

**FOREIGN-TRADE ZONE OPERATING AGREEMENT
MEMPHIS FOREIGN-TRADE ZONE NUMBER 77**

This Agreement is made this _____ day of _____, _____, by and between the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (hereinafter referred to as “EDGE” or “Zone Administrator”) acting on behalf of the City of Memphis, grantee of the Memphis Foreign-Trade Zone Number 77 (“Grantee”), and _____ (hereinafter designated as “Operator”).

WITNESSETH:

WHEREAS, the Foreign-Trade Zones Act of June 18, 1934, as amended, authorized and empowered the U. S. Department of Commerce Foreign-Trade Zones Board to grant to public and private corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States of America; and

WHEREAS, the City of Memphis was granted authority by the Foreign-Trade Zones Board by Board Order No. 0189, dated April 2, 1982, to establish, maintain and operate Foreign-Trade Zone No. 77 (hereinafter “FTZ No. 77”) which was approved for expansion and reorganization on February 29, 2012, under the Alternative Site Framework by Board Order No. 1817 to include all of Shelby County, Tennessee as the Zone Service Area; and

WHEREAS, by resolutions, the City Council of the City of Memphis on February 5, 2013, along with the Shelby County Board of Commissioners on January 28, 2013 delegated administration of FTZ No.77 to the Economic Development Growth Engine for Memphis and Shelby County (hereinafter “EDGE” or “Zone Administrator”); and

WHEREAS, EDGE as Zone Administrator is responsible for the public utility administration of the FTZ No. 77 including: the adoption of a Zone Schedule; execution of FTZ agreements with Zone and Subzone Operators; the filing of applications for zone expansions and boundary modifications; submission of the Annual Report to the Foreign-Trade Zones Board; FTZ education; and marketing of FTZ No. 77; and

WHEREAS, Operator, upon the terms and conditions set forth herein, wishes to assume the responsibilities of an operator and undertake the operational management of foreign-trade zone activities at the location described in Exhibit A (hereinafter called the “Zone Site”); and

WHEREAS, Zone Administrator deems it practicable and desirable to limit its participation in the everyday administration of the Zone Site and enter into a contractual agreement with Operator to provide day-to-day operations of Zone Site;

NOW, THEREFORE, the parties hereto, in consideration of the mutual agreements herein contained and promises herein expressed, do hereby agree as follows

ARTICLE I
DEFINITIONS

The following words are defined below for purposes of this Agreement:

“Act” shall mean the Foreign-Trade Zones Act of June 18, 1934 (19 USC 81, 81a-81u), as amended.

“FTZ Board” shall mean the U. S. Department of Commerce, Foreign-Trade Zones Board, which was established by the Act.

“FTZ Regulations” shall mean collectively the regulations currently published in the Code of Federal Regulations at Title 15, Part 400, and Title 19, Part 146, as such regulations may be amended in the future.

“CBP Regulations” shall mean the Directives issued by the U. S. Customs and Border Protection (CBP).

“Zone” shall refer to either a zone or subzone operation in this Agreement without separate distinction.

“Zone Schedule” shall mean the most current published document adopted by the Memphis City Council that outlines the rules and regulations, rates and charges for Memphis FTZ No. 77 attached as Exhibit B of this Agreement.

“Zone Site” shall mean they are designated as _____ with a zone or subzone number of _____.

ARTICLE II
AGREEMENT TO OPERATE

2.1 Authorization

Zone Administrator hereby grants, subject to all the terms, covenants and conditions set forth in this Agreement and to the provisions, conditions and restrictions of the Act and the Regulations and to other applicable law, permission to Operator to operate and manage the Zone Site.

2.2 Acceptance

Operator accepts and assumes all and complete responsibility for the operation, management and maintenance of the Zone Site.

ARTICLE III
TERM AND TERMINATION

3.1 Commencement and Term of Agreement

The term of this agreement shall commence on the date of this agreement and shall have an initial term of ten (10) years. Upon expiration of the initial term, this Agreement shall automatically renew for three (3) successive renewal periods of five (5) years unless either party provides notice of nonrenewal at least six (6) months prior to expiration of the initial term or any successive renewal term.

3.2 Termination – For Cause

This Agreement may be terminated by Zone Administrator by written notice to Operator if Operator has failed to make any payment required in the Zone Schedule within thirty (30) days of written demand and opportunity cure by Zone Administrator, or if Operator has failed to comply with any other obligation under this Agreement and has not corrected such failure within thirty (30) days after Zone Administrator gives Operator written notice and opportunity cure of such failure, with the effective date of termination to be as stated by Zone Administrator in its written notice to Operator. This Agreement also shall terminate without notice effective upon the revocation or cancellation of the grant of FTZ status to the Zone Site.

