

# ***DEVELOPMENT AGREEMENT***

**BY AND BETWEEN**

**THE MERIDIAN DEVELOPMENT CORPORATION**

**AND**

---

\_\_\_\_\_, 2019

**Civic Block Re-Development Project**

**\*\*\*This is a general form Development Agreement provided for informational purposes, so parties interested in submitting a response to the RFP can better understand the potential agreement that will be required by MDC. The unique aspects of the successful proposal, if any, would be incorporated into this form agreement. Some of the terms and conditions contained in this general form may not be applicable to a selected proposal. \*\*\***

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("DA") is entered into as of the \_\_\_ day of \_\_\_\_\_, 2018, by and between the MERIDIAN DEVELOPMENT CORPORATION, the urban renewal agency for the City of Meridian ("City"), an independent public body, corporate and politic, organized and existing under the urban renewal laws of the State of Idaho (the "Agency") and \_\_\_\_\_, an Idaho \_\_\_\_\_ (referred to as "Participant"). Agency and Participant are collectively referred to as "Parties."

### *RECITALS*

WHEREAS, the MDC, an independent public body, corporate and politic, is an urban renewal agency created by and existing under the authority of and pursuant to the Idaho Urban Renewal Law of 1965, being Idaho Code title 50, chapter 20, as amended and supplemented, and the Local Economic Development Act of 1988, being Idaho Code, Title 50, Chapter 29; as amended and supplemented (collectively the "Act");

WHEREAS, the MDC was established by Resolution No. 01-367 of the City Council of the City of Meridian, Idaho (hereinafter the "City Council"), adopted July 24, 2001;

WHEREAS, the City Council of the City of Meridian, Idaho (the "City"), on October 8, 2002, after notice duly published, conducted a public hearing on the Meridian Revitalization Plan (the "Plan");

WHEREAS, following said public hearing the City adopted its Ordinance No. 02-987 on December 3, 2002, approving the Revitalization Plan and making certain findings;

**\*\*\* MDC anticipates it will add a number of recitals including recitals describing the RFP process, the selection, the successful proposal, description of the applicable properties etc. \*\*\***

NOW, THEREFORE, based upon the mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the Agency and the Participant agree as follows:

I. SUBJECT OF AGREEMENT

A. Development Agreement

The purpose of this DA is to effectuate the Plan and a portion of the Meridian Urban Renewal Project (the "Urban Renewal Project") by providing for transfer of the \_\_\_\_\_ Property to Participant following and contingent upon the transfer of said property from the City to MDC. The transfer of said property to the Participant and will \_\_\_\_\_ be \_\_\_\_\_ under \_\_\_\_\_ the \_\_\_\_\_ following terms: \_\_\_\_\_

The above noted recitals are hereby incorporated into this Agreement as if set forth fully herein.

The term of this Agreement shall be through \_\_\_\_\_ 20\_\_ or until the redevelopment of the \_\_\_\_\_ Property is/are completed, whichever occurs first. This DA may be earlier terminated by the parties as provided herein and portions of this DA pertaining to the obligations of Participant shall survive expiration and termination of this DA.

B. The Plan

This Agreement is subject to the provisions of the Plan, initially approved by the City Council, pursuant to Ordinance No. 02-987 on December 3, 2002.

C. The Properties

The \_\_\_\_\_ Property Site is/are located within the Urban Renewal Project Area. The more specific legal descriptions for the respective properties are attached to this Agreement as Exhibits A and B. The above noted properties may be referred to as the "Site."

D. Agency Participation Policy

Generally, the Agency has agreed to financially participate with a private developer when such participation, in the Agency's complete discretion, achieves and conforms with the goals and objectives of the Plan and the law, is not duplicative of other public entity funding, does not replace or substitute for the obligations imposed by other governmental agencies on the Participant, when funding is available and where the applicable project is a priority for the Agency.

E. Parties to This Agreement

1. The Agency

The Agency is an independent public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Idaho Urban Renewal Law of the State of Idaho, Title 50, Chapter 20, Idaho Code, and the Local Economic Development Act, Title 50, Chapter 29, Idaho Code. The mailing address of the Agency is 104 E. Fairview Ave., #239, Meridian, Idaho 83642. "Agency," as used in this Agreement, includes the Meridian Development Corporation and any assignee or successor to its rights, powers, and responsibilities.

## 2. The Participant

The Participant is \_\_\_\_\_. The principal address to be used for the Participant is \_\_\_\_\_.

