

ITEM IV-A Exhibit I  
EB/MP: 9.3.10  
HTEH/BLB: 9.18.10  
HTEH/BLB 10/7/10

# **CONDOMINIUM UNIT RESERVATION AGREEMENT**

BETWEEN

URBAN RENEWAL AGENCY OF THE CITY OF MERIDIAN,  
aka MERIDIAN DEVELOPMENT CORPORATION,

AND

VALLEY REGIONAL TRANSIT,  
aka VRT

FOR

A CONDOMINIUM UNIT TO BE LOCATED IN A CONDOMINIUM BUILDING TO  
BE CONSTRUCTED ON THE PROPERTY LOCATED AT 200 – 242 E. BROADWAY

**CONDOMINIUM UNIT RESERVATION AGREEMENT**

THIS CONDOMINIUM UNIT RESERVATION AGREEMENT (“**Agreement**”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the Urban Renewal Agency of the City of Meridian, also known as Meridian Development Corporation, a public body, corporate and politic (“**Agency**”), organized pursuant to the Idaho Urban Renewal Law, title 50, chapter 20, Idaho Code, as amended (the “**Law**”), and undertaking projects under the authority of the Local Economic Development Act of 1988 as amended (the “**Act**”), and Valley Regional Transit, a regional public transportation authority organized and existing pursuant to Idaho Code §§ 40-2101 et seq. (“**VRT**”), collectively referred to as the “**Parties**” and each individually as “**Party**,” on the terms and provisions set forth below.

**RECITALS**

**WHEREAS**, Agency is an urban renewal agency created by and existing under the authority of the Law and the Act; and

**WHEREAS**, the City Council of the City of Meridian, Idaho (the “**City**”), after notice duly published, conducted a public hearing on the Meridian Revitalization Urban Renewal Plan (the “**Meridian Revitalization Plan**”); and

**WHEREAS**, Agency adopted the Meridian Revitalization Plan through Ordinance 02-987 dated October 8, 2002; and

**WHEREAS**, in order to achieve the objectives of the Meridian Revitalization Plan, Agency is authorized to acquire real property for the revitalization of areas within Agency’s boundaries; and

**WHEREAS**, the Board of Commissioners of Agency (“**Agency Board**”) adopted Resolutions No. 07-045 and 07-046 on September 12, 2007, authorizing the purchase of certain real property located at 200, 226, 234, & 242 E. Broadway Ave, which is more particularly described in Exhibit A to this Agreement (the “**Site**”), in order to achieve the objectives of the Meridian Revitalization Plan; and

**WHEREAS**, Agency seeks to initiate a project to revitalize the Site in compliance with the Meridian Revitalization Plan through the redevelopment of the Site, which could also serve as a catalyst for redevelopment of other properties in the vicinity; and

**WHEREAS**, Agency plans on developing and constructing a condominium project on the Site consisting of an office building and related improvements and the construction of a parking lot on an adjacent parcel (the “**Project**”); and

**WHEREAS**, the Parties contemplated the condominiumizing of the Site; and

**WHEREAS**, Agency agrees to reserve certain condominium units for VRT and VRT agrees to purchase said condominium units, subject to the terms and conditions set forth below.

**NOW, THEREFORE**, Agency and VRT hereby agree as follows:

### **AGREEMENTS**

#### **1. RESERVATION FEE**

For consideration in the sum of \$100.00 (the “**Reservation Fee**”) paid to Agency, receipt of which is hereby acknowledged, Agency, as Seller, agrees to hold in reservation for VRT, as Buyer, Condominium Unit No. 2 and an interest in Condominium Unit No. 3 (collectively, the “**Units**”), each to be constructed as a condominium unit (as defined in Idaho Code §55-1503) within a condominiumized office building (the “**Building**”), as part of a proposed condominium

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project (as defined in Idaho Code §55-1503) to be known as the “**Meridian Development Corporation Condominium,**” to be located on the Site (such condominium project being hereinafter referred to as the “**Condominium**” and all of the condominium units being hereinafter referred to, collectively, as the “**Condominium Units**”). A draft Design and Concept Plan for the Condominium is set forth in Exhibit B attached to this Agreement.

