

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”), dated as of April _____, 2009, is made between the **CITY OF FLOWERY BRANCH**, Georgia, a municipal corporation of the State of Georgia (the “**City**”), and **HORTMAN & DOBBS DEVELOPERS LLC**, a Georgia limited liability company (“**H & D**”). Capitalized terms used herein and not otherwise defined have the meanings given to them in Article II.

ARTICLE I RECITALS

WHEREAS, the City is duly authorized to exercise the redevelopment powers granted to cities and counties in the State pursuant to the Redevelopment Powers Law (defined below) and by a local act of the Georgia General Assembly, which was approved by the electors of the City; and

WHEREAS, by the TAD Resolution (defined below), the City Council approved the Redevelopment Plan (defined below) and created the Old Town and Commercial Gateways TAD (defined below), effective as of December 31, 2007; and

WHEREAS, the Redevelopment Powers Law provides that the City may enter into public-private partnerships to effect the redevelopment projects contemplated in the Redevelopment Plan; and

WHEREAS, the TAD Resolution expressed the intent of the City, as set forth in the Redevelopment Plan, to provide TAD Funds (defined below) to induce and stimulate redevelopment in the Old Town and Commercial Gateways TAD; and

WHEREAS, the undertakings contemplated by the Redevelopment Plan include, among other development activity, the H & D Project (defined below); and

WHEREAS, in order to induce and further facilitate the successful accomplishment of a portion of the Redevelopment Plan, the City has indicated its intent, at the earliest feasible date, to issue TAD Bonds (defined below) secured by, among other things, the Tax Allocation Increment (defined below) collected in the Old Town and Commercial Gateways TAD, to finance the payment or reimbursement of the Redevelopment Costs (defined below); and

WHEREAS, in order to induce H & D to develop the H & D Project, it is desirable for the City to use TAD Funds to pay or reimburse H & D for Qualified Costs (defined below); and

WHEREAS, the redevelopment within the Old Town and Commercial Gateways TAD is anticipated to generate sufficient Tax Allocation Increment to pay and to provide security for the payment of the principal of, interest on, premium, if any, and other costs associated with the administration and issuance of the TAD Bonds.

AGREEMENT

NOW THEREFORE, the City and H & D, for and in consideration of the mutual promises, covenants, obligations and benefits of this Agreement, hereby agree as follows:

ARTICLE II GENERAL TERMS

Section 2.1. Definitions. Unless the context clearly requires a different meaning, the following terms are used herein with following meanings:

“Act of Bankruptcy” means the making of an assignment for the benefit of creditors, the filing of a petition in bankruptcy, the petitioning or application to any tribunal for any receiver or any trustee of the applicable Person or any substantial part of its property, the commencement of any proceeding relating to the applicable Person under any reorganization, arrangement, readjustments of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if, within 60 days after the filing of a bankruptcy petition or the commencement of any proceeding against the applicable Person seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, the proceedings have not been dismissed, or, if, within 60 days after the appointment, without the consent or acquiescence of the applicable Person, of any trustee, receiver or liquidator of the applicable Person or of the land owned by the applicable Person, the appointment has not been vacated.

“Advances” means advances by H & D or any other Person to pay Qualified Costs.

“Affiliate” means, with respect to any Person, (a) a parent, partner, member or owner of such Person or of any Person identified in clause (b) below, and (b) any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“City” means the City of Flowery Branch, Georgia, a municipal corporation and a political subdivision of the State, acting through its legislative body, the City Council, and its successors and assigns under this Agreement. The City will also act in the capacity of the redevelopment agency as contemplated by the Redevelopment Powers Law and the Redevelopment Plan.

“City Resolution” means Resolution No: 08-014 (and attachments thereto) of the City of Flowery Branch City Council passed on September 3, 2008, following a public hearing held on August 28, 2008, in which the City, at the request of Kellin Dobbs on behalf of H & D, granted redevelopment project approval to the H & D Project.

“Component” means a component of the H & D Project, each of the following being a Component: (i) the demolition of the former Country Craft Furniture complex and related erosion and soil control work, (ii) the Parking Deck, (iii) the Pine Street extension, (iv) each

building that is a part of the H & D Project, (v) each infrastructure improvement made by H & D with respect to the H & D Project; and (vi) open space and improvements to open space.

“Component Costs” means H &D Project Cost attributable to a particular Component.

“County” means Hall County, Georgia.

“Demolition Costs” means costs incurred by H & D for the demolition of the former Country Craft Furniture complex and costs of erosion and soil control on the site of such complex.

“Disbursement” is defined in Section 6.5.

“Effective Date” means date appearing at the end of this Agreement, being the effective date of this Agreement.

“Environmental Laws” means the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, as amended, the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, and as further amended, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, as amended, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, as amended, and any other applicable law relating to health, safety or the environment.

“Environmental Report” means the environmental site assessment prepared by a third party for the Site and any existing structures thereon.

“Force Majeure” means the actual period of any delay to the final completion date of any Component is caused by fire, unavailability of manufactured materials, earthquake, flood, explosion, war, acts of terrorism, invasion, insurrection, mob violence, sabotage, lockouts, litigation, condemnation, riots or other civil disorder, national or local emergency, act of God, unusual delays in transportation, unusual delay in obtaining lawful permits or consents to which the applicant is legally entitled, strike or labor dispute, severe unanticipated weather conditions, or delays caused by the City in excess of 30 days in responding to proposals for Material Modifications pursuant to Section 4.4, in any such case entitling H &D or the City a commensurate extension of time to perform and complete the obligations delayed thereby under this Agreement. The Person requesting an extension of time due to Force Majeure will give written notice in accordance with Section 9.2 as soon as reasonably practical after the start of the event or occurrence giving rise to the delay, specifically identifying the occurrence or event and the anticipated resulting delays to the completion of such Component.

“General Contractor” means, as to any Component, an experienced, bondable and reputable general contractor selected by H &D to construct such Component and reasonably satisfactory to the City.

“H & D” means Hortman & Dobbs Developers LLC, a Georgia limited liability company.

“H & D Project” means the redevelopment project described in the City Resolution and attachments thereto, being a multi-block mixed use development located on approximately 3.22 acres that includes (i) the demolition of the former Country Craft Furniture complex, (ii) several buildings for private use, (iii) the Parking Deck, (iv) a roadway extension of Pine Street, (v) approximately 0.44 acres of open space, and (vi) related infrastructure improvements.

“H & D Project Budget” means the projected H & D Project Costs as set forth in Exhibit B attached hereto and made a part hereof, which costs include all architectural, engineering, design, legal and other consultant fees and expenses related to the H & D Project, as such Exhibit may be amended or modified from time to time or as modified and supplemented by Component Budgets..

“H & D Project Costs” means the total actual costs of the H & D Project, including the aggregate costs of all Components.

“H & D Project Construction Schedule” means the estimated schedule for construction of the H & D Project as set forth in Exhibit A attached hereto and made a part hereof, as such Exhibit may be amended or modified from time to time or as modified and supplemented by Component Schedules.

“Hazardous Substances” means any hazardous waste, as defined by 42 U.S.C. § 6903(5), any hazardous substances as defined by 42 U.S.C. § 9601(14), any pollutant or contaminant as defined by 42 U.S.C. § 9601(33), and any toxic substances, oil or hazardous materials or other chemicals or substances regulated by any Environmental Laws.