3.3 Termination - For No Cause

In the event either party for any reason wishes to terminate its participation in foreign-trade zone activities and terminate its rights and obligations under this Agreement, at least one hundred eighty (180) days prior written notice must be delivered to the other party. If the Grantee wishes to terminate, the Operator shall have the right, directly or through another entity, to assume the rights and obligations of the Grantee subject only to the approval of the Foreign-Trade Zones Board. If the Operator wishes to terminate, Operator is obligated to deactivate the Zone Site prior to the date of termination and must ensure that all foreign status merchandise has either been subject to the payment of customs duties and fees or been transferred, in bond, to another foreign trade zone facility.

3.4 Survival of Prior Obligations

Termination of this Agreement shall not affect any right, duty or obligation arising prior to, or in connection with such termination and Operator shall remain responsible for all applicable CBP laws, regulations and other requirements, until all Merchandise in zone status, except domestic status for which no permit is required, has been either removed from the Zone Site or transferred to the operator's bond of another entity. Upon termination of this Agreement, Operator shall remain liable for all accrued but unpaid fees hereunder.

3.5 Force Majeure

No party will be liable to another as result of any event or occurrence which is caused in any manner by an act of God or any other cause or condition beyond the party's reasonable control, including but not limited to public disorders, labor disputes, legal prohibitions or restrictions, terrorist actions, fire or other casualty, storms, floods or other inclement weather conditions. Any delay of performance by the party affected by such event or occurrence will be excused during the duration thereof and will not constitute a breach thereof. If any party anticipates it will not be able to perform any of its

obligations under this Agreement that party shall immediately so notify the others, giving the reasons and expected duration of the expected inability.

ARTICLE IV
RESPONSIBILITIES OF OPERATOR

4.1 General Responsibilities

Operator shall operate and maintain the Zone in compliance with the FTZ Board, CBP, and other governmental agency rules and regulations as required, as well as the internal rules, regulations and policies set forth in the terms of this Agreement and the FTZ No. 77 Zone Schedule.

4.2 Specific Responsibilities

Operator shall be responsible for providing operational management services. These services include, but are not limited to:

- A. Establishing and implementing Operating Procedures to be followed at the Zone Site which will satisfy CBP Regulations;
- B. Maintaining its accounts and inventory with respect to the operation of the Zone in accordance with generally accepted principles of accounting, and in compliance with 19 C.F.R. Part 146;
- C. Providing the physical security required by CBP in order to ensure the safekeeping of the merchandise at the Zone Site;
- D. Ensuring that the proper CBP FTZ Operator's Bond is maintained and kept current for Operator's activities at the Zone Site;
- E. Preparing the annual report to be submitted to the Zone Administrator through the Online FTZ Information System (OFIS) by February 28 of each year delineating the previous calendar year activities pursuant to current requirements of the FTZ Board.
- F. Paying all applicable fees including the annual fee to the Zone Administrator pursuant to the fees published in the most current Zone Schedule.

ARTICLE V
RESPONSIBILITY OF ZONE ADMINISTRATOR

5.1 Zone Administrator is responsible for the management of FTZ No. 77 activities as a "public utility" ensuring that all zone operators, users and interested parties receive uniform treatment under like circumstances. Zone administration activities include, but are not limited to:

- A. Maintaining files and up-to-date contact information on all zone sites;
- B. Providing assistance and deadline reminders to all Zone Operators concerning the FTZ Board annual report;
- C. Compiling and submitting the annual report via OFIS by March 31 of each year pursuant to the current requirements of the FTZ Board;
- D. Filing of applications to the FTZ Board for zone expansions and boundary modifications to establish or modify Usage-Driven, Magnet or Subzone sites;
- E. Filing of applications to the FTZ Board for production authority, when requested;
- F. Requesting CBP concurrence on zone expansion or boundary modification applications;
- G. Providing Grantee concurrence letter on zone expansion or boundary modification applications;

- H. Offering educational opportunities about FTZs; and
- I. Marketing Memphis FTZ No. 77 zone sites.

ARTICLE VI
RELATIONSHIP BETWEEN ZONE ADMINISTRATOR AND OPERATOR

6.1 Zone Administrator and Operator are not, and shall not be considered as joint venturers, partners, or agents of each other, and neither shall have the power to bind or obligate the other except as set forth in this Agreement. Operator and Zone Administrator agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another except as set forth in the Agreement.