Also shown on Exhibit B attached hereto, is a parking lot to be constructed by Agency on an adjacent parcel owned by Agency (the “**Parking Lot**”). The Parking Lot is considered by the Parties to be a critical part of the Project, as an improvement to provide parking for the Condominium. Accordingly, it shall be an obligation of Agency, as a condition to any obligation of VRT to purchase the Units, to complete the Parking Lot on or before the closing of the purchase of the Units by VRT, so that VRT may use the same as set forth in the Parking Spaces Use Agreement (defined below). Completion of the Parking Lot shall include, without limitation, the pavement by Agency, at Agency’s expense, of the alley way between the Parking Lot and the Condominium.

It is contemplated that VRT will own all of Unit No. 2 and an undivided \_\_\_% interest in Unit No. 3, with the remaining \_\_\_% undivided interest in Unit No. 3 to be owned by the Community Planning Association of Southwest Idaho, an Idaho Non-Profit Association consisting of several public bodies and organized pursuant to Idaho Code §§ 67-2326-2330 (“**COMPASS**”), as further set forth below.

It is contemplated that the name of the Condominium and/or the Building may change, as determined appropriate by Agency, VRT and COMPASS.

The location and rough dimensions of the Units and the Condominium are generally depicted on the floor plan included in the draft Design and Concept Plan attached to this Agreement as Exhibit B (the rough dimensions are for identification purposes only, and are subject to revision and final official description on the condominium plat for the Condominium). Attached hereto as Exhibit C is a narrative description of the major design components of the Units and the amenities to be provided by Agency and included in the proposed Purchase Price (defined below) of the Units.

The Reservation Fee shall be held by Agency and shall not accrue interest. The Reservation Fee is separate consideration for the reservation right granted by Agency to VRT herein, but shall be credited against the Purchase Price of the Units.

## **2. PROPOSED UNITS**

The Condominium Units will be legally described in the final plat for the Condominium, to be recorded in the Official Records of Ada County, Idaho (the “**Condominium Plat**”). The Parties agree that the Condominium Plat shall depict three (3) Condominium Units, consisting of two (2) office use units (one of which is Unit No. 2 to be owned by VRT; the other of which is Unit No. 1 to be owned by COMPASS) (collectively, the “**Office Units**”) and one (1) meeting room unit (Unit No. 3, also referred to herein as the “**Meeting Room Unit**”) (to be owned with by VRT and COMPASS in the undivided ownership interests as set forth herein).

When the Condominium Plat has been recorded, the legal description for the Units, as set forth in the recorded Condominium Plat, shall be the correct actual legal descriptions for the Units, and the same shall be the legal descriptions used in the deed conveying the Units. Any legal descriptions for the Units as set forth in this Agreement, as of the date of full execution

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hereof, are preliminary and shall be deemed to be revised and completed, as appropriate, to correspond with the matching legal descriptions set forth in the Condominium Plat concurrently with the recordation thereof. Upon recordation, the Condominium Plat shall be incorporated herein by this reference thereto.

Unit No. 2 shall have approximately \_\_\_\_\_ square feet of floor area. Unit No. 3 shall have approximately \_\_\_\_\_ square feet of floor area. VRT will purchase an undivided \_\_\_\_% interest (approximately \_\_\_\_ square feet) in Unit No. 3. The total approximate square footage of floor area in Unit No. 3 being purchased by VRT shall be \_\_\_\_\_ square feet. The Units shall be constructed with the materials and include the amenities as set forth in Exhibit C attached hereto.

**3. PROPOSED PURCHASE PRICE; CHANGE ORDER; DELAY**

The purchase price to be paid by VRT for the Units (the “**Purchase Price**”) shall be in the total amount of Eight Hundred Fifty Thousand and No/100 Dollars (\$850,000.00). The Purchase Price shall be inclusive of all closing costs, escrow costs, recording fee, brokerage fees, and all other costs.

Any change order shall not affect the Purchase Price, but shall be subject to the following:

- (a) Any change order requested by VRT that increases the cost of design and construction for the Project above the amount of the public works contract between Agency and the public works contractor awarded the contract to construct the Project, will be charged back by Agency to VRT, and paid by VRT within thirty (30) days after its receipt of an invoice for same, which invoice shall include sufficient detail supporting the charge back.

(b) Subject only to (a), Agency shall bear the risk of any cost of the design and construction for the Condominium that exceeds the cost allocable to the Condominium as set forth on the “**Condominium Allocable Costs**” attached hereto as Exhibit D, which amount the Parties acknowledge and agree as being \$1,829,214.70 (the “**Condominium Cost Amount**”), as was established by the “**Lemley Associates Estimate**” attached hereto as Exhibit D-1, allocating only the costs attributable to the Condominium.

