



CABARRUS COUNTY
BOARD OF COMMISSIONERS

NOTICE OF PUBLIC HEARING
November 16, 2015 – 6:30 P.M.

Economic Development Grant

Notice is hereby given that the Cabarrus County Board of Commissioners will hold a public hearing at 6:30 p.m. (or as soon thereafter as persons may be heard) on Monday, November 16, 2015, in the Board of Commissioners' Meeting Room located on the second floor of the Cabarrus County Governmental Center, 65 Church Street SE, Concord, to consider an economic development cash grant in the amount of \$930,240 for Beacon Partners (River Oaks – River Oaks Corporate Center), pursuant to N.C. General Statute 158-7.1 to provide public infrastructure within the River Oaks Corporate Center to include: a public roadway, utility extensions, and a traffic signal at the intersection of the new roadway and Derita Road. The [proposed draft agreement](#) is available for inspection in the Office of the Clerk to the Board at the Governmental Center.

If reasonable accommodations are needed, please contact the ADA Coordinator at 704-920-2100 at least 48 hours prior to the public hearing.

Megan Smit, Clerk to the Board

Posted November 5, 2015

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

ECONOMIC DEVELOPMENT AGREEMENT
(BEACON PARTNERS)

This AGREEMENT (“Agreement”) is entered into effective April __, 2015 by and between BEACON PARTNERS, a North Carolina _____ (the “Company”), and the COUNTY OF CABARRUS, North Carolina, a body politic and political subdivision of the State of North Carolina (the “County”), and describes the agreement between the parties relating to an economic development project to assist the Company in the construction of public infrastructure in the River Oaks Corporate Center (the “Site”).

RECITALS

1. The County is vitally interested in the economic welfare of its citizens and the creation and maintenance of sustainable jobs for its citizens in strategically important industries and therefore wishes to provide the necessary conditions to stimulate investment in the local economy and promote business, resulting in the creation of a substantial investment in the County and to encourage economic growth and development opportunities which the County has determined will be made possible pursuant to the Project (as defined below).

2. The Company is engaged in the development of business parks in order to attract industrial and commercial enterprises to such parts thereby generating economic growth and creating new jobs.

3. The Company has proposed to make a capital investment of at least \$53,000,000 at the Site in two phases, all in the form of internal infrastructure and at least four (4) industrial or commercial buildings. Such infrastructure and buildings that are located on the Site are referred to herein as the “Facility.” The Facility, along with the land constituting the Site is referred to as the “Project.”

4. The County recognizes that the Project will bring direct and indirect benefits to the County, including job creation, economic diversification and stimulus in technology and manufacturing skills, and has offered economic development incentives (the “County Incentives” as defined below) to induce the Company to locate the Project at the Site.

5. The Company fully intends to establish through the Project an important presence in the County by making a substantial investment in the Project. The County hereby acknowledges that the terms of this Agreement, including specifically the County Incentives and other assistance described in this Agreement, constitute a dispositive inducement to the Company to locate the Project at the Site. Similarly, the Company hereby acknowledges that its decision to develop the Project at the Site resulted from the County’s offer of local incentives and other assistance as described in this Agreement.

In consideration of the mutual covenants and agreements set forth, the parties agree as follows.

I. County Incentives Generally

The County will provide cash incentives (the “County Incentives”) provided that the provisions of this Agreement are met. The County will provide a cash grant for construction of a public roadway, installation of public utilities and installation of a stoplight on Derita Road as described below in Section II.

II. County Economic Development Incentives Related Land Development and Infrastructure

A. Land Development

The Company agrees to develop the Facility on a tract of land owned by the Company consisting of approximately ____ acres located at the southwest corner of Derita Road and Poplar Tent Road in the City of Concord, North Carolina (the “Site”). The Site is denoted on the map attached as Exhibit A

B. County’s Incentives for a Public Road, Utilities and a Stoplight

Within ten (10) days of completion of construction of each of the following improvements to the Site, the County will pay the indicated amount to the Company as reimbursement for such cost, provided evidence of the amount and completion of the construction is given to the County.

C. Company intends to construct the Facility in two phases, beginning in 2015. The two phases re further described as:

Phase	Completion Deadline	Investment Amount
1	9-30-2016	\$25,000,000
2	12-31-2018	\$28,000,000
	TOTAL	\$53,000,000

The investment amounts shown are for the purposes of establishing a minimum investment by Company for each Phase, subject to the Section III. C pro-ration reduction.

