



**City of Flowery Branch
City Council Meeting
Thursday, April 18, 2024, 6:00 PM
City of Flowery Branch City Hall
5410 Pine Street, Flowery Branch, GA 30542**



CALL WORK SESSION TO ORDER:

PLEDGE OF ALLEGIANCE:

ADOPTION OF AGENDA:

AWARDS & RECOGNITIONS:

NEW BUSINESS -WORK SESSION:

- Discussion Concerning the Use of a Distillery in the Central Business District (CBD)
- Discussion with Mr. Mike Dye of Edge City Properties Concerning a Potential Rezoning.
[Edge City Site-Addl-Land Concept-1- PN-22137.00.pdf](#)
[SITE PLAN WITH SEWER MANHOLE 2023-12-29-Site-Zoning Plan-Submitted-2- PN-22137.00.pdf](#)
[Edge City 9.393 Acre Survey for Zoning 3.22.24.pdf](#)
- Consideration of Real Estate Agreement with Sarkar Development Group, Inc. for the Purchase of Real Property
[ES - Property Purchase Sarkar roundabout.pdf](#)
[Purchase and Sale Agreement - Sarkar Property.pdf](#)
- Consideration of Resolution 24-001 Declaring the City of Flowery Branch's Intention to Issue Approximately \$25,000,000 of Revenue Bonds, Series 2024, Through the Gainesville and Hall County Development Authority.
[ES - Resolution 24-001 City's intent to sell bonds.pdf](#)
[AUTHORIZING RESOLUTION - changes accepted.pdf](#)
- Consideration of First Amendment to the Lease Agreement for 5509 Main Street for Giustino's Deli
[Giustino's Deli, 5509 Main Street Lease Agreement.pdf](#)
[Executive Summary Giustino's Deli amendment.pdf](#)
[FIRST AMENDMENT TO GIUSTINOS LEASE AGREEMENT.pdf](#)

DEPARTMENT REPORTS: -

- a. City Manager Report
- b. City Clerk Report
- c. Department of Fun Report
- d. Finance Department Report
- e. Human Resources Report
- f. Planning Department Report
- g. Police Department Report
- h. Public Works & Utilities Report

- i. Attorney Report
- j. Council Report

ADJOURNMENT WORK SESSION:**VOTING SESSION AGENDA****CALL VOTING SESSION TO ORDER:****PUBLIC COMMENTS:** - Please limit to two minutes**CONSENT AGENDA:**

- Consider March 2024 Per Diem for Mayor Asbridge
[March 2024 Mayor Asbridge Per Diem.pdf](#)
- Consider April 2, 2024 Special Called Meeting Minutes
[Unofficial April 2, 2024 Special Called Meeting Minutes.pdf](#)
- Consider April 2, 2024 Executive Session Minutes
- Consider April 4, 2024 City Council Meeting Minutes
[Unofficial April 4, 2024 City Council Meeting Minutes.pdf](#)

UNFINISHED BUSINESS - VOTING SESSION:

- Consider the Second Reading of Ordinance 710 GMEBS Restated Defined Benefit Retirement Plan Adoption Agreement
[Executive Summary 2nd Read Ordinance 710 GMEBS Restated Adoption Agreement 2023.pdf](#)
[Flowery Branch Cover Memo 3 20 2024.pdf](#)
[Flowery Branch Adoption Agreement 3 20 2024.pdf](#)
[Georgia Amendment 1 to DB Basic Plan Document.pdf](#)
[Georgia GMEBS DB Pre-Approved Basic Plan Document for Third 6-Year Cycle \(Final\).pdf](#)
[Georgia Opinion Letter Defined Benefit Plan Third Cycle \(2020 Cumulative List\) \(4877-9792-2173.v1\) \(002\).pdf](#)
[Summary of Amendments 9 15 2023.pdf](#)

NEW BUSINESS - VOTING SESSION:

- Consideration of Real Estate Agreement with Sarkar Development Group, Inc. for the Purchase of Real Property
[ES - Property Purchase Sarkar roundabout.pdf](#)
[Purchase and Sale Agreement - Sarkar Property.pdf](#)
- Consideration of Resolution 24-001 Declaring the City of Flowery Branch's Intention to Issue Approximately \$25,000,000 of Revenue Bonds, Series 2024, Through the Gainesville and Hall County Development Authority.
[ES - Resolution 24-001 City's intent to sell bonds.pdf](#)
[AUTHORIZING RESOLUTION - changes accepted.pdf](#)
- Consideration of First Amendment to the Lease Agreement for 5509 Main Street for Giustino's Deli
[Giustino's Deli, 5509 Main Street Lease Agreement.pdf](#)
[Executive Summary Giustino's Deli amendment.pdf](#)
[FIRST AMENDMENT TO GIUSTINOS LEASE AGREEMENT.pdf](#)

EXECUTIVE SESSION:

ADJOURNMENT:

If you have a disability or impairment and need special assistance please contact the City Clerk prior to the meeting at 770-967-6371 - Meeting agenda is subject to change



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Discussion Concerning the Use of a Distillery in the Central Business District (CBD)

COUNCIL MEETING DATE: April 18, 2024

HISTORY:

At the March 21st City Council meeting there were discussions regarding micro-brewery and distillery uses in the Central Business District (CBD). Micro-breweries are currently allowed but distilleries are not.

FACTS AND ISSUES:

Work session discussion concerning the distillery use and how Council wishes to proceed.

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

0

RECOMMENDATION:

No action taken

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

•



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Discussion with Mr. Mike Dye of Edge City Properties Concerning a Potential Rezoning.

COUNCIL MEETING DATE: April 18, 2024

HISTORY:

In February of this year, Mr. Dye was granted a rezoning of two properties (5408 and 5416 Gainesville Street) from Single-Family, Low-Density District (R-1) to Residential, Detached Single -Family (R-2) to develop and construct a residential subdivision not to exceed forty (40) single-family detached homes. Mr. Dye intends to pursue rezoning a neighboring tract from Planned Unit Development (PUD) to R-2 with the intent to develop and construct a second phase to his recently approved project.

FACTS AND ISSUES:

This is for work session discussion only. The process for this request (and future annexation, rezoning, conditional use permit applications) will be to hold a work session (or two) to allow the applicant to present the proposed project to Mayor and Council in order to receive feedback. This will allow the applicant a clearer view of what changes (if any) they should consider prior to officially submitting. This intent of this process is to have a more complete project presented at the public hearing. The proposed schedule will be a work session, a second work session if either party chooses, official submittal, public hearing, and then back to back Council meeting votes. The only changes that should occur to the project after the public hearing should be those requested by Mayor and City Council or implemented by the applicant, to address any citizen feedback that either party feels needs to be addressed.

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

No action at this time.

SAMPLE MOTION:

No motion at this time. Discussion only.

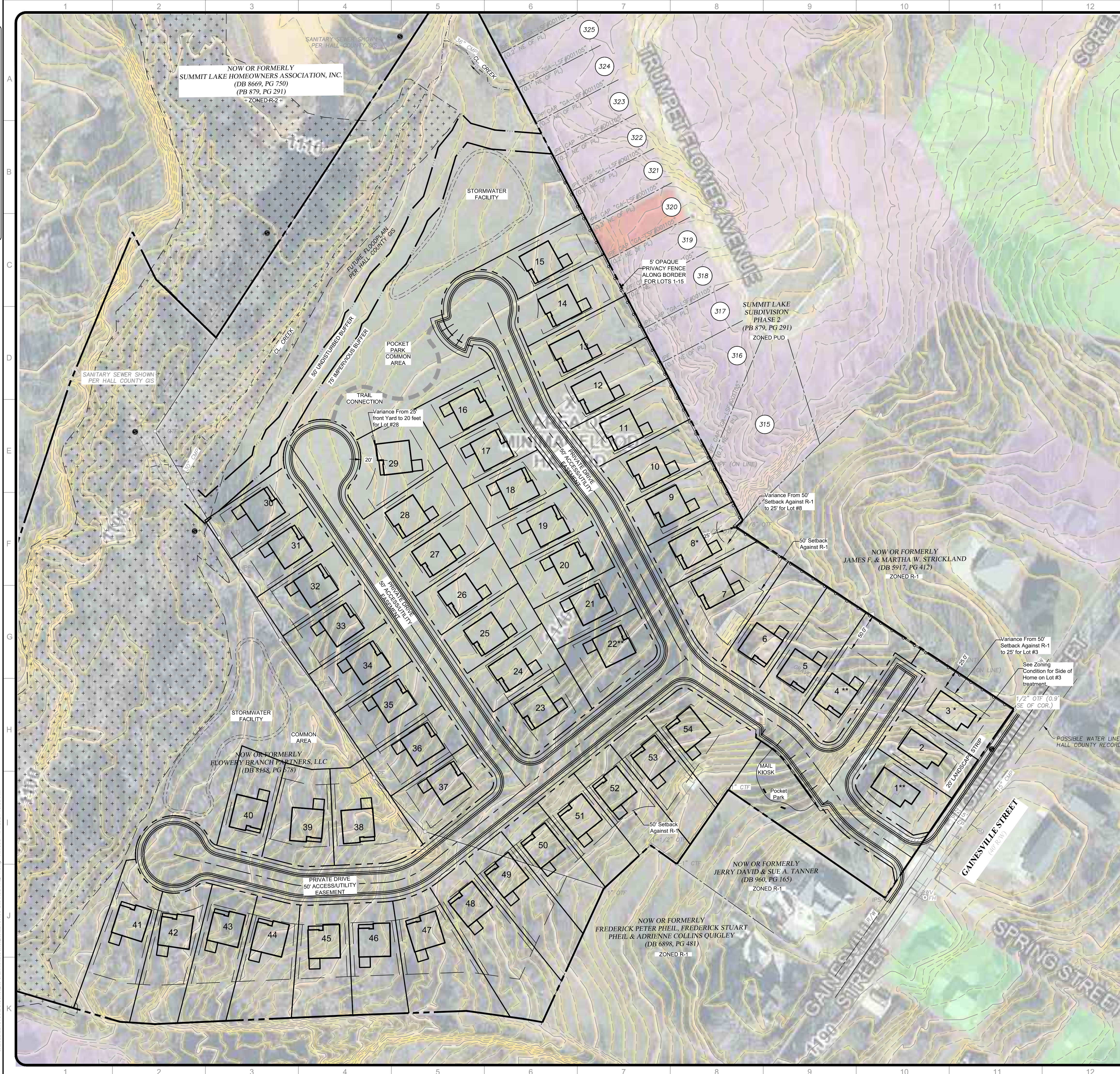
COLLABORATING DEPARTMENT:

DEPARTMENT: Planning

Prepared by: Shelia Cooper

ATTACHMENTS

- [Edge City Site-Addl-Land Concept-1- PN-22137.00.pdf](#)
- [SITE PLAN WITH SEWER MANHOLE 2023-12-29-Site-Zoning Plan-Submitted-2- PN-22137.00.pdf](#)
- [Edge City 9.393 Acre Survey for Zoning 3.22.24.pdf](#)



SITE DATA:	
SITE AREA	23.517 ACRES
ZONING	
EXISTING ZONING	R-1
PROPOSED ZONING	R-2 RESIDENTIAL (CONDITIONAL)
ZONING JURISDICTION	CITY OF FLOWERY BRANCH, GEORGIA
<u>DETACHED SINGLE FAMILY SETBACKS</u>	
FRONT SETBACK	20 FEET
SIDE SETBACK	5 FEET
SIDE CORNER SETBACK	10 FEET
REAR SETBACK	20 FEET
MIN SETBACK AGAINST R-1 DISTRICTS	50 FEET
<u>DEVELOPMENT STANDARDS</u>	
MAXIMUM BUILDING HEIGHT	3 STORIES/ 35 FEET
MINIMUM HEATED FLOOR AREA	1,800 SF
MINIMUM SIZE OF DETACHED LOTS	6,700 SF
60' DETACHED SINGLE FAMILY LOTS	54 LOTS
TOTAL HOMES PROVIDED	54 UNITS
TOTAL SITE DENSITY PROVIDED	2.29 DUA
<u>OPEN SPACE CALCULATIONS</u>	
OPEN SPACE REQUIRED	2.83 ACRES (20% OF TOTAL SITE AREA)
OPEN SPACE PROPOSED	3.02 ACRES (21.3% OF TOTAL SITE AREA)
MAXIMUM LOT COVERAGE	50% (Vary from 35%)
<u>PARKING REQUIREMENTS</u>	
MIN. PARKING REQUIRED	108 SPACES (2 SP/ DWELLING UNIT)
MAX. PARKING PERMITTED	216 SPACES (4 SP/ DWELLING UNIT)
TOTAL PARKING PROVIDED	160 SPACES (2 GARAGE + 1 DRIVEWAY SP.)
PROPOSED GUEST PARKING	8 SPACES
TOTAL PARKING PROVIDED	168 SPACES (3.2 SP/ DWELLING UNIT)

1. VARIANCE REQUEST TO REDUCE MINIMUM LOT SIZE FROM 15,000 SQ. FT. TO 6,700 SQ. FT.
2. VARIANCE REQUEST TO REDUCE MINIMUM LOT WIDTH TO REDUCE FROM 75 FEET TO 80 FEET.
3. VARIANCE REQUEST TO REDUCE MINIMUM FRONT SETBACK FROM 25 TO 20 FEET ON LOT 28 AS SHOWN ON PLAN.
4. VARIANCE REQUEST TO REDUCE MINIMUM SIDE SETBACK (INTERIOR LOT LINE) FROM 15 TO FEET.
5. VARIANCE REQUEST TO REDUCE MINIMUM SIDE SETBACK (CORNER LOT LINE) FROM 25 FEET TO 10 FEET.
6. VARIANCE FROM LOT COVERAGE (IMPERVIOUS) FROM 35% TO 45%.
7. VARIANCE REQUEST TO REDUCE THE 50 FOOT SETBACK AGAINST R-1 DISTRICTS FOR LOTS 3 AND #8 TO 25 FEET AS SHOWN ON THE PLAN.