(c) In consideration of Agency assuming the risk of a cost overrun, any cost savings that reduces the actual cost of the design and construction for the Condominium below the Condominium Cost Amount up to a savings amount of \$100,000 shall accrue to Agency.

(d) Any further cost savings on the Condominium of more than \$100,000 shall be shared amongst Agency, VRT and COMPASS as follows: 50%-Agency; 25%-VRT; and 25%-COMPASS.

#### **4. AGENCY’S OBLIGATIONS**

Agency agrees, once the building plans are completed in the manner described herein, to prepare, in conformity with Idaho Code §§ 55-1501 et seq., the proposed Condominium Plat, Condominium Declaration and Condominium By-Laws (collectively, the “**Condominium Documents**”). The proposed Condominium Documents, together with a proposed final form of the Real Estate Purchase and Sale Agreement (the “**Purchase and Sale Agreement**”) and a proposed final form of the Parking Spaces Use Agreement shall be delivered by Agency to VRT, for VRT’s review and approval. The proposed Purchase and Sale Agreement shall be in form

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substantially the same as that attached hereto as Exhibit E. The proposed Parking Spaces Use Agreement shall be in form substantially the same as that attached hereto as Exhibit F.

VRT shall have thirty (30) calendar days after receipt of all of (i) the proposed Condominium Documents, (ii) the final proposed Purchase and Sale Agreement and (iii) the final proposed Parking Spaces Use Agreement (the “**Review Period**”) to review the same. If VRT approves all of the same on or before the expiration date of the Review Period, Agency shall submit the Condominium Plat to the appropriate governmental authorities for approval, and upon such approval Agency shall cause the Condominium Plat to be recorded. Upon recordation of the Condominium Plat, Agency shall give VRT written notice thereof (the “**Plat Recordation Notice**”), together with a copy of the recorded Condominium Plat (and a copy of the recorded Condominium Declaration which will be recorded concurrently with the Condominium Plat) and two (2) original counterparts of the approved Purchase and Sale Agreement as executed by Agency. Upon receipt of the Plat Recordation Notice and copies of the recorded Condominium Plat and the recorded Condominium Declaration, VRT shall execute both counterpart originals of the Purchase and Sale Agreement, retaining one (1) fully executed counterpart for itself, and delivering the other to Agency, whereupon the Purchase and Sale Agreement shall take effect according to its terms and conditions, and the Parties shall proceed accordingly.

If VRT does not approve of all of the Condominium Documents, the Purchase and Sale Agreement and the Parking Spaces Use Agreement prior to the expiration of the Review Period, the Reservation Fee shall be forfeited and shall be the property of Agency, and this Agreement and Agency’s obligation to reserve the Units shall terminate, whereupon neither Party shall have any further obligation or recourse under this Agreement, subject only to Section 5, below. The

immediately forgoing sentence sets forth the sole and exclusive remedy of Agency under this Agreement for any failure of VRT to perform any of its obligations under this Agreement.

Notwithstanding anything elsewhere to the contrary, in the event that VRT has not received the Plat Recordation Notice from Agency within one hundred eighty (180) days after the date of full execution of this Agreement, at any time after said 180-day period, but only if prior to VRT's receipt of the Plat Recordation Notice from Agency, VRT shall be entitled to give Agency written notice of termination of this Agreement (the "**Notice of Termination**"), whereupon this Agreement shall terminate, the Reservation Fee (and any other fee or deposit paid or made by VRT, if any) shall be refunded to VRT, and thereafter neither party shall have further obligation or recourse under this Agreement.

## **5. VRT NON-APPROVAL**

VRT agrees that if it does not approve of all of the Condominium Documents, the Purchase and Sale Agreement and the Parking Spaces Use Agreement within the Review Period, for any reason other than the default of Agency, VRT shall pay to Agency VRT's pro-rata share of only the actual out-of-pocket Building design costs incurred by Agency up to the expiration date of the Review Period (Agency shall be responsible for any site design costs). For purposes of the foregoing, the Parties agree that VRT's pro-rata share of Building design costs shall be fifty percent (50%). Any of the Reservation Fee or any other fee or deposit paid or made by VRT, if any, to be retained by Agency shall be credited against VRT's pro-rata share.