Whenever the term "Participant" is used herein, such term shall include any permitted nominee, assignee, purchaser, or successor in interest as herein provided. The Participant represents and warrants that their undertakings pursuant to this Agreement are and will be used for the purpose of the timely development and/or redevelopment of the Site and not for speculation in land holding. The Participant further recognizes that in view of: (1) the importance of the Site to the general health, safety and welfare of the community; (2) the reliance by the Agency on the reputation, past experience with and the business expertise of the Participant and the continuing interest and obligation which the Participant will have in the Site to assure the quality of the use, operation, and maintenance of the development thereof; and (3) the fact that a change in control of the Participant, or any other act or transaction involving or resulting in a significant change in the ownership or a change with respect to the identity of the parties in control of the Participant or the degree thereof, is for practical purposes a transfer or disposition of the Site. The qualification and identity of the Participant are of particular importance to the City and the Agency. It is because of the qualifications and identity of the Participant and the nature of the Participant's that the Agency has entered into this Agreement with the Participant.

No voluntary or involuntary successor in interest of the Participant shall acquire any rights or powers under this Agreement except as expressly set forth herein. Except as provided below, the Participant shall not assign all or any part of their rights and obligations under this Agreement without the prior written approval of the Agency. For the reasons stated above, the Participant represents and warrants for itself and any of its successor(s) in interest that during the term of this Agreement, except as expressly provided herein, there shall be no change in the President/CEO/Manager of the Participant (other than such changes occasioned solely by the death or incapacity of an individual) without the prior written approval of the Agency, which approval shall not be unreasonably withheld or delayed. Any upcoming change in the President/CEO/Manager of the Participant shall require immediate notification of such

change by the Participant and written approval by the Agency, which approval shall not be unreasonably withheld.

It shall not be unreasonable for the Agency to withhold or delay its approval when using criteria such as those used by this and other redevelopment agencies in selecting participants for similar developments or because the proposed transferee does not have the current financial strength, experience, or reputation for integrity equal to or better than the Participant as of the date this Agreement has been executed by the Agency. This Agreement may be terminated by the Agency if there is any unpermitted significant change (voluntary or involuntary) in the management or control of the Participant in violation of this Agreement (other than changes occasioned solely by the death or incapacity of an individual) that has not been approved by the Agency previous to that change, if such change occurs prior to the completion of the development of the Site as evidenced by the issuance of a Certificate of Completion therefore.

Notwithstanding the foregoing and any other provisions hereof, the Participant reserves the right, at their discretion and without the prior written consent of the Agency, to join and associate with other persons in joint ventures, partnerships, or other entities for the purpose of acquiring and developing the Site, provided that the Participant remains fully responsible to the Agency as provided in this Agreement with respect to the Site. Any significant change during the period of this Agreement in the controlling interest of the Participant or the control by the Participant of the development of the Site and any Reimbursable Public Improvements covered by this Agreement is subject to the approval of the Agency. Provided, however, that the Participant shall be allowed to add to their development team certain consultants and other development professionals.

#### F. Development

The Participant shall make reasonable efforts to proceed within the Scope and Schedule of Development as set forth within Exhibit E of this Agreement. The Private Development and any development upon the Site by Participant, their successors, assigns, or purchasers of the Site or any portion of the Site shall comply with all the provisions of the Plan, any City Agreements, any City Conditions of Approval, and all

applicable regulations, requirements, ordinances and codes of agencies with jurisdiction.

G. Transfer of Property

Following receipt of the property by the Agency from the City, The Agency shall transfer its ownership interest in the \_\_\_\_\_ Property to Participant via warranty deed within \_\_\_\_\_ days of the execution of this DA. All closing costs to be paid by Participant.

H. Reimbursable Improvements

**\*\*\* Depending on the proposal selected and the desires of MDC, there may or may not be reimbursable public improvements covered in this agreement. \*\*\***

I. Re-Development of the Site by Participant

The Site currently consists of an older outdated building(s) and comprises underdeveloped property. Participant agrees its redevelopment of the Site will be constructed as generally provided in this Agreement and the Exhibits attached hereto and incorporated herein by reference, and in compliance with the information and terms contained in this Agreement, the Plan and any City conditions of approval.

The Participant shall carry out the redevelopment of the Site in compliance with those plans and designs submitted to the Agency and the City. Prior to commencement of construction, the Participant shall provide the Agency with those drawings, plans, and specifications then required by the City of Meridian Planning and Zoning Department and/or Building Department. The Parties grant to the Agency the authority to reject or require modification to these documents as part of the approval process with the City. The Agency is not required to exercise this authority to review and approve but if it desires to do so it must do so within 30 days of the receipt of the documents from the

Participant or they will be deemed acceptable to the Agency. Any subsequent modification of the Agency-approved Basic Concept Drawings, Private Development Plan, City Agreement or City Conditions of Approval shall require the further similar opportunity for review and approval of the Agency.

