

## DEVELOPMENT AGREEMENT

City of Holladay, a Utah municipal corporation (the "City") and the Redevelopment Agency of the City of Holladay (the "Agency" or "RDA") and Holladay Village Square, LLC, a Utah limited liability company ("Developer") enter into this Development Agreement (this "Agreement") effective as of January \_\_\_, 2012 ("Effective Date") and agree as set forth below.

### RECITALS

A. The City and the Agency, acting pursuant to their authority under Utah Code Annotated §§ 10-9a-101, *et seq.*, as amended, §§ 17C-1-101, *et seq.*, and the Municipal Code for the City of Holladay (the "City Code"), and in furtherance of their land use policies, goals, objectives, ordinances, resolutions, and regulations, have made certain determinations with respect to the proposed development of the Property (defined in Recital C), in exercise of its legislative discretion, and has elected to enter into this Agreement.

B. Agency is the owner of certain real property known as Assessor's Parcel Numbers 2203380003, 2203380004, 2203380005, 2203380012 (a portion of) and legally described in attached Exhibit A (the "RDA Property") and desires to contribute the RDA Property to Developer to allow for its development consistent with the terms of this Agreement.

C. Developer is the owner of certain real property known as Assessor's Parcel Number 2203380006 and legally described in attached Exhibit B (the "Developer Property") and desires to contribute the Developer Property to allow for its development consistent with the terms of this Agreement. The RDA Property and the Developer Property combined are referred to as the "Property."

D. City and Developer contemplate the development of the Property consistent with the Concept Plan attached as Exhibit C, including the list of Essential Elements identified therein (the "Concept Plan"). The development of the Property in connection with the Concept Plan and this Agreement is referred to as the "Project."

E. On September 1, 2011, the RDA board awarded Developer the exclusive right to negotiate for the contribution of the RDA Property as part of the Project for a period of six months.

F. The Property is located within the Holladay Village Zone as outlined in the Chapter 13, Section 71 of the City Code (the "Land Use Ordinance"). The parties acknowledge that the Concept Plan and the development of the Property in accordance with this Agreement conforms with the Land Use Ordinance.

G. The City and RDA desire to allow Developer to make improvements to the Property in conformity with this Agreement.

H. Developer and the City acknowledge and agree that the development and improvement of the Property pursuant to this Agreement will result in planning and economic

benefits to the City and its residents, and will provide certainty useful to Developer and the City in ongoing and future dealings and relations between Developer and the City.

I. The City has authorized the negotiation of and adoption of development agreements under appropriate circumstances where the proposed development contains outstanding features which advance the policies, goals and objectives of the Holladay Village Master Plan, preserve and maintain the sustainable atmosphere desired by the citizens of the City, and contribute to capital improvements which substantially benefit the City.

J. The City and RDA will authorize execution of this Agreement by resolutions within 30 days of the Effective Date, which resolutions shall be attached to this Agreement as Exhibits D and H.

#### **DEVELOPER AND THE CITY AGREE AS FOLLOWS:**

**I. Recitals; Definitions.** The recitals set forth above are incorporated herein by this reference. Any capitalized term used but not otherwise defined in this Agreement shall have the meaning ascribed to such term in the Land Use Ordinance.

**II. Developer.** Developer agrees the following terms and conditions apply to the development of the Property:

A. The Property shall be developed in accordance with the requirements and benefits provided for in relation to the Holladay Village Zone under the Land Use Ordinance, as of the Effective Date. The parties agree that this Agreement does not conflict with the requirements of the Land Use Ordinance or the City Code.

B. Developer will proceed in good faith with development of the Property and submit site plan(s), plats, architectural designs, elevations and concept renderings relative to the development of the Property (collectively, the "Developer Plans") as necessary to obtain the approval of the City in accordance with the City Code through its Design Review Board and Planning Commission; provided, however, that with respect to such approval(s), the City (and thereby its staff and other agents) agrees that any such approval shall (i) not be unreasonably withheld, conditioned or delayed, and (ii) be granted where the proposed elevations and site plan concept renderings conform to the Concept Plan and the City's guidelines and requirements in existence as of the date of this Agreement.

C. Developer will proceed in good faith to procure capital and other financial resources necessary for the Project in such amounts and on such terms as deemed necessary in Developer's sole and absolute discretion; provided, however, that Developer provides no assurance or guaranty that Developer will be able to procure such capital or financial resources. In accordance with the foregoing, to the extent Developer deems it advisable, in Developer's sole and absolute discretion, Developer may obtain debt or equity financing for the development of the Property from such sources as deemed advisable by Developer. The City and the RDA agree that Developer has full and complete authority, and that the City's and RDA's consent shall not be required, to place encumbrances on the Property, including deeds of trust, mortgages or similar security instruments, or to pledge Developer's shares or units to any third-party in

connection with a loan or other debt financing of the construction of the Project (a "Financing"); provided that the proceeds of such Financing are used to develop the Property in accordance with the terms of this Agreement, as reasonably determined by Developer, and that the terms of such Financing are representative of an arms' length transaction. Notwithstanding the foregoing, following issuance of a certificate of occupancy for the Project (which the City agrees will not be unreasonably withheld or denied) ("Substantial Completion"), Developer shall have the right to use proceeds from Financing for purposes unrelated to the development of the Property ("Equity Proceeds"), so long as such Equity Proceeds do not exceed more than the total of all of Developer's Equity Contribution through the date that the Equity Proceeds are to be distributed/paid out to Developer. The intent of the foregoing sentence is to allow Developer to obtain access to all cash and funds expended by Developer in connection with the Project through Financing, such that Developer's cash and funds which would have otherwise been available to Developer had it not invested in the Project are available for use by Developer (including its affiliates and principals) for purposes unrelated to the Project.

D. On the Contribution Date (defined below), Developer agrees that it shall contribute or cause to be contributed the Developer Property for the development of the Property.

E. From and after the Effective Date, Developer shall insure, and shall cause each contractor to insure, the Property and the Project against all liabilities, losses and casualties as is commercially reasonable for projects of similar size and type. Developer shall cause to be delivered to the RDA and the City certificates evidencing the existence and amounts of the insurance required hereunder. No such policy shall be cancelable or subject to modification except after 30 days' prior written notice to the RDA and the City. Developer shall, at least 30 days after a renewal, furnish the RDA and the City with evidence of such. The City and the RDA shall be included as additional insureds on all such policies.

F. Developer covenants that Developer shall not (i) own directly or indirectly any interest in real property other than the Project, (ii) own any equity or debt interests in any other entity, or (iii) prior to the Substantial Completion date, create, undertake or guaranty any liability not related to the Project. From and after the Effective Date and prior to the Substantial Completion Date, Developer shall not make any distribution to its members directly or indirectly from the proceeds of any Financing unless such distribution is for the purpose of reimbursing its members for expenses incurred in connection with the Property; after the Substantial Completion Date, Developer may make distributions as it deems appropriate subject to the limitation provided for in connection with Subsection C. above.

G. Developer agrees to include in the contract with the general contractor for the Project a clause substantially similar to the following:

Contractor agrees that neither the City of Holladay nor the Redevelopment Agency for the City of Holladay shall have any liability or obligation (i) to any person or entity in connection with the Project (other than Developer), or (ii) in any way related to the debts, liabilities, construction or operation of the Project (other

than Developer). Contractor shall include a provision substantially similar to the foregoing in each subcontract signed by Contractor.

H. Developer agrees that if in the course of constructing the Project, Developer or its agent causes any damage to the plaza or other public property located adjacent to the Project, Developer will repair the damage.

