

**DEVELOPMENT AGREEMENT
BETWEEN
THE ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL
DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY,
TENNESSEE
AND
THE UNIVERSITY NEIGHBORHOOD DEVELOPMENT CORPORATION**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the ___ day of _____, 2016, by and between THE ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE, a public nonprofit corporation organized under Tenn. Code Ann. §§ 7-53-101, et seq. ("EDGE" or the "Board"), and THE UNIVERSITY NEIGHBORHOOD DEVELOPMENT CORPORATION, a Tennessee nonprofit corporation (the "UNDC").

W I T N E S S E T H:

WHEREAS, the Board has approved an economic impact plan (the "Economic Impact Plan") regarding the development of an area in the City of Memphis (the "City") and Shelby County, Tennessee (the "County") identified on Exhibit A attached hereto and incorporated herein by reference (the "Plan Area"); and

WHEREAS, a copy of the Economic Impact Plan is attached hereto as Exhibit B; and

WHEREAS, the development of the Plan Area would include the redevelopment of the commercial property that includes the three (3) square blocks centered in the 500 block of South Highland, Memphis Tennessee, as more particularly described in the Economic Impact Plan (the "Project"), and all other retail and other commercial development to be developed in the Plan Area by owners represented in the Tax Increment Incentive (as herein defined) by the UNDC (together with the Project, the "Development Project"); and

WHEREAS, the incremental property tax revenues attributable to the Plan Area that are allocated to the Board pursuant to the Resolution (as herein defined) (the "Tax Increment Revenues") would be used to pay for Eligible Costs (as herein defined) or to repay the debt (principal and interest) or other financing of Eligible Costs, all as more particularly described in the Economic Impact Plan and this Agreement (the "Tax Increment Incentive"); and

WHEREAS, under Tenn. Code Ann. §§ 7-53-301, et seq., and the Economic Impact Plan, the Board is authorized to use the Tax Increment Revenues to pay for, among other things, the following "Eligible Costs": (i) the costs of constructing and installing the improvements described on Exhibit C attached hereto and incorporated by reference herein, which shall not include any improvements that must be approved by the State Comptroller of the Treasury in order to be eligible for the Tax Increment Incentive ("Eligible Improvements"), and (ii) those costs described on Exhibit D attached hereto and incorporated by reference herein, including without limitation all costs of the Construction Consultant (as herein defined), together with all

costs associated with any Tax Increment Financing Loan (as herein defined) (collectively, the “Transaction Costs”); and

WHEREAS, for the purpose of establishing the rights and obligations of the parties with respect to the development of the Plan Area and certain terms related to the Tax Increment Incentive, the parties have entered into this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions and mutual agreements by and between the parties, as hereafter set forth in detail, the parties do hereby mutually agree as follows:

1. Definitions. In addition to the terms defined in the recitals above, the following terms have the following meanings when used in this Agreement:

a. “Administrative Fee” shall mean (i) 2% of the County Tax Increment Revenues, to be deducted by the County Trustee upon receipt, and (ii) 3% of the County Tax Increment Revenues and 5% of the City Tax Increment Revenues, to be delivered to the Board upon receipt.

b. “Allocation Period” shall mean, with respect to each parcel within the Plan Area, the twenty-year period of time during which the Tax Increment Revenues from such parcel will be allocated to the Board for the Tax Increment Incentive, as more particularly set forth in the Economic Impact Plan.

c. “Construction Consultant” shall mean any licensed engineer or architect located in the County designated by the Board from time to time and approved by the UNDC, such approval not to be unreasonably withheld, conditioned or delayed.

d. “Local Business Participation Plan” or “LBP Plan” shall mean the commitment by the UNDC to utilize local business participants for the Eligible Improvements. For the purpose of this Policy, “Local Business Participant” or “LBP” means any business that is certified as a Minority/Woman Business Enterprise, Locally Owned Small Business by either the City or County government or their successor programs. A vendor shall be recognized as a LBP if included in lists maintained by the City or County government for that purpose during the year in which the vendor contract is entered into with or the purchase is made by the UNDC or any UNDC Representative.

e. “MLGW” shall mean Memphis Light, Gas and Water.

f. “Payment Request” shall mean a written request by the UNDC for the payment of Eligible Costs substantially in the form attached hereto as Exhibit E.

g. “Resolution” shall mean, collectively, the Resolution(s) approved by the City Council of Memphis, Tennessee and the County Commission of Shelby County, Tennessee approving the Economic Impact Plan.

h. “Tax Increment Financing Loan Documents” shall mean any loan documents evidencing or securing any Tax Increment Financing Loan, which loan documents must be acceptable to the Board in its sole and absolute discretion.

i. “Tax Increment Financing Loan” shall mean any loan(s) to the Board hereafter arranged by the UNDC in connection with the Tax Increment Incentive, which must be acceptable to the Board in its sole and absolute discretion.

j. “UNDC Representative” shall mean a third party construction manager, owner’s representative or other third party representative designated by the UNDC from time.

k. “UNDC Tax Increment Fund” shall mean a separate and special fund established by the Board into which will be deposited all Tax Increment Revenues as received. The UNDC Tax Increment Fund shall, at the UNDC’s request, be separated into separate sub-funds in connection with any Tax Increment Financing Loan obtained by the UNDC.