J. Bodily Injury, Property Damage, and Worker's Compensation Insurance

No later than ten (10) business days following the execution of a deed by the Agency transferring property to Participant, the Participant shall furnish or cause to be furnished to the Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least \$2,000,000 for any person, \$2,000,000 for any occurrence, and \$2,000,000 property damage, naming the Agency as an additional insured. The Participant shall maintain workers' compensation insurance as required by law and also furnish or cause to be furnished to the Agency evidence satisfactory to the Agency that Participant and any contractor with whom they have contracted for the performance of work on the Reimbursable Public Improvements carries workers' compensation insurance as required by law. Upon request by the Agency, Participant shall furnish or cause to be furnished to the Agency evidence satisfactory to the Agency that any contractor with whom Participant has contracted for the performance of work on the Site outside of the Reimbursable Public Improvements carries workers' compensation insurance as required by law.

K. Indemnification

Participant shall indemnify, defend and hold Agency and its respective officers, agents, consultants and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, fees, charges, and expenses, including reasonable architect and attorney fees (collectively referred to in this Section as "general claim"), which may be imposed upon or incurred by or asserted against Agency or its respective officers, agents, consultants and employees by reason of any of the following:



- a. Any and all work done in, on, off, or about the Site, including, without limitation, the construction of any and all buildings, facilities and improvements;
- b. Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of the Site or area, or any part thereof, where the work by Participant is being performed;
- c. Any negligence on the part of Participant or any of their agents, consultants, contractors, subcontractors, servants, employees, subtenants, operators, licensees, guests or invitees;
- d. Any accident, injury, or damage to any person or property occurring in, on, about or enroute to or from the Site or area where the work by Participant is being performed or any part thereof, whether during construction or after construction; and/or
- e. Any failure on the part of Participant to perform or comply with any of the terms, provisions, covenants, and conditions contained in this Agreement to be performed or complied with on its part.

Participant shall also indemnify and hold harmless and defend Agency and its officers, agents, consultants and employees from and against any and all claims or causes of action asserted by entities or individuals that are not a party to this Agreement regarding the validity or legality of this Agreement and the reimbursement to Participant of the costs of the reimbursable Improvements by Agency (“legality claim”). Upon the final decision of a court of competent jurisdiction that is not appealed or not appealable regarding the legality claim determining that the reimbursement to Participant by Agency of the costs of the reimbursable Improvements is unlawful or invalid, the Agency shall have no further obligation or liability to reimburse or make payments to Participant for the costs associated with the reimbursable Improvements and Participant shall solely bear the responsibility for such costs. Upon the final decision of a court of competent jurisdiction that is not appealed or not appealable

regarding the legality claim determining that the reimbursement to Participant by Agency of the costs of the reimbursable Public Improvements is unlawful or invalid, then Participant, in Agency's sole discretion, may be required to return any funds paid by Agency to Participant for the reimbursable Improvements within ninety (90) days of written request from Agency to Participant.

If a legality claim is made, then Agency and Participant shall jointly defend against said claim. Participant has the discretion to hire their own legal counsel with Participant reimbursing the Agency for its reasonable fees and costs, including without limitation, attorney and expert witness fees and costs.

If a claim, other than a legality claim, is brought against Agency or its respective officers, agents, consultants and employees by reason of any such claim, Participant, upon written notice from Agency shall, at Participant's expense, bear the cost and expense of defending Agency against such action or proceedings by counsel selected by Agency.

L. Rights of Access During Construction

Representatives of the Agency and the City shall have the reasonable right of access to the Site without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in rehabilitating and/or constructing the improvements.

M. Antidiscrimination During Construction

The Participant, for themselves and their successors and assigns, agree that in the rehabilitation and/or construction of improvements on the Site provided for in this Agreement, the Participant will not discriminate against any employee or applicant for employment because of age, race, handicap, color, creed, religion, sex, marital status, ancestry, or national origin unless otherwise permitted by federal or state law.

N. Agreement to be Recorded Affecting Real Property

Concurrent with this Agreement, the Participant and the Agency have executed an “Agreement to be Recorded Affecting Real Property,” attached hereto as Exhibit F and incorporated herein by reference, which provides for certain covenants and agreements on the part of the Participant consistent with the terms and purposes of this Agreement. The Agency is authorized to record and shall record the Agreement to be Recorded Affecting Real Property after completion of the Participant’s re-development of the applicable property and completion and acceptance by the Agency and other applicable agencies of the reimbursable Improvements covered under this Agreement pertaining to the applicable portions of the Site.