III. Reduction and Recapture of Incentives

A. If Company is not current on all other taxes, fees, assessments or other amounts owed to the County by Company related to the Facility at the time an EDI Grant is to be paid, the County may set off from any EDI Grant any amount(s) so owed by Company to the County.

- B. If for any reason Company fails to make the \$53,000,000 investment set forth in Section II C then the County will have no further responsibility to make any EDI Grants to Company for investment made after the completion deadline, but agrees to complete EDI Grants pursuant to this Agreement on any investment that has been made as of the completion deadline.
- C. The EDI Grant for any phase will be reduced by the percentage by which Company's capital investment fell short of the target investment for that phase.
- D. The County is not required to make any EDI Grants to Company at any time after any public announcement by Company of its plan to cease construction at the Facility.
- E. If the Company ceases operations completely at the Facility, substantially curtails operations at the Facility for a period of more than one month or otherwise ceases to use the Site for the purposes contemplated herein (or some other purpose such as manufacturing or distribution), in any such case within ten years after the Opening Date, for any reason other than nonperformance by the County of its covenants under this Agreement, then, at the County's request, the Company will refund to the County a percentage of the EDI Grants previously paid to the Company, in each case depending on the year in which one of the above circumstances occurs, as determined by the following table:

Table 2

<u>Year</u>	<u>Reimbursement Percentage</u>
1-4	100
5	65
6	50
7	40
8	30
9	20
10	10

- F. The Company shall secure its potential repayment obligation with an irrevocable, standby letter of credit in an amount equal to the EDI Grants to be paid by County, in a form acceptable to County.
- G. The provisions of this Section IV survive the termination of this Agreement.

IV. Indemnification and Limitations

Company will indemnify and hold harmless the County and its Board of Commissioners, employees and agents (the “Indemnified Parties”) for damages imposed upon them by a court of final determination based on any claims of third parties arising out of any act or omission of the Company in the performance required of it by this Agreement, provided, however, that such indemnification (i) is subject to an aggregate cap equal to the EDI Grants actually received by the Company, (ii) is not contrary to law and (iii) shall not apply to third party claims arising out of or relating to a negligent act or omission of the County. The County agrees that none of the foregoing shall be construed to release County from the obligations it has undertaken elsewhere in this Agreement, in connection with the EDI Grants or otherwise. Except as otherwise set forth herein, each Indemnified Party and the Company agrees to pay its own costs incurred in connection herewith, including all costs incurred in connection with the preparation of this Agreement.

COMPANY SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY CLAIMS ARISING OUT OF ANY ACT OR OMISSION OF THE COMPANY IN THE PERFORMANCE REQUIRED OF IT BY THIS AGREEMENT FOR SPECIAL INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST REVENUES AND PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. This provision also applies to the indemnity set forth in the above paragraph.

V. Disclaimer of Warranties

Company acknowledges that the County has not designed the Facility, that the County has not supplied any plans or specifications with respect thereto and that the County: (a) is not a manufacturer of, or dealer in, any of the component parts of the Facility or similar facilities, (b) has not made any recommendation, given any advice nor taken any other action with respect to (i) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Facility or any component part thereof or any property or rights relating thereto, or (ii) any action taken or to be taken with respect to the Facility or any component part thereof or any property or rights relating thereto at any stage of the construction thereof, (c) has not at any time had physical possession of the Facility or any component part thereof, and (d) has not made any warranty or other representation, express or implied, that the Facility or any component part thereof or any property or rights relating thereto (i) will not result in or cause injury or damage to persons or property, (ii) has been or will be properly designed, or will accomplish the results which Company intends therefore, or (iii) is safe in any manner or respect.

The County makes no express or implied warranty or representation of any kind whatsoever with respect to the Facility or any component part thereof, including but not limited to any warranty or representation with respect to the merchantability or the fitness or suitability thereof for any particular purpose, and further including the design or condition thereof, the safety, workmanship, quality, or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the Facility’s ability to perform any function; or any other characteristic of the Facility; it being agreed that as between the County and

Company, Company is to bear all risks relating to the Facility, the completion thereof or the transactions contemplated hereby and Company hereby waives the benefits of any and all implied warranties and representation of the City.

The provision of this Section V shall survive the Agreement's termination.

VI. Termination of Agreement

This Agreement shall terminate at the end of the tenth year after the County has made the last of the EDI Grants required by this Agreement. After such termination, this Agreement will be null and void, and the parties to this Agreement will have no further obligations from one to the other thereafter, except as specifically noted in this Agreement.