## **6. DEVELOPMENT CONCEPT**

### **6.a. Design and Concept Plan**

Exhibit B attached hereto contains Agency's proposed Design and Concept Plan for the Condominium. By execution of this Agreement, VRT and Agency approve the Design and Concept Plan. The Parties agree that their execution of this Agreement also marks the completion of the first of the three review stages contemplated by the Exclusive Negotiation Agreement: (1) the "**Design and Concept Plan**" stage; (2) the "**Design Development Plan**" stage; and (3) the "**Construction Plans and Documents**" stage.

**6.b. Design Development Plan**

Agency and VRT shall refine and supplement the Design and Concept Plan and shall work together toward successful completion of the second review stage and agreement on a Design Development Plan, which shall culminate in the obtaining by Agency of all required permits from the City after proceeding through any required conditional use and/or design review process. Prior to the submittal of the Design Development Plan to the City, VRT, a principal representative or representatives from the Agency's architectural design firm ("**Principal Designer**") and Agency shall engage in a process to address design-related issues identified by Agency and VRT ("**Design Refinement**"). Agency and VRT shall coordinate with the Principal Designer to prepare the Design Development Plan which shall include square footage by type of uses, number of parking spaces including number of parking spaces which are expected to be available for use by the general public and by the owners of the Condominium Units, perspective renderings, floor plans, site plan, and elevations/sections. The Design Development Plan shall also include a narrative description, a statement of any proposed phasing, and a critical path analysis identifying key milestones in the planning and construction stages.

As a further part of the Design Refinement process, prior to finalization of the Design Development Plan, Agency, VRT and the Principal Designer shall also engage with COMPASS (the holder of a reservation right for the other Office Unit and the remaining undivided interest in the Meeting Room Unit) in a design workshop or series of design discussions to address design-related issues (“**Design Issues**”) as identified by Agency, VRT and COMPASS for resolution prior to finalization of the Design Development Plan. Agency, VRT and COMPASS shall each prepare a list of the Design Issues to be addressed in the Design Refinement process. Agency, VRT and COMPASS shall reach mutual agreement on how to proceed regarding the Design Issues. The Design Development Plan, after it is approved by all of Agency, VRT and COMPASS, shall be submitted to the City for its approval. Agency’s approval of the Design Development Plan is contingent upon approval of the same by each of VRT and COMPASS.

**6.c. Condominium Platting**

The Parties acknowledge that the Condominium will need to be platted and part of the design process will entail engaging a engineering professional and certified land surveyor to set forth the metes and bounds of the condominium units and the common areas, and otherwise prepare the Condominium Plat so that the Condominium can be platted in compliance with local and state laws and ordinances. This task will occur during the Design Development Phase. Agency will procure the services of the professional to provide any such services. Further, the Parties acknowledge that special legal counsel may be necessary to draft the Condominium Documents and other necessary documents required to effectuate this Agreement. Agency will procure the services of special legal counsel to undertake these tasks.

**6.d. Construction Plans and Documents**

Agency and VRT shall coordinate with the Principal Designer to prepare Construction Plans and Documents which shall consist of all construction drawings and documents required by the City for the issuance of a building permit or permits. The Construction Plans and Documents shall include, without limitation, specifications and a project manual that follow and incorporate the Federal Clauses (defined below). The Construction Plans and Documents shall also include, without limitation, the various schedules for approvals, construction start and completion dates, and so forth, as determined appropriate by the Parties. The Construction Plans and Documents shall be reviewed and approved by the Parties, such approval not to be unreasonably withheld, conditioned or delayed. Each Party's approval of the Construction Plans and Documents is contingent upon approval of the same by the other Party.

#### **7. PROGRESS REPORTS**

Upon reasonable notice, as from time to time reasonably requested, Agency agrees to make oral and written progress reports advising VRT on all matters and all studies being made by Agency and the work being performed by the Principal Designer. Agency shall cooperate fully in providing VRT with appropriate information to implement this Agreement.

#### **8. REGULATIONS; FEDERAL CLAUSES; LOCAL MATCH**

Agency shall comply with all applicable federal, state and local municipality regulations in preparing plans and documents, obtaining permits and all construction work related to the Project. All applicable contracts and documents shall include FTA required language/clauses (the "**Federal Clauses**") so as to make them eligible for procuring goods and services with Federal funds. Agency is donating the land upon which the Project is located as income match for purposes of obtaining Federal funds.

**9. ENVIRONMENTAL CONDITION**

VRT acknowledges that prior to its execution hereof, it has previously received from Agency and has reviewed copies of certain environmental reports of the Site, consisting of a Phase One & Two Environmental Assessments prepared by Gem Environmental, which Assessments show the portion of the Site upon which the Condominium is located to be free and clear of hazardous waste, substances or materials. Agency, at Agency expense, shall cause such Assessments to be certified to Agency, VRT and COMPASS as part of Agency's obligation under this Agreement.