The Parties shall also prepare and approve a Memorandum of Agreement as described in Section IV C of this Agreement. The Memorandum of Agreement shall be recorded within ten (10) days of the effective date of this Agreement.

O. City, ACHD, ITD and Other Approvals

Participant shall keep Agency advised of the approval process of City, ACHD and any other applicable agencies and advise the Agency immediately, if any action of the aforementioned agencies shall affect the scope, schedule and/or purpose of the Agreement.

II. USE AND MAINTENANCE OF THE SITE AND ADJACENT AREA

A. Use of the Site

The Participant agrees and covenants to devote the Site to the uses specified in this DA and the Plan and to comply with all other provisions and conditions of the Plan for the period of time the Plan is in force and effect and comply with the on-going obligations described herein. This provision shall be included within the Agreement to be Recorded Against Real Property.

B. Obligation to Refrain from Discrimination

The Participant covenants and agrees for themselves, their successors, their assigns, and every successor in interest to the Site or any part thereof that, unless otherwise permitted by federal fair housing laws, there shall be no discrimination against or segregation of any person or group of persons on account of race, age, color, creed, religion, sex, marital status, handicap, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site, nor shall the Participant themselves or any person claiming under or through them establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site unless otherwise permitted by applicable federal fair housing laws. The foregoing covenants shall run with the land and shall remain in effect in perpetuity.

C. Form of Nondiscrimination and Nonsegregation Clause

The Participant shall refrain from restricting the rental, sale, or lease of the Site on the basis of race, age, color, creed, religion, sex, handicap, marital status, ancestry, or national origin of any person unless otherwise permitted by applicable federal fair housing laws. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In deeds: "The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, that, unless otherwise permitted by federal fair housing laws, there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, age, handicap, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed unless otherwise permitted by

federal fair housing laws. The foregoing covenants shall run with the land.”

2. In leases: “The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through, him, that this lease is made and accepted upon and subject to the following conditions:

“That, unless otherwise permitted by federal fair housing laws, there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, age, religion, handicap, sex, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased unless otherwise permitted by federal fair housing laws.”

3. In contracts: “Unless otherwise permitted by federal fair housing laws, there shall be no discrimination against or segregation of any person or group of persons on account of race, age, color, creed, handicap, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land unless otherwise permitted by federal fair housing laws.”

D. Effect and Duration of Covenants

The covenants contained in this Section II of this DA shall remain in effect until December 31, 2026 (the termination date of the Plan). The covenants against discrimination contained in Sections II of this Agreement shall remain in effect in perpetuity. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the Participant and any successors and assigns to the Site or any part thereof, and the tenants, lessees, sublessees, and occupants of the Site, for the benefit of and in favor of the Agency, its successors and assigns, the City, and any successor in interest thereto.

#### E. Taxes

The Participant and/or owner(s) of the Site or any portions thereof shall pay when due all applicable real estate and personal property taxes and assessments assessed and levied on the Site or their respective portions thereof. This provision or covenant shall run with the land and be binding upon Participant' successors and the successors of the owner(s) of the Site or portions thereof. Except as set forth below, nothing herein contained shall be deemed to prohibit the Participant from contesting the validity or amount of any tax, assessment, encumbrance, or lien or to limit the remedies available to the Participant with respect thereto; provided, such contest does not subject the Site or any portion thereof to forfeiture or sale. Participant and Agency agree to cooperate in the submittal of information to the Ada County Assessor to aid in the assessment process of the Site. Participant recognizes the Agency has little or no authority or involvement in the assessment, tax, or collection process for ad valorem taxes, including real property and personal property taxes. Participant also recognizes the ability of the Agency to fully satisfy its obligations to the Participant under this Agreement is dependent on the ad valorem assessment and collection process. Therefore, in the event insufficient annual net tax increment revenues generated by the Site are received by the Agency because of reductions of the tax levy rates or assessed values being less than assumed by Agency and Participant or in the event of any tax delinquency by any owner of parcels within the Site or by any tenant related to personal property, Participant must elect to either pay the delinquent taxes or receive less reimbursement from the Agency.

### III. DEFAULTS, REMEDIES, AND TERMINATION

#### A. Defaults in General

Subject to any approved extensions of time as set forth in this Agreement, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The Party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay and shall complete such

cure, correction, or remedy with reasonable diligence and during any period of curing shall not be in default.

