

**CITY OF TALLAHASSEE  
TEMPORARY ECONOMIC EMERGENCY  
CONCURRENCY RELIEF AGREEMENT**

**Florida Commerce Credit Union Facility  
1545 Raymond Diehl Road**

This Agreement is entered into between the FLORIDA COMMERCE CREDIT UNION, a state chartered credit union organized and existing under the laws of the State of Florida, with a mailing address at P.O. Box 6416, Tallahassee, Florida 32314 ("Developer"), and the CITY OF TALLAHASSEE, a Florida Municipal Corporation located at 300 South Adams Street, Tallahassee, Florida 32301, ("City").

**WHEREAS**, Developer is the developer of a drive-through banking facility ("Project") described herein in Section 3 and in the EXHIBITS A through C, attached hereto. The Project is located within the City's jurisdiction and must mitigate certain transportation impacts on roadways located within the City, as described in Section 5 herein.

**WHEREAS**, the City has adopted a concurrency management program, codified in Chapter 4 of the Tallahassee Land Development Code ("Concurrency Program"), and the Concurrency Management System Policy and Procedures Manual ("Manual"), subject to the requirements of the 1985 Florida Growth Management Act and the 2010 Tallahassee/Leon County Comprehensive Plan; and

**WHEREAS**, the Concurrency Program and Manual provide that land development shall be authorized only when there is sufficient available capacity

to serve the development in the public facilities of roadway, potable water, parks, sanitary sewer, stormwater, solid waste, and mass transit; and further provides procedures for determining the availability of these public facilities and allocating capacity to specific developments; and further provides for review procedures to determine whether or not a development meets concurrency requirements; and

**WHEREAS**, on April 22, 2009, in recognition of the economic downturn in the City for private developers, the City approved the Temporary Economic Emergency Concurrency Relief Program ("Concurrency Relief Program") under which a portion of transportation concurrency mitigation costs may be waived, so long as the project provides a public benefit; and

**WHEREAS**, as part of its site plan application review process, the Developer has submitted to the City an application for concurrency review and a request to be considered for the Concurrency Relief Program, attached hereto as Exhibit D and made a part hereof; and

**WHEREAS**, the City has determined that the project provides a public benefit, as described herein in Section 4 and is eligible for 50% concurrency relief under the Concurrency Relief Program as provided herein; and

**NOW THEREFORE**, in consideration of and in reliance on the promises, covenants and recitals herein, the Developer and the City hereby agree that development of the Project shall be contingent and conditioned upon the Developer providing for the mitigation of the transportation impact of the Project on public facilities as provided herein.

**SECTION 1. REAL PROPERTY SUBJECT TO THIS AGREEMENT**

The real property subject to this Agreement is described in EXHIBIT A (legal description), located as described in EXHIBIT B (general location map), will be developed as generally set forth in EXHIBIT C (conceptual development plan), and will include the improvements included in EXHIBIT D, which exhibits are attached to and made a part of this Agreement.

**SECTION 2. TERM OF THE AGREEMENT**

The term of this Agreement shall commence upon the execution by the Mayor of the City of Tallahassee and attestation by the City's Treasurer/Clerk, and shall extend until the completion of the Project under the terms of this Agreement, unless sooner terminated or amended as provided herein. The parties acknowledge that any development approvals are contingent upon the approval of this Agreement by the City Commission.

**SECTION 3. ALLOWABLE DEVELOPMENT AND CONSTRUCTION TIMEFRAMES**

- A. The site plan application for the Project was received on June 4, 2009.
- B. The Project is outside the multi-modal transportation district.
- C. The Project qualifies as Type II redevelopment under the City's Land Development Code. The site has a paved driveway consisting of 10,381 square feet of impervious surface, which will be used in the Project.

E. The Project is a credit union facility in a 5,872 square foot building with drive-through windows, located at 1545 Raymond Diehl Road near its intersection with Thomasville Road.

F. The Developer shall commence construction on or before December 31, 2010, and shall show continuous progress, which is defined as a minimum of one approved inspection by the City on the construction site every 180 days.

G. The Developer acknowledges that any changes to the Project described in EXHIBIT C that would serve to increase the number of entering or exiting trips, or which would significantly change the trip assignment pattern will require additional concurrency review and may necessitate an amendment to this Agreement. Development of the Project may commence after the date of execution of this Agreement subject to the conditions of this Agreement and all required permits and approvals being obtained.

**SECTION 4. DESCRIPTION OF PUBLIC BENEFIT**

The Project qualifies for the Concurrency Relief Program by providing public benefits as follows:

A. The building will exceed minimum building code requirements and will be more energy efficient because of enhanced glazing on windows, insulation in walls, use of electric heat pumps for heating and cooling, advanced electronic thermostats, low energy light fixtures, and motion sensitive interior lights.

B. The drive-through facility will have tandem drive-through windows and advanced technology at the drive-through windows to reduce "dwell" time for drive-up vehicles, thus reducing emissions and energy consumption.

C. The project is "shovel ready", and will provide needed construction jobs for the Tallahassee area.

D. In addition to meeting the requirements for the Project in the City's land development regulations, the Developer shall complete the Project according to the standards included in the letter to Bob Herman from Cecilia D. Homison, the Developer's Chief Executive Officer, dated July 27, 2009, which letter is attached hereto as Exhibit D and made a part hereof. Failure to do so will be a breach of this Agreement.

