

**FIRST AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT**

This **FIRST AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT** ("Agreement"), is made and entered into as of this 18th day of August, 2009 (the "Effective Date") by and between the **CITY OF GAINESVILLE, GEORGIA**, a municipal corporation of the State of Georgia (the "City") and the **GAINESVILLE CITY SCHOOL DISTRICT** (the "GCSD"), superseding all previous Intergovernmental Agreements between the City and GCSD related to the City of Gainesville's Tax Allocation District Number One — Midtown.

WHEREAS, the Council of the City of Gainesville (the "City"), by Ordinance 2006-53 adopted on October 17, 2006 (the "City Ordinance"), adopted and approved the Midtown Redevelopment Plan (the "Redevelopment Plan") and established Tax Allocation District Number One — Midtown (the "Midtown TAD") within the incorporated portion of Gainesville, Hall County, Georgia (the "County") in the area of the City (the "Redevelopment Area") as shown in the City Ordinance; and

WHEREAS, the City Ordinance provides that the Midtown TAD was created pursuant to the City's redevelopment powers as authorized by the Redevelopment Powers Law, O.C.G.A. §36-44-1, et seq., and became effective by operation of law on December 31, 2006; and

WHEREAS, the Gainesville City Board of Education consented to participate in the TAD in accordance with a Resolution and Intergovernmental Agreement passed in December 2006; and

WHEREAS, the Board of Education rescinded that consent by Resolution passed on March 27, 2009; and

WHEREAS, notwithstanding the Board of Education consent in 2006, no educational ad valorem tax increment has accrued in the Midtown TAD Special Fund; and

WHEREAS, since the Board of Education granted its initial consent, there has been a constitutional amendment authorizing school districts to participate in redevelopment which passed during a November 2008 voter referendum. *See*, 2008 GA. LAWS 1211, *et seq.*, Act 777; and

WHEREAS, since the Board of Education granted its initial consent, the Georgia General Assembly enacted Act 52 (House Bill 63), 2009 GA. LAWS _____, which became effective on April 22, 2009, repealing and reenacting the Redevelopment Powers Law, OCGA §§ 36-44-1 through 36-44-23, which reauthorizes the participation of school districts in redevelopment; and

WHEREAS, TADs are an invaluable tool that allow local communities to revitalize declining neighborhoods and commercial areas and turn them into vibrant, growing areas; and

WHEREAS, the City and the Board of Education now wish to memorialize their revised agreement regarding the GCSD's participation in the Midtown TAD.

WITNESSETH:

In consideration of the respective representations and agreements hereinafter contained and in furtherance of the mutual public purposes hereby sought to be achieved, the City and the GCSD do hereby agree as follows:

ARTICLE I

Section 1.1 Definitions. In addition to the words and terms defined elsewhere herein, the following words and terms shall have the meanings specified below, unless the context or use indicates another or different meaning or intent:

- (a) **"Board"** means the Gainesville City Board of Education, that elected entity which serves as the governing body responsible for the control and management of the Gainesville City School District.
- (b) **"2009 Board Resolution"** means that certain resolution adopted by the Gainesville City Board of Education on August 10, 2009 (including any subsequent Resolution affirming and/or amending the same) consenting to the inclusion of certain ad valorem taxes levied for educational purposes in the computation of the Tax Allocation Increment, authorizing the execution, delivery and performance of this Agreement, subject to the terms and conditions set forth therein, and other related matters.
- (c) **"City"** means that municipal corporation of the State of Georgia known as the City of Gainesville, Georgia.
- (d) **"City Ordinance"** means that certain ordinance adopted by the Gainesville City Council, on October 17, 2006, approving and adopting the Midtown Gainesville Redevelopment Area and Tax Allocation District Number One – Midtown, establishing the Midtown Gainesville Redevelopment Area, creating the TAD, and other related matters.
- (e) **"GCSD"** means that political subdivision of the State of Georgia known as the Gainesville City School District.
- (f) **"GCSD Tax Allocation Increment"** means that portion of the Tax Allocation Increment accruing within the TAD in each calendar year commencing in 2010 attributable to ad valorem taxes levied by the GCSD for educational purposes in such calendar year.
- (g) **"Redevelopment Area"** means that certain area located within the City as defined in O.C.G.A. §36-44-3(7), created by and established as a redevelopment area by the City in the City Ordinance and designated as "Midtown Gainesville Redevelopment Area," as more fully described in the City Ordinance and the Redevelopment Plan.

(h) **“Redevelopment Costs”** shall have the meaning set forth in O.C.G.A. § 36-44-3(8) of the Redevelopment Powers Law.

(i) **“Redevelopment Plan”** means that written plan of redevelopment for the Redevelopment Area adopted by the City in the City Ordinance and designated as the “Midtown Gainesville Redevelopment Plan,” as more fully described in the City Ordinance, and as defined by O.C.G.A. §36-44-3(9).