The Party claiming default shall give written notice of default to the party in default specifying the default complained of, and the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice; said thirty (30) days constitutes the period to cure any default.

Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any action or proceeding which it may deem necessary to protect, assert, or enforce any such rights or remedies. The time to cure a default shall not commence until notice is provided.

It is expressly understood and agreed that each of the covenants, promises, stipulations and agreements of the Parties hereto and under the provisions of this DA, the Plan and City Conditions of Approval are made to the other and that each covenant, promise, stipulation, and agreement of the Parties shall be deemed and construed as material. It is further understood and agreed that the failure, refusal, or neglect for any reason whatsoever of either party to perform any of the covenants, promises, stipulations, or agreements to be performed by that Party pursuant to the terms and provisions of this Agreement, the Plan or the City Conditions of Approval shall constitute a material default on the part of that Party giving to the other party the right to exercise each and every of its remedies reserved in or under or otherwise the right to enforce this Agreement, the Plan and the City Conditions of Approval in accordance with the provisions of this article and other provisions relating to default in either this Agreement, the Plan or the City Conditions of Approval. Any reference to default or act of default under the provisions of the Plan or City Conditions of Approval shall be deemed to be a corresponding and simultaneous default under this Agreement. The City conditions of approval may take the form of a formal approval letter, agreement or decision with several conditions of approval and references to established City standards.

B. Legal Actions

In addition to any other rights or remedies, any party may institute legal action to cure, correct, or remedy any default; to recover damages for any default; or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the District Court of the County of Ada, State of Idaho, in any other appropriate court in that county, or in the United States District Court for the District of Idaho. The nondefaulting party may also, at their option, cure the default and collect the attorney fees and costs incurred by virtue of curing or correcting the party's breach. Further, the nondefaulting party may pursue an action to require the defaulting party to specifically perform the terms and conditions of this Agreement. The laws of the State of Idaho shall govern the interpretation and enforcement of this Agreement.

C. Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party. The Agency rights and remedies retained by the Agency shall include without limitation: an action for specific performance, damages or other equitable remedy and withholding payment of its funds then due under this Agreement.

D. Damages

If the Agency or the Participant defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall provide written notice of such default to the defaulting party. If the default is not cured within thirty (30) days after providing notice of default, the defaulting party shall be liable to the other party for any damages caused by such default.

It is understood and agreed by the Parties that since real property is to be conveyed to Participant under this DA without a right of reversion, damages for



Participant's failure to comply with the terms of this DA will be very difficult to determine. Therefore, should Participant fail to comply with the terms and conditions of this DA, Agency may demand that Participant pay the Agency the sum of \_\_\_\_\_ as liquidated damages. This amount is not intended by the Parties to be a penalty but is an effort to cover some of the damages that will be suffered by Agency. This amount will be paid by Participant to Agency within thirty (30) days of the date of the Agency's written demand.

E. Specific Performance

If the Agency or the Participant defaults under any of the provisions of this Agreement, the nondefaulting party shall provide written notice of such default to the defaulting party. If the default is not commenced to be cured by the defaulting party within thirty (30) days of providing the notice of default, the nondefaulting party, at the nondefaulting party's option, may institute an action for specific performance of the terms of this Agreement or for other equitable relief. In addition, if, in the reasonable judgment of the Agency based upon the Agency's review of the construction plans and drawings submitted to it by the Participant and upon the Agency's physical inspection of the Site and any reimbursable Improvements, the Agency determines at any time, that the construction work deviates materially from the specifications set forth in such plans and drawings (other than such deviations as shall have been previously approved by the Agency), the Agency shall provide written notice of such deviation to the Participant. If the Participant does not cure such deviation within thirty (30) days of providing such notice, the Agency, at the Agency's option, may institute an action for specific performance compelling the Participant to correct such deviation or for other equitable relief. Agency is not obligated to review and point out any such deviations.

F. Termination

If either party is in breach or default of the terms of this DA, then upon proper notice and opportunity to cure as provided herein, the non-defaulting party may terminate this DA. Upon such termination, non-defaulting party shall have no further liability to the other under this Agreement.

#### IV. GENERAL PROVISIONS

##### A. Notices, Demands, and Communications Between the Parties

Formal notices, demands, and communications between the Agency and Participant shall be sufficiently given if dispatched by regular mail or registered or certified mail, postage prepaid, return receipt requested, to the last known address of Agency and Participant as set forth in this Agreement. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail.

