, (5) NORTHWESTERLY ALONG THE ARC OF SAID SPIRAL CURVE, SAID CURVE BEING CONCENTRIC WITH AND 50.00 FEET RADially DISTANT EASTERLY FROM A 200.00 FOOT TEN-CHORD SPIRAL FOR A 4° CURVE TO THE RIGHT, 196.50 FEET, MORE OR LESS, TO A POINT OF TANGENCY, (6) NORTH 01°43'40" WEST 3.89 FEET, (7) SOUTH 88°12'51" WEST 10.00 FEET, (8) NORTH 01°43'40" WEST 43.18 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID MURRAY-HOLLADAY ROAD; THENCE EASTERLY ALONG SAID SOUTHERLY LINE THE FOLLOWING (3) COURSES: (1) SOUTH 89°47'36" EAST 144.66 FEET, (2) SOUTH 00°11'01" WEST 15.00 FEET, (3) SOUTH 89°47'36" EAST 682.56 FEET TO THE POINT OF BEGINNING.

ATTACHMENT NO. 3

PROJECT AREA BUDGET

| ***DEVELOPER DRAFT 4/12/18, FOR DISCUSSION PURPOSES***

| **[To be added—Springmeyer revising]**

ATTACHMENT NO. 4

DESCRIPTION OF PUBLIC IMPROVEMENTS AND DEADLINES FOR CONSTRUCTION AND INSTALLATION [NTD—to be revised after discussion with city]

City shall install and construct or cause to be installed and constructed the following specific public improvements in accordance with the following provisions and schedule, and in compliance with all applicable City codes and regulations:

To be completed by November 15, 2008: _____:

1. New traffic signal at Moormont and *Necessary Improvements (\$1,740,788)*
 - Highland Drive/Meadowmoor Road Signal Reconstruction
 - 2. New traffic signal at the proposed Main Street exit (north end) and Highland Drive.

To be completed by August 1, 2010:

- 3. —1910 E. Murray Holladay Road Signal Reconstruction/Rehabilitation
- Signal Modification 48thS and Highland
- Murray Holladay Road/Highland Drive Signal Upgrades
- Curb/Gutter and Sidewalk/ADA access improvements installation along east side of Highland Drive from Murray Holladay Road to Arbor Lane as generally shown in the approved master plan including⁺ from MH Road to north side of BCC bridge crossing.

- *New curb & gutter and sidewalk (east side)*
- *New curb & gutter and sidewalk (as needed west side)*
- *Landscaped planter strips each side*
- *5 foot bike lane each side*
- *Landscaped median strip*
- *Pavement reconstruction/restoration*
- *Reconfiguration of intersection at Highland Drive and Arbor Lane*
- *Drainage improvements as needed*
- *Decorative street lighting*
- *Striping and signage*

- 4. —New or renovated traffic signals at Murray Holladay road and Highland Drive and at Restoration along Murray- Holladay Road and the east Cottonwood Mall exit as needed. Highland Drive

- 5. —Rehabilitation Right Turn Pocket on northeast corner of MH Road and Highland Drive

=

Continued Conversation along with the SDMP (\$256,478)

- Murray- Holladay Road Sidewalk Rehabilitation (ADA access)

⁺ It is anticipated that the following improvements will be constructed within the existing rights of way, and that the City shall not be required to acquire any additional land for such improvements.

[DEVELOPER DRAFT 4/12/18, FOR DISCUSSION PURPOSES]

- Highland Drive Curb, Gutter and Sidewalk from BCC bridge cross to Arbor Lane
(subject to continued discussion)

Council Discussion Items (\$868,186)

- Landscaped Median strip along Highland Drive to Viewmont. (optionally to 2225 East subject to budget availability) including:

- ~~Curb & gutter and sidewalk (as needed)~~ • ~~Pavement reconstruction / restoration~~
- ~~Drainage improvements as needed~~
- Decorative street lighting
- ~~Striping and signage~~
- ~~Landscaping along the south side of Murray- Holladay Road adjacent to mall site subject to site limitations~~

- • ~~Expansion and improvement of the and Highland Drive/Murray Holladay Road intersection (as needed, subject to the mutual agreement of the Parties)~~

- Transit Enhancements

**ATTACHMENT NO. 5
AGREED UPON IMPACT FEE SCHEDULE**

INTD: revise based on SDMP finalization and to effect removal of fee based on footnote below

The following impact fees will be generated pursuant to applicable city ordinances.

	Minimum	Maximum	Total Range	
Park & Rec*				
Commercial	0	0		
Residential	\$1,136,911	\$1,537,585	\$1,136,911	\$1,537,858
Storm Water*				
Commercial		795,700	--	\$ 795,700
Public Safety				
Police				
Commercial	74,470	99,293		
Residential	29,887	40,420	104,357	\$ 139,713
Fire				
Commercial	71,150	94,866		
Residential	87,723	118,685	\$158,873	\$ 213,551

* These fees will not be collected. The Developer will install or cause to be constructed the required improvements in-kind in lieu of the City causing the construction to occur. The improvements installed will equal or exceed the fees that would be imposed pursuant to applicable ordinances.

[DEVELOPER DRAFT 4/12/18, FOR DISCUSSION PURPOSES]

ATTACHMENT NO. 6
TAXING ENTITY COMMITTEE RESOLUTION 2011-01