24 HOUR CONTACT:
MIKE DYE



Know what's below.
Call before you dig.

WWW.PEC.PLUS



Planners & Engineers Collaborative+

LAND PLANNING + LANDSCAPE ARCHITECTURE + CIVIL ENGINEERING
ARBORISTS + SURVEYING & CONSTRUCTION + WATER RESOURCES

350 RESEARCH COURT STE 200
PEACHTREE CORNERS, GA 30092

PROJECT

**GAINESVILLE ST.
at SPRING STREET**

**A MASTER PLANNED RESIDENTIAL
DEVELOPMENT**

AT

5408 GAINESVILLE STREET
FLOWERY BRANCH, GEORGIA 30542

CITY OF FLOWERY BRANCH/
HALL COUNTY JURISDICTION

FOR

**EDGE CITY PROPERTIES,
INC.**

MUNICIPALITY PROJECT #

REVISIONS

[illegible]

THIS SEAL IS ONLY VALID IF COUNTER SIGNED
AND DATED WITH AN ORIGINAL SIGNATURE.

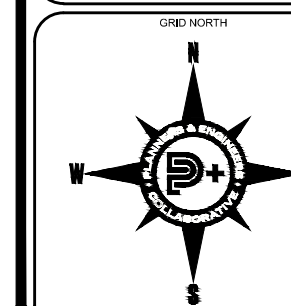


GSWCC LEVEL II DESIGN PROFESSIONAL
CERTIFICATION # 0000059389 EXP. 10/28/20

CONCEPT SITE PLAN



SCALE: 1" = 6'
DATE: 12/28/202
PROJECT: 22137.0

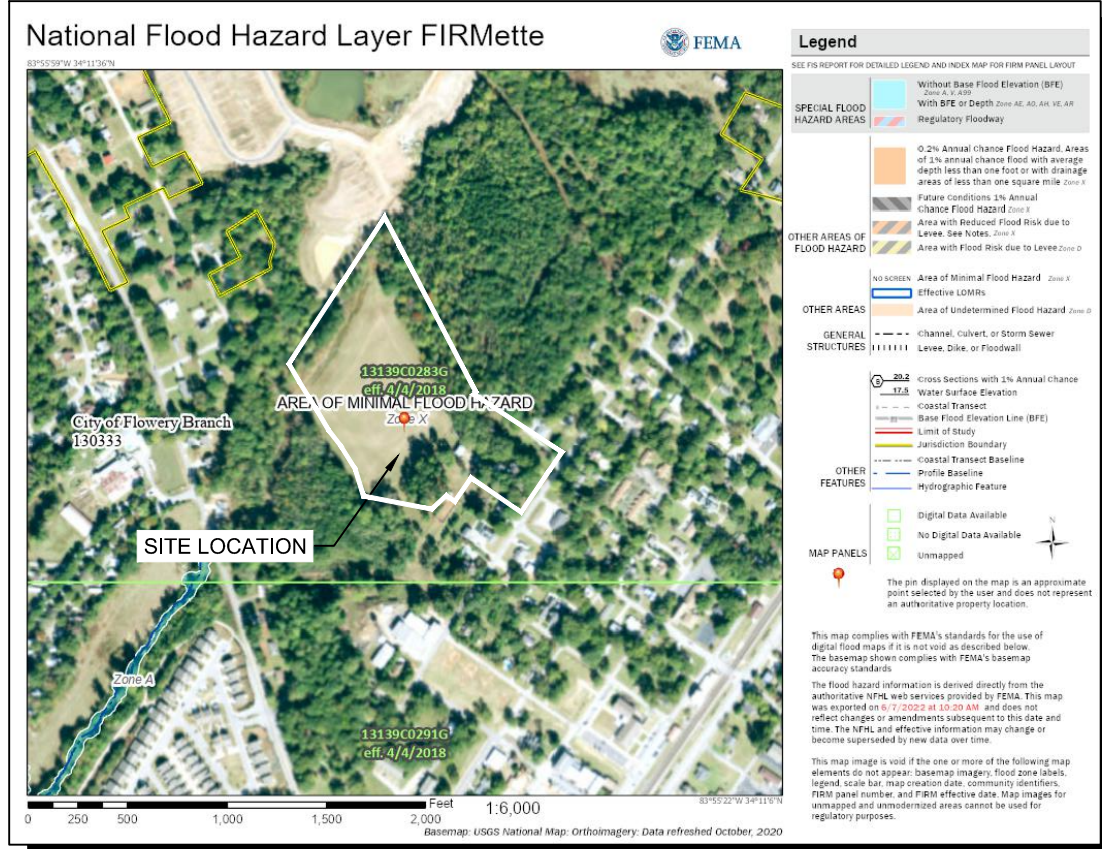


C1

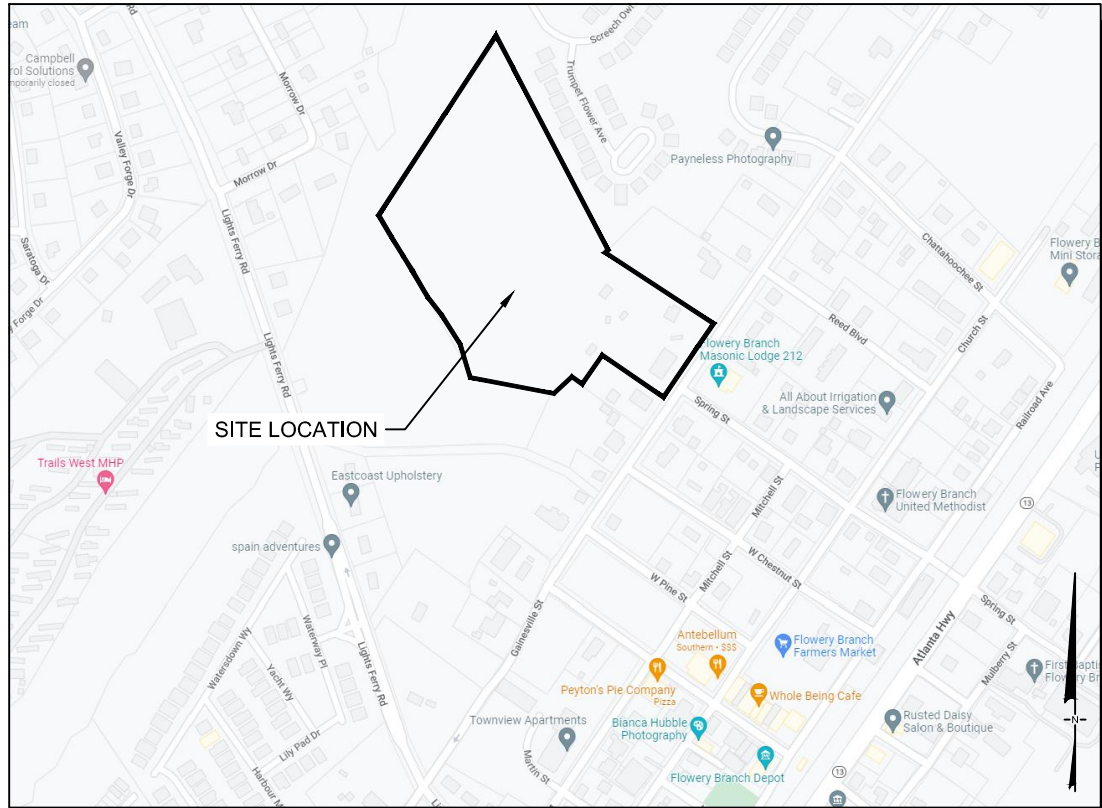
SHEET

This drawing is the property of Planners and Engineers Collaborative and is not to be copied in whole or in part. It is not to be used on any other project and is to be returned upon request. © Planners and Engineers Collaborative

J:\2022\22137\000\Concepts & Exhibits\Zoning\22137-00-Site-Zone-Submittal-2.dwg - KWood - 12/29/2023 9:57 PM



FEMA FIRM MAP
NOT TO SCALE



SITE LOCATION MAP
NOT TO SCALE

SITE DATA:	
SITE AREA	14.158 ACRES
ZONING	
EXISTING ZONING	R-1
PROPOSED ZONING	R-2 RESIDENTIAL (CONDITIONAL)
ZONING JURISDICTION	CITY OF FLOWERY BRANCH, GEORGIA
DETACHED SINGLE FAMILY SETBACKS	
FRONT SETBACK	20 FEET
SIDE SETBACK	5 FEET
SIDE CORNER SETBACK	10 FEET
REAR SETBACK	20 FEET
MIN SETBACK AGAINST R-1 DISTRICTS	50 FEET
DEVELOPMENT STANDARDS	
MAXIMUM BUILDING HEIGHT	3 STORIES/ 35 FEET
MINIMUM HEATED FLOOR AREA	1,800 SF
MINIMUM SIZE OF DETACHED LOTS	6,700 SF
60' DETACHED SINGLE FAMILY LOTS	40 LOTS
TOTAL HOMES PROVIDED	40 UNITS
TOTAL SITE DENSITY PROVIDED	2.83 DUA
OPEN SPACE CALCULATIONS	
OPEN SPACE REQUIRED	2.83 ACRES (20% OF TOTAL SITE AREA)
OPEN SPACE PROPOSED	3.02 ACRES (21.3% OF TOTAL SITE AREA)
MAXIMUM LOT COVERAGE	50% (Vary from 35%)
PARKING REQUIREMENTS	
MIN. PARKING REQUIRED	80 SPACES (2 SP/ DWELLING UNIT)
MAX. PARKING PERMITTED	160 SPACES (4 SP/ DWELLING UNIT)
TOTAL PARKING PROVIDED	120 SPACES (2 GARAGE + 1 DRIVEWAY SP.)
PROPOSED GUEST PARKING	8 SPACES
TOTAL PARKING PROVIDED	128 SPACES (3.2 SP/ DWELLING UNIT)

VARIANCE REQUEST:

- VARIANCE REQUEST TO REDUCE MINIMUM LOT SIZE FROM 15,000 SQ. FT. TO 6,700 SQ. FT.
- VARIANCE REQUEST TO REDUCE MINIMUM LOT WIDTH TO REDUCE FROM 75 FEET TO 60 FEET.
- VARIANCE REQUEST TO REDUCE MINIMUM FRONT SETBACK FROM 25 TO 20 FEET ON LOT #28 AS SHOWN ON PLAN.
- VARIANCE REQUEST TO REDUCE MINIMUM SIDE SETBACK (INTERIOR LOT LINE) FROM 15 TO 5 FEET.
- VARIANCE REQUEST TO REDUCE MINIMUM SIDE SETBACK (CORNER LOT LINE) FROM 25 FEET TO 10 FEET FOR LOTS #1, #4, #22, #40 AS SHOWN ON PLAN WITH **.
- VARIANCE FROM LOT COVERAGE (IMPERVIOUS) FROM 35% TO 45%.
- VARIANCE TO REDUCE THE 50' BUILDING SETBACK AGAINST R-1 ZONED DISTRICTS TO 25 FEET FOR LOTS #3 AND #8 AS SHOWN ON PLAN (*).