(j) **“Redevelopment Powers Law”** means Chapter 44 of Title 36 of the Official Code of Georgia Annotated, as repealed and reenacted enacted by the Georgia General Assembly by Act 52 (House Bill 63), 2009 GA. LAWS _____, which became effective on April 22, 2009.

(k) **“Special Fund”** means the special fund with respect to the TAD created pursuant to O.C.G.A. §36-44-11(c) of the Redevelopment Powers Law.

(l) **“Tax Allocation District” or “TAD”** means that certain area of the City within the Redevelopment Area defined and created as a tax allocation district, as provided in O.C.G.A. §36-44-3(13), by the City pursuant to the City Ordinance and designated as Midtown Gainesville Redevelopment Area and Tax Allocation District Number One – Midtown (sometimes hereinafter referred to as the “Midtown TAD”), as more fully described in the City Ordinance and in the Redevelopment Plan.

(m) **“Tax Allocation Increment Base”** means the taxable value of all taxable real property subject to ad valorem property taxes, as certified by the state revenue commissioner, located within the TAD as of December 31, 2006, as provided in O.C.G.A. §§36-44-3(15), 36-44-10.

(n) **“Tax Allocation Increment”** means the tax allocation increment as defined by O.C.G.A. §36-44-3(14) of the Redevelopment Powers Law with respect to the Midtown Gainesville TAD.

(o) **“TAD Bonds”** means those certain tax allocation bonds, notes or other obligations hereinafter issued by or on behalf of the City in accordance with O.C.G.A. §36-44-3(12) with respect to the TAD that the City may issue as necessary to implement provisions of the Redevelopment Plan, which may include one or more series of bonds, notes or other obligations and which may be issued at one or more times.

(p) **“TAD Financing”** means methods of financing Redevelopment Costs within the TAD including TAD Bonds, bank loans and pay-as-you-go funding directly from the Special Fund without any financing obligations.

ARTICLE II

Section 2.1 Representations of the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The TAD was duly created by the City pursuant to its redevelopment powers as authorized by the Redevelopment Powers Law and the City Ordinance, and the TAD became effective by operation of law on December 31, 2006. The Redevelopment Plan was duly adopted by the City pursuant to the Redevelopment Powers Law and the City Ordinance.

(b) The City made certain findings contained within the Redevelopment Plan in accordance with the Redevelopment Powers Law, including, without limitation, that (i) the Redevelopment Area has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the approval of the Redevelopment Plan, and (ii) the improvement of the Redevelopment Area is likely to enhance the value of a substantial portion of the real property in the TAD.

(c) The City intends to authorize the issuance of TAD Bonds or other authorized means of TAD financing as may be necessary to implement provisions of the Redevelopment Plan, subject to the requirements of O.C.G.A. §36-44-14.

(d) The City is authorized to enter into this Agreement and perform all obligations contained herein, and has, by proper action, duly authorized the execution, delivery and performance of this Agreement.

(e) The City has submitted a School Impact Analysis to the Board as prescribed by O.C.G.A. §36-44-3(9)(R), addressing the financial and operational impact on the school system of the proposed redevelopment arising from the TAD.

Section 2.2 Representations of the GCSD. The GCSD makes the following representations as the basis for the undertakings on its part herein contained:

(a) Ad valorem taxes levied for educational purposes and derived from the Tax Allocation District may be included in the computation of Tax Allocation Increment from the City's Tax Allocation District with the consent of the Board by duly adopted resolution, pursuant to GA CONST. ART. 9, SEC. 2, PAR. VII (b) (as amended) and O.C.G.A. §36-44-9(a).

(b) The GCSD is authorized to enter into this Agreement and perform all obligations contained herein, and has, by proper action, duly authorized the execution, delivery and performance of this Agreement including, without limitation, the inclusion of ad valorem property taxes derived by the GCSD from ad valorem property taxes levied by the GCSD on taxable real property within the TAD in the computation of the Tax Allocation Increment for the purposes set forth in the Redevelopment Plan.

(c) The Board of Education is in receipt of the School Impact Analysis from the City of Gainesville as prescribed by O.C.G.A. § 36-44-3(9)(R), addressing the financial and operational impact on the school system of the proposed redevelopment in the TAD.

ARTICLE III

Section 3.1 Constitutional Authority to Contract. Pursuant to ARTICLE IX, SECTION III, PARAGRAPH I of the Georgia Constitution, the parties are authorized to contract for any period not exceeding 50 years for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, provided such contracts deal with activities, services, or facilities which the City and GCSD are authorized by law to undertake or provide

Section 3.2 Term of the Agreement. The term of this Intergovernmental Agreement (the "Term") shall commence on the Effective Date hereof and this Agreement shall remain in full force and effect until all TAD Bonds and other redevelopment costs have been paid in full and the TAD has been dissolved, but in any event this Agreement shall terminate no later than fifty (50) years from its Effective Date in accordance with the provisions of GA CONST. ARTICLE IX, SECTION III, PARAGRAPH I.