ARTICLE VII
ADMINISTRATIVE EXPENSES

7.1 CBP Expenses – Operator shall pay the full cost of any activation fee and annual fee imposed by the CBP attributable to Operator’s operation of the Zone Site.

7.2 CBP Bond – Operator shall pay the full cost of any CBP Bond as required by law. Operator shall provide Zone Administrator with a copy of any CBP Bond within ten (10) days of receipt of the CBP Bond by Operator.

7.3 Reimbursement by Zone Administrator – Zone Administrator shall not be obligated to reimburse Operator for any expenses incurred by Operator in connection with its operations or administration of the Zone Site, including, without limitation, expenses covering or relating to any of the following: assignment to the Zone Site of CBP personnel; the obtaining of surety bonds as may be required of the Operator by the CBP; keeping of books, records and accounts in the manner required by the FTZ Regulations; any costs incurred by Operator pursuant to the FTZ Regulations and any other expenses involving in any way the administration or operation of the Zone Site or Operator’s compliance with the terms of this Agreement. All such expenses shall be the sole responsibility of Operator.

7.4 Reimbursement by Operator – Operator hereby agrees to pay to Zone Administrator the fees set forth in Exhibit B within the timeframes set forth in Exhibit B. The Parties agree that this amount is fair and reasonable compensation for the services to be rendered by Zone Administrator in assisting Operator with regard to managing FTZ No. 77. Furthermore, Operator understands that the fees listed in Exhibit B are subject to change upon ninety (90) days’ notice from Zone Administrator to Operator and Operator agrees to abide by any fee modification that may occur.

7.5 Fines – Without limiting the generality of any other provision in this Agreement, Operator shall reimburse Zone Administrator for any fine ultimately imposed on Grantee/Zone Administrator by CBP as a result of any act or omission of Operator under this Agreement. In the event any such fine is imposed or if Grantee/Zone Administrator is informed that any such fine is contemplated, Grantee/Zone Administrator shall promptly notify Operator in writing and shall provide Operator the opportunity to defend against such fine.

7.6 Late Submission of Annual Report - In the event that sufficient data for the Grantee to compile its Annual Report to the FTZ Board has not been received by February 28, a late fee in the amount of \$100 per calendar day will be charged beginning on March 1 until the necessary information has been received by the Grantee and all accrued late charges have been paid in full. The late fee charged pursuant to this paragraph is apart from and in addition to the obligation to reimburse the Grantee/Zone Administrator for any fine imposed upon Grantee/Zone Administrator for a late or incomplete Annual Report.

A late fee may be assessed for failure to provide any required reports or for lack of payment of any charges or fees associated with FTZ status. Failure of full payments may result in suspension by Grantee/Zone Administrator of all FTZ activity for the Operator.

7.7 Staff Time/Out-of-Pocket Expenses - In the event Grantee's/Zone Administrator's staff time or out-of-pocket costs exceed what is normal and customary to process similar requests, the Grantee/Zone Administrator reserves the right to charge the applicant/Operator, upon reasonable notice, an additional reasonable amount in addition to the applicable fees identified in the Zone Schedule in consideration of such excess administrative or out-of-pocket costs.

ARTICLE VIII INDEMNIFICATION

8.1 Operator shall indemnify, defend and hold harmless Grantee, Zone Administrator, and any and all of each entity's governing boards, officers, and employees (collectively "Indemnified Parties") from and against any and all actions, suits, proceedings, claims and demands, loss, liens, costs, expenses and liability of any kind and nature whatsoever arising out of Operator's performance or non-performance of this Agreement and, for injury to or death of persons, or damage to property, including property owned by Indemnified Parties, brought, made, filed against, imposed upon or sustained by Indemnified Parties, its governing board, officers, or employees in arising from or attributable to or caused directly or indirectly by the use of the Zone premises and facilities located therein, or from operations conducted by Operator, its officers, agents or employees, or by any person or persons acting on behalf of Operator and with Operator's knowledge and consent, expressed or implied, except where caused solely by the negligence or willful misconduct of the Indemnified Parties.

8.2 Operator shall indemnify, hold harmless, save and defend Indemnified Parties against any and all claims, liens, liability, loss or damage, including but not limited to costs, expenses and attorneys' fees arising out of Indemnified Parties' statutory obligations pertaining to safety of or defective conditions in the Zone premises operated by said Operator or equipment or any federal or state statutes relating to dangerous conditions of public property or laws pertaining to the provisions of a safe place to work or safe equipment for employees arising from or attributable to or caused directly or indirectly, by the use of the premises and the facilities located therein or from operations conducted thereon by any person or persons.