“Legal Requirements” means any legal requirements (including, without limitation, Environmental Laws), including any local, state or federal statute, law, ordinance, rule or regulation, now or hereafter in effect, or order, judgment, decree, injunction, permit, license, authorization, contract, agreement, certificate, franchise, approval, notice, demand, direction or determination of any governmental authority or its designee.

“Lender” means any lender of moneys to H & D to fund the acquisition and construction of a Component.

“Material Modification” means, when used with respect to any Component with respect to which H & D has filed with the City a Component Description, Component Plans, Component Budget and Component Construction Schedule, any modification, (i) any change or alteration in: the description of such Component that would result in that Component being materially different than as contemplated by the Component Description and Component Plans; (ii) any change or alteration in the cost of such Component that causes its cost to be more than 20% of the costs shown on the Component Budget; or (iii) that will causes the Component to be completed more than six months later than shown by the Component Construction Schedule

“Old Town and Commercial Gateways TAD” means the City of Flowery Branch Tax Allocation District Number One – Old Town and Commercial Gateway created by the TAD Resolution and as further described in the Redevelopment Plan.

“Parking Deck” means a 280 parking space parking deck which is a part of the H & D Project.

“Person” includes a corporation, a trust, an association, a partnership (including a limited liability partnership), a joint venture, an unincorporated organization, a business, an individual or natural person, a joint stock company, a limited liability company, or any other entity.

“Plans” means the site plan and the construction plans for the Component Plans for the respective Components.

“Project Approvals” means all approvals, consents, waivers, orders, agreements, authorizations, permits and licenses required under applicable Legal Requirements or under the terms of any restriction, covenant or easement affecting the H & D Project, or otherwise necessary or desirable for the ownership, acquisition, construction, equipping, use or operation of the H & D Project, whether obtained from a governmental authority, its designee or any other person.

“Projected Tax Allocation Increments” are set forth on Exhibit D attached hereto and made a part hereof.

“Projects” means any redevelopment projects described in the Redevelopment Plan for the Old Town and Commercial Gateways TAD.

“Qualified Costs” means all of those H & D Project Costs which legally may be paid with TAD Funds, and specifically includes Demolition Costs, costs of the Parking Deck, the costs of the Pine Street Extension, costs of infrastructure improvements that H & D is required to make in connection with the H & D Project and costs of open space and related improvements dedicated for public use, provided that the amount of Qualified Costs for capital improvements to private property of the H & D Project for which TAD Funds shall not exceed 15% of the total amount of all H & D Project Costs.

“Redevelopment Costs” has the meaning given that term in the Redevelopment Powers Law and, includes Qualified Costs.

“Redevelopment Plan” means the City of Flowery Branch Redevelopment Plan for Tax Allocation District Number One – Old Town and Commercial Gateways approved by the City pursuant to the TAD Resolution.

“Redevelopment Powers Law” means the Redevelopment Powers Law, O.C.G.A. §36-44-1, *et seq.*, as amended.

“Requisition” means a requisition in substantially the form attached as Exhibit C (or such other form approved by the City).

“Schedule of Values” means, as to any Component, the itemized schedule of values of the total “hard costs” of construction of such Component broken out into detail reasonably acceptable to the City.

“**School Board**” means the Board of Education of Hall County, Georgia.

“**Site**” means the real property on which the H & D Project will be located

“**State**” means the State of Georgia. “**TAD Funds**” means available under the Redevelopment Plan for the payment of Redevelopment Costs, including money derived from the Tax Allocation Increments of the City and of the County and proceeds of any TAD Bonds. If the School Board lawfully consents to the inclusion of its Tax Allocation Increment, then funds derived therefrom shall be included in the “TAD Funds.”

“**TAD Bonds**” means tax allocation bonds issued by the City to finance Redevelopment Costs, including Qualified Costs of the H & D Project and secured by the Tax Allocation Increment, all as provided in the Redevelopment Powers Law.

“**TAD Bond Documents**” means the documents to be executed and delivered in connection with the issuance of the TAD Bonds.

“**TAD Bond Trustee**” means the trustee for the TAD Bonds designated in the trust indenture pursuant to which the TAD Bonds are issued.

“**TAD Resolution**” means the resolution duly adopted by the City Council of the City pursuant to which, following a public hearing as required by law, the City approved the Redevelopment Plan and created the Old Town and Commercial Gateways TAD.

“**Tax Allocation Increment**” means the positive tax allocation increment (within the meaning of the Redevelopment Powers Law.

“**Transaction Documents**” means any agreement or instrument other than this Agreement to which H & D is a party or by which it is bound and that is executed in connection with the transactions contemplated by this Agreement, including any TAD Bond Documents to which H & D is a party, as the same may be amended or supplemented.

Section 2.2. Singular and Plural. Words used herein in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular herein also apply to such words when used in the plural where the context so permits and vice versa.

ARTICLE III REPRESENTATIONS AND WARRANTIES

Section 3.1. *Representations and Warranties of H & D.* H & D hereby represents and warrants to the City that:

(a) Organization and Authority. H & D is a Georgia limited liability company, in good standing and authorized to transact business in the State. H & D has the requisite power and authority to execute and deliver this Agreement, to incur and perform its obligations hereunder, and to carry out the transactions contemplated by this Agreement.

(b) Due Authorization, Execution and Delivery. The execution, delivery, and performance of this Agreement has been duly authorized by all necessary action and proceedings by or on behalf of H & D, and no further approvals or filings of any kind, including any approval of or filing with any governmental authority, are required by or on behalf of H & D as a condition to the valid execution, delivery, and performance by it of this Agreement. This Agreement, when duly executed and delivered by each party hereto, will be the valid, binding and enforceable obligation of H & D in accordance with its terms, subject to matters and laws affecting creditors' right generally and to general principles of equity.

(c) Organizational Documents. H & D's organizational documents are in full force and effect and have not been modified or supplemented from those submitted to the City, and no fact or circumstance has occurred that, by itself or with the giving of notice of the passage of time or both, would constitute a default thereunder.

(d) Financial Statements. All financial statements to be furnished to the City with respect to H & D will fairly present the financial condition of H & D as of the dates thereof, and all other written information furnished to the City by H & D will be accurate, complete and correct in all material respects and will not contain any material misstatement of fact or omit to state any fact necessary to make the statements contained therein not misleading.

(e) Environmental. H & D, has no knowledge, except as disclosed in the Environmental Report: (i) of the presence of any Hazardous Substances on the Site or the H & D Project, or any portion thereof, or of any spills, releases, discharges, or disposal of Hazardous Substances that have occurred or are presently occurring on or onto the Site or the H & D Project, or any portion thereof, or (ii) of the presence of any PCB transformers serving, or stored on, the Site or the H & D Project, or any portion thereof, and H & D has no knowledge of any failure to comply with any applicable Environmental Laws relating to the generation, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Substances.

(f) Bankruptcy. No Act of Bankruptcy has occurred with respect to H & D.

(g) No Litigation. There is no action, suit or proceeding pending or, to the knowledge of H & D, threatened against or affecting H & D in any court, before any arbitrator or before or by any governmental body which (i) in any manner raises any question affecting the validity or enforceability of this Agreement, (ii) could materially and adversely affect the business, financial position or results of operations of H & D, or (iii) could materially and adversely affect the ability of H & D to perform its obligations hereunder.