Section 3.3 Certification of Tax Allocation Increment Base. The City and the GCSD hereby agree that the Tax Allocation Increment Base for the TAD, which has been certified by the State Revenue Commissioner as of December 31, 2006, as required by O.C.G.A. §36-44-10, is the taxable value of all real property subject to ad valorem property taxation located within the TAD, net of all exemptions and exclusions as of such applicable date.

Section 3.4 Inclusion of Ad Valorem Property Taxes in Computation of Tax Allocation Increment Commencing January 1, 2010. Pursuant to the 2009 Board Resolution, the GCSD has consented and agreed to inclusion of ad valorem taxes levied for educational purposes on real property within the TAD in the computation of the Tax Allocation Increment in accordance with the Redevelopment Powers Law, commencing as of January 1, 2010, subject to and in accordance with this Agreement.

Section 3.5 Return of GCSD Tax Allocation Increment After Redevelopment Costs Are Paid. Any amounts remaining in the Special Fund after all redevelopment costs and all TAD Bonds have been paid or otherwise satisfied and the TAD had been dissolved, which funds were derived from the GCSD Tax Allocation Increment, shall be paid to the GCSD within 90 days after the end of the calendar year in which the TAD is dissolved, in the same manner and the same proportion as the most recent distribution by the applicable collecting tax authority in accordance with the Redevelopment Powers Law.

Section 3.6 Limitation of Obligations. The GCSD shall have no financial obligation as a result of the redevelopment and improvement of the TAD or the Redevelopment Area other than the inclusion of GCSD ad valorem taxes in the computation of the Tax Allocation Increment of the TAD as provided herein. TAD Bonds shall not constitute an indebtedness of or a charge against the general taxing power of the GCSD.

ARTICLE IV

INTERGOVERNMENTAL COOPERATION

Section 4.1 Reporting. Commencing with calendar year 2009 and each calendar year thereafter the City will provide to the GCSD, within sixty (60) days after the end of each such

calendar year, a comprehensive annual report regarding the amount of positive Tax Allocation Increment deposited in the Special Fund, the use of such funds, and a description of the projects that have received TAD Financing.

Section 4.2 Five-Year Review.

(a) The City will present a comprehensive and cumulative report on the status of all development undertaken within the TAD to the Chair of the Board commencing in January 2015 and then in January every five (5) years thereafter, until the TAD has been dissolved.

(b) The City and the Board agree to cooperatively review the report to determine (i) whether the TAD goals and incremental milestones as stated in the Redevelopment Plan have been achieved during the previous 5-year period, and (ii) whether there has been sufficient increment generated and deposited into the Special Fund to pay all debt service when due on TAD Bonds and other obligations.

(c) At the conclusion of each 5-year period, including the period ending in January 2015, the Board shall have the option not to pledge the GCSD Tax Allocation Increment to any future TAD Financing or Redevelopment Costs by enacting a Resolution expressing such intent, which shall be delivered to the City as provided in Section 6.6, within ninety (90) days after the receipt of the report described in subsection (a) above. This determination shall be within the sole discretion of the Board.

(d) Notwithstanding any decision by the Board with regard to future TAD Bonds nothing in this agreement shall obviate or diminish the pledge of GCSD Tax Allocation Increment by the Board toward the repayment of any TAD Bonds then outstanding.

Section 4.3 Representation on the Midtown TAD Advisory Committee. The City, in its capacity as Redevelopment Agent for the TAD, hereby agrees that the Midtown TAD Advisory Committee assembled to consider TAD projects and policies shall be composed of nine (9) members, whose members shall be appointed as follows:

Appointing Authority	Number and Position of Appointees
City of Gainesville	4 Appointees to include one representative of the Gainesville-Hall County Chamber of Commerce, and one resident of the City who is neither an elected official nor employee of the City.
Gainesville City Board of Education	3 Appointees to include the Superintendent, the Board Chair or those officials' designees, and 1 additional appointee

Hall County Commission	2 Appointees to include the Commission Chair and County Manager, or those officials' designees.
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Section 4.4 Approval of TAD Projects by Midtown TAD Advisory Committee. Prior to the financing of any project in whole or in part from Tax Allocation Increment or with TAD Financing, such project will be reviewed by the TAD Advisory Committee for feasibility and consistency with the objectives of the Redevelopment Plan. Information to be reviewed by the TAD Advisory Committee for each proposed project may include, but is not limited to, experience of the Development Team, proposed capital improvements to the site, analysis of non-TAD financing commitments or equity in the project, and projected Tax Allocation Increment expected to be generated by such project. Any project or reimbursement of redevelopment costs to be recommended for funding to the City first must receive a favorable vote by a simple majority of the TAD Advisory Committee.