8.3 However, should Indemnified Parties, its officers, agents or employees undertake direct actions pursuant to this agreement, the Indemnified Parties shall be solely liable for said acts and shall not be indemnified in any manner by Operator.

8.4 Operator shall be liable and responsible for satisfaction, where applicable, of assessments, penalties or fines imposed by the FTZ Board, CBP or any federal, state or local agency resulting from any activity, act or omission to act in the maintenance and operation of the Zone Site therein shall notify Zone Administrator of same.

ARTICLE IX
INSURANCE

9.1 All insurance required hereby shall (i) be placed with responsible insurance companies qualified to do insurance business in Tennessee and against which Zone Administrator has no reasonable objection, (ii) be evidenced by certificates filed with Zone Administrator, (iii) be in form and substance reasonably acceptable to Zone Administrator, (iv) contain an undertaking by the respective insurers that such policies shall not be modified or canceled without prior written notice given to Zone Administrator, (v) provide that the proceeds of such insurance shall be payable to Zone Administrator and Operator as their respective interests may appear, (vi) to the extent obtainable, provide that any loss shall be payable to Zone Administrator notwithstanding any act or negligence of Operator which might otherwise result in a forfeiture of said insurance; and (vii) not less than ten (10) days prior to the expiration dates of the policies, certificates of the renewal thereof, reasonably satisfactory to Zone Administrator shall be deposited with Zone Administrator.

9.2 Upon execution of this Agreement, the Operator shall furnish the Zone Administrator with Certificates of Insurance attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in force and effect. The name of the Zone shall also be specified on the Certificate of Insurance.

9.3 The Operator, upon execution of this Agreement, shall provide at its own cost and expense the following insurances to the Zone Administrator with companies acceptable to Zone Administrator and licensed in the State of Tennessee, which insurance shall be evidenced by certificates and/or policies as determined by the Zone Administrator.

9.4 Workers Compensation Insurance: Operator shall maintain in force Workers' Compensation coverage in accordance with the statutory requirements and limits of the State of Tennessee and shall require all subcontractors to do likewise. The current required minimum standards are:

Employer's Liability	\$100,000 Each Accident
	\$500,000 Disease-Policy Limit
	\$100,000 Disease-Each Employee

9.5 Automobile Liability Insurance: To be taken out in the name of the Operator as Named Insured and Zone Administrator as an Additional Insured; covering owned, non-owned, and hired vehicles with MINIMUM LIMITS OF:

\$1,000,000 each occurrence Combined Single Limit

9.6 Commercial General Liability Insurance: Comprehensive General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage, with MINIMUM LIMITS OF:

\$2,000,000	General Aggregate per Project
\$2,000,000	Products—Completed Operations
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence
\$50,000	Fire Damage any one Fire
\$5,000	Medical Expense any One Person

The Operator shall be the Named Insured and Zone Administrator shall be made as an additional insured.

9.7 Property Insurance: Operator shall be responsible for maintaining any and all property insurance on their own equipment.

9.8 Insurance Notice. Additional coverage and limits may be required as determined by Zone Administrator. Copies of all required endorsements and Certificate of Insurance shall be mailed to:

Economic Development Growth Engine for Memphis & Shelby County
 100 Peabody Place, Suite 100
 Memphis, TN 38103-3652

ARTICLE X
NONDISCRIMINATION AND AFFIRMATIVE ACTION

10.1 Operator shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, creed, color, religion, sex or national origin, or otherwise commit an unfair employment practice. Operator will take action to ensure that applicants are employed and that employees are dealt with during employment without regard to their race, creed, color, religion, sex or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or advertising; termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Operator further agrees that this clause will be incorporated in all leases and contracts entered into with sub lessees and contractors of materials or services and all labor organizations furnishing skilled unskilled and union labor, or who may perform any such labor or services in connection with this agreement.

