

B. Gordon Companies Capital (V397)

January 20, 2012

General Project Plan

Grantee: Gordon Companies, Inc. (“Gordon” or the “Company”)

ESD Investment: A grant of up to \$75,000 to be used for a portion of the costs of real estate acquisition.

Project Location: 85 Innsbruck Drive, Cheektowaga, Erie County

Proposed Project: Acquire and equip a new facility in NYS, including retaining and creating jobs.

Regional Council: The Western New York Regional Council has been made aware of this item.

ESD Incentive Offer Accepted: May 15, 2007 (initial offer); November 15, 2011 (revised offer)

Project Completion: November 2011

Number of Employees at Facility:

Initial employment at time of ESD initial Incentive Offer:	15
Current employment level:	51
Minimum employment on January 1, 2012:	45

Grantee Contact: Mr. David M. Gordon, President
85 Innsbruck Drive
Cheektowaga, NY 14227
Phone: (716) 706-0320 Fax: (716) 706-0319

Project Team:

Origination	Ray Witzleben
Project Management	Jean Williams
Affirmative Action	Helen Daniels
Environmental	Soo Kang

Project Description:

Background

Gordon was established in 1977 in Buffalo as a retailer of close-out merchandise. Today, the Company is an Internet sales distributor specializing in an extensive, broad-based seasonal holiday inventory, as well as close-out goods including home and patio decorations and furniture, kitchen and food products, sports items, and miscellaneous gifts. The Company purchases first-run and close-out merchandise from the United States, China, Hong Kong, Mexico, and Canada and sells via its MerchantOverstock.com and

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ChristmasCentral.com Web sites. Company products are also featured on eBay.com, Amazon.com, Sears.com, and Linens and Things. The Company also operates a retail Christmas and craft store, Dave's Craft & Christmas, in Cheektowaga. In 2007, eBay recognized Gordon as being the 76th fastest-growing online retailer worldwide and in 2011, ChristmasCentral.com was included as an honoree in the 2011 Inc. Magazine 500/5000 fastest-growing private companies in America. Major competitors include online divisions of big box retailers such as Frontgate.com (West Chester, OH), ChristmasLights, Etc. (Omaha, NE) and BalsamHill.com (Redwood City, CA).

In March 2007, the Company advised ESD that it had to relocate, as its 17,000-square-foot inefficient Buffalo facility was located on a 23-acre site designated by the City of Buffalo as the future location of a 134-home subdivision. Gordon could easily relocate its Internet-based operations anywhere in the United States and was considering sites in Pennsylvania, Ohio and New York to complete the \$492,850 project; however, the cost of operation was higher in New York State than in the competing states. Gordon therefore sought assistance and accepted ESD's May 2007 incentive offer of a \$75,000 capital grant as inducement to relocate operations to a leased facility in Erie County and purchase machinery and equipment. The project would retain 15 jobs and create 30 new jobs by January 1, 2011.

In 2009, Gordon was established at its new location; however, it was experiencing significant issues with the building and landlord; therefore it decided to relocate once again into a larger, more efficient, vacant facility in Cheektowaga, which it purchased in 2010. In November 2011, ESD issued a revised incentive proposal consisting of a \$75,000 capital grant toward the acquisition of the building.

The Project

The \$2.2 million project involved the acquisition of a 100,000-square-foot facility; building improvements including roof, gutters, roll-up doors, HVAC, sprinkler and alarm system repairs; the acquisition and installation of new and used machinery and equipment including warehouse racking, pallet jacks, forklifts, pallet wrappers, and office furniture, fixtures and equipment; soft costs; and the lease of the previous facility to accommodate the Company while it relocated. The newly acquired facility provides a more efficient design and will accommodate anticipated growth. Gordon completed its relocation in November 2011, and the Company has already created 36 jobs, exceeding its job commitment.

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Financing Uses	Amount	Financing Sources	Amount	Percent
Real Estate	\$1,826,259	ESD Grant	\$75,000	3%
Furniture, Fixtures & Equipment; Machinery & Equipment	234,090	Company Equity	313,653	14%
Building Improvements	35,330	Five Star Bank - Loan ^(a)	900,000	41%
Soft Costs/Lease	112,974	SBA Loan ^(b)	720,000	33%
		Cheektowaga Economic Development Corp. - Loan ^(c)	200,000	9%
Total Project Costs	\$2,208,653	Total Project Financing	\$2,208,653	100%

(a) 5%/10 yrs/1st on RE

(b) 4.28%/20 yrs/ 2nd on RE and assignment of rents on the premises

(c) 2.6%/5 yrs/1st on RE located at 2695 Union Rd, 2715 Union Rd, and 2725 Union Road as a modification to an existing loan for a separate Gordon-owned business.