ARTICLE V

FUNDING OF RESIDENTIAL DEVELOPMENT

Section 5.1 The City agrees that residential projects or mixed-use projects with residential components which are eligible for and receive TAD Financing shall not exceed 35 percent of the total value of projects approved to be measured over each 5-year period as provided in Section 4.2, and in no event, more than 800 residential units total.

Section 5.2 The City agrees to solicit and encourage residential or mixed-use developments for TAD Financing which serve active adult (age 55+) or senior citizen residents.

Section 5.3 The City agrees that no less than 70 percent of the residential units which receive TAD Financing will have two or fewer bedrooms per individual unit, to be measured over 5-year periods as provided in Section 4.2.

ARTICLE VI

Section 6.1 Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed, construed, and interpreted according to the laws of the State of Georgia.

Section 6.2 Entire Agreement. This Agreement expresses the entire understanding and all agreements between the parties hereto with respect to the matters set forth herein.

Section 6.3 Survival of Warranties. All agreements, covenants, certifications, representations, and warranties of the parties hereunder, or made in writing by or on behalf of them in connection with the transactions contemplated hereby shall survive the execution and delivery hereof, regardless of any investigation or other action taken by any person relying thereon.

Section 6.4 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

Section 6.5 Amendments in Writing. This Agreement may be amended, supplemented or otherwise modified solely by a document in writing duly executed and delivered by the GCSD and the City. No waiver, release, or similar modification of this Agreement shall be established by conduct, custom, or course of dealing, but solely by a document in writing duly executed and delivered by a duly authorized official of the GCSD.

Section 6.6 Notices. Except as otherwise specifically provided herein, any notices, demands, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed given when the writing is delivered in person, or one business day after being sent by reputable overnight registered delivery service, charges prepaid, or three business days after being mailed, if mailed, by certified mail, return receipt requested, postage prepaid, to the City and the GCSD at the addresses shown below or at such other addresses as may be furnished by the City and the GCSD in writing from time to time:

CITY:

City of Gainesville, Georgia
300 Green Street
P.O. Box 2496
Gainesville, Georgia 30503
Attention: City Manager

With a copy to the City Attorney:

Mr. James E. Palmour, III
1294 W. Ridge Rd. Ste. B
Gainesville, GA 30501
770-535-0222 Telephone
770-535-0444 Facsimile

And to:

Sharon A. Gay, Esq.
McKenna Long & Aldridge LLP
303 Peachtree Street, NE, Suite 5300
Atlanta, Georgia 30308
404-527-4676 Telephone
404-527-4198 Facsimile

GAINESVILLE CITY SCHOOL DISTRICT:

Gainesville City School District
508 Oak Street
Gainesville, Georgia 30501
Attention: Superintendent

With a copy to the GCSD Attorney:

Phillip L. Hartley, Esq.
HARBEN, HARTLEY & HAWKINS, LLP
Wachovia Center, Suite 750
340 Jesse Jewell Parkway
Gainesville, Georgia 30501
(770) 534-7341 Telephone
(770) 532-0399 Facsimile

Section 6.7 Limitation of Rights. Nothing in this Agreement, express or implied, shall give to any person, other than the parties hereto and their successors and assigns hereunder, any benefit or any legal or equitable right, remedy, or claim under this Agreement.

IN WITNESS WHEREOF, the City and the GCSD have caused this Intergovernmental Agreement to be executed in their respective official names and have caused their respective official seals to be hereunto affixed and attested by their duly authorized officers, all as of the Effective Date set forth hereinabove.

This 18th day of August, 2009.

CITY OF GAINESVILLE, GEORGIA

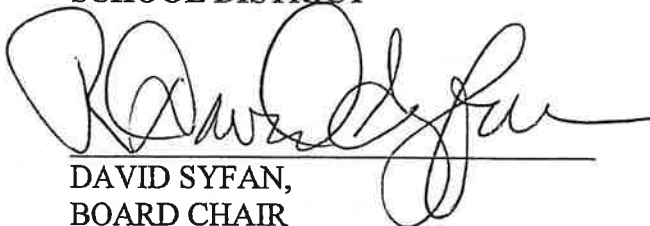
By: Myrtle W. Figueroa
MYRTLE W. FIGUERAS, MAYOR

Attest: Denise O. Jordan
DENISE JORDAN, City Clerk
[SEAL]



This 17 day of August, 2009.

**GAINESVILLE CITY
SCHOOL DISTRICT**



DAVID SYFAN,
BOARD CHAIR

ATTEST:



DR. MERRI ANNE DYER, SUPERINTENDENT
SECRETARY EX OFFICIO