**III. Development Standard and Developer Control.** Developer agrees to professionally manage the development and operation of the Property using good business judgment, including retaining professional development, leasing and management assistance with regard to the Property in keeping with the vision set forth in the Land Use Ordinance. As a condition of this Agreement by City and the RDA, Developer has entered into a consulting agreement with Rockworth Companies ("Rockworth") to assist it in adhering to the foregoing standard. Developer agrees to continue such consulting agreement through the earlier of (i) the date that each component of the completed Project (e.g., office, retail, etc.) is leased up to occupancy rates as then exist in the Salt Lake City market relative to that particular component of the Property, excluding those portions of the Property sold to third-party buyers (e.g., a purchaser of a commercial condominium unit) who are not an affiliate of Developer (for purposes of this sentence, "an affiliate of Developer" is any entity where Developer or a principal of Developer owns a controlling interest in such entity); or (ii) three years from the Contribution Date. At the time that the development of the Property is completed and prepared for leasing, Rockworth will recommend a leasing agency to Developer and City for the initial leasing period and Developer and City shall have the right to approve the leasing agency selected, subject to their reasonable discretion. Developer agrees that under no circumstances will it lease the Property for any of the following types of uses: (a) for the sale or display of pornography, nudity, graphic violence, drug paraphernalia, or any goods and/or services that, in the sole and absolute discretion of Landlord, are inconsistent with the image of a community or family-oriented shopping center, (b) as a massage parlor, adult bookstore or second-hand store, (c) a second-hand store, (d) a blood/plasma donor facility, or (e) an auction house. Developer agrees to provide updates each month to the RDA which advise the RDA of the status of construction, and the lease up of the Project. Notwithstanding the foregoing, Developer shall have no further obligation to provide the RDA with such monthly updates three years after the Contribution Date. Developer agrees to use its commercially reasonable efforts to lease the space to within the project to promote a broad variety of uses within the Project, to encourage neighborhood commercial uses, and to create a local community and family oriented commercial shopping area.

**IV. City.** The City agrees the following terms and conditions apply to the development of the Property:

A. The City shall accept and review development of this Property in accordance with all laws and regulations and to review and resolve any issues related to the development of the Property in a timely manner, as further provided in **Subsection II.B.** above.

B. The City agrees that the Concept Plan comports with the requirements set forth in this Agreement and meets the purposes and objects of the Land Use Ordinance.

C. The City agrees that development of the Property shall proceed under the Holladay Village Zone Ordinance and the development of the Property shall be permitted to proceed in conformity with the Concept Plan.

D. Except as expressly provided otherwise in this Agreement, City and RDA agree Developer shall have complete control and discretion with regard to any decisions made with regard to the means, methods, processes, and timing for the development and operation of the Property, and to change, alter or revise the nature, design, structure, outlay and mixture of anticipated uses within the Property, so long as such changes comport with the Concept Plan and Essential Elements. City agrees Developer shall have no liability to City under this Agreement for decisions made within the discretion of Developer as permitted in connection with this Agreement.

E. After the date that any appeal may be filed after the passage of the resolution adopting this Agreement and the signing of this Agreement by Developer, the RDA agrees to convey title to the RDA Property to Developer (the "Contribution Date") by special warranty deed. The City and the RDA make the representations and warranties to Developer set forth in **Exhibit E** which is deemed incorporated into this Agreement. City agrees to indemnify, defend and hold Developer harmless from any damages, claims, costs or expenses relating to any breach or material inaccuracy in any of the representations or warranties made in connection with this Agreement. On the Contribution Date, Developer will execute in recordable form a special warranty deed for the RDA Property and the Developer Property in favor of the RDA (the "RDA Deed"), and shall deliver the RDA Deed, together with joint escrow instructions in form reasonably satisfactory to the parties, a title company mutually agreeable to the RDA and Developer, directing that the RDA Deed be recorded in the event that all conditions to the availability of proceeds from construction Financing have not been satisfied on or before January 1, 2014, subject to the obligation of the City and RDA to pay Developer for the Developer Costs (defined below), which payment shall be prior to or concurrently upon the recording of the RDA Deed. If the RDA Deed is recorded, Developer agrees to return possession of the RDA Property to the RDA free and clear of any liens or encumbrances arising by or as a result of any action of Developer, its contractors or their representatives or agents and to assign to the City any right, title and interest Developer may have in and to any personal property owned by Developer and for which Developer is receiving reimbursement in connection with the Developer Costs. The RDA Deed and the joint escrow instructions will be attached to this Agreement as **Exhibit F** and **Exhibit G** respectively and will be deemed incorporated into this Agreement. "Developer Costs" means the out-of-pocket costs incurred by Developer relative to the development of the Property and Developer's contribution to the Project, including, without limitation: architectural, engineering, legal and consulting fees, the settlement payment or contribution made by Developer in connection with Section V below, the value of the Developer Property which is deemed to be \$409,078.84, payments made to any contractors, subcontractors, suppliers or materialmen, any filing or application fees, or any other costs or fees associated with the development of the Property.

F. The City and RDA agree to facilitate any communications or other efforts that may be necessary in order to expedite the development of the Property.

G. The City and RDA agree to efficiently make any decisions and timely render any approvals or consents which may be required of the City and RDA to expedite the development of the Property in accordance with applicable law.

H. The City and RDA agree to cooperate with Developer in connection with Developer's activities described in this Agreement in accordance with applicable law. Without limiting the generality of the foregoing, as part of such cooperation, the City shall (i) promptly review, consider and execute all consents, submittals or other documents as may be required in connection with the Concept Plan, (ii) have a representative available to attend all appropriate meetings with respect to Developer's activities under this Agreement, provided adequate notice is given to the City, and (iii) promptly meet and consider such actions as required by Utah Municipal Code, applicable City Code and the Utah Open Meetings Act to provide all appropriate consents, approvals and opinions as requested by Developer from time to time.

I. The City and RDA agree to pay for any fees or charges associated with any approvals, consents, plans, applications or utility connections to the extent that such fees or charges would otherwise be paid to the City.

V. **Settlement with Cowboy Partners.** City and Developer acknowledge the prior involvement of one or more interested developers as participants in prior development efforts with regard to the Property. City, RDA and Developer agree that as a condition to the effectiveness of this Agreement, a settlement and release satisfactory to the parties shall be entered into with such interested developers.

#### VI. **Interest Income Retained by City.**

A. Developer's Return. Developer will at all times receive all cash proceeds generated from the Property, including, without limitation, all cash derived from the ownership, operation, use, leasing, sale or occupancy of the Property (the "Cash Proceeds"). The allocation of the Cash Proceeds shall be as follows:

1. Developer's Cash on Cash Return of 8%. From and after the date that Net Cash Proceeds become available with respect to the Project, and continuing until Developer has been paid Developer's Equity Contribution (defined in subsection 2. below) in full, Developer will be paid from Net Cash Proceeds an 8% annualized cash on cash return on Developer's Equity Contribution (the "Developer's Return"). To determine the extent to which Developer's Return has been paid, the following calculation shall be performed: within 30 days after the last day of each calendar quarter (the "Calculation Date"), the aggregate Net Cash Proceeds received by Developer up to and through such Calculation Date shall be divided by Developer's Equity Contribution up to and through such Calculation Date. If the quotient of the foregoing formula is less than Developer's Return, then the difference in dollars shall be added to Developer's Equity Contribution and paid back to Developer as provided in subsection 2. below. For purposes of calculating Developer's Return, Developer's Equity Contribution shall not be decreased. Developer agrees to promptly provide City and the RDA a statement as of each Calculation Date showing the calculation of Cash Proceeds, Net Cash Proceeds, Developer's Return and the Return Threshold. By way of example only (and not contractual agreement), Developer's Return would be calculated as follows: \$10,000 (Net Cash Proceeds) / \$100,000 (Developer's Equity

Contribution) = .10 or 10%, with distribution of the Net Cash Proceeds as follows: \$8,000 to Developer as Developer's Return, with the remaining \$2,000 being attributed as repayment of Developer's Equity Contribution (which would not be decreased for purposes of calculating Developer's Return in the future).