VII. Assignments

The Company shall not assign this Agreement or any portion thereof without the written consent of the County, nor shall the Company assign any funds due or to become due to it hereunder without the prior written consent of the County; provided, however, the Company shall be permitted to assign this Agreement or any portion thereof, or any funds due or to become due to it hereunder, to any direct or indirect wholly-owned subsidiary or other related party of the Company. However, in the event of such assignment, the Company shall remain ultimately responsible and liable for the performance of the Company's obligations hereunder.

VIII. Representations

The Company represents as of the date of this Agreement as follows:

- A. The Company (i) is a _____ company duly organized and validly existing under the laws of its state of incorporation; (ii) is duly qualified to transact business and is in good standing in North Carolina; (iii) is not in violation of any provision of its organizational documents; (iv) has full corporate power to own its properties and conduct its business; (v) has full power and authority to enter into this Agreement and to enter into and carry out the transactions contemplated by this Agreement; (vi) by proper action has duly authorized the execution and delivery of this Agreement; and (vii) is not in default under any provision of this Agreement.
- B. The Company's execution and delivery of this Agreement neither conflicts with, nor will result in, a breach or default under its organizational documents; nor, to the best of its knowledge, will its execution and delivery conflict with, or result in, a breach or default under the terms, conditions, or provisions of any statute, order, rule, regulation, agreement, or instrument to which the Company is a party

or by which it is bound; nor will its execution and delivery result in the imposition of any lien on its property.

- C. The Company has duly authorized, executed, and delivered this Agreement, and to the Company's knowledge, this Agreement constitutes its legal, valid, and binding obligations, enforceable in accordance with its terms.

To the Company's knowledge, there is no litigation or proceeding pending or, to its knowledge, threatened against the Company, which would adversely affect the validity of this Agreement.

The County represents as of the date of this Agreement as follows:

- A. At the time of execution of this Agreement, the County (i) has full power and authority to enter into this Agreement and to enter into and carry out the transactions contemplated by this Agreement; (ii) by proper action has duly authorized the execution and delivery of this Agreement; and (iii) is not in default under any provisions of this Agreement.
- B. The County has duly authorized, executed, and delivered this Agreement, and this Agreement constitutes the County's legal, valid, and binding obligation, enforceable in accordance with its terms.
- C. To the County's knowledge, there is no litigation or proceeding pending or threatened against the County or affecting it which would adversely affect the validity of this Agreement.
- D. To the best of the County's knowledge at the time of execution of this Agreement, the County is not in default under any provision of State law which would affect its existence or its powers.
- E. To the best of the County's knowledge at the time of execution of this Agreement, no official of the County has any interest (financial, employment, or other) in the Company or the transactions contemplated by this Agreement.
- F. With respect to this Agreement, County has complied fully with all requirements of N.C. General Statutes §158-7.1, to the County's ability and knowledge.

NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT

SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE SOLE DISCRETION OF THE COUNTY FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE COUNTY'S MONEYS, NOR SHALL ANY PROVISION OF THE AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE COUNTY GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS ARTICLE TAKES PRIORITY.

IX. **Miscellaneous**

A. **Definitions.** All terms with initial capitals used in this Agreement and not otherwise defined will have the meanings ascribed to those terms in the Webster's Third New International Dictionary.

B. **Governing Law.** The parties intend that the law of the State of North Carolina will govern this Agreement.

C. **Notices.**

(1) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.

(2) Any communication under this Agreement shall be sufficiently given and deemed given when delivered by hand or after being deposited in the mails by first-class certified mail, postage prepaid, and addressed as follows:

(i) If to COMPANY: Jon L. Morris
Beacon Partners
610 East Morehead Street, Suite 250
Charlotte, N C 28202

With copy to: John Hunter
Womble Carlyle
One Wells Fargo Center
Suite 3500
Charlotte, NC 28202

(ii) If to the COUNTY: Michael K. Downs
County Manager

County of Cabarrus
P. O. Box 707
Concord, NC 28026-0707

With copy to: Richard M. Koch
County Attorney
County of Cabarrus
3220-201 Prosperity Church Road
Charlotte, N C 28269

Any addressee may designate additional or different addresses for communications by notice given under this Section to each other.