##### B. Nonliability of Agency Officials and Employees

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

##### C. Memorandum of Agreement and Recording

It is agreed by both the Agency and the Participant that, in lieu of the entire Agreement, a memorandum or short form of this Agreement shall be prepared and be recorded in the records of Ada County, Idaho in the form attached hereto as Attachment 6. All covenants and conditions set forth herein shall be appurtenant and shall run with the land and shall be binding upon Participant' heirs, successors, and assigns.

Upon the completion of the re-development on the Site and applicable acceptance thereof by the appropriate agency, then any and all duties, obligations, or undertakings of the Participant would pass to and be assumed by any successor in interest to the Participant to the extent any successor receives, takes or assumes Participant's ownership and/or interest in all or any portion of the Site.

D. Attorney Fees and Costs

In the event that either party to this Agreement shall initiate an action to enforce any of the provisions hereof in any action at law or in equity, the non-prevailing party to such action agrees to pay to the prevailing party all costs and expenses, including reasonable attorney fees incurred therein by the prevailing party, and such may be included in the judgment entered in such action.

E. Severability

The provisions in this Agreement are severable. Should any one or more of the provisions of this Agreement for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

F. Headings

The section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

G. Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

H. Dispute Resolution

In the event that a dispute arises between Agency and Participant regarding the application or interpretation of any provision of this Agreement, the aggrieved party shall promptly notify the other party to this Agreement of the dispute within thirty (30) days after such dispute arises. If the Parties fail to resolve the dispute informally within thirty

(30) days after delivery of such notice, the Parties agree to first endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or otherwise, as the Parties may mutually agree before resorting to litigation. Should the Parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days or other mutually agreeable timeframe after such commencement of mediation or other process of structured negotiation, each party shall have the right to pursue any rights or remedies it may have at law or in equity.

I. Forced Delay; Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental restrictions or priority; litigation; unusually severe weather; acts of another party; environmental analysis or removal of hazardous or toxic substances; acts or the failure to act of any public or governmental agency or entity; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the forced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the Agency and Participant.

J. Inspection of Books and Records

The parties shall have the right, upon not less than seventy-two (72) hour notice, at all reasonable times, to inspect the related books and records of the other party.

K. Attachments and Exhibits Made a Part

All attachments and exhibits which are attached to this Development Agreement are made a part hereof by this reference.

L. Computation of Time

In computing any period of time prescribed or allowed under this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last calendar day of the period so computed shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. As used herein, "legal holiday" means a legal holiday recognized by the City on which the offices of the City are closed for City business.

M. No Third-Party Beneficiary or Joint Venture

The provisions of this Agreement are for the exclusive benefit of Agency and Participant and their authorized successors and assigns, and not for the benefit of any third person; nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person except for provisions expressly for the benefit of a mortgagee of Participant or its successors and assigns. The parties hereto are no partners nor are they to be considered to be engaged in any joint venture.

N. Good Faith and Cooperation

It is agreed by Agency and Participant that it is in their mutual best interests and in the best interests of the public that the re-development of the Site proceed and be completed as herein agreed, and, to that end, the Parties shall in all instances cooperate and act in good faith in compliance with all of the terms, covenants, and conditions of this DA and shall deal fairly with each other.









**Exhibit A – Legal Description the Property**

**Exhibit B – Other Legal Descriptions – If any.**

**Exhibit C – Proposal and General Development Conditions**

## General Development

The development of the re-development upon the Site shall be in acceptable conformity with the Agency's Plan, all applicable City building, zoning, design review approval and subdivision ordinances and the City Conditions of Approval. The Agency and the Participant will cooperate and direct their consultants to cooperate so as to ensure the continuity and coordination vitally necessary for the proper and timely completion of the re-development to be constructed on the Site.

All improvements constructed by the Participant shall be constructed substantially in accordance with this Scope and Schedule of Development, Plan, City Agreements, City conditions of approval, with plans and drawings which have been submitted to the City and other applicable agencies and the Agency. Plans and drawings are to be submitted to the Agency for review and approval concurrent with submission to the City and other applicable agency as they are to be reviewed and approved by the Agency in accordance with this Agreement. The Participant shall also provide the Agency with the plans and the specifications of the reimbursable Improvements for review and approval at the same time they are submitted to the applicable agency. Agency may defer to and concur with the City approval process and the results thereof.

Any development or construction not in substantial accordance with this Scope and Schedule of Development shall require the approval of the Agency.

Generally, the Private Development consists of a mix of commercial, retail, office and residential uses.