2. Return of Developer's Equity. Second, all Net Cash Proceeds available after payment of Developer's Return shall be paid to Developer until Developer has been paid an amount equal to Developer's Equity Contribution. "Net Cash Proceeds" shall be calculated as the Cash Proceeds less the sum of the following (collectively, the "Property Expenses"): (a) reasonable operating expenses (such as cleaning, utilities, administrative, landscaping, security and management expenses, repairs and maintenance, advertising costs, license fees, commissions, operational equipment), (b) fixed expenses (such as insurance, real estate and other taxes, and management fees), (c) capital replacement reserves, (d) any debt service payments, costs or fees (including principal and interest payments for any loan where the loan proceeds were used for the benefit of the Property, but not including any equity financing), and (e) reserves for anticipated future payments relating to Financing (e.g., reserves relating to a balloon payment obligation in connection with Financing). "Developer's Equity Contribution" includes (i) any cash expended by Developer in connection with the development of the Property, including, without limitation, all costs of construction for the development of the Property (including, but not limited to, materials, supplies and labor incorporated into the Property; architectural, engineering, consultant, and legal fees; insurance, including builder's risk insurance; permit, license and approval fees; surveys; title fees; costs of construction financing, including, without limitation loan origination fees); (ii) capital improvement costs (which shall include, but not be limited to, the following: any costs related to making changes to improve the Project (before and after Substantial Completion), but shall not include capital replacement reserves included as part of the Property Expenses); (iii) utility connection fees; (iv) off-site improvement costs (if any); (v) any other costs reasonably relating to the development of the Property; and (vi) any Developer's Return which has not been paid pursuant to subsection 1. above. Until repayment of Developer's Equity Contribution, Developer agrees to promptly provide City and the RDA a statement at the end of each calendar quarter showing the calculation of Developer's Equity Contribution.

3. City's Return. Upon payment in full of Developer's Equity Contribution, all of the Net Cash Proceeds shall be split 50/50 between Developer and the City. Developer shall pay the City's share of any Net Cash Proceeds within 45 days of each Calculation Date.

4. Return Contingency. If Developer's Return exceeds an annualized 15% cash on cash return as determined on a Calculation Date (the "Return Threshold"), regardless of whether Developer's Equity Contribution has been paid back in full, Developer and City shall split 50/50 all Net Cash Proceeds available on such Calculation Date above the Return Threshold. Developer shall pay the City's share above the Return Threshold within 45 days of each Calculation Date.

5. Delayed Expenses. Notwithstanding any provision of Sections 3 or 4 to the contrary, to the extent that the Property Expenses for a given calendar quarter do not include a delayed expense that is likely to be incurred or show in a calendar quarter subsequent to the

calendar quarter then being calculated (e.g., the requirement of a lump-sum repayment for a Financing), then no payment shall be made in connection with Sections 3 or 4 until such delayed expense has been accounted for in connection with the Net Cash Proceeds.

B. No Interest in Property. City acknowledges and agrees that from and after and the Contribution Date it will have no legal or equity interest in or to the Property and that its rights hereunder are contractual in nature as specified in this Agreement.

**VII. First Right of Refusal.** City shall have the right of first refusal (the "ROFR") to purchase all or any portion of the Property offered for sale upon the terms and conditions set forth in this Section. If at any time Developer shall enter into a letter of intent or contract with a third party to sell all or a portion of the Property (the "Premises") to a third party or shall offer to sell all or a portion of the Property to a third party pursuant to a letter of intent or contract provided by Developer to such third party, which contract, in either case, shall be subject to City's ROFR, Developer shall give City written notice thereof (the "ROFR Notice"), accompanied by a copy of the contract (the "Third Party Contract"), and City shall have the right to purchase the Premises on the same terms and conditions, including payment of the full purchase price, as are set forth in the Third Party Contract, modified as otherwise provided in this Section. The date that the ROFR Notice is delivered to the City is referred to as the "ROFR Notice Effective Date."

A. Manner of Exercise. If City desires to exercise the ROFR to acquire the Premises, City must, within 15 days of the ROFR Notice Effective Date (the "ROFR Notice Period"): (i) give written notice to Developer electing to acquire the Premises on the terms and conditions provided in this Section (the "Exercise Notice"); and (ii) pay to Developer, for deposit in escrow pursuant to the ROFR Purchase Agreement described below, an amount equal to 10% of the purchase price for Premises specified in the Third Party Contract (the "Earnest Money"). The date the Exercise Notice is delivered to Developer is referred to as the "Exercise Notice Effective Date".

B. Waiver of ROFR. Time is of the essence with respect to City's exercise of the ROFR with respect to a particular ROFR Notice, and if City does not properly give an Exercise Notice within the ROFR Notice Period, City shall conclusively be deemed to have irrevocably waived its ROFR to acquire the Premises pursuant to that ROFR Notice.

C. ROFR Purchase Agreement and Escrow. If City properly gives an Exercise Notice, then within 10 days following the Exercise Notice Effective Date, Developer shall provide to City a real estate sale agreement for the purchase of the Premises by City (the "ROFR Purchase Agreement") on the terms and conditions stated in the Third Party Contract, except that, notwithstanding the provisions of the Third Party Contract, the ROFR Purchase Agreement shall provide the following:

1. An escrow for the transaction shall be opened with a nationally recognized title company selected by Developer, and Developer and City shall execute such standard escrow instructions as may be required by the title company.

2. The close of escrow for City's purchase of the Premises shall occur on the later of (A) that date which is 45 days after the Exercise Notice Effective Date; and (B) that date which is 30 days following the Execution Deadline (defined below).

3. The Premises will be conveyed to City by special warranty deed, warranting against the acts of grantor and no others, subject to real property taxes and assessments (which shall be prorated), reservations in patents, all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record (other than monetary liens that were placed on the Premises by Developer), and all matters which an accurate survey or physical inspection of the Premises would disclose.

4. Subject only to performance by Developer with the terms of the ROFR Purchase Agreement, City's obligation to purchase the Premises will be absolute and unconditional, without any due diligence, title, survey, or other review and cancellation period allowed to City.

5. The sale of the Premises to City shall be an "AS IS" and "WHERE IS" sale without warranty, express or implied, relative to the Premises and the condition of the Premises and the suitability of the Premises for any particular use or purpose, and with "ALL FAULTS" associated with the Premises; provided, however, that to the extent Developer is providing any representations or warranties in the Third Party Contract, Developer shall make those same representations and warranties to City, subject, however, to any matter which is known or should be known by the City and subject to any matter which existed prior to the Contribution Date.

City shall execute and return the ROFR Purchase Agreement to Developer within seven days of receipt thereof by City (the "Execution Deadline"). If City fails to execute and return the ROFR Purchase Agreement by the Execution Deadline, then City shall conclusively be deemed to have irrevocably waived its ROFR to acquire the Premises pursuant to that ROFR Notice. City may assign its ROFR to the RDA without Developer's consent; provided, however, that City shall first provide written notice of such assignment to Developer. No waiver of the ROFR by City or the RDA shall affect the contractual right to income provided for under Subsection VI

**VIII. Vested Rights.** Consistent with the terms and conditions of this Agreement, City agrees Developer shall have, as of the earliest date permitted under Utah law, the vested right to develop and construct the Property in accordance with the Holladay Village Zone designation. City agrees that should any changes be made to the City Code (or any other provision of law within the City's direct control) which would affect the Project in any way on or prior to the date that Developer's rights shall vest, Developer may terminate this Agreement and shall be entitled to sell the Project back to the City as further provided in connection with Section J.2. (without the obligation of an appeal). City agrees to provide Developer with prior written notice of any proposed change to the City Code which may affect the Project.

**IX. Term.** This Agreement shall be effective as of the date of recordation, shall run with the land and shall continue in full force and effect until the earlier of the date that this Agreement is terminated pursuant to the provisions hereof or all obligations hereunder have been fully performed and all rights hereunder fully exercised; provided, however, that unless the parties

mutually agree to extend the term, this agreement shall not extend further than a period of 50 years from its date of recordation in the official records of the Salt Lake County Recorder's Office.