ARTICLE XI
NO IMPLIED WAIVER

11.1 No waiver by either party at any time of any of the terms, conditions, covenants or agreements of this agreement shall be deemed or taken as a waiver at any time thereafter of the same of any other term, condition, covenant or agreement herein contained nor of the strict and prompt performance thereof by the party obligated to perform. No delay, failure or omission of either party to exercise any right, power, privilege or option arising from any default, nor subsequent acceptance of compensation then or thereafter accrued shall impair any such right, power, privilege or option or be construed to be a waiver of any such default or relinquishment there of or acquiescence therein. No option, right, power, remedy or privilege of either party hereto shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers,

options or remedies given to the parties hereto by this agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by a party shall not impair its rights to any other right, power, option or remedy.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.1 Marketing/Advertising

For multiple user Zones, Operator and Zone Administrator shall use reasonable efforts to promote foreign-trade zone business. Such promotional efforts might include conducting seminars on Zone use, contacting potential users, coordinating promotional activities with economic development activities, and emphasizing the benefits of the Zone for manufacturing enterprises in promotional information. This section shall not apply to single user subzones.

12.2 Availability of Zone

For multiple user zones, Operator agrees that during the term of this agreement it will make the Zone premises available on reasonable terms approved by Zone Administrator to all qualified persons, firms, and corporations, desiring to do business within the Zone. This section shall not apply to single user subzones.

12.3 Construction

In the event Operator desires to make substantial alterations or construct additional facilities, all plans and specifications for such construction shall be submitted to Zone Administrator for approval in writing and the concurrence, and if necessary, of the FTZ Board. All plans and specifications for such construction must also meet federal, state and local construction code regulations.

12.4 Change of Ownership of Operator

Should the ownership of the Operator change through sale, buyout, merger, acquisition, this agreement is in no way transferable or assignable by Operator and shall be null and void. In the event that the operator name(s) in this agreement is changed other than as a result of a sale, buyout, merger or acquisition, Operator shall send written notice to the Zone Administrator within 30 days of such name change.

12.5 Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same Agreement.

12.6 Additional Instruments and Actions/Amendments

Each party shall deliver such further instruments and take such further actions as may be reasonably requested by the other in order to carry out the provisions and purposes of this Agreement. This Agreement may only be modified or amended by an instrument in writing signed by the parties.

12.7 Headings

Headings and captions in this Agreement are solely for the convenience of reference and shall not affect the interpretation of this Agreement.

12.8 Integration

This Agreement contains the entire agreement of the Parties, and no representation, inducements, promises, or agreements, oral or otherwise, not embodied herein shall be of any force or effect.

12.9 Severability

If any provision of this Agreement is declared void or defective, that declaration will not affect the validity of any other provision of this Agreement.

12.10 Notices

All communications and notices under this Agreement shall be made by letter sent by certified mail return receipt requested, or by a recognized commercial courier such as FedEx or UPS, addressed to the address of the respective party set forth on the signature page of this Agreement or at such other address as may be given in writing by any party to the others in compliance with this paragraph. All such communications and notices shall be deemed to be received upon actual receipt by the party to whom the same is addressed.

12.11 Governing Law/Attorney Fees

This Agreement shall be governed, construed and enforced according to the laws of the State of Tennessee. All actions, whether sounding in contract or in tort relating to the validity, interpretation and enforcement of this Agreement shall be instituted in the courts of the State of Tennessee, located in Shelby County, and in no other. The successful party in any action to enforce the terms of this Agreement shall be entitled to its reasonable attorney's fees and expenses as awarded by the court.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this agreement as of the date above written.

**ECONOMIC DEVELOPMENT GROWTH
ENGINE OF MEMPHIS & SHELBY COUNTY
(Zone Administrator)**

(Operator)

Reid Dulberger, EDGE President and CEO

Address:
100 Peabody Place, Suite 100
Memphis, TN 38103-3652

Name and Title

Address:

ATTEST:

ATTEST:

APPROVED AS TO FORM:

Mark Beutelschies
EDGE Attorney

EXHIBIT A

ZONE SITE DESCRIPTION

FOREIGN-TRADE ZONE (FTZ)/SUBZONE SITE NUMBER

FTZ SITE OPERATOR

FTZ ZONE SITE ADDRESS

<http://register.shelby.tn.us/imgView.php?imgtype=pdf&id=130222972013>

EXHIBIT B

ZONE SCHEDULE

FOREIGN-TRADE ZONE NO. 77

MEMPHIS AND SHELBY COUNTY, TENNESSEE

.PDF IS INSERTED BELOW

ZONE SCHEDULE

Foreign-Trade Zone No. 77

Memphis and Shelby County, Tennessee

Grantee

City of Memphis, Tennessee

Zone Administrator

**Economic Development Growth Engine (EDGE)
For Memphis & Shelby County**

Effective: November 18, 2014

Final: Approved by Memphis City Council, November 18, 2014
Memphis FTZ No. 77 Zone Schedule

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