(h) No Undisclosed Liabilities. Neither H & D nor the Site is subject to any material liability or obligation, including contingent liabilities, other than loans to finance the H & D Project. H & D is not in default under or in breach of any material contract or agreement, and no event has occurred which, with the passage of time or giving of notice (or both) would constitute such a default which has a material adverse effect on the ability of H & D to perform its obligations under this Agreement.

(i) Tax Matters. H & D has prepared and filed in a substantially correct manner all federal, state, local, and foreign tax returns and reports heretofore required to be filed by it and has paid all taxes shown as due thereon. No governmental body has asserted any deficiency in

the payment of any tax or informed H & D that such governmental body intends to assert any such deficiency or to make any audit or other investigation of H & D for the purpose of determining whether such a deficiency should be asserted against H & D.

(j) Principal Office. The address of H & D's principal place of business is 4850 Golden Parkway--Suite B-336l, Buford, GA 30518.

(k) Licenses and Permits. H & D possesses or will obtain when needed,, and will at all times possess, all franchises, patents, copyrights, trademarks, trade names, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of its business substantially as now conducted or as it is intended to be conducted with respect to the H & D Project, without known conflict with any rights of others.

(l) H & D Project Location. The H & D Project is located wholly within the Old Town and Commercial Gateways TAD.

(m) Utilities. All utility services necessary and sufficient for the construction and operation of any Component shall be obtained when needed by H & D, and will at all times be, available through dedicated public rights of way or through perpetual private easements.

(n) Rights of Way. The rights of way for all roads necessary for the full utilization of any Component for its intended purposes have either been acquired by the appropriate governmental body or have been dedicated to public use and accepted by such governmental body or shall be so acquired or dedicated prior to construction of such Component. All curb cuts, driveways and traffic signals which will be shown on the Component Plans for any Component shall have been fully approved by the appropriate governmental bodies prior to any construction of such Component.

(o) Plans. H & D shall furnished the City with true and complete sets of the plans for any Component for which it proposes to seek TAD Funds for the payment of Qualified Costs of such Component. The Plans so furnished to the City comply with all applicable governmental requirements, all Project Approvals, and all restrictions, covenants and easements affecting such Component, and the Component Plan for each Component shall be approved by such governmental body as is required for construction of that Component

(p) Survey. To the best of H & D's knowledge, any survey for the H & D Project or any Component or portion thereof delivered of to be delivered to the City by H & D does not or will not fail to reflect any material matter of survey affecting the H & D Project or such Component portion or the title thereto.

(q) Liens. Other than as disclosed in writing to the City, there are no material encumbrances on the Site.

(r) Construction Schedule. The H & D Project Construction Schedule accurately reflects the currently estimated schedule for construction of the components of the H & D Project.

(s) Budget. The H & D Project Budget accurately reflects the currently estimated cost range of the components of H & D Project (except for costs of the extension to Pine Street, costs of open space and improvements thereto and cost of infrastructure, which are not yet known).

(t) Tax Allocation Increment. The H & D Project is projected to produce the annual Tax Allocation Increments as shown on Exhibit D. The numbers shown on Exhibit D are merely good faith estimates based on (i) treating the increase in value attributable to Components of the H & D Project that will be subject to tax as being equal to the low estimates of costs in the H & D Project Budget for such Components and (ii) the millage rates for the year 2007; the amounts in Exhibit D are not guaranteed by H & D.

Section 3.2. *Representations and Warranties of the City.* The City hereby represents and warrants to H & D that:

(a) Organization and Authority. The City is a municipal corporation duly created and existing under the laws of the State. The City has the requisite power and authority to execute and deliver this Agreement, to incur and perform its obligations hereunder, and to carry out the transactions contemplated by this Agreement.

(b) Due Authorization, Execution and Delivery. The execution, delivery, and performance of this Agreement has been duly authorized by all necessary action and proceedings by or on behalf of the City, and no further approvals or filings of any kind, including any approval of or filing with any governmental authority, are required by or on behalf of the City as a condition to the valid execution, delivery, and performance by the City of this Agreement. This Agreement, when duly executed and delivered by each party hereto, will be the valid, binding and enforceable obligation of the City in accordance with its terms, subject to matters and laws affecting creditors' right generally as to political bodies and to general principles of equity.

(c) No Litigation. There are no actions, suits, proceedings or investigations of any kind pending or threatened against the City before any court, tribunal or administrative agency or board or any mediator or arbitrator that questions the validity of this Agreement or any action taken or to be taken pursuant hereto.

(d) Redevelopment Plan. The TAD Resolution has been validly adopted, remains in full force and effect, and has not been amended or supplemented since its date of adoption. To the best of its knowledge, no amendment of or supplement to the TAD Resolution is contemplated by the City

ARTICLE IV DEVELOPMENT AND CONSTRUCTION

Section 4.1. *Construction of the H & D Project.*

(a) The demolition of the Country Craft Furniture complex and related erosion and soil control work has been completed and the City shall promptly after the execution hereof use TAD Funds to pay such Demolition Costs in accordance with all relevant Legal Requirements.

(b) Except for the demolition of the Country Craft Furniture complex and related erosion and soil control work which has been completed, prior to the commencement of the construction of a Component for which H & D proposes to incur Qualified Costs for which it desires to seek payment or reimbursement from TAD Funds, it shall file with the City, a description of such Component (a “**Component Description**”), plans and specifications therefor (“**Component Plans**”), a specific budget therefor (a “**Component Budget**”) and a proposed schedule therefor (a “**Component Construction Schedule**”), which will be used as the basis for reimbursement of Advances or Disbursements under Sections 6.4 and 6.5, respectively. The City will have 30 days after submission of the foregoing item to review the submission and deliver to H & D written comments to or written approval thereof. If the City determines, in its reasonable judgment, that the proposed items are acceptable, the City will notify H & D in writing, the items will be deemed to be approved by the City. If the City determines, in its reasonable judgment, that the proposed items are not acceptable, the City will so notify H & D in writing, specifying in reasonable detail in what respects they are not acceptable and, by written notice to the City, H & D will revise such item in response to such objections, and resubmit such revised items to the City for review by and comment by it within 30 days after such notification as described above. Notwithstanding anything herein contained to the contrary, the approval by the City of any such item may not be unreasonably withheld. No TAD Funds have to be paid to H & D with respect to Qualified Costs of such Component until the City has approved the foregoing items.

(c) H & D, subject to Force Majeure, will develop and construct the H & D Project in substantial compliance with the description thereof in the City Resolution, and shall use its reasonable efforts to construct the H & D Project in the time frames shown on Exhibit A. Further H & D agrees that as to any Component referred to in (b), above, that it shall construct such Component as described in the Component Description and Component Plans therefor and in accordance with the Component Budget and Component Construction Schedule therefore. The City acknowledges that, during the term of this Agreement, modifications to the H & D Project, the H & D Project Construction Schedule or the H & D Project Budget as contemplated on the Effective Date may occur in the sole discretion of H & D, H & D shall advise the City of any modification which would be a Material Modification. To the extent that any such modification is a Material Modification, H & D will comply with the procedures set forth in Section 4.4.