**10. MERIDIAN REVITALIZATION PLAN**

This Agreement and any future agreements between the Parties concerning the Condominium are subject to the provisions of the Meridian Revitalization Plan, as it may be amended. The Meridian Revitalization Plan is hereby incorporated herein by reference and made a part hereof as though fully set forth herein. The Meridian Revitalization Plan references certain planning documents which have been prepared and adopted by Agency, including, without limitation, the following: Downtown Streetscaping Standards, as updated and approved by Agency dated March, 2007, or as thereafter amended.

**11. REAL ESTATE COMMISSIONS**

Each Party, by its execution hereof, represents and warrants that it has not dealt with or contracted with any broker, agent or finder to act in its behalf in connection with this transaction except for Colliers International ("**Broker**"), who was retained by and represents VRT. Notwithstanding that Broker was retained by VRT, Agency agrees that the brokerage fee due to Broker shall be included in the Purchase Price and not in addition to the Purchase Price, and that

said fee shall be paid to Broker by the escrow holder out of the proceeds of the Purchase Price at closing. The brokerage fee shall be in an amount calculated at 4% of the Purchase Price. The Purchase Price being \$850,000, the brokerage fee is \$34,000. Subject to the foregoing, each Party agrees to hold harmless the other Party from any claim from any broker, agent or finder arising from (i) any misrepresentation by the indemnifying Party pursuant to this Section 11 or (ii) any claim from any broker, agent or finder engaged by the indemnifying Party.

**12. LIMITATIONS**

Execution of this Agreement by Agency and VRT does not constitute a disposition of property by Agency.

**13. SUSTAINABLE DESIGN AND LEED CERTIFICATION**

VRT and Agency shall cooperate in exerting commercially reasonable best efforts to obtain a LEED Certification for the Building; provided, however, that any consideration required of VRT with respect to such cooperation has been factored into the Purchase Price and any such cooperation by VRT shall be at no additional cost, expense or liability to VRT.

**14. OVERALL COORDINATION WITH ADJACENT DEVELOPMENT**

VRT and Agency shall discuss appropriate participation, if any, and overall connection and coordination with any adjacent development within the Meridian Revitalization Plan area; provided, however, that the same shall be at no additional cost, expense or liability to VRT.

**15. IMPACT FEES**

The Parties acknowledge that the Condominium may be assessed impact fees by the City and ACHD. The Parties agree to cooperate in the preparation of the individual assessment for ACHD and to support presentation of the individual assessment to ACHD. Any impact fees and

the cost of any individual assessment shall be the sole responsibility of Agency, without contribution from VRT.

**16. BOND COUNSEL REVIEW**

Agency and VRT recognize and acknowledge that Agency's prior acquisition of the Site was financed through the issuance of a tax-exempt note and that Agency may finance the construction of the Condominium and/or the Parking Lot with a tax-exempt note. Agency and VRT agree to inform and communicate with Bond Counsel to Agency to determine whether the redevelopment of the Site as contemplated herein will require any modification of the documents concerning the acquisition financing or require any additional activity by Agency before the construction of the Condominium on the Site. The cost of bond counsel review shall be paid by Agency.

**17. DEFAULT**

Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations (or breached any of its representations or warranties) under this Agreement unless such party, prior to expiration of said thirty (30) day period has rectified the particulars specified in said notice of default; provided, however, that if the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) days period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

**18. NOTICES**

Formal notices, demands, and communications between Agency and VRT shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested to the principal offices of Agency and VRT as set forth below. Routine communication may be by first class mail, E-mail, facsimile or telephone.

Agency

Meridian Development Corporation  
33 E. Broadway Ave.  
Meridian, ID 83642  
Attn: Ashley Ford  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

VRT

Valley Regional Transit  
830 N. Main Street  
Meridian, Idaho 83642  
Attention: Kelli Fairless  
Phone: (208) 846-8547 x4212  
E-mail: kfairless@valleyride.org

**19. RECORDATION**

The Parties acknowledge that neither this Agreement nor a memorandum thereof shall be recorded.

**20. FORCE MAJEURE**

Time periods provided for performance of the obligations set forth in this Agreement shall be extended for a period or periods of time equal to any period or periods of delay caused by strikes, lockouts, fire, or other casualty, litigation by third parties, the elements or acts of God, or other causes, other than financial, beyond the reasonable control of the Party having the relevant obligation.