Financial Terms and Conditions:

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$75,000 capital grant (\$750) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will be obligated to advise ESD of any material or adverse changes in its financial condition prior to disbursement.
3. The Company will be required to contribute at least 10% of the total project cost in the form of equity contributed after the Company's written acceptance of ESD's offer. Equity is defined as cash injected into the project by the Company or by investors, and should be auditable through Company financial statements or Company accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.
4. Prior to disbursement, the Company must employ at least the number of Full-time Permanent Employees set forth as the Baseline Employment in the table below. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less

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than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.

5. Up to \$75,000 will be disbursed to the Grantee in three installments as follows:
 - a) an Initial Disbursement of an amount equal to 50% of the grant (\$37,500) will be disbursed to the Grantee upon completion of the project substantially as described in these materials; documentation of project costs of \$2.2 million; and documentation of the employment of at least 15 Full-time Permanent Employees at the Project Location, assuming that all project approvals have been completed and funds are available;
 - b) a Second Disbursement of an amount equal to 25% of the grant (\$18,750) will be disbursed to the Grantee upon documentation of the employment of at least 30 Full-time Permanent Employees at the Project Location (Employment Increment of 15), provided the Grantee is otherwise in compliance with program requirements;
 - c) a Third Disbursement of an amount equal to 25% of the grant (\$18,750) will be disbursed to the Grantee upon documentation of the employment of at least 45 Full-time Permanent Employees at the Project Location (Employment Increment of 15), provided the Grantee is otherwise in compliance with program requirements.

Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require. Expenditures must be incurred on or after May 15, 2007, to be considered eligible project costs. All disbursements must be requested by July 1, 2012.

6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$75,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Company and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.
7. In consideration for the making of the Grant, Grantee will achieve the Employment Goals set forth in Column B of the table below. If the Full-time Permanent Employee Count for the year prior to the reporting date set forth in Column A of the table below is less than eighty-five percent (85%) of the Employment Goal set forth in Column B (an "Employment Shortfall"), then upon demand by ESD, Grantee shall be obligated to repay to ESD a portion of each disbursement of the Grant, as follows:

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the Employment Shortfall occurred. The Recapture

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Amount shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the Employment Shortfall occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the Employment Shortfall occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the Employment Shortfall occurred in the third full calendar year after the disbursement was made;
- (iv) 40% of the disbursed amount if the Employment Shortfall occurred in the fourth full calendar year after the disbursement was made;
- (v) 20% of the disbursed amount if the Employment Shortfall occurred in the fifth full calendar year after the disbursement was made.

The Grantee's number of Full-time Permanent Employees shall be deemed to be the greater of the number as of the last payroll date in the month of December for such year or the average employment for the 12 month period computed by quarter.

Baseline Employment	15
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A	B
Reporting Date	Employment Goals
February 1, 2013	15+X+Y
February 1, 2014	15+X+Y
February 1, 2015	15+X+Y

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in Section 5 (i.e. X=15, and Employment Goals shall equal $[15 + X = 30]$ if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then X=0.

Y = Grantee's Employment Increment that will be the basis of the Third Disbursement of the Grant as described in Section 5 (i.e. Y=15, and Employment Goals shall equal $[15 + X + Y = 45]$ if the Third Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Third Disbursement has not yet been made then Y=0.

Statutory Basis – Empire State Economic Development Fund:

1. The project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the State or would enhance or help to maintain the economic viability of family farms.

As a result of this project, the Company will retain 15 jobs and create 30 new jobs by January 1, 2012.

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2. The project would be unlikely to take place in New York State without the requested assistance.
The Company considered relocating its operations to Pennsylvania or Ohio. ESD's assistance helped to reduce costs and make the project feasible in New York.
3. The project is reasonably likely to accomplish its stated objectives and the likely benefits of the project exceed costs.
Evaluated over a seven-year period, project fiscal benefits to New York State government are expected to be \$695,665, which exceed the cost to the State.
4. The requirements of Section 10(g) of the Act are satisfied.
See cover memo.