(d) Upon completion of the construction of any Component described in (b), above, H & D will provide the City with a final cost summary of all costs and expenses associated with that Component, a certification that such Component has been completed, and evidence that all amounts owing to contractors and subcontractors have been paid in full evidenced by customary affidavits executed by such contractors; provided that the Component will not be deemed completed until the City or the appropriate agencies or departments thereof, as appropriate, or their duly appointed agents, have certified such completion to H & D.

(e) H & D will comply with all Legal Requirements that are applicable to the construction of the H & D Project.

Section 4.2. *Approvals Required for the Components of the H & D Project.* H & D will obtain or cause to be obtained all necessary Project Approvals for each Component of the H & D

Project and will comply with all Legal Requirements of any governmental body or its designee regarding the use or condition of the H & D Project. H & D may, however, contest any such Legal Requirement or Project Approval by an appropriate proceeding diligently prosecuted. The City agrees to process zoning and permit applications in a prompt and timely manner in accordance with its normal rules and procedures.

Section 4.3. *Unreasonable Delay or Abandonment.* If the City determines in its reasonable discretion that (i) H & D has unduly delayed construction of any Component for which H & D intends to seek TAD Funds and such delay is a Material Modification, (ii) that Component is delayed for reasons other than Force Majeure such that the Component will not be completed within 360 days of the completion date established for that Component in the Component Construction Schedule, or (iii) H & D has ceased work on the Component for 360 days, then, as its sole and exclusive remedies, the City (A) may terminate this Agreement as to such Component, or (B) may, without terminating this Agreement as to such Component, seek any remedies available to the City hereunder with respect to any prior breach hereof or default hereunder. Prior to taking the actions described in (A) above, the City must give 90 days advance written notice to H & D and, in the City's judgment, H & D must have failed to affect a cure within said 90-day notice period. Upon termination of this Agreement as to any such Component as provided in this paragraph, none of the parties hereto will have any further rights, duties or obligations hereunder as to such Component.

Section 4.4. *Material Modifications.* If H & D proposes to make a Material Modification to any Component for which H & D proposed to seek TAD Funds, the Component Description, the Component Plans, the Component Construction Schedule or the Component Budget therefor, H & D shall submit the proposed modifications to the City in writing for review and approval by it. Any such submission must clearly identify all changes, omissions and additions as compared to the previously approved Component Description, the Component Plans, the Component Construction Schedule or the Component Budget therefor. The City will have 30 days after submission of the proposed modifications to review the submission and deliver to H & D written comments to or written approval of the modifications. If the City determines, in its reasonable judgment, that the proposed modifications are acceptable, the City will notify H & D in writing, the proposed modifications will be deemed to be incorporated, and H & D will perform its obligations under this Agreement as so modified. If the City determines, in its reasonable judgment, that the proposed modifications are not acceptable, the City will so notify H & D in writing, specifying in reasonable detail in what respects they are not acceptable and, by written notice to the City, H & D will either (a) withdraw the proposed modifications, in which case, construction of the Component will proceed on the basis of the description of, budget or construction schedule for that Component previously approved as provided herein, or (b) revise the proposed modifications in response to such objections, and resubmit such revised modifications to the City for review by and comment by it within 30 days after such notification as described above; and if H & D fails to do one of the foregoing, it shall be deemed to have waived its right to have any further Qualified Costs of such Component paid or reimbursed from TAD Funds. Notwithstanding anything herein contained to the contrary, the approval by the City of any modifications by H & D may not be unreasonably withheld. In addition, to the extent any Material Modification requires an amendment to any portion of the Redevelopment Plan, the City will have such amount of time as reasonably required to pursue any such amendment and to obtain any required approvals.

Section 4.5. *Approvals Required for Material Modifications.* H & D will obtain or cause to be obtained all necessary Project Approvals for each Material Modification of any Component of the H & D Project and will comply with all Legal Requirements of any governmental body or its designee regarding the use or condition of the H & D Project. H & D may, however, contest any such Legal Requirement or Project Approval by an appropriate proceeding diligently prosecuted. The City agrees to process zoning and permit applications in a prompt and timely manner in accordance with its normal rules and procedures.

ARTICLE V DUTIES, RESPONSIBILITIES AND SPECIAL COVENANTS OF H & D

Section 5.1. *Completion of a Component.* Subject to Force Majeure, H & D will commence and complete construction of each Component for which it seeks TAD Funds substantially in accordance with the Component Construction Schedule therefor with diligence and in a good and workmanlike manner, free and clear of all liens and claims for materials supplied or for labor or services performed in connection with the Component, subject to any lawful protest in accordance with Section 5.6.

Section 5.2. *Compliance with Documents.* H & D agrees to comply with all material obligations and covenants of H & D herein and in the Transaction Documents, including its obligations and covenants in any loan documents pursuant to which amounts are loaned or otherwise made available to H & D to finance construction of any Component of the H & D Project.

Section 5.3. *Litigation.* H & D will notify the City in writing, within five (5) days of its having knowledge thereof, of any actual, pending, or threatened litigation or adversarial proceeding in which a claim is made against H & D or against the H & D Project, and of any judgment rendered against H & D. H & D will notify the City in writing and within five (5) days of any matter that H & D reasonably considers may result or does result in a material adverse change in the financial condition or operation of H & D or the H & D Project.

Section 5.4. *Maintenance of the H & D Project.* H & D agrees that, to the extent it has an interest in a Component of the H & D Project, it will at its own expense, (i) keep or cause such Component to be kept in as reasonably safe condition as its operations permit, (ii) make or cause to be made from time to time all necessary repairs thereto and renewals and replacements thereof and otherwise keep the H & D Project in good repair and in good operating condition and (iii) not permit or suffer others to commit a nuisance or waste on or about such Component, at its own expense and from time to time, may make any additions, modifications or improvements to such Component that it may deem desirable for its business purposes and that do not impair the effective use, or decrease the value, of such Component. The foregoing shall not apply to any part of or Component of the H & D Project which is not at such time owned by H & D, such as residential units or building lots that it has sold to others and Components that it has conveyed to the City

Section 5.5. *Records and Accounts.* H & D will keep true and accurate records and books of account with respect to itself and the H & D Project in which full, true and correct entries will be made on a consistent basis, in accordance with generally accepted accounting principles.

Section 5.6. *Liens and Other Charges.* As to any Component which is to be owned by a public body, H & D will duly pay and discharge, or cause to be paid and discharged, before the same become overdue all claims for labor, materials, or supplies that if unpaid might by law become a lien or charge upon a Component unless H & D is lawfully protesting the same, in which case H & D will provide a suitable “mechanics lien bond” to discharge such lien from the H & D Project.

Section 5.7. *Compliance with Laws, Contracts, Licenses, and Permits.* H & D will comply in all material respects with (a) all applicable laws, (b) all agreements and instruments by which it or any of its properties may be bound, and all restrictions, covenants and easements affecting the H & D Project, (c) all applicable decrees, orders and judgments, and (d) all licenses and permits required by applicable laws and regulations for the conduct of its business or the ownership, use or operation of its properties.

