

**LEON COUNTY ECONOMIC DEVELOPMENT
GRANT AGREEMENT
LEON COUNTY FY 2005/2006**

THIS CONTRACT AND AGREEMENT, by and between Leon County, a political subdivision of the State of Florida, located at 301 South Monroe Street, 5th Floor, Leon County Courthouse, Tallahassee, Florida 32301 (hereinafter referred to as "COUNTY") and Capital Circle Commerce Park, L.L.C., a Florida corporation its successors and assigns, of 1801 North Meridian Road, Post Office Box 3886, Tallahassee, Florida 32315 (hereinafter referred to as "CCCP") do hereby enter into this Agreement.

THIS CONTRACT AND AGREEMENT shall be effective as of the ____ day of _____, 2006.

WHEREAS, the Leon County Board of County Commissioners wishes to encourage economic development in Leon County and has set aside funds in furtherance of this goal; and

WHEREAS, Capital Circle Commerce Park, LLC (CCCP) is the owner of the Capital Circle Commercial Park located at 4755 Capital Circle N.W., Tallahassee, FL 32304 (Commerce Park); and

WHEREAS, CCCP has requested funding for a project within the Commerce Park that will result in the construction of a new warehouse facility (Project); and

WHEREAS, the Board of County Commissioners has provided to CCCP \$300,000 towards the Project from funds set aside for economic development (Grant).

NOW THEREFORE, in consideration of the above recitals and mutual covenants and promises contained herein, the receipt and sufficiency of which being acknowledged, the Parties do hereby mutually agree as follows, to-wit:

1. **Construction of Project.** CCCP shall construct one (1) 14,000 sq. ft. building appropriate for use as a warehouse, no later than March 30, 2008, unless such completion date is extended by mutual agreement of both Parties.
2. **Act of Default.** The failure of CCCP to construct the Project in accord with paragraph 1 above shall constitute an Act of Default under this Agreement.
3. **Documentation.** CCCP shall furnish sufficient documentation of its expenditures of the Leon County Economic Development Grant funds.
4. **Access to Records.** If requested by the COUNTY, CCCP shall allow reasonable access to its records and facilities to the COUNTY, or its agents, as the COUNTY may reasonably require, so that the County may audit and inspect CCCP records as they relate specifically to the conditions of this Agreement.

5. Public Records. CCCP shall comply with Chapter 119, *Florida Statutes*, for all documents, papers, letters or other materials subject to the provisions of Chapter 119, *Florida Statutes*, and made or received by the CCCP in conjunction with this Agreement.
6. Project Schedule. CCCP shall develop a schedule which identifies the start date for construction of the Project at the Commerce Park, and the dates by which such construction will be 33%, 66%, and 100% complete.
7. Reports. CCCP shall submit a detailed quarterly report to the COUNTY that demonstrates its progress toward achieving the milestones set out in paragraph 6 above. These reports shall be delivered to the COUNTY no later than the end of each quarter of the calendar year and shall continue to be submitted each quarter until the County accepts the Project as complete.
8. CCCP shall complete construction of the Project at Commerce Park by or before March 30, 2008, unless extended by mutual agreement of the Parties. CCCP shall notify the COUNTY, in writing, upon commencement and completion of construction. Upon the COUNTY's determination that the Project has been completed in accord with the terms of this Agreement, the COUNTY shall issue a written acceptance of the Project saying same.
9. Subsequent Purchaser. Any contract for sale entered into by CCCP for the sale of any property within the Commerce Park executed prior to the County's acceptance of the Project as complete shall be provided to the COUNTY within thirty (30) days of execution thereof. CCCP shall notify said potential buyer of this Leon County Economic Development Grant Agreement and the Participating Party Agreement, executed between the COUNTY and CCCP on August 8, 2006, and shall require that the buyer assume all obligation and responsibilities contained in both Agreements prior to closing on the property, subject to provisions of paragraph 16 herein.
10. Notices. For purposes of this Agreement, any notices, records, reports, or papers required to be furnished by CCCP to the COUNTY shall be delivered to Parwez Alam, County Administrator, 301 South Monroe Street, 5th Floor, Leon County Courthouse, Tallahassee, Florida 32301.
11. Time of Essence. It is specifically understood and agreed that time is of the essence in this Agreement.
12. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter reflected herein.
13. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any actions to enforce any of the provisions of this Agreement shall be maintained in Tallahassee, Leon County, Florida.
14. Modification. This Agreement shall not be extended, changed or modified, except in writing duly executed by the Parties hereto.