2. Calculation of Tax Increment Revenues. The Tax Increment Revenues shall be determined on an aggregate basis, with all parcels grouped together in a single parcel for purposes of calculating both the baseline property tax revenues and incremental property tax revenues attributable to the Plan Area; provided, however, that if any parcel in the Plan Area is owned or acquired by a tax-exempt entity (such as, by way of example only, the University of Memphis), such parcel shall, to the extent permitted by applicable law, be excluded from such grouping in determining both the baseline property tax revenues and incremental property tax revenues attributable to the Plan Area.

3. Disbursement of Tax Increment Revenues to Pay Eligible Costs Directly. The Board hereby agrees to commit the Tax Increment Revenues to the payment of Eligible Costs in accordance with the terms of this Agreement and the Economic Impact Plan. The UNDC may from time to time request that the Board pay Eligible Costs from amounts on deposit in the UNDC Tax Increment Fund. The UNDC shall make such requests by submitting a Payment Request to the Board, with such Payment Request to be certified as true and correct in all material respects by the Construction Consultant and an authorized representative of the UNDC, along with conditional lien waivers from all contractors and suppliers providing work or materials for the Eligible Improvements to be paid (or reimbursed) with the Payment Request. The Board shall, to the extent of available funds then on deposit in the UNDC Tax Increment Fund, make payment to or at the direction of the UNDC in accordance with such Payment Request within thirty (30) days of receiving a correct and complete Payment Request along with such conditional lien waivers. The Board shall not be required to fund Payment Requests more than once per month or in an amounts less than Twenty-Five Thousand Dollars (\$25,000.00) as to any single Payment Request (except for the final Payment Request for Eligible Costs for the Eligible Improvements then under construction). If the amount on deposit in the UNDC Tax Increment Fund and available to pay Eligible Costs (i.e., not pledged to pay any Tax Increment Financing Loan(s)) at the time of any Payment Request is not sufficient to pay all Eligible Costs for all Eligible Improvements then under construction, the UNDC shall verify to the Board’s reasonable satisfaction that the UNDC has sufficient additional funds (which may include loan

proceeds) to pay all such Eligible Costs for all such Eligible Improvements then under construction.

4. Disbursement of Tax Increment Revenues to pay Tax Increment Financing Loan. As of the date of this Agreement, the UNDC has not obtained a Tax Increment Financing Loan as part of the Tax Increment Incentive. However, the UNDC may hereafter request that some or all of the Tax Increment Incentive be structured as Tax Increment Financing Loan(s), and the Board shall provide commercially reasonable cooperation to the UNDC in closing any such Tax Increment Financing Loan(s) pursuant to Tax Increment Financing Loan Documents that are acceptable to the Board in its sole and absolute discretion. The Board shall not be obligated to incur any out of pocket cost or expense in connection therewith, and, to the extent not financed as Transaction Costs, the UNDC shall pay all such reasonable out of pocket costs or expenses incurred by the Board in connection with any Tax Increment Financing Loan arranged by the UNDC; provided, that such costs or expenses shall be included in Transaction Costs eligible for payment or reimbursement as Eligible Costs. At the request of either the UNDC or the Board, the parties shall enter into any addendum to (or amended and restated version of) this Agreement reasonably requested by either party to further evidence and memorialize the parties' rights and obligations with respect to any Tax Increment Financing Loan hereafter arranged by the UNDC as set forth in this Section 4; provided, that such addendum (or amended and restated agreement) must be acceptable to the Board in its sole and absolute discretion. The Board agrees to use the proceeds of any such Tax Increment Financing Loan to pay Eligible Costs in accordance with this Agreement, as amended, and the Loan Documents for such Tax Increment Financing Loan.