Section 5.8. *Laborers, Subcontractors and Materialmen.* H & D will furnish to the City, upon request at any time, and from time to time, affidavits listing all laborers, subcontractors, materialmen, and any other Persons who might or could claim statutory or common law liens and are furnishing or have furnished labor or material to each Component for which TAD Funds are to be used, together with affidavits, or other evidence satisfactory to the City, showing that such parties have been paid all amounts then due for labor and materials furnished to H & D for such Component, and will also furnish to the City, at any time, and from time to time upon demand by the City, lien waivers bearing a then current date and prepared on a form satisfactory to the City from the General Contractor for such Component and such subcontractors or materialmen as the City may designate.

Section 5.9. *Taxes.* H & D will pay when due all generally applicable taxes legally imposed upon or assessed against its property and income in the County and the City. H & D will have the right to contest such taxes in accordance with law.

Section 5.10. *Demolition.* The parties acknowledge that prior to the Effective Date of this Agreement, but after the effective date of the creation of the Old Town and Commercial Gateways TAD, H & D incurred the Demolition Costs, which constitute part of the Qualified Costs hereunder, and that the related demolition by H & D of the former Country Craft Furniture complex was satisfactory in all respects for purposes hereof. The City shall reimburse H & D for such Demolition Costs in accordance with all relevant Legal Requirements.

Section 5.11. *Further Assurances and Corrective Instruments.* The City and H & D agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments hereto and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement; provided that the rights of the City and H & D hereunder and the ability of H & D to construct the H & D Project are not impaired thereby.

Section 5.12. *Performance by H & D.* H & D will perform all acts to be performed by it hereunder and will refrain from taking or omitting to take any action that would materially violate H & D’s representations and warranties hereunder or render the same materially inaccurate as of the Effective Date and subsequent Requisition dates or that in any material way

would prevent the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof.

Section 5.13. *Tax Allocation Increments of School Board.* If on account of the voter approval of the proposed constitutional amendment the School Board would be permitted to consent to the inclusion of the School Board's Tax Allocation Increment in the TAD Funds, the City shall use its best efforts to cause the School Board to consent to the inclusion of the School Board's Tax Allocation Increment in the TAD Funds.

Section 5.14. *Access to the Site.* H & D will permit persons designated by the City to access the H & D Project and to discuss the progress and status of the H & D Project with representatives of H & D, all in such detail and at such times as the City may reasonably request. All such access must be during normal business hours and in a manner that will not unreasonably interfere with construction activities of the H & D Project or with H & D's business operations generally. The City must be accompanied by a representative of H & D during any access contemplated by this Section.

ARTICLE VI THE TAD BONDS

Section 6.1. *TAD Bonds.* The City, if requested by H & D, will use its best efforts to issue TAD Bonds on or prior to July 1, 2009, or such other date as mutually agreed upon by the parties in the principal amount which can reasonably be expected to be sold based on the opinion of an underwriter or financial consultant selected by the City with the approval of H & D, which consent shall not unreasonably be withheld. Such bonds shall have such maturity, interest rates and term as shall be satisfactory to such underwriter or financial consultant and to the City and to H & D. H & D agrees to provide such non-monetary aid and assistance to the City as may be reasonably requested by the City in order to facilitate the issuance of TAD Bonds, such assistance to include providing requested documentation, and executing certificates or other documentation as may be reasonably required by the City. If permitted by law, any amounts advanced by H & D to the City under this Section may be reimbursed with proceeds of the TAD Bonds.

Section 6.2. *Conditions to Issuance by the City of TAD Bonds.* H & D hereby acknowledges and agrees that the City's obligations under this Agreement to issue the TAD Bonds are contingent upon satisfaction of the following conditions on or prior to the issuance of the TAD Bonds:

(a) The City Council shall have adopted one or more resolutions or ordinances, as appropriate, authorizing the issuance of the TAD Bonds, approving the TAD Bond Documents in substantially final form and authorizing the initiation of a validation proceeding for the TAD Bonds.

(b) The Superior Court of Hall County, Georgia has entered a final order validating the issuance of the TAD Bonds pursuant to the financing structure generally described in the TAD Bond Documents.

(c) If interest on the TAD Bonds or a series thereof is intended to be excludable from gross income for federal and State income taxes, the City shall have received an opinion from nationally recognized bond counsel to such effect and to such other matters as it may reasonably request.

(d) H & D certifies that all representations, warranties and covenants made by it in this Agreement are true and correct in all material respects.

(e) H & D has provided an opinion of legal counsel in form and substance satisfactory to the City to the effect that (a) this Agreement and the Transaction Documents identified in such opinion (i) have been duly authorized by it and will be valid, binding and enforceable against it subject to standard enforceability exceptions and (ii) will not violate or otherwise contravene its organizational documents or any agreement or instrument to which it is a party or to which its property or assets are bound and (b) there is no litigation pending or, to such counsel's knowledge, threatened before any court or administrative agency against it or the Site, which, if adversely determined, would have a material adverse effect on H & D or its financial condition.

(f) H & D has delivered evidence of financial commitments sufficient to allow it to pay any Qualified Costs in excess of the proceeds of the TAD Funds that are to be allocated to the payment or reimbursement of Qualified Costs.

Section 6.3. *H & D's Obligations Contingent.* The City hereby agrees that H & D's obligations under this Agreement are contingent upon the terms of the TAD Bonds, the TAD Bond Documents and the other Transaction Documents being reasonably satisfactory to it at the time of issuance of the TAD Bonds.

Section 6.4. *Advances.*

(a) H & D, has made Advances for Demolitions Costs and in its sole discretion as to timing and amount, may make or cause to be made Advances in connection with any Component.

(b) To the extent Advances for Qualified Costs are made prior to the issuance of such TAD Bonds and have not been reimbursed prior to the issuance of TAD Bonds, net proceeds of such TAD Bonds will be applied to repay and reimburse such Advances as set forth in a Requisition on or promptly after the date of issuance of such TAD Bonds. Subsequent Advances are to be made as provided in 6.5, below.

Section 6.5. *Disbursements.* The City, upon written request of H & D as provided below, agrees to apply TAD Funds to pay Qualified Costs of the Components of the H & D Project in an amount equal to the lesser of (i) actual total Qualified Costs of the H & D Project, or (ii) 15% of the total amount of all H & D Project Costs for capital improvements to private property, and further agrees to reserve for such purpose, on a priority basis, an amount equal to 15% of the H & D Project Costs for capital improvements to private property set forth in Exhibit B. TAD Funds shall be applied to pay or to reimburse Advances for Qualified Costs. Prior to the issuance of TAD Bonds, the City itself shall apply TAD Funds to the payment or reimbursement of Qualified Costs upon the written request of H & D. Upon the issuance of TAD Bonds, any

Advances theretofore made and not reimbursed shall be reimbursed from the proceeds of such TAD Bonds and any net proceeds of TAD Bonds not immediately applied to reimburse Advances shall be deposited with the TAD Bond Trustee in a "project fund," "construction fund" or other fund customarily used in connection with the issuance of municipal bonds similar to the TAD Bonds. Subject to compliance by H & D with all of the terms and conditions of this Agreement, the funds held by the TAD Bond Trustee in any such fund will be disbursed in several disbursements at such times and in such amounts as determined (each a "Disbursement") in accordance with the following procedures:

(a) Not less than three business days prior to the date on which H & D desires a Disbursement for Qualified Costs of any Component, H & D will submit to the City a Requisition therefor, on the form attached hereto as Exhibit C or on such other form as shall be satisfactory to the City and to H & D (which Requisition shall be approved by the Lender, if any, that has loaned H & D funds for such Component). The Requisition will include an itemization of the Qualified Costs of such Component for which TAD Funds are requested (the "Schedule of Values"), and (ii) the percentage of completion of each line item on the Component Budget and the Schedule of Values therefor. The accuracy of the cost breakdown and percentage completion in the Requisition must be certified by H & D and the General Contractor for such Component.