15. **Binding Effect.** This Agreement shall be binding upon the successors and subject to the provisions of paragraph 17, assigns of the parties hereto.
16. **Assignment.** Because of the unique nature of the relationship between the Parties and the terms of this Agreement, neither Party hereto shall have the right to assign this Agreement or any of its rights or responsibilities hereunder to any third party without the express written consent of the other Party to this Agreement, which consent shall not unreasonably be withheld.
17. **Ambiguity.** This Agreement has been negotiated by the Parties upon the advice of counsel and, in the event of any ambiguity herein, such ambiguity shall not be construed against any Party as the author hereof.
18. **Cost(s) and Attorney Fees.** In the event of litigation between the Parties to construe or enforce the terms of this Agreement or otherwise arising out of this Agreement, the prevailing Party in such litigation shall be entitled to recover from the other Party its reasonable costs including a reasonable attorneys' fee incurred in maintaining or defending subject litigation. The term litigation shall include appellate proceedings.
19. **Severability.** It is intended that each paragraph of this Agreement shall be viewed as separate and divisible, and in the event that any paragraph, or part thereof, shall be held to be invalid or unenforceable, the remaining paragraphs and parts shall continue to be in full force and effect.
20. **Survivability.** Any term, condition, covenant, or obligation which requires performance by a Party subsequent to the termination or expiration of this Agreement shall remain enforceable against such Party subsequent to such termination or expiration.
21. **Independent Contractor.** When performing the activities required by this Agreement, CCCP will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or associate of the COUNTY. CCCP shall be solely responsible for the means, methods and procedures used by CCCP to perform under this Agreement. Neither CCCP nor any of its employees, officials, agents or subcontractors shall represent, act, purport to act, or be deemed to be the agent, representative, employee, or servant of the COUNTY. CCCP shall have no authority to bind the COUNTY to any agreement or contract. No person performing any work or services for CCCP under this Agreement shall be entitled to any benefits available or granted to employees of the COUNTY.
22. **Sovereign Immunity.** Nothing in this Agreement shall be interpreted or construed to mean that the COUNTY waives its rights to sovereign immunity under Section 768.28, Florida Statutes.
23. **Waiver.** Unless otherwise specifically provided by this Agreement, no delay or failure to exercise a right under this Agreement shall impair such right, or be construed as a waiver thereof. The failure of the COUNTY or CCCP at any time to require performance by the

other Party of any term in this Agreement shall in no way affect the right of the COUNTY or CCCP thereafter to enforce same; nor shall waiver by the COUNTY or CCCP of any breach of any term of this Agreement be taken or held to be a waiver of any succeeding breach of such term or as a waiver of any term itself. To be effective, any waiver shall be in writing and signed by the Party granting such waiver. Any such waiver shall be limited to the particular right so waived and shall not be deemed to be a waiver of any other right under this Agreement.

24. **Indemnification.** CCCP shall protect, defend, hold harmless and indemnify the COUNTY, its official, officers, agents, employees and representatives, from and against any and all claims, damages, demands, liabilities, losses, delays, fines, penalties, settlements, injuries and expenses of any kind or nature including court costs and reasonable attorneys fees, which in any way arise out of, result from or relate to CCCP's participation in this Agreement, provided that any such claim is caused by an act, omission, or negligence of CCCP, any subcontractor, anyone employed by any of them, or anyone for whose acts any of them may be liable.
25. **Damages.** Except where otherwise specifically provided, the measure of damages to be paid by CCCP to the COUNTY or by the COUNTY to CCCP, due to any failure by CCCP or the COUNTY to meet any of its obligations under this Agreement, shall be the actual damages incurred by the COUNTY or CCCP, including any and all consequential damages.
26. **Liquidated Damages.** If, after notice to CCCP and failure of CCCP to cure an alleged Act of Default within thirty (30) days of such written notification, CCCP fails or refuses to comply with the provisions of paragraph 1, regarding the construction of the Project, CCCP shall be liable to the COUNTY for \$300,000. The foregoing shall apply without regard to the COUNTY's rights pursuant to any other section of this Agreement.
27. **Notice.** Except as otherwise provided herein, if either Party breaches this Agreement or defaults in the performance of any of the material covenants or conditions contained herein, the other Party shall provide written notice to the defaulting Party, identifying with particularity the specific conditions giving rise to a breach of this Agreement or default in the performance of any of the material covenants or conditions contained herein. Such notice shall be in accord with the provisions of paragraph 10 herein.
28. **Notice of Claim.** Upon full execution of this Agreement, the COUNTY shall file a Release of Notice of Claim in the public records of Leon County in accordance with law, which Release shall release the Notice of Claim filed by the COUNTY on September 26, 2006 and recorded at O.R. Book 3587, Page 27, Official Records of Leon County.
29. **Termination.** This Agreement shall terminate upon the COUNTY's delivery of the Acceptance of Project in accordance with paragraph 8.

APPROVED this _____ day of _____, 2006.

WITNESS:

Bill A. Z...
James Luffelt

**CAPITAL CIRCLE COMMERCE
PARK, L.L.C.**

By: [Signature]

Its: Managing Member

By: _____

Its: _____

LEON COUNTY, FLORIDA

By: _____

Bill Proctor, Chairman
Board of County Commissioners

ATTESTED BY:

Bob Inzer, Clerk of the Court

By: _____
Bob Inzer, Clerk

APPROVED AS TO FORM:

County Attorney's Office

By: _____
Herbert W. A. Thiele, Esq.
County Attorney