P: (770) 451-2741 F: (770) 451-3915

WWW.PEC+PLUS



Planners & Engineers Collaborative+

LAND PLANNING + LANDSCAPE ARCHITECTURE + CIVIL ENGINEERING
ARBORISTS + SURVEYING & CONSTRUCTION + WATER RESOURCES

350 RESEARCH COURT STE 200
PEACHTREE CORNERS, GA 30092

PROJECT

GAINESVILLE ST.
at SPRING STREET

A MASTER PLANNED RESIDENTIAL
DEVELOPMENT

AT

5408 GAINESVILLE STREET
FLOWERY BRANCH, GEORGIA 30542

CITY OF FLOWERY BRANCH/
HALL COUNTY JURISDICTION

FOR

EDGE CITY PROPERTIES,
INC.

MUNICIPALITY PROJECT #

REVISIONS

NO.	DATE	BY	DESCRIPTION
*1	12/4/2023	JH	CITY COMMENTS
*2	12/27/2023	JH	Reduce Variances

THIS SEAL IS ONLY VALID IF COUNTER SIGNED
AND DATED WITH AN ORIGINAL SIGNATURE.

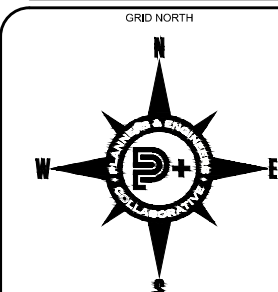


GSWOC LEVEL II DESIGN PROFESSIONAL
CERTIFICATION # 0000059389 EXP. 10/28/2024

REZONING SITE
PLAN



SCALE: 1" = 60'
DATE: 10/17/2023
PROJECT: 22137.00



Z1

SHEET

24 HOUR CONTACT:
MIKE DYE



1) OWNER OF RECORD: HARVEY FAMILY HOLDINGS, LLC

125	90.88	N18°23'22"W
126	7.03	N18°23'22"W

all that tract or parcel of land lying and being in Land Lot(s) 112 & 118 of the 8th District, City of Flowery Branch, Gwinnett County, Georgia and being more

Right-of-Way of Beginning

GOOD IDEAS ONLY

1



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consideration of Real Estate Agreement with Sarkar Development Group, Inc. for the Purchase of Real Property

COUNCIL MEETING DATE: April 18, 2024

HISTORY:

The City of Flowery Branch has been trying to acquire four pieces of property at the intersection of McEver Road and Gaines Ferry Road for a roundabout.

FACTS AND ISSUES:

The entire parcel consists of 16.093 acres. The temporary construction easement which will revert to the property owner after construction is 13,554 square feet (or 0.311 acres) with the permanent easement totaling 1,774 square feet or (0.041 acres). There are also three permanent drainage easements totaling 1,740 square feet or (0.040 acres).

The cost of the real property as described in the paragraph above is \$20,918. The funding for the roundabout project is SPLOST funding.

OPTIONS:

- 1) Authorize the Real Estate Agreement and purchase the property for \$20,018.
- 2) Do not authorize the Real Estate Agreement or purchase the property.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$20,918 SPLOST

RECOMMENDATION:

Approve a Real Estate Agreement with Sarkar Development Group, Inc. for the purchase of real property.

SAMPLE MOTION:

I move to authorize the agreement with Sarkar Development Group, Inc., and the purchase of real property for \$20,918.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [ES - Property Purchase Sarkar roundabout.pdf](#)
- [Purchase and Sale Agreement - Sarkar Property.pdf](#)



**FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY**

SUBJECT: Consideration of Real Estate Agreement with Sarkar Development Group, Inc. for the Purchase of Real Property

DATE: April 8, 2024

☒ **RECOMMENDATION**
☐ **POLICY DISCUSSION**
☐ **STATUS REPORT**
☐ **OTHER**

BUDGET INFORMATION:
ANNUAL-
CAPITAL- \$20,918

COUNCIL ACTION REQUESTED ON: April 4, 2024

PURPOSE: The purpose of this item is to request council approval a Real Estate Agreement with Sarkar Development Group, Inc. for the purchase of real property.

HISTORY: The City of Flowery Branch has been trying to acquire four pieces of property at the intersection of McEver Road and Gaines Ferry Road for a roundabout.

FACTS AND ISSUES: The entire parcel consists of 16.093 acres. The temporary construction easement which will revert to the property owner after construction is 13,554 square feet (or 0.311 acres) with the permanent easement totaling 1,774 square feet or (0.041 acres). There are also three permanent drainage easements totaling 1,740 square feet or (0.040 acres).

The cost of the real property as described in the paragraph above is \$20,918. The funding for the roundabout project is SPLOST funding.

OPTIONS: 1) Authorize the Real Estate Agreement and purchase the property for \$20,018.
2) Do not authorize the Real Estate Agreement or purchase the property.

RECOMMENDED SAMPLE MOTION: I move to authorize the agreement with Sarkar Development Group, Inc., and the purchase of real property for \$20,918.

DEPARTMENT: Administration

Prepared by: Tonya Parrish

REAL ESTATE AGREEMENT

THIS AGREEMENT, made this ____ day of March, 2024, by and among, SARKAR DEVELOPMENT GROUP, INC, a Georgia corporation (herein referred to as the "Seller"), the CITY OF FLOWERY BRANCH, GEORGIA, a Georgia municipal corporation (herein referred to as the "Purchaser") and PEREIRA, KIRBY, KINSINGER & NGUYEN LLP, a Georgia limited liability partnership ("Escrow Agent").

R E C I T A L S

A. Seller is the owner of that certain tract of real property commonly known as Hall County Tax Parcel 08140000218 that sits adjacent to the western corner of the intersection of Gaines Ferry Road and McEver Road in Flowery Branch, Georgia 30042, more particularly described in Exhibit A attached hereto, and all improvements located thereon and all easements and appurtenances thereunto belonging, including any right, title and interest of the Seller in and to adjacent streets, alleys or rights-of-way.

B. Seller desires to sell a portion of the real property identified in Exhibit A to Purchaser in fee simple and Purchaser desires to purchase a portion of the real property identified in Exhibit A from Seller in fee simple, more particularly described on Exhibit "B" attached hereto. In addition, the Seller desires to convey a temporary construction easement across the real property identified in Exhibit A and Purchaser desires to purchase from Seller a temporary construction easement across the real property identified in Exhibit A in an area more particularly described in Exhibit C attached hereto. Said easement shall expire upon the completion of the improvements to be conducted by Purchaser at the intersection of Gaines Ferry Road and McEver Road. Seller desires to sell portions of the real property identified in Exhibit A to Purchaser as permanent drainage easements and Purchaser desires to purchase portion of the real property identified in Exhibit A from Seller as permanent drainage easements, more particularly described on Exhibit "D" attached hereto. The areas of real property identified as Exhibits B, C, and D shall hereinafter be referred to as the "Property."

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. PURCHASE PRICE. The Purchase Price ("Purchase Price") shall be TWENTY THOUSAND NINE HUNDRED EIGHTEEN AND NO/100THS DOLLARS (\$20,918.00), and the Purchaser agrees to purchase the Property for said sum, subject to the terms and conditions herein. At the Closing, the Purchaser shall pay to the Seller the Purchase Price by wire transfer to an account or accounts designated by Seller or by other payment medium providing for immediately collectable funds designated by Seller.

2. EARNEST MONEY.

A. Earnest Money. The Purchaser, upon execution of this Agreement by the Seller, shall deliver to the Escrow Agent the Purchaser's check in the amount of ONE THOUSAND AND NO/100THS DOLLARS (\$1,000.00) (the "Earnest Money"). The Earnest Money shall be non-refundable to Purchaser except for the inability or failure of Seller to close the transaction contemplated herein, breach by Seller of its obligations hereunder, or as is otherwise expressly provided for herein.

B. Application. At the Closing, Escrow Agent shall pay the Earnest Money to Seller and the Earnest Money shall be applied and credited in reduction of the Purchase Price. If Purchaser shall exercise any right or option under this Agreement to rescind, cancel or terminate this Agreement, then Escrow Agent, after the passage of any required notice periods, shall immediately refund the Earnest Money to Purchaser, less the sum of TEN AND NO/100 DOLLARS (\$10.00) which shall be paid to Seller in consideration for this Agreement, whereupon this Agreement shall terminate and the parties to this Agreement shall have no further rights, duties or obligations under this Agreement, except as otherwise specifically provided in this Agreement.

C. Deposit of Earnest Money. Escrow Agent shall deposit the Earnest Money in a non-interest bearing escrow account at a financial institution whose deposits are insured by the F.D.I.C. chosen by Escrow Agent.

3. SURVEY. The Purchaser may, at its sole cost and expense, cause prior to the end of the Inspection Period, a Georgia registered land surveyor (herein referred to as the "Surveyor") to make a boundary survey (herein referred to as the "Survey") of the Property for the purpose of determining the exact number of acres within the boundary of the Property (to the nearest one thousandth (1/1000th) of an acre), the boundary lines of the Property, the location of all rights-of-way, buffers, easements and encroachments, if any, affecting the Property and any portion of the Property located within an area of special flood hazard as designated by the United States Department of Housing and Urban Development, the Federal Emergency Management Agency or any similar federal, state or local agency. Purchaser will deliver three (3) prints of the Survey to Seller not later than the Expiration Date as such term is defined in Paragraph 5(B) herein. The Survey shall be reasonably acceptable to Seller. Seller agrees to convey the Property pursuant to the Survey legal description by Quitclaim Deed if requested by Purchaser.

4. CONVEYANCE OF TITLE. The Seller shall convey good and marketable fee simple title to the Property to the Purchaser pursuant to recordable limited warranty deed. The Property shall be conveyed free and clear of all liens, encumbrances and other exceptions to title, except for: (i) those existing title matters shown on Exhibit "E" attached hereto and incorporated herein by this reference ("Existing Title Exceptions"); and (ii) the lien for ad valorem taxes not yet due and payable ((i) through (iv) hereinafter referred to as the "Permitted Title Exceptions"). Not later than ten (10) days from the Effective Date of this Agreement, as such term is defined herein, the Purchaser shall deliver to the Seller a statement of any objections to the Seller's title and the Seller shall have the right (but not the obligation) within a reasonable time thereafter in which to cure any such

objections. Seller shall give Purchaser notice of its intent to cure or not cure any title objections within ten (10) days after receipt by Seller of Purchaser's title objection notice; but if Seller does not give this notice within such ten (10) day period, then Seller shall be deemed to elect not to cure any title objections. In the event that the Seller fails to cure any such objections, Purchaser may (i) terminate this Agreement and recover the Earnest Money previously paid by Purchaser, (ii) remove any such objections (but only as to monetary liens created, assumed or suffered by Seller against the Property) and pay the same at Closing from the Purchase Price in accordance with the amount of money due and payable for such monetary lien, or (iii) waive such objections and close the transaction contemplated by this Agreement in accordance with all of the terms and provisions hereof. At any time prior to the Closing Date, the Purchaser shall have the right to check down the title from and after the effective date of the preliminary title examination contemplated in this Paragraph 4 and deliver to the Seller a written statement of any objection which appears in the real property records of Hall County, Georgia and affects title to the Property occurring subsequent to the preliminary title examination. The Seller shall have until the Closing Date to cure, at its expense, any such objection. In the event the Seller fails or refuses to cure such objection prior to the Closing Date, the Purchaser shall have the same rights with respect to such failure or refusal set forth in this Paragraph 4 as to preliminary title objections.

5. RIGHT OF INSPECTION.

A. General. The Seller agrees that, the Purchaser and its agents shall have the right and privilege of going upon the Property to inspect, examine and survey the Property, to plan for the development and use thereof. This right and privilege shall include the right to locate utilities, review any zoning conditions or requirements, review any protective or restrictive covenants, make soil tests, borings, percolation tests and such other inspections, examinations and tests the Purchaser deems necessary to prepare for the development of the Property; provided, however that no grading shall be done and no trees or bushes shall be cut, and Purchaser nor its agents shall interfere with the business operations of any tenants during any such inspections. To the extent allowed by law, Purchaser indemnifies and holds Seller harmless from and against loss or damage Seller may incur and any and all liens that may arise as a result of Purchaser's activities or the activities of Purchaser's agents, representatives or designees on the Property and against any and all claims for death or injury to persons or property arising out of or connected with Purchaser's (or its agents, representatives or designees) going upon the Property pursuant to the provisions of this Paragraph 5 or otherwise, and against all costs, expenses and liabilities occurring in or in connection with any such claim or proceeding brought thereon, including, without limitation, court costs and reasonable and actual attorney's fees. This indemnity, to the extent allowed by law, shall survive the Closing or any termination of this Agreement. Purchaser shall, at Purchaser's expense, restore the Property to substantially the same condition existing at the Effective Date upon completion of inspection activities, but only to the extent any changes were caused by Purchaser, its representatives or designees.