(b) In addition, the Requisition must be accompanied by evidence in form and content reasonably satisfactory to the City (and any such Lender), including, but not limited to, certificates and affidavits of H & D and such other Persons as the City (or any such Lender) may reasonably require including:

(i) Copies of all bills or statements or canceled checks for any indirect or soft-cost expense for which the Disbursement is requested;

(ii) If the Requisition includes amounts to be paid to any contractor, a contractor's application for payment showing the amount paid by H & D with respect to each such line item and, upon request of any such Lender, copies of all bills or statements or canceled checks for expenses incurred by H & D for which the Disbursement is requested and a copy of a satisfactory "Interim Waiver and Release upon Payment" pursuant to O.C.G.A. Section 44-14-366 from the General Contractor which received payment from the proceeds of the immediately preceding Requisition;

(iii) That all construction has been conducted substantially in accordance with the Component Plans (and all changes thereto approved by the City or otherwise permitted pursuant to the terms hereof); and

(iv) That there are no encumbrances outstanding against the Component except for (a) those disclosed to the City prior to the commencement of construction thereof, (b) inchoate liens for property taxes not yet due and payable, (c) liens being contested in accordance with the terms and conditions set forth in applicable law and (d) loans for the construction of the H & D Project (other than the TAD Bonds).

(c) The construction for which Qualified Costs are included in any Requisition must be reviewed and approved by the City (any such Lender) or their appointed consultants to verify

the approval of the construction, the cost of completed construction, the percentage of completion and the compliance with the Component Plans.

Section 6.6. *Component Budgets.* H & D will pay when due all costs of development and construction of each Component as set forth in the Component Budget therefor to the extent TAD Funds are not available therefor. Notwithstanding any other provision of this Agreement, H & D warrants and agrees that it will not be entitled to recover any alleged cost or budget overruns from the City in excess of TAD Funds allocated to Qualified Costs.

Section 6.7. *Use of TAD Bond Funds.* It is anticipated that all costs of issuance of the TAD Bonds and all expenses related thereto will be paid from TAD Bond proceeds. The net proceeds from the issuance of TAD Bonds will be used by the City solely to pay or reimburse Redevelopment Costs in the TAD, including Qualified Costs, and to reimburse any Advances for Qualified Costs, and for no other purpose.

Section 6.8. Limited Liability.

(a) The City will have no liability to repay any TAD Bonds except from the sources and security pledged therefor under the trust indenture pursuant to which such TAD Bonds are issued, including primarily the Tax Allocation Increment. Except as specifically provided in any guaranty or other security for the TAD Bonds provided by H & D, if any such guaranty or other security is provided, H & D will have no liability whatsoever with respect to payment of any TAD Bonds except to the extent required by law to pay generally applicable *ad valorem* taxes, if any, levied on the H & D Project.

(b) To the extent permitted by State law, no director, officer, employee or agent of the City or the City, and no officer, employee or agent of the City or the City, will be personally responsible for any liability arising under or growing out of this Agreement.

(c) The City will direct any TAD Bond Trustee to disburse funds to H & D for Qualified Costs that it is entitled to have paid or reimbursed from TAD Funds hereunder.

ARTICLE VII INDEMNIFICATION

Section 7.1. *Indemnification.* H & D will defend, indemnify, and hold the City and its agents, employees, officers, and legal representatives (collectively, the “Indemnified Persons”) harmless for all claims, causes of action, liabilities, fines, and expenses (including, without limitation, reasonable attorneys’ fees, court costs, and all other defense costs and interest) (collectively, the “Losses”) for injury, death, damage, or loss to persons or property sustained in connection with or incidental to the construction of the H & D Project. Notwithstanding anything to the contrary in this Article, (1) H & D’s indemnification obligation under this Article is limited to \$1,000,000; (2) H & D will not be obligated to indemnify any Indemnified Person for the Indemnified Person’s own negligence, recklessness or intentional act or omission; and (3) H & D will not be obligated to indemnify any Indemnified Persons to the extent that any claims that might otherwise be subject to indemnification hereunder resulted, in whole or in part, from the negligence, recklessness or intentional act or omission of any other Indemnified Person or Persons.

Section 7.2. Notice of Claim. If an Indemnified Person receives notice of any claim or circumstance which could give rise to indemnified Losses, the receiving party must give written notice to H & D within ten (10) business days upon receipt of said notice. The notice must include a description of the indemnification event in reasonable detail, the basis on which indemnification may be due, and the anticipated amount of the indemnified Losses. Such notice will not stop or prevent an Indemnified Person from later asserting a different basis for indemnification or a different amount of indemnified Losses than that indicated in the initial notice. If an Indemnified Person does not provide this notice within the ten (10) business-day period, it does not waive any right to indemnification except to the extent that H & D is prejudiced, suffers loss, or incurs expense because of the delay.

Section 7.3. Defense. H & D may assume and control the defense of the claim based on the indemnified Losses at its own expense with counsel chosen by H & D with the concurrence of the Indemnified Person. H & D will also control any negotiations to settle the claim. Within ten business days after receiving written notice of the indemnification request, H & D will advise the Indemnified Person as to whether or not it will defend the claim. If H & D does not assume the defense, the Indemnified Person will assume and control the defense and all defense expenses actually incurred by it will constitute Losses.

Section 7.4. Separate Counsel. If H & D elects to defend a claim, the Indemnified Person may retain separate counsel, at the sole cost and expense of such Indemnified Person, to participate in (but not control or impair) the defense and to participate in (but not control or impair) any settlement negotiations. H & D may settle the claim without the consent or agreement of the Indemnified Person, unless the settlement (i) would result in injunctive relief or other equitable remedies or otherwise require the Indemnified Person to comply with restrictions or limitations that adversely affect the Indemnified Person, (ii) would require the Indemnified Person to pay amounts that H & D does not fund in full, or (iii) would not result in the Indemnified Person's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

Section 7.5. Survival. The provisions of Article will survive any expiration or earlier termination of this Agreement and any closing, settlement or other similar event which occurs under this Agreement.

ARTICLE VIII DEFAULT

Section 8.1. Default by H & D. The following will constitute a default by H & D:

(a) Failure of H & D to materially and timely comply with and perform each of its obligations set forth in this Agreement.

(b) A default by H & D under, or failure of H & D to comply with any material obligation of H & D set forth in the Transaction Documents.

(c) Any representation or warranty made by H & D in this Agreement or subsequently made by it in any written statement or document furnished to the City or the City

and related to the transactions contemplated by this Agreement is false, incomplete, inaccurate or misleading in any material respect.