Once construction has commenced, the Participant shall proceed diligently and continuously, subject to all of the terms and conditions of this Agreement. Construction shall be continued diligently until completed on or before the times set forth herein.

## **Exhibit D – Reimbursable Public Improvements**

## Exhibit E Schedule of Development

**Exhibit F**  
**Agreement to Be Recorded Affecting Real Property**

RECORDED AT THE REQUEST OF:

The Urban Renewal Agency of the City of Meridian,  
also known as the Meridian Development Corporation, and  
\_\_\_\_\_, LLC

WHEN RECORDED, RETURN TO:

The Meridian Development Corporation, and \_\_\_\_\_, LLC

MERIDIAN URBAN RENEWAL PLAN  
MERIDIAN, IDAHO

AGREEMENT TO BE RECORDED AFFECTING REAL PROPERTY

THIS AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the MERIDIAN DEVELOPMENT CORPORATION, the Urban Renewal Agency for the City of Meridian, a public body, corporate and politic (hereinafter referred to as the “Agency”), and \_\_\_\_\_, LLC (hereinafter referred to as the “Participant”), with reference to the following:

A. The Participant is the present owner of certain real property (the “Site”) located in the City of Meridian, County of Ada, State of Idaho, legally described in the attached Exhibit A.

B. The Site is within the Meridian Urban Renewal Plan Project Area (the “Project”) in the City of Meridian and is subject to the provisions of the Meridian Urban Renewal Plan (the “Plan”), adopted by the City Council of the City of Meridian. The Plan, as it now exists and as it may be subsequently amended, is incorporated herein by reference and made a part hereof as though fully set forth herein.

C. Recordation of this Agreement at the Agency’s request is conclusive evidence that the Participant has rehabilitated and/or constructed the reimbursable Improvements on the Site and have otherwise developed the Site in accordance with the Plan and pursuant to the terms and provisions of a certain “Development Agreement” entered into between the Agency and the Participant on \_\_\_\_\_, 2017 (hereinafter “Development Agreement”).

NOW, THEREFORE, THE AGENCY AND THE PARTICIPANT HEREBY AGREE AS FOLLOWS:

1. The Agency hereby acknowledges that the Participant, upon execution of this Agreement, intends to rehabilitate and prior to recording of this Agreement has rehabilitated and/or constructed certain improvements on the Site as noted in and pursuant to the Development Agreement and in accordance with the Plan.

2. The Participant, on behalf of themselves and their successors, assigns, and each successor in interest to the Site or any part thereof, hereby covenants and agrees as follows:

- a. The Participant agrees to use, devote, and maintain the Site and each part thereof for the purposes and uses specified in the Plan.
- b. The Participant or the City, ACHD or other responsible agency, as applicable and as may be agreed upon, will maintain any public improvements and landscaping on the Site in a clean and orderly condition and in good condition and repair and to keep the Site free from any accumulation of debris and waste materials.
- c. The Participant agrees that Section II of the Development Agreement; Section III \_\_\_ of the Development Agreement; and Attachment 3, Scope and Schedule of Development, relating to the reimbursement and payment by the Agency, and maintenance of the reimbursable Improvements of the Development Agreement shall remain valid and effective following expiration of the Development Agreement;
- d. Unless otherwise permitted by federal fair housing laws, the Participant agrees not to discriminate upon the basis of age, race, color, creed, religion, sex, disability, marital status, ancestry or national origin in the sale, lease, sublease, transfer, or rental or in the use, occupancy, tenure, or enjoyment of the Site or any improvements thereon. Each and every deed, lease, and contract entered into with respect to the Site shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:
  - (1) In deeds: “The grantee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through them, that, unless otherwise permitted by federal fair housing laws, there shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, religion, sex, disability, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed.



The foregoing covenants shall run with the land unless otherwise permitted by federal fair housing laws.”

- (2) In leases: “The lessee herein covenants by and for himself, his heirs, executors, administrators and assigns, and all persons claiming under or through him, that this lease is made and accepted upon and subject to the following conditions:

“That, unless otherwise permitted by federal fair housing laws, there shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, religion, disability, sex, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased unless otherwise permitted by federal fair housing laws.”

- (3) In contracts: “Unless otherwise permitted by federal fair housing laws, there shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, religion, disability, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself, or any person claiming under or through him, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land unless otherwise permitted by federal fair housing laws.”

3. Unless otherwise permitted by federal fair housing laws, there shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, religion, disability, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall the Agency or Participant or any person claiming under or through them establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Site or any part thereof unless otherwise permitted by federal fair housing laws.