**21. SUCCESSORS AND ASSIGNS**

No Party may assign or delegate its obligations under this Agreement without the consent of the other Party hereto, which consent may be withheld in the discretion of that Party. Except as otherwise set forth in this Agreement, the terms, covenants, conditions, and agreements contained herein shall be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of the Parties.

**22. NUMBER AND GENDER**

In constructing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

**23. NO THIRD-PARTY BENEFICIARY**

This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third-party beneficiary rights in any person not a Party hereto unless otherwise expressly provided herein.

**24. COUNTERPARTS; FACSIMILE**

This Agreement may be executed in counterparts, and each counterpart shall then be deemed for all purposes to be an original, executed agreement with respect to the Parties whose signatures appear thereon. Facsimile transmission of any signed original of this Agreement, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original and shall be binding upon the parties.

**25. MERGER CLAUSE**

This Agreement, along with any and all Exhibits, attached hereto and incorporated herein

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by reference, contains the entire Agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

## **26. MISCELLANEOUS PROVISIONS**

Each Party represents and warrants that each person executing this Agreement on behalf of such Party is, at the time of such execution, duly authorized to do so by such Party's governing body, and is fully vested with the authority to bind such party in all respects.

If any provision of this Agreement is held invalid, illegal, or unenforceable, the remainder shall be construed to conform to the intent of the parties, and shall survive the severed provisions.

The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

The Parties shall in all instances cooperate and act in good faith in compliance with the terms, covenants and conditions of this Agreement and each shall deal fairly with the other.

Each Party shall cooperate fully with the other and execute such further instruments, documents and agreements and give such further written assurances, as may be reasonably requested by the other to better evidence and reflect the transactions described herein and contemplated hereby, and to carry into effect the intents and purposes of this Agreement.

In any suit, action or appeal therefrom to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees. Except as provided in the foregoing, and except as otherwise specifically

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provided herein, regardless of whether the transaction contemplated by this Agreement is consummated, each respective Party shall be responsible for its own legal, accounting, and other professional fees incurred in relation to this Agreement or the transaction contemplated by this Agreement.

This Agreement shall not be modified or otherwise amended except in writing signed by all of the Parties.

The terms, conditions, covenants, representations of warranties set forth in this Agreement shall survive the closing of VRT's purchase of the Units from Agency.

Nothing contained in this Agreement shall be deemed or construed as creating an employer/employee relationship between the Parties, a partnership or joint venture between or among the Parties, or with any other party, or cause any Party to be responsible in any way for the obligations of any other Party or non-party.

If the date for delivery of a notice or performance of some other obligation of a Party falls on a Saturday, Sunday or legal holiday in the State of Idaho, then the date for such notice or performance shall be postponed until the next business day

This Agreement shall be governed by the laws of the State of Idaho.

## **27. RIGHT OF FIRST OFFER**

To be set forth in a separate agreement to be recorded against the Parking Lot, shall be the grant by Agency to VRT and COMPASS of a joint right of first offer (“**Right of First Offer**”) to purchase the Parking Lot. The legal description of the Parking Lot is set forth in Exhibit F attached hereto. The Right of First Offer will set forth the process for determining how one or both of VRT and COMPASS will acquire the Parking Lot and shall include, among other

things, the following terms and conditions:

(a) In the event Agency determines to sell the Parking Lot, Agency shall give concurrent notice (“**Offer Notice**”) to VRT and COMPASS (collectively, the “**Offeree**”). The Offer Notice shall either (i) include all the material terms and conditions under which Agency is willing to sell the Parking Lot to Offeree, or (ii) set forth that Agency has elected to ask Offeree to make an offer to purchase the Parking Lot.

(b) VRT and COMPASS shall each have forty-five (45) days after receipt of the Offer Notice to elect to decline or exercise the Right of First Offer. If both elect to exercise, then VRT shall be entitled to pursue a \_\_\_% undivided interest as a tenancy in common and COMPASS shall be entitled to pursue a \_\_\_% undivided interest as tenancy in common in the Parking Lot, and Agency, VRT and COMPASS shall proceed accordingly with negotiations. If only one of VRT or COMPASS timely elects to exercise the Right of First Offer, then only the party electing to exercise shall be entitled to pursue the acquisition of the entire Parking Lot on its own behalf, free and clear of any further interest of the non-electing party in the Parking Lot. If neither of VRT or COMPASS timely elect to exercise the Right of First Offer within the time provided, the Right of First Offer shall automatically expire, shall be without further force or effect, and Agency may proceed free and clear of the Right of First Offer; provided, however, that the Parking Spaces Use Agreement shall continue in full force and effect.