Seller will provide Purchaser within five (5) business day after the Effective Date a copy of any of the following to the extent in Seller's actual possession or control (collectively, "Seller's Documentation"): environmental reports prepared with respect to the Property; Seller's owner's

title insurance policy for the Property; the most recent survey prepared with respect to the Property and applicable tax bills. Any failure of Seller to provide any or all of the Seller's Documentation within such five (5) day period shall not be deemed to be a default on the part of Seller hereunder; however, the Inspection Period, but not the Closing Date, shall be extended an equal number of days of any such delay. Purchaser acknowledges and agrees that any materials provided pursuant to this Paragraph by Seller to Purchaser are made without any representations or warranties as to the accuracy or contents thereof, and Purchaser acknowledges and agrees that it shall not be entitled to rely upon any such materials. In the event the Closing fails to occur for any reason, Purchaser agrees to return promptly to Seller all information given to Purchaser pursuant to this Paragraph including any and all originals or copies made of such information in the possession of Purchaser's consultants and agents. Despite the provision of the materials provided in this Paragraph, Purchaser acknowledges that it shall be solely responsible for ordering its own title insurance commitment and title insurance policy, providing a current survey, obtaining an environmental audit or report relative to the Property, and any other inspections and reports desired by Purchaser, all at Purchaser's sole expense.

B. Right to Terminate. In the event the Purchaser determines, in its sole and absolute discretion, that the Property is not acceptable for its intended use, the Purchaser shall have the exclusive right and option to terminate this Agreement on or before thirty (30) calendar days after the date of final execution of this Agreement (said 30th day being herein referred to as the "Expiration Date"), in which event the Earnest Money (less the sum of \$10.00 which shall be paid to Seller by Escrow Agent and retained by Seller as consideration for entering into this Agreement) shall be delivered by the Escrow Agent to the Purchaser. The term "Inspection Period", as used in this Agreement, means the period from the date of final execution of this Agreement through the thirtieth (30th) calendar day hereafter. If Purchaser elects to terminate this Agreement during the Inspection Period, upon written request of Seller, Purchaser agrees to provide Seller with copies of all surveys, reports, tests, studies or any other documents or writings of any kind dealing with the Property which come into Purchaser's possession of control during the pendency of this Agreement.

6. CLOSING.

A. General. The consummation of the transaction contemplated under this Agreement (herein referred to as the "Closing") shall be on or before May 15, 2024 (hereinafter referred to as the "Closing Date"). The Closing shall be held at the offices of the Purchaser's counsel, Pereira, Kirby, Kinsinger & Nguyen, LLC, 690 Longleaf Drive, Lawrenceville, Georgia 30046, at a time and date which is mutually agreeable to Seller and Purchaser; provided however, at the election of either party, such party's portion of the Closing may be conducted by delivery of such party's closing documents to the closing attorney, on the Closing Date, by a courier or overnight delivery service. At the Closing, the Seller shall execute and deliver to the Purchaser a limited warranty deed conveying good and marketable fee simple title to the Property free and clear of all liens and encumbrances except the Permitted Title Exceptions.

B. Taxes. Real property ad valorem taxes assessed against the Property for the year in which the Closing occurs shall be prorated as of the Closing Date. In the event tax bills for the year

in which the Closing occurs have not been issued at the time of the Closing, the proration shall be made on the basis of the taxes actually paid for the immediately preceding year. In the event the amount of such taxes is not finally determined at the date of Closing, an appropriate adjustment shall be made between Seller and Purchaser by payment of the difference, if any, when the actual amount of such taxes becomes known. If the Property is included within a larger parcel for taxing purposes, Seller agrees to cause the taxes to be paid on the real property of which the Property forms a part on or before the date such tax bills become delinquent. At the time that the tax bills are received for the year in which the Closing occurs (whether before or after the Closing), the Purchaser and the Seller shall make any adjustments made necessary by reason thereof.

C. Documents. The Seller and the Purchaser agree that such documents as may be legally necessary or appropriate to carry out the terms of this Agreement shall be executed and delivered by each party to the other at the Closing, including, but not limited to, an affidavit from the Seller that has as its subject matter averments that, to the actual knowledge of the person signing the affidavit for Seller, (i) there are no rights or claims of parties in possession not shown by the public records, (ii) there are no liens or encumbrances other than those as to which specific provision is made at Closing, (iii) there are no liens, or rights to a lien, for services incurred by Seller (including, but not limited to, real estate brokerage services incurred by Seller), labor or material furnished at the request of Seller and not shown by the public records, (iv) the Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, and (v) the Seller is not a "non-resident" within the meaning of O.C.G.A. § 48-7-128 (or if Seller is a "non-resident" within the meaning of such code section, that Seller will do all things necessary to comply at Closing with the provisions of O.C.G.A. Section 48-7-128). The owner's affidavit to be executed by Seller at Closing shall expressly state that nothing contained therein shall in any way be deemed to modify or enlarge the other representations contained in this Agreement or the limited warranty of title which is to be contained in the deed of conveyance from Seller to Purchaser.

E. Expenses of Closing. The Seller shall pay its share of prorations required herein and the recording costs associated with any title clearance items that Seller elects to undertake under Section 4 herein. The Purchaser shall pay the cost of the State of Georgia transfer tax due on the conveyance of the Property, the survey costs for which Purchaser is responsible under Paragraph 3, title examination costs, title certification costs, title insurance premiums, any fees charged by the Escrow Agent, and any other costs incurred by the Purchaser. Each party shall bear the expense of its own legal counsel.

7. SELLER'S REPRESENTATIONS.

A. The Seller makes the following representations, to the actual knowledge of the person signing this Agreement on behalf of Seller:

(i) Seller owns fee simple title to the Property, subject to those title exceptions identified in Exhibit E;

(ii) the execution and delivery of this Agreement and the consummation of the transactions contemplated herein shall not constitute a default by Seller of any other agreement to which Seller is a party;

(iii) Seller has not engaged any broker or agent with respect to the purchase and sale contemplated under this Agreement and there are no leasing management agreements or other agreements arising through Seller with any third parties concerning leasing of the Property;

(iv) There are no leases or agreements whose term (or any extension thereof) would extend beyond the Closing Date or give the right of possession of the Property or any portion thereof beyond the Closing Date;

(v) Seller has not received any written notice from any governmental authority of any taking of the Property or any portion thereof by eminent domain and, to its knowledge, no condemnation or any taking of the Property is contemplated or threatened by any such governmental authority; and

(vi) Other than as disclosed in Section 20 herein, there are no pending or threatened actions, suits, proceedings or bankruptcies against Seller of the Property which might affect the Property, Seller's title thereto, or the ability of Seller to perform its obligations hereunder.

B. Seller will not take, or cause to be taken, any action, which would cause or threaten to cause, any of the representations stated herein to become incorrect or untrue.

8. PURCHASER'S REPRESENTATIONS.

A. Purchaser represents to Seller as follows:

(i) this Agreement has been properly executed on behalf of Purchaser by its duly authorized officer and any and all actions which are or may be necessary to fully authorize or approve Purchaser to enter into and perform this Agreement have been properly obtained;

(ii) the execution and delivery of this Agreement and the consummation of the transactions contemplated herein shall not constitute a default by Purchaser of any other agreement to which Purchaser is a party; and

(iii) Purchaser has not engaged any broker with respect to the purchase and sale of the Property contemplated under this Agreement.

B. Purchaser will not take, or cause to be taken, any action which would cause or threaten to cause, any of the representations stated herein to become incorrect or untrue; and Purchaser shall affirmatively comply with Subparagraph (iii) above.

9. CONDITIONS PRECEDENT.

A. The Purchaser's obligation to purchase the Property hereunder is expressly made subject to the satisfaction (or waiver by the Purchaser) of each of the following conditions, on or before the Closing Date (or any earlier date expressly set forth below), in addition to all other conditions set forth in this Agreement:

(i) that the Property will be in the same condition, reasonable wear and tear only excepted, at Closing as it is on the Effective Date of this Agreement;

(ii) that all representations of Seller contained in Paragraph 7 of this Agreement be true and correct in all material respects as of the Closing Date; and

If any of the above conditions set forth in this Paragraph 9(A) have not been duly satisfied by the Closing Date or earlier date specified as to each condition, the Purchaser may rescind this Agreement by written notice to the Seller on or before the Closing Date or the earlier date expressly set forth above, in which event the Earnest Money (less \$10.00 which shall be remitted by Escrow Agent to Seller as the Seller's sole consideration for entering into this Agreement) shall be promptly refunded to the Purchaser by the Escrow Agent. Thereafter, the parties hereto shall have no further rights, duties or obligations hereunder, except as is otherwise specifically provided in this Agreement. In the event that the party having the right to rescind this Agreement does not so elect to rescind this Agreement on or before the Closing Date or earlier date specified above, then such condition shall be deemed waived and this Agreement shall continue in full force and effect.

10. NO BROKERS. Neither Seller nor Purchaser has contracted for the payment of any real estate commission, brokerage, finders or other fees with respect to the transaction contemplated hereby and to the extent allowed by law, each party hereto hereby agrees to defend, indemnify and hold harmless the other party from and against any claim by third parties for brokerage, commission, finders or other fees relative to this Agreement or the sale of the Property, and any court costs, attorneys' fees or other costs or expenses arising therefrom, alleged to be due by, through or under the indemnifying party.

11. DAMAGE AND CONDEMNATION.

A. Risk of Loss. The Seller shall bear all risk of loss with respect to the Property until the Closing.

B. Condemnation. In the event of any condemnation with respect to any material portion of the Property, the Purchaser may elect to (i) terminate this Agreement and receive a refund of the Earnest Money or (ii) consummate the purchase of the Property in accordance with the terms and provisions hereof and without any diminution in the purchase price on account of such condemnation in which event the Seller shall, at the Closing, pay to the Purchaser all condemnation awards and other payments previously received in connection with such condemnation and assign to the Purchaser all of Seller's rights to receive any award payable on account of such condemnation.

The parties acknowledge and agree that the pending litigation referenced in Section 20 herein shall not be subject to the terms and conditions of this Section 11(B) nor shall this provision be used by Purchaser to terminate this Agreement.

12. NOTICES.

Any notice, communication, request, reply or advice (collectively, "Notice") provided for or permitted by this Agreement to be made or accepted by either party must be in writing. Notice shall be given or served by depositing the same in the United States mail, postage paid, registered or certified, with return receipt requested or by hand delivering the same to such party, or an agent of such party, or by delivery by overnight courier such as Federal Express, or by delivery by email transmission. Each Notice shall be effective upon being so delivered in the case of hand delivery, upon being so deposited or upon transmission if sent by email, but the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof which, in the case of delivery by mail, shall be as evidenced by the return receipt, in the case of delivery by a nationally recognized overnight courier service, shall be evidenced by confirmation of delivery from the overnight courier service, and in the case of delivery by email, on the date the Notice was confirmed sent by the sending apparatus. Rejection or other refusal by the addressee to accept or the inability of any party attempting hand delivery or, in the case of attempted delivery by mail or overnight courier service, failure by any party to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. For the purposes of Notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

SELLER:

Sarkar Development Group, Inc.
6680 Woodlake Drive
Flowery Branch, GA 30542
Phone: _____
Email: _____

PURCHASER:

City of Flowery Branch
5410 Pine Street
Flowery Branch, Georgia 30542
City Manager Tonya Parrish
Phone: 770-967-6371
Email: tonya@flowerybranchga.org

Copy to: Ted C. Baggett, Esq.
PEREIRA, KIRBY, KINSINER & NGUYEN, LLC
690 Longleaf Drive
Lawrenceville, Georgia 30046
Phone: 770-963-1997
Email: tcb@pkknlaw.com

ESCROW AGENT:

Ted C. Baggett, Esq.
PEREIRA, KIRBY, KINSINER & NGUYEN, LLC
690 Longleaf Drive
Lawrenceville, Georgia 30046
Phone: 770-963-1997
Email: tcb@pkknlaw.com

Any party may by notice to the other in the manner provided above, designate a different address for receiving Notice under this Agreement. A post office box shall not be the only notice address for either Seller or Purchaser. Any Notice which is delivered to the notice address on a non-business day shall be deemed given the next business day if left at the notice address; or, if not left at the notice address, the next business day when re-delivered to the notice address. A non-business day is a Saturday, Sunday or any legal holiday when national banks are closed for business to the general public.

