

ECONOMIC INCENTIVE AGREEMENT BETWEEN UDI COMMUNITY DEVELOPMENT CORPORATION AND THE CITY OF DURHAM FOR NEIGHBORHOOD REVITALIZATION

THIS AGREEMENT is made and entered into this the ___ day of _____, 2012 (“Contract Date”) by and between UDI Community Development Corporation (the "Company"), a nonprofit corporation organized and existing under the laws of the State of North Carolina, and the City of Durham (the "City"), a North Carolina municipal corporation.

BACKGROUND.

(a) Section 2(f) of the Resolution Establishing an Economic Development Financial Assistance and Incentive Policy for Job Creation, Job Retention and Capital Investment, adopted by the City Council on April 4, 2011 (the “Resolution”), specifies that the City Council may appropriate economic development investment funds for certain neighborhood revitalization fund projects. In order to be eligible for an incentive payment under the “Neighborhood Revitalization Fund Program,” the Capital Investments must be made within the Community Development Area (CDA) (but outside the downtown development tier), Targeted Portions of the CDA or Targeted portions of the Urban Growth Area. Eligible improvements must be completed within one year after the Contract Date.

(b) Section 2(f)(i) of the Resolution further specifies that the incentive may be equal to fifty percent (50%) of the total capital investment made for a total incentive payment not to exceed \$500,000.00, comprising qualifying capital investments as defined by the Resolution.

(c) By authorizing the execution of this Agreement, the City Council of the City of Durham finds that in order to aid and encourage the revitalization and redevelopment in the Targeted Portions of the CDA and the CDA (but outside the downtown development tier), eligible areas within the City of Durham as identified by the Resolution, it is necessary and desirable to provide for the renovation of the building and property located at 727 North Magnum Street and that the proposed renovation will improve the economic conditions of the immediate area, increase taxable property in the City, and increase business prospects of the City.

(d) The quality of the proposed development meets the economic goals, the design control criteria as reflected in the Resolution, and the land-use goals of the City Council.

IT IS AGREED AS FOLLOWS:

1. Definitions.

(a) “Property” is the land and building(s) located at 727 North Magnum Street more precisely as Durham County Parcel Identification Number 0831-05-09-8342.

(b) “Capital Investments” are defined and identified in the Resolution under Section 3(b).

2. (a) Prerequisites to Payments. If the Company, in its discretion, makes expenditures that meet the definition of Capital Investments within one year after the Contract Date, the City

shall make payments to the Company as provided in Section 2(b) (*Schedule of Payments*). However, before the City shall be obligated to make any payments pursuant to Section 2(b), the Company shall have:

(i) (*Minimum Expenditures*) made Capital Investments to the Property by renovating a 1500 SF building into a 4500 SF mix-use commercial/residential three level building and expending at least \$570,000 in Capital Investments, which investments shall include, but not be limited to, site work, selective demolition, concrete and masonry work, metal work, façade work, doors, glass & glazing, drywall, flooring, painting, furnishing, fire protection, plumbing HVAC, and electrical work.

(ii) (*Certificate of Compliance*), if required for the project(s), obtained from the Durham City-County Inspections Department a certificate of compliance (referred to below as “CO”) allowing occupancy or use, for office and/or commercial uses, of the area renovated to qualify under Section 2(a)(i) (*Minimum Expenditures*) above;

(iii) (*Accounting*) provided to the City a full and accurate accounting, with such detail as the City may reasonably require, of all expenditures comprising the Capital Investments; and

(iv) (*Certification*) delivered to the City a written certification, in such form as the City reasonably requires that the Company has satisfied all applicable requirements of Section 2 of this Agreement.

(b) *Schedule of Payments*. the City shall make payment of \$100,000.00 to the Company within 60 days after the Company has demonstrated compliance with all of the conditions in Section 2(a) (*Prerequisites to Payments*) as qualified by the effective Option.

3. *Delay of Payment*. If the City has reason to believe that any statement or certification made by the Company pursuant to this Agreement, including but not limited to Section 2 is not accurate, a payment otherwise appearing to be due shall be delayed for a reasonable time for a determination of the facts, provided that the City shall send notice to the Company of the grounds for that belief.

4. *Time of Essence for All Dates and Deadlines; 18-Month Expiration*. *Time is of the essence for all dates and deadlines in this Agreement*. Notwithstanding any other provision contained in this Agreement, the City shall have no obligation to, and shall not make any payment to the Company pursuant to this Agreement on a date more than eighteen months after the Contract Date.

5. *Addresses*. The payments by the City pursuant to this Agreement shall be mailed to:

_____ (*add address*)

or to such other address as the Company may specify by written notice to the City. When a notice is required or permitted by this Agreement, it shall be effected by written notice to the City by delivery to:

Director
Office of Economic & Workforce Development
City of Durham
101 City Hall Plaza, Durham NC 27701

and to the Company by delivery to:

R. Edward Stewart
UDI-CDC
631 United Drive
Durham, NC 27713

(add address)

Either party may change the address by giving notice of the change to the other party. Notice is deemed received (i) when it is handed to an employee of the other party located at the address stated in this section, or (ii) in case of mailing, on the third business day after it is deposited in a post-paid envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

6. EEO. Nondiscrimination.

(a) EEO Provisions. For purposes of these EEO Provisions, the Company is the "Contractor." During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall

include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(b) THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX, AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

7. Assignment. Without the City's written consent, the Grantee shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Grantee duties that arise out of this contract and all of the City's claims that arise out of this contract..

8. Modifications by Written Agreement; No Other Current Agreements; Waivers; Performance of Government Functions; References to Sections. This Agreement may be modified only by a written agreement executed by both parties hereto. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions. This Agreement is intended for the benefit of the City and the other party executing this Agreement and not any other person. Unless the context requires otherwise, references in this Agreement to Sections are references to Sections contained in this Agreement. Section titles, including references to Sections with their titles (as in "Section X(a)(i)(*title of X(a)(i)*)", is for convenience only, and the titles are not intended to affect the meaning of this Agreement.

9. Default. Termination. If the Company fails to fulfill any of its obligations under this Agreement, and fails to correct such failure within 30 days of receiving notice of such failure from the City, or if the Company makes any materially false statement in any statement or certification referred to in this Agreement, the City may hold the Company in default and (a) terminate this Agreement and make no further payments to Company and (b) recover all prior payments and reasonable direct expenses incurred by the City in connection with this Agreement, including reasonable attorney's fees.

10. Forum and Choice of Law. This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this

Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

11. Indemnification.

(a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item. "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

12. Agreement Subject to Resolution. This Agreement is made pursuant to the Resolution, and it is subject to the procedures, limitations, and restrictions set forth in the Resolution.

13. City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by the City Manager or a deputy or assistant City Manager without City Council action.

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed under seal by their respective duly authorized officers.

ATTEST:

CITY OF DURHAM

Economic Incentive Agreement between UDI Community Development Corporation and the City of Durham for Neighborhood Revitalization

By: _____
City Manager

preaudit certificate

COMPANY NAME

Secretary

By: _____
President/ CEO R. Edward Stewart

(Affix corporate seal.)

State of _____ **ACKNOWLEDGMENT BY UDI Community Development Corporation**
County of _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before this day and stated that she or he is the (~~strike through the inapplicable:~~) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of UDI Community Development Corporation a(TYPE OF COR), and that by authority duly given and as the act of the corporation, he or she signed the foregoing contract with the City of Durham and the corporate seal was affixed thereto.

This the _____ day of _____, 20_____.

My commission expires:

Notary Public