5. UNDC Obligations.

a. The UNDC shall cause to be prepared and, upon request, submit to the Board conceptual plans for all Eligible Improvements that the UNDC elects to construct. The UNDC may determine the sequencing and timing of construction of the Eligible Improvements in its sole discretion. The UNDC shall be responsible for obtaining any required approvals of such plans and specifications from the City, MLGW, or any other required approvals.

b. Upon the execution of this Agreement, the UNDC shall provide an attorney's opinion to confirm that the Economic Impact Plan, proposed Eligible Improvements, and the use of Tax Increment Revenues along with the applicable notices and approvals comply in all material respects with all state law and local ordinances, subject to reasonable qualifications and assumptions. The Tax Increment Incentive may be terminated by the Board in accordance with this Agreement if the items covered in the opinion are found to be in violation of the applicable laws and ordinances.

c. The UNDC shall negotiate, execute and deliver any required contracts for the construction of the Eligible Improvements to be constructed, including without limitation any such contracts with the City or MLGW as to the Eligible Improvements to be constructed by or on behalf of the City or MLGW. The UNDC shall provide the Board with copies of any such contracts.

d. The UNDC shall cause the Eligible Improvements that the UNDC elects to construct to be constructed in accordance with the applicable plans, specifications, contracts and applicable law.

e. The UNDC shall cause the Eligible Improvements constructed inspected by the Construction Consultant in connection with the submission of Payment Requests. The UNDC shall provide the Construction Consultant with reasonable access to all plans, specifications and contracts for the Eligible Improvements then under construction.

f. The UNDC shall pay (or cause to be paid) any Eligible Costs to the extent such Eligible Costs exceed the amount of Tax Increment Financing then on deposit in the UNDC Tax Increment Financing Fund or otherwise then available. The UNDC shall have no obligation to construct (or cause to be constructed) any Eligible Improvements to the extent that the cost thereof would exceed any available Tax Increment Revenues or proceeds of a Tax Increment Financing Loan.

g. The UNDC shall enter into a Local Business Participation Program Plan in the form attached hereto and incorporated herein as Exhibit F.

h. The UNDC may cause some or all of its obligations under this Agreement to be performed by the UNDC Representative, and the reasonable compensation and costs due to the UNDC Representative shall be included in Transaction Costs and Eligible Costs.

6. Board Obligations.

a. The Board shall create and maintain the UNDC Tax Increment Financing Fund during the term of the Tax Increment Financing, as set forth in the Resolution, to be kept separate and apart from all other funds of the Board, pursuant to the requirements of Tenn. Code Ann. § 7-53-312. The Board shall deposit all Tax Increment Revenues into such UNDC Tax Increment Financing Fund and make disbursements therefrom to or at the direction of the UNDC in accordance with this Agreement.

b. The Board shall from time to time appoint a member of the EDGE staff as the Board's authorized representative for all purposes under this Agreement or otherwise in connection with the Tax Increment Financing, subject to such periodic Board oversight as the Board may require. The initial member of the EDGE staff so appointed shall be Reid Dulberger.

c. The Board and the County Trustee shall receive the Administrative Fee to compensate each for its administrative expenses in connection with administering the Tax Increment Incentive.

7. Future Pledges. The Board covenants and agrees not to pledge the Tax Increment Revenues (other than the Administrative Fee payable to the Board) to the payment of any indebtedness or to apply the Tax Increment Revenues (other than the Administrative Fee payable to the Board) for any purpose other than the payment of Eligible Costs.

8. Other Tax Increment Financing. The Board represents, warrants, and certifies to the UNDC that the Board currently does not have outstanding any bonds, notes, or other obligations payable from or secured by Tax Increment Revenues derived from the Plan Area.

9. Waiver of Consequential Damages. In no event shall the parties have the right to recover any consequential, exemplary, incidental or punitive damages as a result of any breach or default under this Agreement.

10. Attorneys' Fees. In the event of any litigation brought by either party to enforce this Agreement, the prevailing party will be entitled to recover its attorney's fees and court costs from the other party, including pre-suit and appellate attorney's fees and costs.

11. Assignment. The UNDC may not assign or transfer this Agreement or any interest of the UNDC hereunder, without the prior written consent of the Board. Any such assignment shall not relieve the UNDC of the UNDC's liability for the performance of its duties and obligations hereunder unless the Board consents in writing to such release. The Board may not assign or transfer this Agreement or any interest of the Board hereunder without the prior written consent of the UNDC.

12. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and the permitted successors and assigns of the parties.

13. Notices. Any notice, request, demand, tender or other communication under this Agreement shall be in writing, and shall be deemed to have been duly given at the time and on the date when personally delivered, or upon the business day following delivery to a nationally recognized commercial courier for next day delivery, to the address for each party set forth below, or upon the third business day after being deposited in the United States Mail, Certified Mail, Return Receipt Requested, with all postage prepaid, to the address for each party set forth below.

If to the UNDC to:

The University Neighborhood Development Corporation
460 S. Highland
Memphis, TN 38111
Attn: Board President

If to the Board to:

The Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee
100 Peabody Place, Suite 1100,
Memphis, TN 38103-3652
Attention: Reid Dulberger
Email: rdulberger@growth-engine.org

Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such communication. By giving prior notice to all other parties, any party may designate a different address for receiving notices. Notwithstanding the foregoing, Payment Requests may be submitted to the Board via email at the email address above.

14. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee. Venue for any action arising out of this Agreement shall be exclusively in Shelby County, Tennessee.

15. Entire Agreement. This Agreement supersedes all prior discussions and agreements between the Board and the UNDC with respect to the Tax Increment Incentive. This Agreement contains the sole and entire agreement between the Board and the UNDC with respect to the transactions contemplated by this Agreement.

16. Amendment. This Agreement may not be modified or amended in any respect except by written agreement executed by the parties to this Agreement in the same manner as this Agreement is executed.

17. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

18. Captions. All captions, headings and section and paragraph numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement. All references to particular sections, paragraphs or subparagraphs by number refer to the particular section, paragraph or subparagraph so numbered in this Agreement unless reference to another document or instrument is specifically made.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which constitutes an original and all of which together constitute one and the same Agreement.

20. Inspection Rights. Upon reasonable prior notice, the Board and its Construction Consultant may inspect the Eligible Improvements to assure that the terms of this Development Agreement are being satisfied by the UNDC.

21. Term. Unless terminated earlier as provided herein, this Agreement shall be effective as of the date hereof and shall remain in effect until the earlier to occur of (i) six (6) months after the expiration of the Allocation Period, or (ii) the UNDC's completion of all Eligible Improvements and final payment of all Eligible Costs in connection therewith or, if applicable, final repayment of any outstanding Tax Increment Financing Loan(s).

22. No Government Limitation. This Agreement between the UNDC and the Board shall not be construed to bind any other agency or instrumentality of federal, state, or local government in the enforcement of any regulation, code, or law under its jurisdiction.

23. Time of the Essence. Time shall be of the essence in the performance of the terms and conditions of this Agreement.

[Signatures to follow on next page]

IN WITNESS WHEREOF, the Board and the UNDC have caused this Agreement to be duly executed as of the date first above written.

THE ECONOMIC DEVELOPMENT GROWTH
ENGINE INDUSTRIAL DEVELOPMENT
BOARD OF THE CITY OF MEMPHIS AND
COUNTY OF SHELBY, TENNESSEE

By: _____
Name: _____
Title: _____

ATTEST:

Secretary

THE UNIVERSITY NEIGHBORHOOD
DEVELOPMENT CORPORATION

By: _____
Name: _____
Title: _____

EXHIBIT A

Plan Area



EXHIBIT B

Economic Impact Plan

[See attached]

EXHIBIT C

Eligible Improvements

[See attached]

EXHIBIT D

Transaction Costs

EXHIBIT E

Form of Payment Request

PAYMENT REQUEST

To: The Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee
100 Peabody Place, Suite 1100,
Memphis, TN 38103-3652
Attention: Reid Dulberger

Re: Development Agreement dated _____, 2016, between University Neighborhood Development Corporation, a Tennessee nonprofit corporation (“UNDC”), and The Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (“EDGE”)

Pursuant to Section 3 of the Development Agreement, please disburse the sum of \$_____ from the UNDC Tax Increment Fund. In connection with such disbursement, the undersigned hereby certifies as follows:

(a) All amounts disbursed will be applied to the payment of or the reimbursement to the UNDC for Eligible Costs (including, without limitation, Transaction Costs), and the Eligible Improvements to which such Eligible Costs relate (if applicable) have been completed in material compliance with the plans and specifications previously provided to EDGE or its Construction Consultant. The Construction Consultant has inspected and approved the Eligible Improvements and Eligible Costs.

(b) With the delivery of this Payment Request, all requirements for this disbursement under Section 3 of the Development Agreement have been satisfied.

(c) UNDC or the UNDC Representative has entered into all development agreements with the City of Memphis or an agency thereof necessary for the construction of the Eligible Improvements to which this Payment Request relates. As of the date of this Payment Request, there are no defaults on the part of the UNDC or the UNDC Representative under any such development agreements.

(d) As of the date of this Payment Request, the UNDC has complied in all material respects with the LBP Plan.

Please disburse all such amounts to the parties in the manner described on Exhibit A attached hereto.

All capitalized terms used herein and not otherwise defined have the respective meanings given to such terms in the Development Agreement.

Dated as of _____, 201_.

UNIVERSITY NEIGHBORHOOD
DEVELOPMENT CORPORATION

By: _____

Name: _____

Title: _____

Payment Request reviewed and reimbursement of Eligible Cost recommended:

[CONSTRUCTION CONSULTANT]

By: _____

Title: _____

Date: _____

EXHIBIT F

Local Business Participation Plan

19402768.3