**X. General Provisions.**

A. Notices. All Notices, filings, consents, approvals, and other communication provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by registered or certified U.S. Postal Service mail, return receipt requested, postage prepaid to:

If to City:           The City of Holladay  
                          RDA Agency  
                          Attn: City Manager  
                          4580 South 2300 East  
                          Holladay, UT 84117

If to Developer: Holladay Village Square, LLC  
                          Attn: Ken Melby  
                          4725 Holladay Blvd., #230  
                          Holladay, UT 84117

or to such other addresses as either party may from time to time designate in writing and deliver in like manner. Any such change of address shall be given at least 10 days before the date on which the change is to become effective.

B. Mailing Effective. Notices given by mail shall be deemed delivered 72 hours following deposit with the U.S. Postal Service in the manner set forth above.

C. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach by the same of any other provision of this Agreement.

D. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any provision this Agreement.

E. Authority. The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. Developer represents and warrants it is fully formed and validly existing under the laws of the State of Utah, and that it is duly qualified to do business in the State of Utah and is in good standing under applicable state laws. Developer and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the parties on whose behalf each individual is signing. Developer represents to the City that by entering into this Agreement

Developer has bound all persons and entities having a legal or equitable interest to the terms of the Agreement as of the Effective Date.

F. Entire Agreement. This Agreement, including exhibits, constitutes the entire Agreement between the parties.

G. Amendment of this Agreement. This Agreement may be amended in whole or in part with respect to all or any portion of the Property by the mutual written consent of the parties to this Agreement or by their successors-in-interest or assigns. Any such amendment of this Agreement shall be recorded in the official records of the Salt Lake County Recorder's Office.

H. Severability. If any of the provisions of this Agreement are declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the fundamental purpose of this Agreement and Developer's ability to complete the development of the Property as set forth in the Concept Plan is not defeated by such severance.

I. Governing Law. The laws of the State of Utah shall govern the interpretation and enforcement of the Agreement. The parties shall agree that the venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Salt Lake County, Utah, and the Parties hereby waive any right to object to such venue.

J. Remedies.

1. Generally. Without limiting any other provision of this Agreement, if any party to this Agreement breaches any provision of this Agreement, the non-breaching party shall be entitled to all remedies available at both law and in equity; provided, however, that the non-breaching party shall first give the breaching party written notice of the breaching specifying the obligation(s) of this Agreement breached and affording the breaching party 15 days to cure such breach, provided, however, that if the breaching party commences to cure such breach within such 15 day period and diligently prosecutes to completion, the breaching party shall have such additional time as is reasonably necessary to cure the breach.

2. Remedy to Developer for Failure in Approval Process. If in the process of obtaining approvals through the City, including the Design Review Board, the Planning Commission or for building permits, Developer is (i) unable to obtain approval of the Project as proposed by Developer, (ii) the City, Design Review Board or Planning Commission requires material changes or upgrades (either individually, or which collectively would be material), or (iii) the Building Department will not issue a building permit (provided Developer has made a good faith attempt to comply with the applicable codes in connection with the application for the building permit), then, after Developer has been unsuccessful in obtaining Developer's desired result in an appeal to the City Council, Developer may notify City in writing of Developer's demand to exercise its remedy under this subsection 2., and within 30 days of the City's receipt thereof, the City and Developer shall perform the following obligations: the Developer and the City shall open an escrow mutually acceptable to the City and the RDA (or if the escrow holding the RDA Deed is still open, use such escrow), and Developer shall deposit therein a special

warranty deed to the Developer Property, the RDA Deed if necessary, and the City shall deposit therein the total amount of the Developer Costs. On or before the expiration of the 30 day period, the escrow agent shall record in the official records the RDA Deed and the special warranty deed to the Developer Property and wire or transmit to Developer funds in the amount of the Developer Costs.

3. Remedy to City for a Developer Default in connection with Financing. If Developer is notified by a lender of a default on its Financing, Developer shall notify the City of such default within five days and of whether Developer intends to cure such default. Upon notifying City, and provided Developer has no stated intention to cure such default, City may provide funds either to Developer or the lender to cure the default provided that City and Developer are able to agree to a means of compensating City for providing funds to cure a default (which agreement between the City and Developer shall attempt to be reached by good faith efforts of both the City and Developer).

K. Attorney's Fee and Costs. If any party brings legal action either because of a breach of the Agreement or to enforce a provision of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs.

L. Binding Effect. The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest and assigns. This Agreement shall be incorporated by reference in any instrument purporting to convey an interest in the Property.

M. Third Parties. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

N. Assignment. Developer may not assign or transfer its rights under this Agreement, or permit the transfer or pledge of its membership interests other than in connection with a Financing as provided in Section II.C., unless it has first obtained City's written consent, which consent shall not be unreasonably withheld, conditioned or delayed. City and RDA agree that City's consent to any such assignment may be granted by the City's Manager and that the consent of the City Council, the RDA, or a public hearing process will not be required. Upon an assignment or transfer of this Agreement, Developer shall be released of any obligations arising under this Agreement subsequent to the date of such assignment. Notwithstanding any provision of this Agreement to the contrary, a sale of all or a portion of the Project shall not be deemed an assignment or transfer of this Agreement requiring the City's or the RDA's consent. The parties agree that upon a sale of all or a portion of the Project, no further obligations shall exist as to the portion of the Project sold in connection with this Agreement (including, without limitation, Section VI above), except that the obligations to ensure that the Project (or the portion thereof sold) conforms to the Concept Plan and the Essential Elements. So long as Developer shall own any portion of the Project, Developer's rights in connection with this Agreement shall continue.

O. No Agency Created. Nothing contained in the Agreement shall create any partnership, joint venture, or agency relationship between the parties.

P. Obligations and Rights of Mortgage Lenders. The holder of any mortgage, deed of trust, or other security arrangement with respect to the Property, or any portion thereof, shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement which pertain to the Property or such portion thereof in which it holds an interest. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, and, as would be the case in any assignment, the purchaser of the Property from the holder shall be subject to all of the terms and conditions of this Agreement, including the obligation to complete all required amenities and improvements. City agrees to cooperate with Developer in amending this Agreement to include any provisions reasonably requested by holder, which amendments shall be made in accordance with applicable law. If City has been provided with a holder's address, City shall concurrently send to such holder any notice required to be sent under this Agreement to Developer in connection with subsection J. above.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

*{Signatures follow on next page.}*

ATTEST:

CITY OF HOLLADAY  
A Utah Municipal Corporation

By: *Stephanie N. Carlson*  
City Recorder

By: *Randy [Signature]*  
City Manager

APPROVED AS TO FORM:

REDEVELOPMENT AGENCY

By: *[Signature]*  
City Attorney

By: *[Signature]*  
Its: Chairman

HOLLADAY VILLAGE SQUARE, LLC  
a Utah limited liability company

By: *[Signature]*  
Name: Kenneth Melby II  
Title: Manager

STATE OF UTAH            )  
  )ss  
County of Salt Lake     )

The foregoing instrument was acknowledged before me this 24 day of January, 2012, by Kenneth Melby II, as manager of Holladay Village Square, LLC, on behalf of said company.

*Eloise Johnson*  
Notary Public

Exhibit A

LEGAL DESCRIPTION OF RDA PROPERTY

## LEGAL DESCRIPTION OF PROPERTY

A parcel of land located in the South half of Section 3, Township 2 South, Range 1 East, Salt Lake Base and Meridian.