- D. **Non-Business Days.** If the date for making any payment or performing any act or exercising any right is not a Business Day, such payment must be made or act performed or right exercised on or before the next Business Day.
- E. **Entire Agreement: Amendments.** This Agreement, including Exhibits A, B and C attached, which are incorporated herein and made a part hereof constitute the entire contract between the parties. This Agreement may not be changed except in writing signed by all parties.
- F. **Binding Effect.** This Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and assigns. There are no other agreements or other conditions precedent to the binding nature of the respective obligations of the County under Sections II and III, other than the performance by Company of its obligations under this Agreement.
- G. **Time.** Time is of the essence in this Agreement and each and all of its provisions.
- H. **Liability of Officers and Agents.** No officer, agent, or employee of the County or Company shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent, or employee from the performance of any official duty provided by law.
- I. **Counterparts.** This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.
- J. **Provide W-9 To County.** Company shall provide a completed W-9 form to the County upon execution of this Agreement.

- K. **Dissolution of Company.** If the Company's legal entity is dissolved or suspended and the Company does not notify the County of such dissolution in three business days and/or the entity status is not reinstated in thirty business days, this Agreement, at the sole option of the County, shall be declared null and void or the Company shall execute a new Agreement showing the Company's correct legal entity.
- L. **Notice of Potential Disclosure of Confidential Company Information.** The Company acknowledges that it has been informed by the County that the County is required by North Carolina law to disclose "Public Records" as the term is defined by North Carolina General Statutes § 132-1, upon request. All information disclosed to the County by the Company which is subject to that definition and whose disclosure is not otherwise protected by law will be released by the County upon request as provided by North Carolina General Statutes § 132-6. The County may withhold from disclosure confidential records as defined by North Carolina General Statutes § 132-1.2. The Company acknowledges that it has read and is familiar with the County's obligations of public disclosure of documents and the definitions of confidential documents as contained in Chapter 132 of the North Carolina General Statutes. In order to prevent the disclosure of the confidentiality of information identified by the Company as a trade secret or as "confidential" pursuant to North Carolina General Statutes § 132.1.2 the County shall, if it receives a request for disclosure of such information, notify the Company of such request so that the Company may defend any claims or disputes arising from efforts of others to cause such trade secrets to be disclosed as a public record. The Company acknowledges that this disclosure of the County's public records requirements is given pursuant to North Carolina General Statutes § 132-1.8(b) and agrees that such disclosure is full and sufficient to the satisfaction of the Company. Both parties agree that this Section will survive the termination of the Agreement.
- M. **Force Majeure.** Any delay in the performance of any of the duties or obligations of either party hereunder (the "Delayed Party") shall not be considered a breach of this Agreement and the time required for performance shall be extended for a period equal to the period of such delay, provided that such delay has been caused by or is the result of any acts of God; acts of the public enemy; insurrections; riots; embargoes; labor disputes, including strikes, lockouts, job actions, or boycotts; shortages of materials or energy; fires; explosions; floods; changes in laws governing international trade; or other unforeseeable causes beyond the control and without the fault or negligence of the Delayed Party. The Delayed Party shall give prompt notice to the other party of such cause, and shall take whatever reasonable steps are necessary to relieve the effect of such cause as promptly as possible. No such event shall excuse the payment of any sums due and payable hereunder on the due date thereof except any payment due upon the occurrence of any act or event for which delayed performance is excused as provided above.

- N. **Severability.** If any court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, then (a) such holding shall not invalidate or render unenforceable any other provision of this Agreement, unless such provision is contingent on the invalidated provision; and (b) the remaining terms hereof shall, in such event, constitute the parties' entire agreement.
- O. **Audit Right.** The County reserves the right to require a certified audit or may perform the audit through the use of its staff pertaining to the Company's compliance with the capital investment condition described in this Agreement during normal business hours and upon reasonable prior notice.
- P. **Annual Report.** In the event the Company should cease to be part of a public company with its annual report publicly available on line for review, the Company shall furnish to the County a copy of its annual audit report performed by a certified public accountant as soon as it becomes available to the Company, but no later than six months following the Company's fiscal year end.

(SIGNATURES FOLLOW ON THE NEXT PAGE.)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

<p>[SEAL]</p> <p>ATTEST:</p> <p>By: _____ Megan I.E. Smit, Clerk to the Board</p>	<p>COUNTY OF CABARRUS NORTH CAROLINA</p> <p>By: _____ Stephen M. Morris Chair Cabarrus County Board of Commissioners</p>
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COUNTY OF CABARRUS

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Susan Fearington, Finance Director
County of Cabarrus, North Carolina
Date: _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Richard M. Koch, County Attorney

<p>[SEAL]</p> <p>ATTEST:</p> <p>_____ Name: _____ Title: _____</p>	<p>BEACON PARTNERS</p> <p>By: _____ _____ President</p>
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Exhibit A

Property Description or Map