13. DEFAULT.

A. Remedies of Purchaser.

(i) In the event the Closing does not occur in accordance with the terms of this Agreement because of the inability of the Seller to convey good and marketable fee simple title to the Property because of title defects or objections, the Purchaser's sole right and exclusive remedy shall be either to (a) terminate this Agreement in which event the Earnest Money previously paid by Purchaser shall be immediately refunded to the Purchaser or (b) waive such inability and proceed to close the transaction without regard thereto. Despite the provisions of this Paragraph 13(A)(i), Purchaser may cure any monetary liens created, assumed or suffered by Seller against the Property and pay the same at Closing from the purchase price in accordance with the provisions of Paragraph 4 of this Agreement.

(ii) If Seller fails or refuses to perform its obligations hereunder, then Purchaser shall have the right to (i) terminate this Agreement by Notice to Seller, in which event the Earnest Money shall be refunded to Purchaser, and neither Seller nor Purchaser shall have any further rights or obligations hereunder, except for those obligations which survive termination, or (ii) seek specific performance of Seller's obligations to convey the Property to the Purchaser in accordance with the terms of this Agreement; provided, however, that Purchaser shall only be

entitled to such remedy if such suit for specific performance is filed within thirty (30) days after the scheduled date of Closing and further provided that the remedy of specific performance shall only be available to Purchaser upon Purchaser's full satisfaction of each of Purchaser's obligations under this Agreement, including without limitation, delivering sufficient proof to the Seller that Purchaser is ready, willing and able to close this transaction as of the date scheduled for Closing. If Purchaser has not filed suit for specific performance within said 30-day period, then Purchaser shall be deemed to have elected to terminate this Agreement pursuant to (i) above. The option selected (or deemed selected) by Purchaser shall be Purchaser's sole and exclusive remedy, and in no event shall Purchaser be entitled to sue Seller for damages. In no event, including the provisions above, or after Closing, shall Seller be liable to Purchaser for any consequential, indirect, punitive, treble, exemplary, or speculative damages. Purchaser acknowledges that Purchaser's agreements in this Section 13(A) are a material inducement for Seller to enter into this Agreement and without which Seller would not have entered into this Agreement. Nothing in this Section 13(A) shall limit Purchaser's indemnification obligations under this Agreement or Purchaser's restoration obligation in Section 5(A) of this Agreement. The provisions of this Section 13 shall survive Closing or termination of this Agreement.

B. Remedies of Seller. If the Closing does not occur in accordance with the terms of this Agreement due to the default of the Purchaser, or in the event of a breach by the Purchaser of its obligations hereunder, the Seller shall be entitled, as its sole right and exclusive remedy, to receive the Earnest Money previously paid by Purchaser as full, final and complete liquidated damages in accordance with and under the authority contained in O.C.G.A. § 13-6-7. The parties understand and agree that (i) actual damages would be difficult or impossible to ascertain in the event of such default or breach and (ii) the sum specified as liquidated damages is a reasonable estimation of the probable loss which would be sustained by the Seller by reason of such default or breach and is not a penalty or forfeiture. Seller hereby waives any right to damages (except as described in this Paragraph 13(B) and except as to the indemnity contained in Paragraph 16) or specific performance against the Purchaser.

14. ESCROW INSTRUCTIONS.

A. Disbursement of Funds. At such time as Escrow Agent receives written Notice from Seller or Purchaser, or both, stating the identity of the party to whom the Earnest Money is to be disbursed, Escrow Agent shall disburse such Earnest Money pursuant to such notice; provided, however, that if such notice is given by either Seller or Purchaser but not both, Escrow Agent shall notify the other party in writing of such notice and shall withhold disbursement of the Earnest Money for a period of fifteen (15) calendar days after giving such notice and if Escrow Agent receives written Notice from either Seller or Purchaser within such fifteen (15) day period, which notice countermands or disputes the earlier notice of disbursement, then Escrow Agent shall withhold such disbursement until both Seller and Purchaser can agree upon a disbursement of the Earnest Money. Notwithstanding the foregoing, if Purchaser notifies Escrow Agent on or before the expiration of the Inspection Period of its election to terminate this Agreement pursuant to Paragraph 5(B), then no confirming notice from Seller shall be required by Escrow Agent, and Escrow Agent shall promptly disburse the Earnest Money as provided in

Paragraph 5(B), without requesting or waiting for confirming notice from Seller. Seller and Purchaser agree to send to the other a duplicate copy of any written notice sent to Escrow Agent requesting disbursement or countermanding or disputing a request for disbursement.

B. Limited Liability. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for any negligence, willful misconduct or breach of trust by Escrow Agent under this Agreement, and, accordingly, Escrow Agent shall not incur any such liability with respect to the following: (a) any action taken or omitted in good faith upon advice of its legal counsel given with respect to any questions relating to the duties and responsibilities of Escrow Agent under this Agreement; or (b) any action taken or omitted in reliance on any instrument, including any written notice or instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a person or persons having authority to sign or present such instrument, and to conform with the provisions of this Agreement.

C. Disputes. Notwithstanding anything in this Agreement to the contrary, upon a dispute between Seller and Purchaser sufficient in the sole discretion of Escrow Agent to justify its doing so, or if Escrow Agent has not disbursed the Earnest Money on or before the thirtieth day (30th) day following the Closing Date specified in Paragraph 6(A) (as the same may be extended as provided herein or by agreement of Purchaser and Seller), then Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction the Earnest Money, together with such pleadings as it may deem appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement (other than with respect to any liabilities for negligence, willful misconduct or breach of trust by Escrow Agent).

D. Indemnity. To the extent allowed by law, Seller and Purchaser indemnify Escrow Agent against, and hold Escrow Agent harmless from, any and all claims, actions, demands, losses, damages, expenses (including, without limitation, court costs, attorneys' fees and accountant's fees) and liabilities that may be imposed upon performance of its duties under this Paragraph 14, including, without limitation, any litigation arising from this Agreement or involving the subject matter of this Agreement, but excluding any such claims, actions, demands, losses, damages, expenses and liabilities resulting from or arising out of any negligence, willful misconduct or breach of trust by Escrow Agent under this Agreement. If there is any litigation arising from this Agreement or involving the subject matter hereof, and if Seller and Purchaser are opposing parties in such litigation, then the party prevailing in such litigation shall be reimbursed promptly upon demand by the other such party in an amount equal to that amount which the prevailing party shall have paid Escrow Agent with respect to such litigation and its subject matter pursuant to the indemnification agreement contained in this Paragraph 14(D). The provisions of this Paragraph 14(D) shall survive the Closing or any termination, cancellation or rescission of this Agreement.

15. PROPERTY SOLD "AS IS/WHERE IS".

EXCEPT FOR SELLER'S REPRESENTATIONS SET FORTH IN SECTION 7 OF THIS AGREEMENT, THE PROPERTY IS BEING SOLD AND CONVEYED TO PURCHASER "AS IS/WHERE IS" AND "WITH ALL FAULTS". EXCEPT FOR SELLER'S REPRESENTATIONS SET FORTH IN SECTION 7 OF THIS AGREEMENT, SELLER HAS NOT MADE, DOES NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES REGARDING OR RELATING TO: THE CONDITION OF THE PROPERTY, THE IMPROVEMENTS LOCATED THEREON, OR THE PERSONALTY; THEIR SUITABILITY FOR ANY PARTICULAR PURPOSE; THE SUSCEPTIBILITY TO FLOODING OF THE PROPERTY; THE VALUE OR MARKETABILITY OF THE PROPERTY; THE LAYOUT OR LEASABLE SQUARE FOOTAGE OF THE PROPERTY; THE PROJECTED INCOME OR EXPENSES OF THE PROPERTY; THE ZONING CLASSIFICATION, OR USE AND OCCUPANCY RESTRICTIONS, APPLICABLE TO THE PROPERTY; THE CURRENT MANNER OF OPERATION OF THE PROPERTY; THE COMPLIANCE OF THE PROPERTY WITH ENVIRONMENTAL LAWS, AND LAWS AND REGULATIONS RELATING TO HAZARDOUS SUBSTANCES, TOXIC WASTES AND UNDERGROUND STORAGE TANKS; AND ALL MATTERS AFFECTING OR RELATING TO THE PROPERTY. PURCHASER ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, HAVE BEEN MADE BY SELLER, OR BY ANY OTHER PERSON REPRESENTING OR PURPORTING TO REPRESENT SELLER.

BY PROCEEDING WITH THE ACQUISITION OF THE PROPERTY FOLLOWING THE INSPECTION PERIOD, PURCHASER AGREES THAT IT WILL BE CONFIRMING THAT IT HAS INVESTIGATED TO ITS SATISFACTION ALL MATTERS CONCERNING THE PROPERTY THAT ARE RELEVANT TO PURCHASER AND THAT PURCHASER IS ACQUIRING THE PROPERTY IN AN "AS IS/WHERE IS" AND "WITH ALL FAULTS" CONDITION. IN AGREEING TO PURCHASE THE PROPERTY "AS IS/WHERE IS" AND "WITH ALL FAULTS" AND WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, PURCHASER ACKNOWLEDGES AND REPRESENTS THAT IT HAS FACTORED THE "AS IS/WHERE IS" AND "WITH ALL FAULTS" CONDITION OF THE PROPERTY INTO THE PURCHASE PRICE PURCHASER HAS HEREBY AGREED TO PAY FOR THE PROPERTY. FROM AND AFTER THE CLOSING, PURCHASER AGREES TO WAIVE, AND DOES HEREBY WAIVE, ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION AND OTHER LIABILITIES OF OR AGAINST SELLER WITH RESPECT TO THE CONDITION OF THE PROPERTY IN VIOLATION OF FEDERAL, STATE OR OTHER APPLICABLE LAW. THE TERMS AND COVENANTS OF THIS SECTION 15 SHALL SURVIVE THE CLOSING AND SHALL NOT BE MERGED INTO THE DEED CONVEYING THE PROPERTY TO PURCHASER.

16. LIENS AND ENCUMBRANCES.

Purchaser shall have no authority, expressed or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon or in any manner, to bind the interest of Seller in the Property or to charge the proceeds payable hereunder for any claim in favor of any person dealing with Purchaser, including those who may furnish materials or perform labor for any construction or repairs, and any such liens shall be attached to, if at all, only the Purchaser's interest, if any, granted the Purchaser by this instrument. Purchaser covenants and agrees that it will pay or cause to be paid all sums legally due and payable by or on account of any labor performed or materials furnished in connection with any work performed on the Property on which any lien is or can be validly or legally asserted against its interest, if any, in the Property with improvements thereon and that it will save and hold Seller harmless of any and all loss, costs or expense, based upon or arising out of asserted claims or liens against the Purchaser's estate, if any, or against the right, title or interest of the Seller in the Property under the terms of this Agreement, except for indemnities which by the express written terms of this Agreement are to survive the termination or cancellation of this Agreement. This Paragraph shall survive any termination or cancellation of this Agreement.

17. LIKE-KIND EXCHANGES.

Each party acknowledges and agrees that the other may engage in an exchange of like-kind property, using a qualified intermediary, pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, in connection with its disposition of the Property. Each party agrees to cooperate with any such like-kind exchange; provided (i) such party shall not be required to execute any instrument that increases such party's obligations or decrease its rights under this Agreement, (ii) such party shall not be required to incur any liability, cost or expense, and (iii) such party shall not be required to take title to any other property. Such party agrees to consent to the other party's assignment of this Agreement to a qualified intermediary in order to facilitate such like-kind exchange so long as such assignment does not adversely affect such party's rights hereunder, and such party agrees that it will have no recourse whatsoever against any qualified intermediary to whom this Agreement is assigned; provided the other party's assignment of this Agreement to a qualified intermediary shall not result in the other party being released from its obligations and liabilities hereunder.

18. MISCELLANEOUS.

A. Termination. In the event this Agreement is terminated pursuant to the terms hereof or otherwise, the terminating party shall give notice thereof to the other party and this Agreement shall be null and void and of no force or effect and the parties shall have no rights, obligations or liabilities hereunder, except those which expressly survive the termination of this Agreement.

B. Waiver. The failure of any party to exercise any right given hereunder or to insist

upon strict compliance with any term, condition or covenant specified herein shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with any such term, condition or covenant under this Agreement.

C. Entire Agreement. This Agreement contains the sole and entire agreement of the Seller and the Purchaser with respect to the transaction contemplated hereunder and no representation, inducement, promise or agreement, parole or written, between the Purchaser and the Seller and not incorporated herein shall be of any force or effect. Any amendment to this Agreement shall be in writing and executed by the Purchaser and the Seller.

D. Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and the respective successors, successors in title and permitted assigns, provided, however, that Purchaser shall not be entitled to assign its rights hereunder without the express written consent of Seller. Seller shall be entitled to assign its rights hereunder, in whole or in part, to an entity or entities that control, are controlled by, or are under the same control as Seller, without Purchaser's prior written consent; "Control", as used in this Paragraph 18(D) shall mean beneficial ownership equal to or greater than 50% of the entity.

E. Time is of the Essence. Time is of the essence with respect to this Agreement.

F. Survival of Provisions. Except as expressly provided herein, the terms, conditions, obligations, provisions of this Agreement shall merge into the documentation from this transaction and shall not survive the Closing of this transaction and the execution and delivery of the deed pursuant hereto.

G. Applicable Law. This Agreement and all amendments hereto shall be governed by and construed under the laws of the State of Georgia.

H. Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, such provision, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall be deemed severable, and the remainder hereof shall not be affected thereby, and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

I. Date of this Agreement. In the event that any date or deadline set forth in this Agreement occurs on a Saturday, Sunday or legal holiday, such date or deadline shall automatically be extended to the next date which is not a Saturday, Sunday or legal holiday. The date of "final execution" and the "Effective Date" of this Agreement shall be the date of the last signature of Purchaser and Seller to this Agreement.

J. Possession. Full and complete possession of the Property shall be delivered to Purchaser at Closing.

K. Counterparts and Execution and Delivery by Electronic Transmission. This Agreement may be executed in separate counterparts, each of which shall be deemed an original and all of which, collectively, shall comprise one and the same instrument. Furthermore, this Agreement may be executed and delivered by electronic transmission. The parties intend that electronic (e.g. pdf. format) signatures constitute originals signatures and that an electronic copy or counterparts of this Agreement containing signatures (original or electronic) of a party is binding upon that party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, under seal, as of the day and year indicated opposite their names below.

SELLER:

Date

(SEAL)
SARKAR DEVELOPMENT GROUP, INC.
(Robi Sarkar, CEO)

PURCHASER:

CITY OF FLOWERY BRANCH, GEORGIA

Date

By: _____
Name: _____
Title: _____

CONSENTED TO FOR THE PURPOSE
OF SERVING AS ESCROW AGENT:

PEREIRA, KIRBY, KINSINGER & NGUYEN, LLP.

By: _____
Title: _____
Date: _____

EXHIBIT "A"

**LEGAL DESCRIPTION OF PROPERTY FROM WHICH PORTIONS ARE BEING
OBTAINED IN FEE SIMPLE, FOR A TEMPORARY CONSTRUCTION EASEMENT,
AND FOR PERMANENT DRAINAGE EASEMENTS**

All that tract or parcel of land lying and being in Land Lot 149, 8th District, Hall County, Georgia, and being more particularly described as follows:

BEGINNING at a point at the intersection of the north right of way of McEver Road (80' right of way) with the southwesterly right of way of Gaines Ferry Road (80' right of way); thence 287.13 feet along a curve, said curve having a chord of South 53°19'55" West 286.62 feet and a radius of 1386.75;; thence South 59°13'39" West, a distance of 631.60 feet to a point; thence North 44°37'59" West, a distance of 200.99 feet to a point; thence North 45°29'17" West, a distance of 795.26 feet to a point; thence North 47°01'03" East, a distance of 148.77 feet to a point; thence North 30°05'29" West, a distance of 107.26 feet to a point; thence South 85°14'59" East, a distance of 446.02 feet to a point; thence 698.14 feet along a curve, said curve having a chord of South 73°38'29" East 693.37 feet and a radius of 1722.95 feet to a point; thence South 61°58'13" East, a distance of 358.04 feet to a point, being the **POINT OF BEGINNING**.

Said tract contains 16.093 acres.

EXHIBIT “B”
LEGAL DESCRIPTION OF PORTION OF PROPERTY BEING TRANSFERRED IN
FEE SIMPLE

1,774 SQUARE FEET (0.041 AC)

All that parcel lying and being in Land Lot 139, 8th Land District, Flowery Branch, Hall County, Georgia containing 1,774 square feet (0.041 acre) and being the property to be acquired for a proposed roadway round-a-bout which will be located within such area, and depicted on the attached drawing prepared by Matthew N Austin, Georgia RLS 3393, on December 7, 2023, and being more particularly described as follows:

From the POINT OF REFERENCE, which is a 1” solid rod marker having Georgia State Plane, West Zone, NAD83 coordinates North 1516434.6535' and East 2360063.2227', and being the common corner of the parcel shown on Deed Book 8293, Page 128 and along the Northern right-of-way of McEver Road, travel N59°54'33”E a distance of 633.78' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N57°55'08”E and a chord length of 62.26', thence run along the arc of said curve and said right-of-way a distance of 62.27' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N55°58'33”E and a chord length of 31.79', said point being the POINT OF BEGINNING of the parcel herein described, thence run along the arc of said curve and said right-of-way a distance of 31.79' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N51°21'49”E and a chord length of 191.32', thence run along the arc of said curve and said right-of-way a distance of 191.47' to a point, thence N60°56'56”W a distance of 47.47' to a point lying on a non-tangent curve to the left, having a radius of 41.00', a chord bearing of S06°33'51”W and a chord length of 58.40', thence run along the arc of said curve a distance of 64.99' to a point, thence S51°58'32”W a distance of 86.98' to a point, thence S50°30'36”W a distance of 76.58' to the POINT OF BEGINNING.

EXHIBIT "C"
**LEGAL DESCRIPTION OF PORTION OF PROPERTY BEING CONVEYED AS A
TEMPORARY CONSTRUCTION EASEMENT**

13,554 SQUARE FEET (0.311 AC)

All that parcel lying and being in Land Lot 139, 8th Land District, Flowery Branch, Hall County, Georgia containing 13,554 square feet (0.311 acre) and being a TEMPORARY CONSTRUCTION EASEMENT for the construction of the above-described roadway round-about as shown on the attached drawing prepared by Matthew N Austin, Georgia RLS 3393, on December 7, 2023, and being more particularly described as follows:

From the POINT OF REFERENCE, which is a 1" solid rod marker having Georgia State Plane, West Zone, NAD83 coordinates North 1516434.6535' and East 2360063.2227', and being the common corner of the parcel shown on Deed Book 8293, Page 128 and along the Northern right-of-way of McEver Road, travel N59°54'33"E a distance of 633.78' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N58°46'34"E and a chord length of 20.77', thence run along the arc of said curve a distance of 20.77' to a point, said point being the POINT OF BEGINNING, thence N26°16'16"E a distance of 104.53' to a point, thence N54°23'26"E a distance of 36.97' to a point, thence N83°57'21"E a distance of 48.77' to a point, thence N51°56'12"W a distance of 32.35' to a point lying on a tangent curve to the right, having a radius of 21.15', a chord bearing of N11°02'55"E and a chord length of 27.51', thence run along the arc of said curve a distance of 29.96' to a point, thence N60°56'56"W a distance of 89.10' to a point lying on a tangent curve to the left, having a radius of 2,855.33', a chord bearing of N61°50'13"W and a chord length of 88.04', thence run along the arc of said curve a distance of 88.04' to a point, thence N62°40'40"W a distance of 127.84' to a point, thence N62°21'29"W a distance of 16.01' to a point, thence N27°16'57"E a distance of 20.00', thence S62°21'46"E a distance of 16.12' to a point, thence S62°40'40"E a distance of 127.72' to a point lying on a tangent curve to the right, having a radius of 2,875.38', a chord bearing of S61°50'13"E and a chord length of 88.66', thence run along the arc of said curve a distance of 88.66' to a point, thence S60°56'56"E a distance of 93.69' to a point lying on a non-tangent curve to the left, having a radius of 41.00', a chord bearing of S06°33'51"W and a chord length of 58.40', thence run along the arc of said curve a distance of 64.99' to a point, thence S51°58'32"W a distance of 86.98' to a point, thence S50°30'36"W a distance of 76.58' to the POINT OF BEGINNING.

EXHIBIT “D”
**LEGAL DESCRIPTION OF PORTIONS OF PROPERTY BEING CONVEYED AS A
PERMANENT DRAINAGE EASEMENTS**

DRAINAGE EASEMENT 1 – 904 SQUARE FEET (0.021 AC)

All that parcel lying and being in Land Lot 139, 8th Land District, Flowery Branch, Hall County, Georgia containing 904 square feet (0.021 acre) and being a DRAINAGE EASEMENT, said easement being 20' in width as shown on the attached drawing prepared by Matthew N Austin, Georgia RLS 3393, on December 7, 2023, and being more particularly described as follows: From the POINT OF REFERENCE, which is a 1" solid rod marker having Georgia State Plane, West Zone, NAD83 coordinates North 1516434.6535' and East 2360063.2227', and being the common corner of the parcel shown on Deed Book 8293, Page 128 and along the Northern right-of-way of McEver Road, travel N59°54'33"E a distance of 633.78' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N57°55'08"E and a chord length of 62.26', thence run along the arc of said curve and said right-of-way a distance of 62.27' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N55°58'33"E and a chord length of 31.79', thence N39°29'24"E a distance of 56.70' to a point, said point being the POINT OF BEGINNING, thence N19°52'38"W a distance of 48.80' to a point, thence N70°07'22"E a distance of 20.00' to a point, thence S19°52'38"E a distance of 41.71' to a point, thence S51°58'32"W a distance of 1.35', thence S50°30'36"W a distance of 19.87' to the POINT OF BEGINNING.

DRAINAGE EASEMENT 2 – 413 SQUARE FEET (0.009 AC)

All that parcel lying and being in Land Lot 139, 8th Land District, Flowery Branch, Hall County, Georgia containing 413 square feet (0.009 acre) and being a DRAINAGE EASEMENT, said easement being 20' in width and offset from one side of the above-described right-of-way as shown on the attached drawing prepared by Matthew N Austin, Georgia RLS 3393, on December 7, 2023, and being more particularly described as follows: From the POINT OF REFERENCE, which is a 1" solid rod marker having Georgia State Plane, West Zone, NAD83 coordinates North 1516434.6535' and East 2360063.2227', and being the common corner of the parcel shown on Deed Book 8293, Page 128 and along the Northern right-of-way of McEver Road, travel N59°54'33"E a distance of 633.78' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N57°55'08"E and a chord length of 62.26', thence run along the arc of said curve and said right-of-way a distance of 62.27' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N55°58'33"E and a chord length of 31.79', thence run along the arc of said curve and said right-of-way a distance of 31.79' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N51°21'49"E and a chord length of 191.32', thence run along the arc of said curve and said right-of-way a distance of 191.47' to a point, thence N60°56'56"W a distance of 47.47' to a point, thence N60°56'56"W a distance of 62.07' to a point, said point being the POINT OF BEGINNING, thence N60°56'56"W a distance of 20.67' to a point, thence S14°24'33"W a distance of 20.67' to a point, thence S60°56'56"E a distance of 20.67' to a point, thence N614°24'33"E a distance of 20.67' to the POINT OF BEGINNING.

DRAINAGE EASEMENT 3 – 423 SQUARE FEET (0.010 AC)

All that parcel lying and being in Land Lot 139, 8th Land District, Flowery Branch, Hall County, Georgia containing 423 square feet (0.010 acre) and being a DRAINAGE EASEMENT, said easement being 20' in width and offset from one side of the above-described right-of-way as shown on the attached drawing prepared by Matthew N Austin, Georgia RLS 3393, on December 7, 2023, and being more particularly described as follows:

From the POINT OF REFERENCE, which is a 1" solid rod marker having Georgia State Plane, West Zone, NAD83 coordinates North 1516434.6535' and East 2360063.2227', and being the common corner of the parcel shown on Deed Book 8293, Page 128 and along the Northern right-of-way of McEver Road, travel N59°54'33"E a distance of 633.78' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N57°55'08"E and a chord length of 62.26', thence run along the arc of said curve and said right-of-way a distance of 62.27' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N55°58'33"E and a chord length of 31.79', thence run along the arc of said curve and said right-of-way a distance of 31.79' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N51°21'49"E and a chord length of 191.32', thence run along the arc of said curve and said right-of-way a distance of 191.47' to a point, thence N60°56'56"W a distance of 47.47' to a point, thence N29°03'04"W a distance of 63.69' to a point lying on a tangent curve to the left, having a radius of 2,875.38', a chord bearing of N28°09'47"W and a chord length of 88.66', thence run along the arc of said curve a distance of 88.67' to a point, thence N62°40'40"W a distance of 80.15' to a point, said point being the POINT OF BEGINNING, thence N62°40'40"W a distance of 21.33' to a point, thence S06°59'14"W a distance of 20.97' to a point, thence S61°47'10"E a distance of 21.46' to a point, thence N06°59'14"E a distance of 21.33' to the POINT OF BEGINNING.