Beginning at a point on the existing northerly right of way line of Murray-Holladay Road, which point is 3.5 Chains North by record, more or less from the South Quarter Corner of Section 3, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence S 65°43=00@ W 204.69 feet (204.08 feet by record) along the said existing northerly right of way line of Murray-Holladay Road to the westerly boundary line of Parcel 4 as described in that certain Special Warranty Deed recorded as Entry No. 9068567 in Book 8990 at Page 5100 and on file in the Salt Lake County Recorders Office, Salt Lake County, Utah; thence N 04°45=00@ W 198.03 feet (198.5 feet by record) along said boundary line to the southerly lot line of Lot 24 of Peony Gardens Subdivision, filed as Entry No. 822310 in Book I of Plats at Page 75; thence S 65°43=00@ W 161.98 feet along the southerly lot line of Lots 24 and 25 of said Peony Gardens to the Southwest corner of said Lot 25; thence N 16°03=00@ W 175.39 feet (175.45 feet by record) along the westerly lot line of said Lot 25 to the southerly right of way line of Laney Avenue, which point is on a 327.00-foot radius curve to the left (radius point bears N 15°38=07@ W); thence northeasterly 121.74 feet along the arc of said curve through a central angle of 21°19=53@ (chord bears N 63°41=57@ E 121.04 feet) to a point of tangency; thence continuing along the said southerly right of way line of Laney Avenue N 53°02=00@ E 17.73 feet to the northeast corner of Lot 23 of said Peony Gardens; thence S 36°58=00@ E 106.62 feet along the easterly lot line of said Lot 23; thence N 51°25=00@ E 100.04 feet (100 feet by record) along the northerly line of Parcel 1 as described in the said Special Warranty Deed recorded as Entry No. 9068567, to the existing southwesterly right of way line of Holladay Boulevard; thence S 36°58=00@ E 296.29 feet along said existing southeasterly right of way line of Holladay Boulevard to the intersection with the said existing northerly right of way line of Murray-Holladay Road; thence S 65°43=00@ W 48.32 feet (48.97 feet by record) along said northerly right of way line of Murray-Holladay Road to the point of beginning.

Containing 76,160 square feet or 1.748 acres, more or less.

Less and Excepting the following for future road widening along Murray-Holladay Road and Holladay Boulevard.

A parcel of land located in the South half of Section 3, Township 2 South, Range 1 East, Salt Lake Base and Meridian.

Beginning at a point on the existing northerly right of way line of Murray-Holladay Road, which point is 3.5 Chains North by record, more or less from the South Quarter Corner of Section 3, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence S 65°43=00@ W 204.69 feet (204.08 feet by record) along the said existing northerly right of way line of Murray-Holladay Road to the westerly boundary line of Parcel 4 as described in that certain Special Warranty Deed recorded as Entry No. 9068567 in Book 8990 at Page 5100 and on file in the Salt Lake County Recorders Office, Salt Lake County, Utah; thence N 04°45=00@ W 12.73 feet along said boundary line to a point 45 feet perpendicularly distant northerly from the centerline of Murray-Holladay Road; thence N 65°43=00@ E 187.83 feet along a line parallel with the said existing northerly right of way line of said Murray-Holladay Road to a point of tangency with a 31.00-foot radius curve to the left; thence northerly 55.56 feet along the arc of said curve through a central angle of 102°41=00@ (chord bears N 14°22=30@ E 48.41 feet) to a point 52 feet perpendicularly distant southwesterly from the centerline of Holladay Boulevard; thence N 36°58=00@ W 88.94 feet along a line parallel with the said southwesterly right of way line of said Holladay Boulevard to a point 52 feet perpendicularly distant westerly from the extension of the centerline of 2300 East Street, which point is on the extension of the future proposed right of way line of said 2300 East Street; thence N 00°54=47@ E 30.94 feet along the extension of said proposed future right of way to the existing southwesterly right of way line of said Holladay Boulevard; thence S 36°58=00@ E 168.70 feet along said existing southwesterly right of way line of Holladay Boulevard to the intersection with the said existing northerly right of way line of Murray-Holladay Road; thence S 65°43=00@ W 48.32 feet (48.97 feet by record) along said northerly right of way line of Murray-Holladay Road to the point of beginning.

Containing 6,033 square feet or 0.138 acres, more or less.

Balance of remaining area is: 70,127 square feet or 1.610 acres, more or less.

Exhibit B

LEGAL DESCRIPTION OF DEVELOPER PROPERTY

### Property Description

Lots 18, 19, 20 and 21, PEONY GARDENS, and commencing at the most Northerly Corner of Lot 22, PEONY GARDENS, South 36 deg 59' East 23.78 feet; thence South 51 deg 25' West 100 feet; thence North 36 deg 59' West 26.56 feet; thence North 53 deg 02' East 100 feet to the place of beginning, according to the official plat thereof, filed in Book "I" of Plats, at Page 75 of the Official Records of the Salt Lake County Recorder.

(22-03-380-006)

## Exhibit C

### CONCEPT PLAN

In addition to the attached Concept Plan, it is anticipated that the Project will include the following essential elements (collectively, the "Essential Elements"):

1. Two two-story buildings.
2. A two-level parking deck located to the west of the buildings.
3. The ground floor of the buildings will be used for retail purposes and the second floor for office space.
4. The buildings to include approximately 21,200 square feet of retail space.
5. Building A, to the north, will have two retail entrances, with the entrance located on 2300 East or the plaza.
6. Building B, to the south, will have two retail entrances, both on Holladay Boulevard or the plaza, and at least two retail entrances onto Murray-Holladay Road.
7. Of the retail entrances listed in 5 and 6, all entrances on the plaza, 2300 East, Holladay Blvd and Murray-Holladay Road must remain open and unlocked during business hours; only one of the entrances need be a primary entrance, while any other entrances may appear to be a primary entrance, but in fact may not be a primary entrance.
8. Open pedestrian walkways from both levels of the parking deck eastward to Holladay Boulevard/Plaza and southward to Murray-Holladay Road and those walkways must remain accessible 24/7.
9. The tallest portion of the project will be located at the corner of Holladay Boulevard and Murray-Holladay Road. That corner will include an architectural feature, which may be a clock tower, bell tower or other prominent feature or other similar architectural feature designed to create a sense of a center place. Developer should be allowed flexibility to design the ground floor of the Project to encourage pedestrian circulation.
10. No billboards shall be allowed in the Project. As used herein, the term "billboards" means off-premises advertising and does not refer to marquis or other signage monuments which would be customary for a retail project.
11. The buildings shall be custom designed for the site and constructed so as to be parallel to and frame the plaza (the old Holladay Boulevard corridor) and Murray-Holladay Road, unless doing so would make it commercially unreasonable to create adequate interior tenant space or be prohibitively expensive.