**SECTION 5. PUBLIC FACILITIES TO SERVE THE PROJECT**

A. The City's concurrency review indicates that the Project does not meet concurrency standards on the following roadway segments:

Capital Circle NE - I10 to Raymond Diehl Rd. (southbound),

Capital Circle NE - Hermitage Blvd. to Raymond Diehl Rd./Eastgate (northbound),

Capital Circle NE - Raymond Diehl Rd. to Hermitage Blvd. (southbound)

I10 - Ramp A1 to Thomasville Rd. (eastbound),

Thomasville Rd. - I10 EB Exit/Raymond Diehl Rd. to I10 WB (northbound),

Thomasville Rd. - I10 WB to Timberlane Rd. ( northbound), and

Thomasville Rd. - Timberlane Rd. to Capital Circle/Market St.  
(northbound).

B. In order to satisfy the noted deficiency, the improvements identified in EXHIBIT D (mitigation requirements), attached hereto and made a part hereof, must be accomplished to satisfy the reduction in transportation mitigation cost.

C. The full cost of the mitigation above is \$175,489.00.

D. The Developer qualifies for a 50% reduction of the mitigation cost, and shall pay \$87,744.00, which is due prior to sign-off of the final site plan.

**SECTION 6. EFFECT OF AGREEMENT ON CITY**

A. Any act related to the improvements under this Agreement, but not specifically addressed by this Agreement, shall comply with the laws, ordinances and regulations of the City.

B. Failure of this Agreement to address a particular permit, condition, term or restriction legally in effect at the time this Agreement is executed shall not relieve the Developer, or successors in interest of the necessity of complying with the laws, ordinances, and regulations governing such permitting requirements, conditions, terms or restrictions.

**SECTION 7. ENFORCEMENT**

A. In the event the Developer breaches this Agreement or fails to comply with any conditions of this Agreement, including those in Exhibit D, the City may, at its discretion, terminate this Agreement, provided that the City

gives thirty (30) days written notice to the Developer to correct the violation or to provide evidence to the City that a good faith effort to correct the violation of the Agreement has been substantially commenced.

B. In the event that this Agreement is based upon materially inaccurate information provided by or on behalf of the Developer, the City may, at its discretion, terminate this Agreement without notice.

C. If this Agreement is terminated pursuant to this section, the Developer shall immediately pay the full concurrency mitigation amount of \$175,489, less any amount already paid.

**SECTION 8. ASSIGNMENT**

A. The Developer shall have the right to assign or transfer this Agreement with all rights, title and interest herein to any person, firm or corporation (at any time during the term of the Agreement), who shall succeed to the remaining interest of the Developer in the Project. To the extent and if the Developer shall assign or transfer, enter a long-term lease, merger, joint venture or partnership, the successor to the Developer shall receive the benefits and be bound by the provisions of this Agreement. The Developer shall inform any successor in interest in and to the lands or parcels affected by this Agreement that they are bound by the terms of this Agreement.

B. In the event the Developer assigns or transfers rights and obligations under this Agreement, the Developer shall notify the City's Land Use and Environmental Services Administrator of such change within thirty (30) days.

**SECTION 9. OTHER PERMITS**

This Agreement affects the rights and obligations of the parties. It is not intended to determine or influence the authority or decisions of any other local or state government agency in the issuance of any permits or approvals which may be required by law, statute, ordinance, regulation for any development authorized in this Agreement.

**SECTION 10. INDEMNIFICATION**

The Developer understands and agrees that it has entered into this Agreement in its own right for its own benefit and not as an agent or employee of the City; and further, the Developer undertakes and assumes all potential liabilities resulting from the negligent and wrongful acts of its officers, employees or agents for any cause whatsoever in connection with the performance of this Agreement, and expressly agrees to indemnify and hold harmless the City from any and all liabilities associated directly with such negligent and wrongful acts during the term of the Agreement.

**SECTION 11. ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the parties hereto related to concurrency for the Project with regard to conditions for authorization for the development of the Project and supersedes all prior understanding, if any. There are no oral or written promises, conditions, representations, understandings or terms of any kind as conditions or inducements to the execution hereof and none have been relied upon by either party. No subsequent conditions, representations, warranties or agreements,

nor any modifications hereto shall be valid and binding upon the parties unless they are in writing, signed by the parties and executed in the same manner as this Agreement.

**SECTION 12. AMENDMENTS**

This Agreement may be amended by the parties hereto with the same formality and in the same manner as the original agreement was approved.

**SECTION 13. SEVERABILITY**

In the event any term or provision of this Agreement shall be held invalid, such invalid term or provision shall not affect the validity of any other term or provision hereof and all such other terms or provisions shall be enforceable to the fullest extent permitted by the law provided, however, if any term or provision of this Agreement is held to be invalid due to the scope or extent thereof, such term or provision shall automatically be deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.

**SECTION 14. EFFECTIVE DATE**

This Agreement shall become effective upon its execution by the Mayor as attested by the Treasurer/Clerk.

Approved by the City Commission on \_\_\_\_\_.

WITNESSES:

**FLORIDA COMMERCE CREDIT UNION**

\_\_\_\_\_  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
By:  
Its:  
  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009 by \_\_\_\_\_ as \_\_\_\_\_, who is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida

(NOTARY SEAL)

**CITY OF TALLAHASSEE**

\_\_\_\_\_  
Attest: Gary Herndon  
City Treasurer - Clerk

\_\_\_\_\_  
John R. Marks, III, Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Approved As To Form  
James English, City Attorney

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009 by JOHN R. MARKS, III, Mayor of Tallahassee, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida

(NOTARY SEAL)

**EXHIBITS**

- EXHIBIT A**            LEGAL DESCRIPTION
- EXHIBIT B**            GENERAL LOCATION MAP
- EXHIBIT C**            CONCEPTUAL DEVELOPMENT PLAN
- EXHIBIT D**            Letter from Cecilia D. Homison dated 7/27/09