EXHIBIT “E”
EXISTING TITLE EXCEPTIONS

- a. All taxes and special assessments, including water, sanitary and other utility bill, for the year 2024 and subsequent years, which are not yet due and payable, together with any and all taxes and special assessments which may become due and payable for the current or previous years, due to, but not limited to, reassessments, re-billings, or errors by tax officials or their agents. Easement to Georgia Power Company recorded in Deed Book 23, Page 518, aforesaid records.
- b. Easement to Georgia Railway and Power Company recorded in Deed Book 23, Page 607, aforesaid records.
- c. Right of way to Georgia Railway and Power Company recorded in Deed Book 45, Page 400, aforesaid records.
- d. General Utility Easement in favor of Georgia Power Company recorded in Deed Book 72, Page 495, aforesaid records.
- e. Easement to Southern Bell Telephone and Telegraph Company recorded in Deed Book 92, Page 210, aforesaid records.
- f. Right of Way Easement to Suwanee Electric Membership Corporation recorded in Deed Book 192, Page 376, aforesaid records.
- g. Right of Way Easement to Suwanee Electric Membership Corporation recorded in Deed Book 193, Page 128, aforesaid records.
- h. Easement to Suwanee Electric Membership Corporation recorded in Deed Book 885, Page 5, aforesaid records.
- i. Right of Way Easement to Suwanee Electric Membership Corporation recorded in Deed Book 3479, Page 396, aforesaid records.



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consideration of Resolution 24-001 Declaring the City of Flowery Branch's Intention to Issue Approximately \$25,000,000 of Revenue Bonds, Series 2024, Through the Gainesville and Hall County Development Authority.

COUNCIL MEETING DATE: April 18, 2024

HISTORY:

Previously, the city heard a presentation from Stifel about the potential of revenue bonds as a funding source for the water reclamation facility (WRF) Expansion project. At that time, the city had received bids for the project and the low bid was \$52M. The city was seeking the funds as a value engineering effort was occurring to try to reduce costs of the low bid. The value engineering effort was not successful, the city then chose to issue an RFP for a construction manager at risk (CMAR), and the process started again utilizing some of the old plans, but with new components with the design of the plant and the processes to be used to treat wastewater.

At the last council meeting (April 4, 2024), Trey Monroe with Stifel presented options for a bond issue now.

FACTS AND ISSUES:

Recently, during a presentation from the engineer and CMAR, it was shown that the new estimate for construction of the WRF was approximately \$45M. Efforts are ongoing to reduce costs from that number, but the time has come to look at other potential funding sources. The city already had a loan secured from GEFA (Georgia Environmental Finance Authority) for \$23.3M of which approximately \$20M is still available. Funding will need to be secured for the additional \$20-25M prior to issuing a Notice to Proceed (NTP) on the new plant which is currently scheduled for June 2024. GEFA has also changed their rules on extending loans to local governments. The current maximum amount of a loan is \$12M. Funding options would have been explored anyway to determine what was best for the city and its ratepayers, but this now requires another funding option besides GEFA.

After much review, staff has determined that issuing revenue bonds for the other \$25,000,000 is in the city's best interest.

OPTIONS:

- 1) Authorize the resolution declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority
- 2) Do not authorize the resolution declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

Funding requirements vary from year to year with interest and principal debt payments.

RECOMMENDATION:

Authorize a resolution declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority. This resolution, if approved, will also authorize the engagement of an underwriter and a bond counsel for the issuance of the bonds.

SAMPLE MOTION:

I move to approve Resolution No. 24-001 declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [ES - Resolution 24-001 City's intent to sell bonds.pdf](#)
- [AUTHORIZING RESOLUTION - changes accepted.pdf](#)



**FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY**

SUBJECT: Consideration of Resolution No. 24-001 Declaring the City of Flowery Branch's Intention to Issue Approximately \$25,000,000 of Revenue Bonds, Series 2024, Through the Gainesville and Hall County Development Authority.

DATE: April 18, 2024

BUDGET INFORMATION:

ANNUAL- Debt service varies

CAPITAL-

☒ **RECOMMENDATION**
☐ **POLICY DISCUSSION**
☐ **STATUS REPORT**
☐ **OTHER**

COUNCIL ACTION REQUESTED ON: April 18, 2024

PURPOSE: The purpose of this item is to request council approval of a resolution declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority. This resolution, if approved, will also authorize the engagement of an underwriter and a bond counsel for the issuance of the bonds.

HISTORY: Previously, the city heard a presentation from Stifel about the potential of revenue bonds as a funding source for the water reclamation facility (WRF) Expansion project. At that time, the city had received bids for the project and the low bid was \$52M. The city was seeking the funds as a value engineering effort was occurring to try to reduce costs of the low bid. The value engineering effort was not successful, the city then chose to issue an RFP for a construction manager at risk (CMAR), and the process started again utilizing some of the old plans, but with new components with the design of the plant and the processes to be used to treat wastewater.

At the last council meeting (April 4, 2024), Trey Monroe with Stifel presented options for a bond issue now.

FACTS AND ISSUES: Recently, during a presentation from the engineer and CMAR, it was shown that the new estimate for construction of the WRF was approximately \$45M. Efforts are ongoing to reduce costs from that number, but the time has come to look at other potential funding sources. The city already had a loan secured from GEFA (Georgia Environmental Finance Authority) for \$23.3M of which approximately \$20M is still available. Funding will need to be secured for the additional \$20-25M prior to issuing a Notice to Proceed (NTP) on the new plant which is currently scheduled for June 2024. GEFA has also changed their rules on extending loans to local governments. The current maximum amount of a loan is \$12M. Funding options would have been explored anyway to determine what was best for the city and its ratepayers, but this now requires another funding option besides GEFA.

After much review, staff has determined that issuing revenue bonds for the other \$25,000,000 is in the city's best interest.

OPTIONS: 1) Authorize the resolution declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority
2) Do not authorize the resolution declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority.

RECOMMENDED SAMPLE MOTION: I move to approve Resolution No. 24-001 declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority.

DEPARTMENT: Administration

Prepared by: Tonya Parrish

A RESOLUTION DECLARING THE CITY OF FLOWERY BRANCH'S INTENTION TO ISSUE APPROXIMATELY \$25,000,000 OF REVENUE BONDS, SERIES 2024, THROUGH THE GAINESVILLE AND HALL COUNTY DEVELOPMENT AUTHORITY; AUTHORIZING THE ENGAGEMENT OF AN UNDERWRITER AND A BOND COUNSEL FOR THE ISSUANCE OF THE SERIES 2024 BONDS; AND FOR OTHER RELATED PURPOSES.

WHEREAS, the City Council of the City of Flowery Branch, Georgia (the "City") has determined that there is a need to make certain improvements to the water and sewer system of the City as generally described on **Exhibit "A"** attached hereto (the "Project"); and

WHEREAS, the City Council has determined that revenue bonds (the "Bonds") should be issued through the Gainesville and Hall County Development Authority (the "Authority") denoted as Series 2024, in an amount of approximately \$25,000,000 for the purpose of financing the acquisition, construction and equipping of the Project, paying capitalized interest on the Bonds (if any), and to pay the costs of issuance of the Bonds; and

WHEREAS, the City wishes to engage Stifel, Nicolaus & Company, Incorporated ("Stifel") as underwriter and Stewart, Melvin & Frost, LLP as bond counsel for such Bonds; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Flowery Branch, Georgia, and it is hereby resolved by authority of the same, as follows:

Section 1. The City Council hereby declares its intention to issue approximately \$25,000,000 aggregate principal amount of revenue bonds (the "Bonds") through the Authority to finance a portion of the Project. The Bonds shall have such terms as approved by the City Council by adoption of an authorizing resolution.

Section 2. The attorneys for the City are hereby authorized and instructed to commence preparation of the necessary documents for the issuance of the Bonds, and to take such other actions necessary for the issuance of the Bonds.

Section 3. The issuance of the Bonds shall not exceed any debt limitation prescribed by the Constitution of the State of Georgia.

Section 4. The Bonds shall be payable from the revenues of the water and sewer system of the City, from the proceeds received by the City from sales and use taxes, from the general funds of the City, and from any other lawfully available funds.

Section 5. The City Council hereby approves the engagement of Stifel as underwriter for the City in the issuance and sale of the Bonds under the terms of a mutually agreeable bond purchase agreement.

Section 6. The City Council hereby approves the engagement of Stewart, Melvin & Frost, LLP as bond counsel for the City in the issuance and sale of the Bonds under the terms of the engagement letter to be submitted by Stewart, Melvin & Frost, LLP to the City.

Section 7. The City requests that the Authority issue the Bonds on behalf of the City to provide funds to pay or to be applied toward the cost of the acquisition, construction and equipping of the Project. The Bonds shall constitute only the limited obligation of the Authority to pay principal and interest thereon from payments to be received under an agreement with the City and any other revenue sources arranged for by the City and specifically pledged for that purpose. The Bonds shall not be backed by other credit of the Authority or by any credit of the State of Georgia, or its political subdivisions. The terms of the Bonds (maturity schedule, interest rates, denominations, redemption provisions, security, etc.) shall be satisfactory to the City and the Authority and will be set forth generally in an intergovernmental contract or similar instrument to be entered into between the Authority and the City . The City will pay for all expenses of the Project (including bond issuance costs) which are authorized by the City, such payment to be from proceeds of the Bonds or other funds of the City.

Section 8. All resolutions and parts of resolutions in conflict with this Resolution, if any, shall be and the same are hereby repealed.

PASSED, ADOPTED, SIGNED, APPROVED, AND EFFECTIVE this 18th day of April, 2024.

**CITY OF FLOWERY BRANCH,
GEORGIA**

By: _____
Mayor

Attest: _____
City Clerk

(SEAL)

EXHIBIT “A”
The Project

The construction, renovation, expansion, and equipping of the existing wastewater treatment facility located within the City of Flowery Branch, Georgia, including (i) the expansion of treatment capacity to 1,500,000 gallons per day, (ii) the construction of new biological treatment processing, clarification, and filtration systems capable of treating water to near drinking standards prior to discharge, (iii) the replacement of existing systems wherever necessary to meet the growing demand caused by the growth of the City of Flowery Branch, and other capital improvements to the water and sewer system the City deems necessary.

4868-9205-5222, v. 1



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consideration of First Amendment to the Lease Agreement for 5509 Main Street for Giustino's Deli

COUNCIL MEETING DATE: April 18, 2024

HISTORY:

Giustino's Deli began its lease agreement with the City of Flowery Branch on October 5, 2023 in the Main Street A Master Condominium Shopping Center. The commercial portion is city-owned and the residential is privately owned and leased. This is the former site of the City of Flowery Branch City Hall, Police Station, and various other retail spaces. The entirety of the site was demolished in 2019. In September 2021 the final certificate of occupancy was issued. The apartments are fully occupied, and Giustino's Deli completes the final leased retail spaces.

FACTS AND ISSUES:

Giustino's Deli is eager to continue the build-out process. Giustino's Deli is asking for an extension of the Fixed Rent Commencement date for an additional 6 months. This will allow them to focus solely on the build-out and getting the business open

OPTIONS:

- 1) Authorize the amendment to the existing lease as presented.
- 2) Do not authorize the amendment of the lease as presented and suggest other terms.
- 3) Do not authorize the amendment of the lease.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Department of Fun

Prepared by: Shelia Cooper

ATTACHMENTS

- [Giustino's Deli, 5509 Main Street Lease Agreement.pdf](#)
- [Executive Summary Giustino's Deli amendment.pdf](#)
- [FIRST AMENDMENT TO GIUSTINOS LEASE AGREEMENT.pdf](#)

FB MAIN STREET
A MASTER CONDOMINIUM
SHOPPING CENTER
LEASE AGREEMENT
5509 Main Street
Flowery Branch, Georgia
LANDLORD: City of Flowery Branch
TENANT: GIUSTINO'S

ARTICLE I. BASIC LEASE PROVISIONS
AND ENUMERATION OF EXHIBITS

SECTION 1.1. BASIC LEASE PROVISIONS

A.	DATE (for reference purposes):	<u>October 5, 2023</u>
B.	LANDLORD:	City of Flowery Branch, a Georgia municipal corporation
C.	LANDLORD'S ADDRESS:	5410 Pine Street Flowery Branch, Georgia 30542
D.	TENANT:	Giustino's Deli
E.	TENANT'S TRADE NAME:	Giustino's Deli
F.	TENANT'S NOTICE ADDRESS:	Teresa Ali and Angela Santiago 5752 Shore Isle Court Flowery Branch, Georgia 30542
G.	PHONE NUMBER AND EMAIL:	Teresa Ali: 770-826-8684; tali7616@gmail.com Angela Santiago: 312-961-9542; angelamarie1919@yahoo.com
H.	POSSESSION DATE:	Upon delivery of a fully executed Lease and completion of Landlord's Work, if any.
I.	LEASE COMMENCEMENT DATE:	Upon delivery of a fully executed Lease and completion of Landlord's Work, if any.
J.	LEASE TERM:	Five (5) Years following the Rent Commencement Date.
K.	FIXED MINIMUM RENT COMMENCEMENT DATE:	Earlier of (i) Tenant opening for business or (ii) four (4) months following the Lease Commencement Date.
L.	FIXED MINIMUM RENT:	See Exhibit G for rent schedule.