# SITE PLAN

*Robbinston Village*

2-STORY  
14,800 TOTAL SF

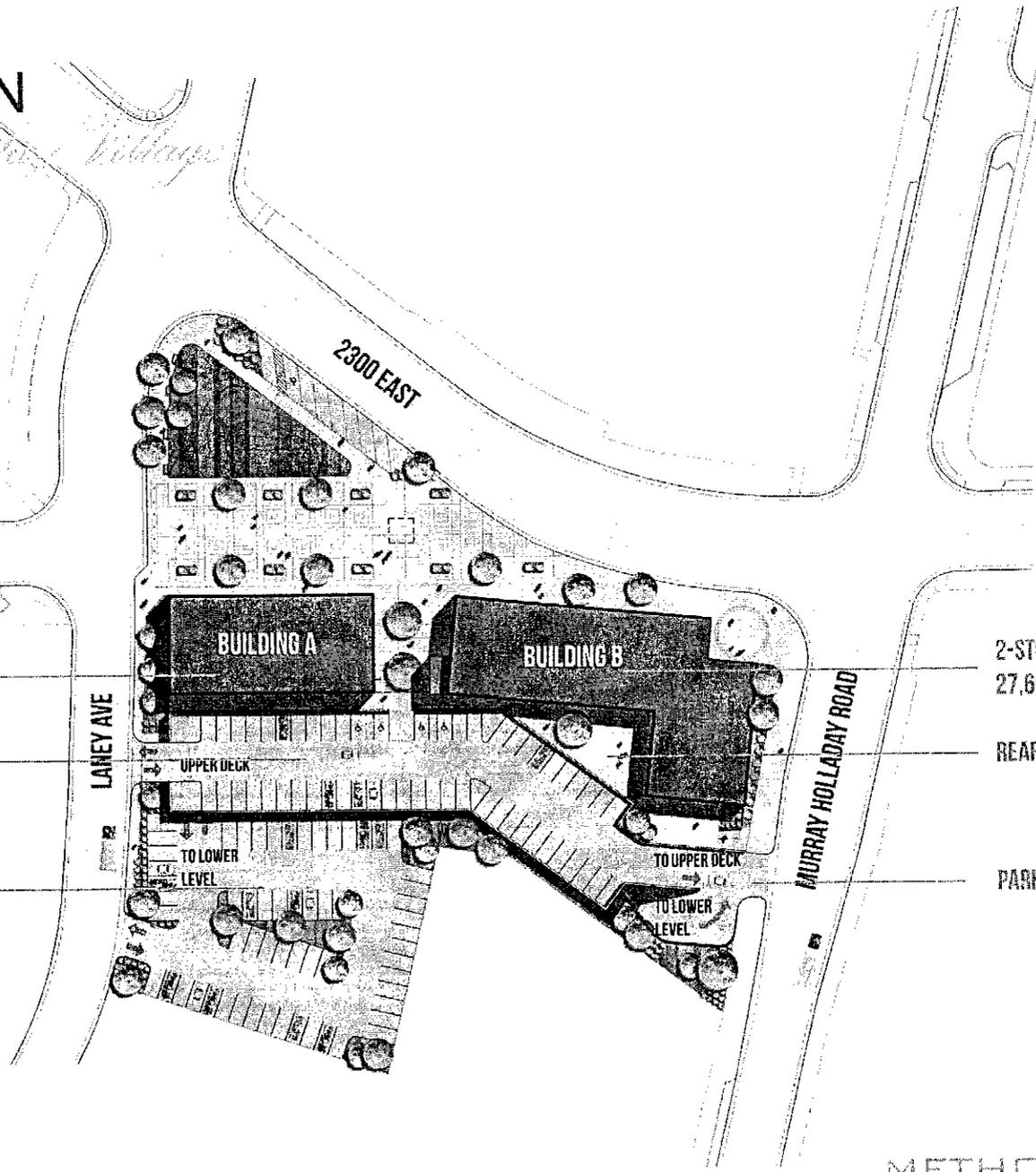
2-STORY PARKING STRUCTURE  
100 STALLS

PHASE 11 SURFACE PARKING  
60 STALLS

2-STORY  
27,600 TOTAL SF

REAR COURTYARD

PARKING ENTRY



**ROCKWORTH**  
COMPANIES

METHODSTUDIO<sup>INC.</sup>

Exhibit D

CITY RESOLUTION

CERTIFIED COPY

STATE OF UTAH            )  
                                  )  
COUNTY OF SALT LAKE )       SS:

I, Stephanie N. Carlson, do hereby certify that I am the duly appointed, qualified and acting City Recorder for the City of Holladay, State of Utah, and do further certify that the foregoing is a true and correct copy of Resolution 2011-41 entitled "*A Resolution Authorizing the Mayor to Execute a Development Agreement with Holladay Village Square, LLC, for Property Located at Approximately 4668 S Holladay Blvd*" duly adopted by the Holladay City Council on the 8<sup>th</sup> day of December 2011.

Dated this 8<sup>th</sup> day of December 2011.

SEAL:



Stephanie N. Carlson  
Stephanie N. Carlson, MMC  
Holladay City Recorder

CITY OF HOLLADAY

RESOLUTION NO. 2011 - 41

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH HOLLADAY VILLAGE SQUARE, LLC, FOR PROPERTY LOCATED AT APPROXIMATELY 4668 SOUTH HOLLADAY BOULEVARD**

WHEREAS, the City of Holladay ("Holladay") is a co-owner of certain real property located at approximately 4668 Holladay Boulevard; and

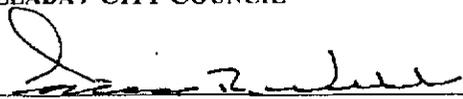
WHEREAS, the City and RDA have received a proposal from Holladay Village Square, LLC, for the development of the City and RDA parcel, together with certain adjacent property; and

WHEREAS, the proposed Development Agreement, once approved and executed, will allow the further development of the Holladay Square.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Holladay that the Mayor is authorized to execute the Development Agreement with Holladay Village Square, LLC, for the development of property located at approximately 4668 Holladay Boulevard, attached as *Exhibit A*, the same is approved.

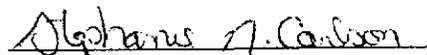
PASSED AND APPROVED this 8<sup>th</sup> day of December, 2011.

HOLLADAY CITY COUNCIL

By:   
Dennis R. Webb, Mayor



ATTEST:

  
Stephanie N. Carlson, MMC  
City Recorder

VOTING:

Lynn H. Pace	Yea	<u>X</u>	Nay	___
J. James Palmer, Jr.	Yea	<u>X</u>	Nay	___
Sabrina R. Petersen	Yea	<u>X</u>	Nay	___
Patricia Pignanelli	Yea	<u>X</u>	Nay	___
E. Barry Topham	Yea	<u>X</u>	Nay	___
Dennis R. Webb	Yea	<u>X</u>	Nay	___

## Exhibit E

### REPRESENTATIONS AND WARRANTIES OF THE CITY AND RDA

1.1 Representations and Warranties. As of the Effective Date, the City and the RDA represent and warrant to Developer as follows:

(a) Entity Action. All entity action on the part of the City and the RDA which is required for the execution, delivery and performance by the City and the RDA has been or will be duly and effectively taken.

(b) Enforceable Nature of Agreement. This Agreement constitutes legal, valid and binding obligations of the City and the RDA, enforceable against the City and the RDA, in accordance with their respective terms.

(c) Litigation. Neither the City nor the RDA is a party to any pending or threatened action, suit, proceeding or investigation, at law or in equity or otherwise, in, for or by any court or governmental board, commission, agency, department or officer arising from or relating to the RDA Property or to the past or present operations and activities the City or the RDA upon or relating to the RDA Property. No litigation, administrative or other proceeding (including any condemnation proceeding), or order or judgment is pending, outstanding, or threatened against or relating to any portion of the RDA Property or which could affect the performance by the City or the RDA of any of its obligations under this Agreement. The City and the RDA have no knowledge of any facts or circumstances which could give rise to such action.

(d) Governmental Restrictions. To the best knowledge of the City and RDA, neither the City nor the RDA has received, or is aware of, any notifications, restrictions, or stipulations from the United States of America, the State of Utah, the County of Salt Lake, the City or the RDA, or any other governmental authority requiring any work to be done on the RDA Property or threatening the use of the RDA Property. To the best knowledge of the City and RDA, there are no pending or threatened condemnation proceedings affecting any portion of the RDA Property. To the best knowledge of the City and RDA, the City and the RDA are not subject to, and no basis exists for, any order, judgment, decree or governmental restriction which would adversely affect the RDA Property.

(e) Title and Access. Fee simple title to the RDA Property is vested in the RDA.

(f) Encroachments. The legal description of the RDA Property attached to this Agreement as **Exhibit A** accurately and completely describes the property which the RDA owns and which Developer is taking title to under this Agreement. No person has any unrecorded right, title or interest in the RDA Property, whether by right of adverse possession, prescriptive easement or otherwise.

(g) Unrecorded Documents. There are no unrecorded leases, arrangements, agreements, understandings, options, contracts, or rights of first refusal to which the City or the RDA is a party affecting or relating to the RDA Property in any way.

(h) Adverse Title Claims. To the best knowledge of the City and RDA, neither the City nor the RDA has knowledge of any title defect, lien, encumbrance, adverse claim, or other matter relating to the title to the RDA Property.

(i) Information. There is no material information or document not disclosed or provided by the City or the RDA to Developer, which is known to the City or the RDA, and which directly or indirectly relates to this transaction, to the ownership of the RDA Property, or that would be material in connection with the development of the RDA Property.

(j) Disclosure. No representation, warranty or covenant contained in the Agreement contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact which is necessary in order to make the statements contained herein or therein not misleading.