(c) If Agency and Offeree (VRT and/or COMPASS, as the case may be) are unable, despite good faith efforts, within ninety (90) days after Agency receipt of Offeree’s notice of election to exercise the Right of First Offer (as measured from the date of the last such notice if both VRT and COMPASS respond), to reach final written agreement regarding the

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terms and conditions of the proposed sale, the Right of First Offer shall automatically expire, and shall be without further force or effect, and Offeree, upon request from Agency, shall execute and deliver in recordable form any necessary release; provided, however, that expiration shall be effective upon its occurrence, and is not conditioned upon such release being either obtained or recorded. Upon such expiration, Agency shall be entitled to thereafter proceed with the Parking Lot, as determined appropriate by Agency, free and clear of any interest of Offeree under the Right of First Offer; provided, however, that the Parking Spaces Use Agreement shall continue in full force and effect.

(d) The Right of First Offer shall be a one time right with respect to the Parking Lot.

(e) The Right of First Offer shall commence upon the date of the recordation of the separate agreement (which shall be concurrent with the closing of the Units) and shall continue until it is exercised or it expires.

## **28. PARKING SPACES USE AGREEMENT**

As a condition to the performance by VRT of its obligations under this Agreement, Agency shall provide VRT, its agents, customers, employees and invitees, \_\_\_\_\_ (\_\_\_) parking spaces to be located on the Parking Lot, subject to the terms and conditions of the Parking Spaces Use Agreement, attached hereto as Exhibit F, to be executed by the Parties at closing.

## **29. REVIEW OF TITLE**

Notwithstanding that the Purchase and Sale Agreement shall not be executed and enforceable until after the Plat Recordation Notice, the Parties desire to attend to the review of

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the condition of title to the Units prior to such time, to expedite same, and hereby agree that within ten (10) day after the date of full execution of this Agreement, Agency shall cause Escrow Agent (as defined in the Purchase and Sale Agreement) to provide VRT and Agency with a preliminary commitment for title insurance, with legible copies of all documents identified in Schedule B thereof (the “**Commitment**”), covering the Units. VRT shall have thirty (30) days from its receipt of the Commitment in which to notify Agency in writing of any objections to the matters contained therein. VRT shall have thirty (30) days following its receipt of any supplemental or amended Commitment to object to any new matters contained therein not theretofore contained in the original or a supplemented or amended Commitment. If VRT fails to timely object in writing as provided above, VRT shall be deemed to have approved the condition of title to the Units as set forth in the Commitment or the supplemented or amended Commitment, as the case may be.

If VRT objects to Agency’s title, Agency shall at its sole expense promptly proceed to remove all liens, encumbrances or title exceptions objected to by VRT prior to expiration of the Review Period (as defined in Section 4 of this Agreement) and shall provide a date-down Commitment to VRT evidencing removal of the objectionable items. If Agency fails to remove any lien, encumbrance or title exception objected to by VRT, VRT may declare Agency to be in default of this Agreement or may extend the Review Period for a period not to exceed thirty (30) days to permit Agency to cure any title defects. The condition of title as approved by VRT and as set forth in the date-down Commitment shall be the condition of title that Agency shall be obligated to deliver to VRT at the closing of VRT’s purchase of the Units.

Notwithstanding anything in the foregoing or elsewhere to the contrary, from and after the date of full execution of this Agreement, Agency shall not cause or permit the Units to be subjected to any liens, encumbrances or other exceptions to title, as caused or created by Agency or arising from any Agency act or omission, without the prior written consent of VRT, which consent shall not be unreasonably withheld. On or before the closing of VRT's purchase of the Units, Agency shall cause to be released of record any and all consensual monetary encumbrances secured by the Units and either caused, created, assumed or taken subject to by Agency or arising from any act or omission of Agency. As such, VRT shall have no obligation to object to and, in no event shall VRT be deemed to have approved, as a Permitted Exception (defined below), any consensual monetary encumbrances secured by the Units as caused or created by Agency or arising from any Agency act or omission.