4. The covenants and agreements established in this Agreement shall, without regard to technical classification and designation, be binding on the Participant and any successor in interest to the Site, or any part thereof, for the benefit of and in favor of the Agency, its successors and assigns. The covenants contained in Sections 2a and 2c of this Agreement shall

remain in effect until December 31, 2026 (the termination date of the Plan). The covenants against discrimination (contained in Sections 2d and 3) shall remain in effect in perpetuity as of the date first above written.

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

By \_\_\_\_\_  
Chairman

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

\_\_\_\_\_ LLC  
"PARTICIPANT"

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, before me, \_\_\_\_\_, the undersigned notary public in and for said state, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of \_\_\_\_\_, LLC, the \_\_\_\_\_ that executed the within instrument, and acknowledged to me that he/she executed the same on behalf of \_\_\_\_\_, LLC for the purposes therein contained.

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 \_\_\_\_\_, 20\_\_, before me, \_\_\_\_\_, the undersigned notary public in and for said state, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_ of the MERIDIAN DEVELOPMENT CORPORATION the public body, corporate and politic, that executed the within instrument, and acknowledged to me that he/she executed the same on behalf of MERIDIAN DEVELOPMENT CORPORATION for the purposes therein contained.

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 \_\_\_\_\_

Exhibit A

Legal Description of the Site

[Exhibit A to Agreement to be inserted.]

**Exhibit G**  
**Memorandum of Agreement**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Borton-Lakey Law  
Attn: Todd M. Lakey  
141 E. Carlton Ave.  
Meridian, Idaho 83642

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(Space Above for Recorder's Use)

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**MEMORANDUM OF DEVELOPMENT AGREEMENT**

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This MEMORANDUM OF DEVELOPMENT AGREEMENT (this "**Memorandum**") is made and entered into as of the 8th day of March, 2017 (the "**Effective Date**"), by and between the MERIDIAN DEVELOPMENT CORPORATION, a public body corporate and politic, formed under the urban renewal laws of the state of Idaho ("Agency") and \_\_\_\_\_, LLC ("Participant"). Agency and Participant may be referred to herein individually as a "**Party**," and collectively as the "**Parties**."

**RECITALS**

A. WHEREAS, Agency and Participant entered into that certain Development Agreement, of even date herewith (the "**Agreement**"), relating to the development of certain properties owned or controlled by Participant located in the City of Meridian, Ada County and more particularly described in Exhibit A attached hereto and incorporated by reference herein ("Site"). The Parties agreed that Participant would construct certain improvements on the Site in accordance with the Agreement and that the construction of the improvements and the development and future use of the Site would be in accordance with the Agreement and the Agency's Plan. The Agreement is expressly incorporated herein by reference and made a part hereof as though fully set forth herein.

B. WHEREAS, by this Memorandum, the Parties desire to provide public notice of the Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Public Notice. All members of the general public are hereby placed on notice of inquiry as to the specific provisions of the Agreement, all of which are incorporated herein by reference with the same force and effect as if herein set forth in full. This Memorandum shall be recorded in the real estate records of Ada County, State of Idaho, in lieu of recording the entire Agreement.

2. Term. The term of the Agreement shall commence on the effective date of the Agreement and shall continue until December 31, 2026, as set forth more fully in the Agreement. A copy of the Agreement may be obtained from the Meridian Development Corporation.

3. Conflicts. In the event of any conflict between the terms of this Memorandum and the terms of the Agreement, the terms of the Agreement shall control.

4. Captions and Capitalized Terms. Caption headings are inserted herein only as a matter of convenience of reference, and in no way serve to define, limit or describe the scope of intent of, or in any way affect this Memorandum. Capitalized terms not defined in this Memorandum shall have the meanings ascribed to them in the Agreement.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Development Agreement as of the date set forth above.

**AGENCY:**

Meridian Development Corporation

\_\_\_\_\_  
Name: \_\_\_\_\_  
Chairman \_\_\_\_\_

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

**PARTICIPANT**

\_\_\_\_\_, LLC.

\_\_\_\_\_  
\_\_\_\_\_





STATE OF IDAHO            )  
  ) ss.  
County of Ada                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, \_\_\_\_\_, the undersigned notary public in and for said state, personally appeared \_\_\_\_\_, known or identified to me to be the Secretary of the Meridian Development Corporation the public body, corporate and politic, that executed the within instrument, and acknowledged to me that he executed the same on behalf of the Meridian Development Corporation for the purposes therein contained.

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 \_\_\_\_\_

**EXHIBIT A**  
**Legal Description of the Site**