(k) Environmental Matters.

(i) The RDA Property is free from Hazardous Substances, and is not now in violation of any Environmental Law. Neither City nor RDA have caused or allowed the use, generation, manufacture, production, treatment, storage, release, discharge, or disposal of any Hazardous Substances on, under, or about the RDA Property, and has not caused or allowed the transportation to or from the RDA Property of any Hazardous Substance.

(ii) All property adjacent to the RDA Property is and has always been free from Hazardous Substances, and is not and has never been in violation of any Environmental Law.

(iii) There are not now and have never been any buried or partially buried storage tanks located on the RDA Property.

(iv) City and RDA have received no warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the RDA Property or adjacent property are or have been in violation of any Environmental Law, or informing City and RDA that the RDA Property is subject to investigation or inquiry regarding the presence of Hazardous Substances on or about the RDA Property or the potential violation of any Environmental Law.

(v) City and RDA is not aware of any facts or circumstances that could give rise to a violation of an Environmental Law.

(vi) No environmental lien in favor of any governmental entity has attached to any of the RDA Property.

As used in this Agreement: (1) "**Environmental Law**" means any federal, state or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or environmental conditions, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, *et seq.*; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, *et seq.*; the Toxic Substances Control Act of 1976, 15 U.S.C. Sections 2601, *et seq.*; the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 U.S.C. Sections 11001, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, *et seq.*; the Clean Air Act, 42 U.S.C. Sections 7401, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Sections 300f, *et seq.*; the Solid Waste Disposal Act, 42 U.S.C. Sections 3251, *et seq.*; and any other federal, state or local law, statute, ordinance, or regulation now in effect or hereafter enacted which pertains to health, industrial hygiene, or the regulation or protection of the environment, including, without limitation, ambient air, soil, groundwater, surface water, and/or land use; and (2) "**Hazardous Substance**" means any material, waste, substance, pollutant, or contaminant which may or could pose a risk of injury or threat to health of the environment, including, without limitation: (w) those substances included within the definitions of "hazardous substance", "hazardous waste", "hazardous material", "toxic substance", "solid waste", or "pollutant or contaminant" in, or otherwise regulated by any Environmental Law; (z) those substances listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101, including appendices and amendments thereto), or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (y) such other substances, materials, or wastes which are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and (z) any material, waste, or substance which is (A) petroleum or refined petroleum products; (B) asbestos in any form; (C) polychlorinated biphenyls; (D) flammable explosives; (E) radioactive materials; or (F) radon. Any reference in these definitions to statutory or regulatory sections shall be deemed to include any amendments to such sections and any successor sections.

The foregoing representations and warranties shall continue through the term of this Agreement.

RDA DEBD

Exhibit F

Parcel Nos.: 2203380003, 2203380004,  
2203380005, 2203380012 (a portion of), and  
2203380006

**WHEN RECORDED RETURN TO:**

The City of Holladay  
RDA Agency  
Attn: City Manager  
4580 South 2300 East  
Holladay, Utah 84117

**SPECIAL WARRANTY DEED**

HOLLADAY VILLAGE SQUARE, LLC, a Utah limited liability company, whose mailing address is 4725 Holladay Blvd., #230, Holladay, UT 84117, as Grantor, hereby CONVEYS AND WARRANTS against all claims arising by, through and under Grantor, to the REDEVELOPMENT AGENCY OF THE CITY OF HOLLADAY whose mailing address is 4580 South 2300 East, Holladay, Utah 84117, as Grantee, for the sum of TEN DOLLARS and other good and valuable consideration, all of Grantor's right, title and interest in and to the described tract of land in, Salt Lake County, Utah, described as follows:

See attached Exhibit A, referred to as the "Developer Property" and Exhibit B, referred to as the "RDA Property."

DATED this \_\_\_ day of January, 2012.

GRANTOR:

HOLLADAY VILLAGE SQUARE, LLC,  
A UTAH LIMITED LIABILITY COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF UTAH     )  
                          ) ss.  
County of Salt Lake )

On the \_\_\_ day of January, 2012, \_\_\_\_\_, the \_\_\_\_\_ of Holladay Village Square, LLC, a Utah limited liability company, personally appeared before me and duly acknowledged to me that he/she executed the same on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

Residing at:  
\_\_\_\_\_

**EXHIBIT A**

**THE DEVELOPER PROPERTY**

### Property Description

Lots 18, 19, 20 and 21, PEONY GARDENS, and commencing at the most Northerly Corner of Lot 22, PEONY GARDENS, South 36 deg 59' East 23.78 feet; thence South 51 deg 25' West 100 feet; thence North 36 deg 59' West 26.56 feet; thence North 53 deg 02' East 100 feet to the place of beginning, according to the official plat thereof, filed in Book "I" of Plats, at Page 75 of the Official Records of the Salt Lake County Recorder.

(22-03-380-006)

**EXHIBIT B**  
**THE RDA PROPERTY**

## LEGAL DESCRIPTION OF PROPERTY

A parcel of land located in the South half of Section 3, Township 2 South, Range 1 East, Salt Lake Base and Meridian.

Beginning at a point on the existing northerly right of way line of Murray-Holladay Road, which point is 3.5 Chains North by record, more or less from the South Quarter Corner of Section 3, Township 2 South, Range 1 East, Salt Lake Base and Meridian; thence S 65°43=00@ W 204.69 feet (204.08 feet by record) along the said existing northerly right of way line of Murray-Holladay Road to the westerly boundary line of Parcel 4 as described in that certain Special Warranty Deed recorded as Entry No. 9068567 in Book 8990 at Page 5100 and on file in the Salt Lake County Recorders Office, Salt Lake County, Utah; thence N 04°45=00@ W 198.03 feet (198.5 feet by record) along said boundary line to the southerly lot line of Lot 24 of Peony Gardens Subdivision, filed as Entry No. 822310 in Book I of Plats at Page 75; thence S 65°43=00@ W 161.98 feet along the southerly lot line of Lots 24 and 25 of said Peony Gardens to the Southwest corner of said Lot 25; thence N 16°03=00@ W 175.39 feet (175.45 feet by record) along the westerly lot line of said Lot 25 to the southerly right of way line of Laney Avenue, which point is on a 327.00-foot radius curve to the left (radius point bears N 15°38=07@ W); thence northeasterly 121.74 feet along the arc of said curve through a central angle of 21°19=53@ (chord bears N 63°41=57@ E 121.04 feet) to a point of tangency; thence continuing along the said southerly right of way line of Laney Avenue N 53°02=00@ E 17.73 feet to the northeast corner of Lot 23 of said Peony Gardens; thence S 36°58=00@ E 106.62 feet along the easterly lot line of said Lot 23; thence N 51°25=00@ E 100.04 feet (100 feet by record) along the northerly line of Parcel 1 as described in the said Special Warranty Deed recorded as Entry No. 9068567, to the existing southwesterly right of way line of Holladay Boulevard; thence S 36°58=00@ E 296.29 feet along said existing southeasterly right of way line of Holladay Boulevard to the intersection with the said existing northerly right of way line of Murray-Holladay Road; thence S 65°43=00@ W 48.32 feet (48.97 feet by record) along said northerly right of way line of Murray-Holladay Road to the point of beginning.

Containing 76,160 square feet or 1.748 acres, more or less.

Less and Excepting the following for future road widening along Murray-Holladay Road and Holladay Boulevard.

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Containing 6,033 square feet or 0.138 acres, more or less.

Balance of remaining area is: 70,127 square feet or 1.610 acres, more or less.

Exhibit G

ESCROW INSTRUCTIONS

JOINT ESCROW INSTRUCTIONS

January \_\_\_\_, 2012

First American Title ("*Escrow Agent*")  
560 South 300 East, Salt Lake City, Utah 84111  
Attn: Jay Thompson

Re: Development Agreement (the "*Development Agreement*") dated as of January \_\_\_\_, 2012 among City of Holladay, a Utah municipal corporation (the "*City*") and the Redevelopment Agency of the City of Holladay (the "*RDA*") and Holladay Village Square, LLC, a Utah limited liability company (the "*Developer*")

Ladies and Gentlemen:

This letter will constitute joint escrow instructions (the "*Instructions*") to the Escrow Agent from the City, the RDA and Developer (the "*Transaction Parties*") as required by Section IV.E of the Development Agreement.