(d) Any report, certificate or other document or instrument furnished to the City by H & D in relation to the transactions contemplated by this Agreement is false, inaccurate or misleading in any material respect; or if any report, certificate or other document furnished to the City on behalf of H & D, to the extent that H & D knows such document is false, inaccurate or misleading and fails to promptly report such discrepancy to the City.

(e) An Act of Bankruptcy of H & D.

Section 8.2. *City's Remedies.* If a default by H & D occurs and is continuing 30 days after receipt of written notice to H & D from the City specifying the existence of such default (or within a reasonable time thereafter if such default cannot reasonably be cured within such 30-day period and H & D begins to diligently pursue the cure of such default within such 30-day period), the default will become an "Event of Default," and the City will be entitled to elect any or all of the following remedies: (i) termination of this Agreement and discontinuation of funding hereunder, (ii) seek any remedy at law or in equity that may be available as a consequence of H & D's default; (iii) pursuit of specific performance of this Agreement or injunctive relief; or (iv) waiver of such Event of Default. In the event of an Event of Default, if the City employs attorneys or incurs other expenses for the enforcement of the performance or observance of any covenants or agreements on the part of H & D contained herein, and if the City is the prevailing party, H & D agrees that it will on demand therefor pay to the City the reasonable fees of such attorneys and such other reasonable expenses so incurred by the City, the amount of such fees of attorneys to be without regard to any statutory presumption.

Section 8.3. *Default by the City.* The following will constitute a default by the City, as applicable: Any material breach by it of any representation made in this Agreement or any material failure by it to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, for a period of 30 days after written notice specifying such breach or failure and requesting that it be remedied, given to it by H & D; provided that in the event such breach or failure can be corrected but cannot be corrected within said 30-day period, the same will not constitute a default hereunder if corrective action is instituted by the defaulting party or on behalf of the defaulting party within said 30-day period and is being diligently pursued.

Section 8.4. *Remedies Against the City.* Upon the occurrence and continuance of a default by the City hereunder, H & D may seek specific performance of this Agreement or pursue any other remedies available at law or in equity. In the event of default by the City, if H & D employs attorneys or incurs other expenses for the collection of amounts due hereunder or for the enforcement of the performance or observance of any covenants or agreements on the part of City contained herein, and if H & D is the prevailing party, the City agrees that it will on demand therefor pay to the H & D the reasonable fees of such attorneys and such other reasonable expenses so incurred by the H & D, the amount of such fees of attorneys to be without regard to any statutory presumption.

Section 8.5. *Remedies Cumulative.* Except as otherwise specifically provided, all remedies of the parties provided for herein or in the Transaction Documents are cumulative and

will be in addition to any and all other rights and remedies provided for or available hereunder and under the Transaction Documents, at law or in equity.

ARTICLE IX MISCELLANEOUS

Section 9.1. *Term of Agreement.* This Agreement will commence on the Effective Date and will expire on the date on which the H & D Project has been completed.

Section 9.2. *Notices.* Any notice sent under this Agreement (except as otherwise expressly required) must be written and mailed or sent by overnight courier or personally delivered to an officer of the receiving party at the following addresses:

If to H & D:

Hortman & Dobbs Developers LLC
4850 Golden Parkway—Suite B-336
Buford, GA 30518
Attention: Kellin Dobbs
Facsimile: 678-889-6000

With a copy to:

Seyfarth Shaw LLP
1545 Peachtree Street, NE, Suite 700
Atlanta, GA 30309
Attention: Daniel M. McRae
Facsimile: 404-892-7056

If to the City:

City of Flowery Branch
5517 Main Street
P.O. Box 757
Flowery Branch, Georgia 30542
Attention: City Manager
Facsimile: 770-962-6481

With a copy to:

Carothers & Mitchell, LLC
278 West Main Street
Buford, Georgia 30518
Attention: E. Ronald Bennett, Jr.
Facsimile: 770-932-6348

Each party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this Section will be deemed to be given

when so mailed, any notice so sent by electronic or facsimile transmission will be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person will be deemed to be given when receipted for by, or actually received by the party identified above.

Section 9.3. *Amendments and Waivers.* Any provision of this Agreement may be amended or waived if such amendment or waiver is in writing and is signed by the parties hereto. No course of dealing on the part of any party to this Agreement, nor any failure or delay by any party to this Agreement with respect to exercising any right, power or privilege hereunder will operate as a waiver thereof.

Section 9.4. *Invalidity.* In the event that any provision of this Agreement is held unenforceable in any respect, such unenforceability will not affect any other provision of this Agreement.

Section 9.5. *Successors and Assigns.* H & D may not assign this Agreement or any of its rights hereunder or any interest herein without the prior written consent of the City, which consent may not be unreasonably withheld, conditioned or delayed; provided that H & D may, without the prior consent of the City, assign this Agreement and all or any portion of its rights hereunder and interests herein, to any Affiliate of it or to any entity controlled by or under common control with it that has assets of a value at least equal to that of H & D at the time of the assignment. H & D will provide written notice to the City of any such assignment. Upon any such assignment of the obligations of H & D hereunder, H & D will be deemed released from such obligations. Notwithstanding the above, H & D may collaterally assign this Agreement and its rights hereunder and interest herein, without the consent of the City, to a lender to secure any acquisition, development or construction loan for the H & D Project.

Section 9.6. *Exhibits; Titles of Articles and Sections.* The exhibits attached to this Agreement are incorporated herein and will be considered a part of this Agreement for the purposes stated herein, except that in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement will prevail. All titles or headings are only for the convenience of the parties and may not be construed to have any effect or meaning as to the agreement between the parties hereto. Any reference herein to a Section or subsection will be considered a reference to such Section or subsection of this Agreement unless otherwise stated. Any reference herein to an exhibit will be considered a reference to the applicable exhibit attached hereto unless otherwise stated.

Section 9.7. *Applicable Law.* This Agreement is a contract made under and will be construed in accordance with and governed by the laws of the State of Georgia.

Section 9.8. *Entire Agreement.* This written agreement represents the complete and final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This written agreement may only be modified in a writing signed by both the parties.

Section 9.9. *Approval by the Parties.* Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the parties agree that such

approval or consent may not be unreasonably withheld, conditioned or delayed, and will be deemed given if no written objection is delivered to the requesting party within ten business days after delivery of the request to the approving party.

Section 9.10. Additional Actions. The parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

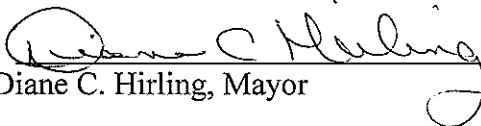
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the ____ day of April, 2009.

HORTMAN & DOBBS DEVELOPERS LLC

By: _____
Marty R. Hortman
Principal

By: _____
Kellin B. Dobbs
Principal

CITY OF FLOWERY BRANCH, GEORGIA

By: 
Diane C. Hirling, Mayor

ATTEST:

City Clerk

EXHIBITS

- A H & D Project Construction Schedule
- B H & D Project Budget
- C Form of Requisition
- D Projected Tax Allocation Increments from the H & D Project

EXHIBIT A

OLD TOWN AND COMMERCIAL GATEWAYS TAX ALLOCATION DISTRICT

H & D PROJECT CONSTRUCTION SCHEDULE

PRE-CONSTRUCTION: (Reimbursement)

1. Demolition of buildings (\$225,000)
2. Erosion and soil control (\$13,500)

Phase 1:

1. Pine Street South Building (All Commercial)
2. Pine Street Restaurant Building (free standing)
3. Pine Street extension including sidewalks, lighting, green space, etc.
4. Storm water control, detention systems, utilities, and additional infrastructure improvements.