Agency shall within a reasonable time after the closing of VRT's purchase of the Units, furnish to VRT a standard policy of title insurance policy in the amount of the Purchase Price, showing marketable and insurable title subject only to the Permitted Exceptions. If VRT elects to extend the Review Period or the Closing (as defined in the Purchase and Sale Agreement), Agency agrees to correct all meritorious objections to the Commitment, to the end that a policy of title insurance, subject only to the Permitted Exceptions, can and will be delivered to VRT.

Agency shall pay for the cost of a standard policy of title insurance. The cost of any extended coverage title insurance shall be at the option and expense of VRT.

### **30. FINANCING CONTINGENCY**

The Parties acknowledge that Agency will need to obtain financing for the Project and that, in the event Agency is unable to obtain financing for the Project, it will not be able to

construct the Project. Notwithstanding anything elsewhere to the contrary, in the event that Agency, using its best reasonable efforts, has not obtained sufficient financing to construct the Project by November 15, 2010, Agency shall be entitled to give VRT written notice of termination of this Agreement (the “**Notice of Termination**”), whereupon this Agreement shall terminate; provided, however, that as precedent conditions to such termination, (i) the Reservation Fee (and any other fee or deposit paid or made by VRT, if any) shall be refunded to VRT, and (ii) Agency shall pay to VRT an amount equal to its out of pocket costs and expenses, including, without limitation, reasonable attorney’s fees (such costs, expenses and/or attorney’s fees not to exceed a cap of \$ \_\_\_\_\_), actually incurred by VRT in relation to its negotiation of this Agreement and its pursuit of the Units up to and including the date of its receipt of the Notice of Termination. When such refund and payment have been made, this Agreement shall terminate and thereafter neither party shall have further obligation or recourse under this Agreement.

### **31. LIMITATION ON RIGHT TO SELL UNITS**

The Parties acknowledge that Agency seeks to finance this Project with a tax exempt loan. If Agency funds this Project with a tax exempt loan, VRT agrees, to the extent permitted by law, that it shall not sell its interest in the Units for a period of \_\_\_\_\_ (\_\_\_) years from the date of VRT’s closing of its purchase of the Units, or until VRT receives notice from Agency that Agency has retired all debt owed on the tax exempt loan related to the Units, whichever occurs first.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set opposite their signatures. The effective date of this Agreement shall be the date of the

signature of the last Party to sign.

\_\_\_\_\_, 2010

**THE URBAN RENEWAL AGENCY OF  
THE CITY OF MERIDIAN, IDAHO,  
aka MERIDIAN DEVELOPMENT  
CORPORATION**

By \_\_\_\_\_  
Larry Lipschultz, Chairman

By \_\_\_\_\_  
\_\_\_\_\_, Secretary

\_\_\_\_\_, 2010

**VALLEY REGIONAL TRANSIT**

By \_\_\_\_\_  
By: Kelli Fairless  
Its: \_\_\_\_\_

Attest \_\_\_\_\_  
Secretary

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, \_\_\_\_\_, the undersigned notary public in and for said county and state, personally appeared Larry Lipschultz, known or identified to me to be the Chairman of the Urban Renewal Agency of the City of Meridian, also known as the Meridian Development Corporation, the public body, corporate and politic, that executed the within instrument on behalf of said Agency, and acknowledged to me that such Agency executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
Commission Expires \_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, \_\_\_\_\_, the undersigned notary public in and for said county and state, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of Valley Regional Transit that executed the within and foregoing instrument, and acknowledged to me that said public entity executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
Commission Expires \_\_\_\_\_

**EXHIBITS:**

- Exhibit A: Legal Description of the Site
- Exhibit B: Design and Concept Plan with Floor Plan of Unit/Draft
- Exhibit C: Narrative Description of Materials and Amenities
- Exhibit D: Condominium Allocable Costs
- Exhibit D-1: Lemley Associates Estimate
- Exhibit E: Real Estate Purchase and Sale Agreement
- Exhibit F: Parking Lot Use Agreement

**Exhibit A**

**SITE DESCRIPTION**

**Exhibit B**

**DESIGN AND CONCEPT PLAN WITH FLOOR PLAN OF UNIT/DRAFT**

**Exhibit C**

**NARRATIVE DESCRIPTION OF MATERIALS AND AMENITIES**

**Exhibit D**

**CONDOMINIUM ALLOCABLE COSTS**

**Exhibit D-1**

**LEMLEY ASSOCIATES ESTIMATE**

**Exhibit E**

**REAL ESTATE PURCHASE AND SALE AGREEMENT**

**Exhibit F**

**PARKING LOT USE AGREEMENT**