1. *Delivery of Documents.* Delivered to Escrow Agent herewith is an original, fully executed and acknowledged Special Warranty Deed, describing certain real property therein (the "*RDA Property*"), which Special Warranty Deed is being delivered to Escrow Agent (as opposed to the RDA) subject to the contingency set forth in Section IV.E of the Development Agreement relating to Developer's inability to obtain Financing on the date specified therein. Title shall not be deemed to transfer (if at all) to the RDA until such time as the Special Warranty Deed is recorded as permitted pursuant to the Development Agreement and these Instructions. Concurrently with satisfaction of the Recording Conditions (as hereinafter defined) (the "*Closing*"), Escrow Agent shall record the RDA Deed for the benefit of the RDA.

2. *Conditions to Closing.* The following are the conditions to recording the RDA Deed (collectively, the "*Recording Conditions*"):

- A. Escrow Agent shall have received a written notice executed by each of the Transaction Parties (the "*Escrow Notice*") which (i) references these Instructions; (ii) provides the amount of the Development Costs (as defined in the Development Agreement); and (iii) instructs Escrow Agent to record the RDA Deed upon the satisfaction of all other Recording Conditions.
- B. Escrow Agent shall have received by wire transfer from the RDA (i) the amount of the Development Costs provided by the Escrow

Notice and (ii) an amount sufficient to cover all recording fees, costs and expenses of Escrow Agent.

- C. Escrow Agent is in possession of a current title commitment, dated as of the date of Closing, confirming that the RDA Property is free and clear of any liens or encumbrances arising by or as a result of any action of Developer, its contractors or their representatives or agents (unless previously authorized by the RDA or the City) (the "*Non-Permitted Liens*"), and the written confirmation from City and Developer, as reasonably determined by them, that the title commitment does not reflect any Non-Permitted Liens.
- D. Escrow Agent shall have received all other documents reasonably required by Escrow Agent for the Closing, executed by the applicable Transaction Parties.

3. *Escrow Agent's Closing Obligations.* Unless otherwise instructed by the RDA, when all of the foregoing Recording Conditions have been fully met, Escrow Agent shall, on the same day perform each of the following:

- A. record the RDA Deed in the appropriate records of Salt Lake County, State of Utah; and then
- B. disburse the Development Costs to the Developer; and then
- C. provide email confirmation of such recording and disbursement, together with the recording information for the RDA Deed, to the Transaction Parties.

4. *Interest.* If, for any reason, funds are invested by Escrow Agent prior to the Closing, funds shall be invested pursuant to written investment instructions executed by Developer and delivered to Escrow Agent together with an executed Form W-9. All income from the investment of funds will be promptly paid to Developer following the Closing.

5. *Release of RDA Deed.* Notwithstanding any provision of these Instructions to the contrary, should Developer obtain Financing as provided for under the Development Agreement, then immediately upon the closing of such Financing, and upon reasonable evidence thereof, together with a request for the return of the RDA Deed, being provided to Escrow Agent and RDA, Escrow Agent shall return to Developer the RDA Deed, and upon such return, these Instructions shall be deemed terminated.

6. *Notices.* Except for the email notice expressly provided in Section 3, any notice, approval, request, demand, document or other communication which any party is required or may desire to give, deliver or make to any other party pursuant to these Instructions shall be in writing, and shall be (i) personally delivered, (ii) given or delivered by United States registered or certified mail, return receipt requested, or (iii) given by overnight delivery service (e.g., Federal Express), addressed as follows:

To the City and the RDA:

The City of Holladay  
RDA Agency  
Attn: City Manager  
4580 South 2300 East  
Holladay, Utah 84117

To the Developer:

Holladay Village Square, LLC  
Attn: Ken Melby  
4725 Holladay Blvd., #230  
Holladay, UT 84117

To the Escrow Agent:

First American Title  
560 South 300 East  
Salt Lake City, Utah 84111  
801-278-8846

Any party may designate a different address for itself by notice similarly given. Any notice, demand or document shall be deemed to have been given upon actual delivery. Notices hereunder may be given by an attorney for a party hereto.

7. *Amendments.* These Instructions may not be changed, modified, supplemented or terminated, nor may any of the obligations of City, RDA, Developer or Escrow Agent hereunder be waived, except by an instrument executed by the party or parties hereto which are or will be affected by the terms of such instrument.

8. *Counterparts.* These Instructions may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

9. *Duties of Agent.* Escrow Agent agrees to act in good faith in accordance with the terms of these Instructions. If Escrow Agent shall receive any notice from any party hereto objecting to the disposition of any of the documents, funds or other property escrowed pursuant to these Instructions, Escrow Agent shall be entitled to refrain from taking any action until Escrow Agent has received further written instructions executed by all of the Transaction Parties. Escrow Agent shall not be liable hereunder for any error in judgment, mistake of fact or law or act done or omitted in good faith, except to the extent of Escrow Agent's gross negligence or willful misconduct.

Agreed to and accepted:

Attest:

CITY OF HOLLADAY,  
a Utah municipal corporation

By: Stephanie N. Carlson  
City Recorder

By: [Signature]  
City Manager

Approved as to form:

REDEVELOPMENT AGENCY OF THE CITY  
OF HOLLADAY

By: [Signature]  
City Attorney

By: [Signature]  
Its: Chairman

HOLLADAY VILLAGE SQUARE, LLC,  
a Utah limited liability company

By: [Signature]

Name: Kenneth Meloy II

Title: Manager

ESCROW AGENT:

By: \_\_\_\_\_

Name: Jay Thompson

Title: Escrow Officer

Exhibit H

RDA RESOLUTION

REDEVELOPMENT AGENCY OF THE CITY OF HOLLADAY

RESOLUTION No. 2011 – 11

A RESOLUTION AUTHORIZING THE CHAIRMAN OF THE REDEVELOPMENT AGENCY OF HOLLADAY TO EXECUTE A DEVELOPMENT AGREEMENT WITH HOLLADAY VILLAGE SQUARE, LLC, FOR PROPERTY LOCATED AT APPROXIMATELY 4668 SOUTH HOLLADAY BOULEVARD

WHEREAS, the City of Holladay ("Holladay") is a co-owner of certain real property located at approximately 4668 Holladay Boulevard; and

WHEREAS, the City and RDA have received a proposal from Holladay Village Square, LLC, for the development of the City and RDA parcel, together with certain adjacent property; and

WHEREAS, the proposed Development Agreement, once approved and executed, will allow the further development of the Holladay Square.

NOW, THEREFORE BE IT RESOLVED by the Board of Directors of the Redevelopment Agency of the City of Holladay that the Chairman of the Redevelopment Agency of Holladay is authorized to execute the Development Agreement with Holladay Village Square, LLC, for the development of property located at approximately 4668 Holladay Boulevard, attached as Exhibit A, the same is approved.

PASSED AND APPROVED this 8<sup>th</sup> day of December, 2011.

HOLLADAY CITY REDEVELOPMENT AGENCY

By: [Signature]  
Lynn H. Pace, Chairman

[SEAL]

VOTING:

Lynn H. Pace	Yea	<u>X</u>	Nay	___
J. James Palmer, Jr.	Yea	<u>X</u>	Nay	___
Sabrina R. Petersen	Yea	<u>X</u>	Nay	___
Patricia Pignanelli	Yea	<u>X</u>	Nay	___
E. Barry Topham	Yea	<u>X</u>	Nay	___
Dennis R. Webb	Yea	<u>X</u>	Nay	___

ATTEST:

[Signature]  
Stephanie N. Carlson, MMC  
City Recorder