Phase 2:

1. Pine Street North (mixed-use)
2. Railroad Ave Building (Mixed use)
3. Parking Deck
4. Storm water control, sidewalks, green space, lighting, and additional infrastructure improvements

Phase 3:

1. Chattahoochee townhouses
2. Public Park*
3. Final paving and all required systems completed.

* Under the land site approval conditions the park has to be completed within one year of 50% issuance of COs for any residential component for the project.

This is a general scope of what H & D project for the phasing model. There will certainly be adjustments made and more specific details added.

EXHIBIT B

OLD TOWN AND COMMERCIAL GATEWAYS TAX ALLOCATION DISTRICT

H & D PROJECT BUDGET

Building	Area (SF)	Low Total Cost	Low Cost/SF	High Total Cost	High Cost/SF
Restaurant (RR Ave/Pine St)	5,455	\$ 463,675	\$ 85/SF	\$ 518,225	\$ 95/SF
Pine Street South	14,150	\$ 1,132,000	\$ 80/SF	\$ 1,273,500	\$ 90/SF
Pine Street North	30,600	\$ 2,998,800	\$ 98/SF	\$ 3,432,597	\$ 112/SF
Railroad Avenue	36,800	\$ 3,422,400	\$ 93/SF	\$ 4,210,165	\$ 114/SF
Townhouses	14,840	\$ 1,409,800	\$ 95/SF	\$ 1,558,200	\$ 105/SF
Parking Garage	101,750	\$ 3,561,250	\$ 35/SF	\$ 4,688,000	\$ 46/SF
Site work & Hard Scapes		\$ 442,000		\$ 1,750,000	
Preconstruction Services		\$ 25,000		\$ 35,000	
Contingency		\$ 486,187		\$ 522,921	
General Conditions		\$ 392,000		\$ 773,214	
Total Construction Cost		\$14,333,112		\$18,761,822	
Land Cost		\$ 625,000		\$ 625,000	
Demolition		\$ 225,000		\$ 225,000	
Planning/Engineering		\$ 450,000		\$ 450,000	
Sewer Reservation		\$ 355,000		\$ 355,000	
Realtor Commission		\$ 605,303		\$ 660,330	
Marketing		\$ 6,000		\$ 6,000	
Project Total Costs		\$ 16,554,415		\$ 21,058,152	

The table above is a reflection of the lowest and highest cost estimate to build all aspects of the H & D Project. The goal of H & D is to take the lowest cost to build, without sacrificing a quality appearance, by using value engineering to some degree throughout the project.

The foregoing does not include costs attributable to the Pine Street extension, the open space or infrastructure, as those costs have not been estimated. At such time as estimates of such costs are made, H &D will provide such estimates to the City.

EXHIBIT C

OLD TOWN AND COMMERCIAL GATEWAYS TAX ALLOCATION DISTRICT

FORM OF REQUISITION

Requisition No. ____

Date of Requisition: _____, 20__.

TO: CITY OF FLOWERY BRANCH, GEORGIA

Attention: _____

Facsimile: _____

PROJECT:

Old Town and Commercial Gateways TAD--H & D Project

COMPONENT: _____

DEVELOPER:

Hortman & Dobbs Developers LLC

Application is made for payment or reimbursement from the TAD Funds to pay for reimburse Qualified Costs of the above-identified Component of the H & D Project, in the amount shown below, for the purposes and on the terms set forth below, all in accordance with the provisions of that certain Development Agreement between the City of Flowery Branch, Georgia, and the Developer named above dated as of April ____, 2009. All capitalized terms used herein not otherwise defined shall have the meaning given them in the Development Agreement.

Payment and acceptance of payment are without prejudice to any rights of the City under the Development Agreement.

AIA Form G-702 and its Continuation Sheet, AIA Document G-703, are attached as Exhibit A and are made a part of this Requisition. Architect's and Contractor's Certificates for Payment are attached as part of the attached AIA Form G-702.

1. The budgeted cost of the _____ is \$ _____ and Schedule of Values and Percentages of Completion are as set forth on Forms G-702 and G-703 attached.
2. Amount Requested: \$ _____.
3. Attached hereto as Exhibit B are:

(a) Copies of all bills or statements or cancelled checks for any indirect or soft-cost expense for which this Requisition is requested;

(b) Copies of all bills or statements or cancelled checks for any such hard cost expenses incurred by H & D for which this Requisition is requested;

(c) To the extent applicable, a copy of a satisfactory "Interim Waiver and Release Upon Payment" pursuant to O.C.G.A. Section 44-14-366 from the General Contractor which received payment from the proceeds of the immediately preceding Requisition.

DEVELOPER'S CERTIFICATIONS

In accordance with the Development Agreement, H & D certifies to the City that:

(a) all of its representations and warranties made in and as of the date of the Development Agreement are true and correct as of the date hereof;

(b) the quality of the construction of the Component identified above to date is in accordance with the Component Plans, the Development Agreement, and the Transaction Documents;

(c) the breakdown of Qualified Costs, Schedule of Values and the percentage completion referenced in this Requisition are accurate;

(e) all TAD Funds expended or to be expended on stored materials for such Component are and will be stored in either (a) a bonded warehouse approved by the City and accessible to inspection by representatives of the City, or (b) stored in a locked and otherwise secure storage arrangement acceptable to the City and insured in an amount acceptable to the City;

(f) no TAD Funds are requested for materials to be stored more than 150 days before being used in the H & D Project;

(g) all payments requested under this Requisition are for proper Qualified Costs for said Component which have not been previously paid and which have been approved by the governing authority or its designee;

(i) there are no liens outstanding against such Component except (i) inchoate liens for property taxes not yet due and payable, (ii) liens being contested in accordance with the terms and conditions set forth in applicable law and (iii) liens consented to by the City

(j) H & D is not in default under the Development Agreement and

(k) no governmental body has issued the equivalent of a stop order with respect to any portion of the aforesaid Component.

HORTMAN & DOBBS DEVELOPERS LLC,
As Developer

By: _____
Its: _____

APPROVED BY LENDER::

_____,
as Lender

By: _____
Its: _____

EXHIBIT F

OLD TOWN AND COMMERCIAL GATEWAYS TAX ALLOCATION DISTRICT

PROJECTED TAX ALLOCATION INCREMENT FROM THE H & D PROJECT

s

Buildings	Value Increase*	Assessed at 40%	City Tax Increment	County Tax Increment	School Board Tax Increment
Restaurant	\$ 463,675				
Pine Street South Bldg	\$ 1,132,000				
Pine Street North Bldg	\$ 2,998,800				
Railroad Avenue Bldg	\$ 3,422,400				
Townhouses Bldg	\$ 1,409,800				
Parking Deck	\$ 3,561,250				
TOTAL	\$12,987,935	\$5,195,174	\$ 12,312.56	\$ 32,521.79	\$ 81,823.99

* based on low estimate of costs

Taxes based on 2007 millage rates