M.	ESTIMATED ADDITIONAL MONTHLY RENT (for all relevant property expenses including but not limited to taxes, insurance, property management overhead and fee, maintenance, exterior building repairs and maintenance, and parking lot and landscaping maintenance):	\$370.10 Notwithstanding anything contained in this Lease to the contrary, the Additional Monthly Rent shall be adjusted to actual expenses annually.
N.	ADVANCE RENT:	\$3,364.58
	ADVANCE ADDITIONAL RENT:	\$370.10
	SECURITY DEPOSIT:	\$3,364.58 plus \$370.10
	TOTAL AMOUNT DUE WITH LEASE:	\$3,364.58 + \$370.10 + \$3,734.68
O.	GUARANTORS:	Teresa Ali, Angela Santiago and owners having more than 20% interest in Tenant
P.	USE:	For the use of a restaurant and for no other purpose.
Q.	HOURS OF OPERATION:	Tenant agrees to remain open during standard operating hours for a restaurant (11 a.m. to 9 p.m.) on a daily basis (Monday through Sunday) during the lease term and any extensions.
R.	APPROXIMATE SIZE OF LEASED PREMISES:	1,615 Square Feet
S.	OPTION TO RENEW:	Subject to the conditions herein set forth. Tenant is hereby granted the option to renew the Term of this Lease (the "Renewal Option") for three (3) periods of five (5) years (the "Renewal Term"), to commence at the expiration of the initial Term of this Lease. Tenant shall exercise the Renewal Option by delivering written notice of such election to Landlord at least six (6) months but no more than twelve (12) months prior to the expiration of the initial Term of this Lease or Renewal Term. The renewal of this Lease shall be upon the same terms and conditions as this Lease, except: (a) the annual Minimum Guaranteed Rental during the Renewal Term shall be as shown on Exhibit G; (b) Tenant shall have no option to renew this Lease beyond the expiration of the Renewal Term; and (c) Tenant shall not have the right to assign the Renewal Option to any sublessee of the Leased Premises or assignee of the Lease, nor may any such sublessee or assignee exercise or enjoy

		the benefit of such Renewal Option. Notwithstanding the foregoing, Tenant shall not have the right to exercise the Renewal Option, unless: (i) this Lease shall be in full force and effect on the date of the exercise of the Renewal Option and the date of the expiration of the original Term; and (ii) on the date of the exercise of the Renewal Option and the date of the expiration of the original Term there exists no default on the part of the Tenant under this Lease.
--	--	---

SECTION 1.2. SIGNIFICANCE OF BASIC LEASE PROVISIONS

Each reference in this Lease to any of the Basic Lease Provisions contained in Section 1.1 of this article shall be deemed and construed to incorporate all of the terms provided under each such basic lease provision.

SECTION 1.3. ENUMERATION OF EXHIBITS

The exhibits enumerated in this section and attached to this Lease are incorporated in this Lease by this reference and are to be construed as a part of this Lease.

Exhibit A.	Site Plan
Exhibit B.	Tenant's Work
Exhibit C.	Legal Description
Exhibit D.	Rules and Regulations
Exhibit E.	Sign Criteria
Exhibit F.	Lease Guarantee
Exhibit G.	Rent Schedule

ARTICLE II. LEASED PREMISES AND TERM

SECTION 2.1. SHOPPING CENTER

Landlord is the owner of a parcel of real estate, legally described on Exhibit C, located in 5519 Main Street, Flowery Branch, Georgia commonly known as the FB Main Street – a Master Condominium (the “Shopping Center”). It is agreed that the depiction of the Shopping Center on Exhibit A does not constitute a representation, covenant or warranty of any kind by Landlord. Landlord reserves the right to sell any portion or portions of the Shopping Center, such portion(s) thereafter shall not be included in the Shopping Center. Landlord reserves the right to change the number and location of buildings, building dimensions, the number of floors in any of the buildings, store dimensions, the identity and type of other stores and tenancies, and Landlord further reserves the right to locate kiosks and to make available common areas pursuant to the terms hereof, provided only that the Leased Premises as hereinafter defined shall be substantially

as depicted on Exhibit A. Landlord further reserves the right to alter the Shopping Center, at Landlord's sole election, however, no such alteration shall materially impair the visibility or accessibility of Tenants Leased Premises.

SECTION 2.2. LEASED PREMISES

Landlord hereby leases and demises to Tenant, and Tenant hereby accepts from Landlord, subject to and with the benefit of the terms and provisions of this Lease, the store premises sometimes herein referred to as the "Leased Premises" as more particularly described as follows:

5509 Main Street consisting of approximately 1,615 sq. ft. as shown on Exhibit "A".

Said Leased Premises shall extend from the exterior faces of all exterior walls and the center line of those walls separating the Leased Premises from adjacent leased premises in the Shopping Center.

SECTION 2.3. LEASE TERM

The Lease Term shall, commence on the Lease Commencement Date [Section 1.1.I.] and shall end on the last day of the last Lease Year (hereinafter "Termination Date"), unless sooner terminated.

SECTION 2.4. LEASE YEAR

The term "Lease Year" means a period of twelve (12) consecutive calendar months. The first full Lease Year shall begin on the Lease Commencement Date if the Lease Commencement Date shall occur on the first day of a calendar month; if not, then the first Lease Year shall commence upon the first day of the month next following the Lease Commencement Date. Each succeeding Lease Year shall commence upon the anniversary date of the first Lease Year.

SECTION 2.5. STATEMENT AS TO LEASE TERM

In the event the Lease Commencement Date and Termination Date of the Lease Term have not been determined, as of the date of execution hereof, Landlord and Tenant shall execute and deliver a written statement specifying therein the Lease Commencement Date and Termination Date of the Lease Term when determined.

SECTION 2.6. OBLIGATIONS OF TENANT BEFORE LEASE TERM BEGINS

Prior to the Possession Date, Tenant shall deliver to Landlord the required Certificate of Insurance (stated in Section 7.2). Prior to the Lease Commencement Date, and after first obtaining the prior written consent of Landlord, Tenant shall be permitted to install its leasehold improvements, fixtures and other equipment required by Tenant to conduct its business. Tenant shall observe and perform all of its obligations under this Lease, from the Possession Date [Section 1.1.H.] until the Lease Commencement Date [Section 1.1.I.], in the same manner as though the Lease Term began on the Possession Date, including but not limited to payment of Additional Rent as stated in Section 1.1.M. but excluding Fixed Minimum Rent. Landlord shall have no liability whatsoever

for loss or damage to Tenant's leasehold improvements, fixtures, equipment or other property of Tenant or Tenant's contractors.

ARTICLE III. RENT AND OTHER TENANT CONTRIBUTIONS

SECTION 3.1. FIXED MINIMUM AND ADDITIONAL RENT

Tenant agrees to pay rent to Landlord, or to such other person or entity as Landlord may direct, without demand, at such place as Landlord may by notice in writing to Tenant, from time to time, direct, a fixed amount of rent (the "Fixed Minimum Rent"), and an amount of additional rent based upon certain expenses relating to the Leased Premises and the Shopping Center (the "Additional Rent") at the following rates and times and as set forth on Exhibit G:

(a) Fixed Minimum Rent shall be payable in advance in equal successive monthly installments on the first day of each calendar month included in this Lease Term. For any portion of a calendar month included at the beginning of said term, one-thirtieth (1/30) of such a monthly payment for each day of such portion shall be payable on the first day of such portion; and

(b) Additional Rent shall be payable as provided in Sections 3.2, 5.3 and 8.1.

SECTION 3.2. TAXES

Tenant shall pay to Landlord, as Additional Rent hereunder, Tenant's prorata share of any and all special assessments, transportation or environmental protection taxes or levy or similar tax or levy, and Tenant's prorata share of real estate taxes attributable to the Shopping Center paid annually by Landlord during the Lease Term, prorated for any partial Lease Year beginning on the Possession Date. Tenant's prorata share shall be based on the ratio of the total Floor Area of the Leased Premises to the total Floor Area on all floors of building space within the Shopping Center as of the assessment date for the particular special assessment, tax or levy, or real estate tax in question. Tenant shall also pay its prorata share of all expenses, including reasonable attorneys' fees, expenses, administrative hearing and court costs incurred in contesting or negotiating the amount, assessment or rate of any such real estate tax, special assessment, tax or levy. Should the state, or any political subdivision thereof or any governmental authority having jurisdiction thereover, impose a tax and/or assessment upon or against the rentals and/or other charges payable hereunder by Tenant to Landlord, either by way of substitution for the taxes and assessments levied or assessed against such land and such buildings, or in addition thereto, or impose an income or franchise tax in substitution for the general tax levied against such land and buildings, such taxes and/or assessments shall be deemed to constitute a tax and/or assessment against such land and such buildings for the purpose of this section. The annual charges for such assessments or taxes shall be paid in monthly installments on the first day of each calendar month in advance in an amount estimated by Landlord. Landlord shall furnish Tenant, upon Tenant's request, a statement of the assessments or taxes paid or incurred by Landlord for each calendar year of the Lease Term and thereupon there shall be an adjustment between Landlord and Tenant with payment to Landlord or credit to Tenant for future tax payments, as the case may be, to the end that Landlord

shall receive the precise amount of Tenant's prorata share of such assessments and taxes for such period and no more. In the event any portion or portions of the Shopping Center are separately assessed, for purposes of the proration above, Tenant's proportionate share shall be the ratio of the total Floor Area of the Leased Premises to the total Floor Area of all floors of building space within the particular parcel assessed which includes the Leased Premises.

SECTION 3.3. SECURITY DEPOSIT

Tenant, contemporaneously with the execution of this Lease, has deposited with Landlord to secure the faithful performance by Tenant of all the covenants, conditions and agreements in this Lease set forth, and contained on the part of Tenant to be fulfilled, kept, observed and performed, such sum as set forth in Section 1.1 as a Security Deposit. Said deposit shall be held by Landlord, without liability for interest, as security for the faithful performance by Tenant of all the terms, covenants and conditions of this Lease, and Landlord may commingle the same with its other funds. Such interest, if any, may be retained as property of the Landlord, and will not be paid to the Tenant. Such Security Deposit or any portion thereof not previously applied may be applied to the curing of any default that may then exist under this Lease, without prejudice to any other remedy or remedies which Landlord may have on account thereof, and upon such application, Tenant shall pay Landlord on demand the amount so applied which shall be added to the Security Deposit so that the same may be restored to its original amount. In the event the Leased Premises are conveyed by Landlord, the deposit or any portion thereof not previously applied may be turned over to Landlord's grantee or successor, and in such event Tenant hereby releases Landlord from any and all liability with respect to the deposit and/or application or return and Tenant agrees to look to such grantee for such application or return. In the event Tenant shall faithfully fulfill, keep, perform and observe all the covenants, conditions and agreements in this Lease set forth and contained on the part of Tenant to be fulfilled, the sum deposited or the part or portion thereof not previously applied shall be returned to Tenant, without interest, no later than thirty (30) days after the expiration of the Term of this Lease or any renewal or extension thereof, provided Tenant has vacated the Leased Premises and surrendered possession thereof to Landlord at the expiration of said Term or any renewal thereof as provided herein.

ARTICLE IV. UTILITY SERVICES

SECTION 4.1. WATER, SEWER, ELECTRICITY AND GAS

Landlord has caused the necessary mains, conduits and other facilities to be provided to supply water, sewer, gas and electricity to the Shopping Center. Landlord shall provide gas service and facilities to Tenant, however, the same being the sole responsibility of Tenant. Tenant agrees to have all utility services transferred into Tenant's name on the Possession Date. If Tenant has not had any or all of the utilities transferred on the Possession Date, then Tenant agrees to pay Landlord, on demand, the actual cost paid by Landlord for such utilities, together with an administrative charge of One Hundred Fifty and no/100 Dollars (\$150.00) for each such payment. Tenant shall pay for all electricity used in the Leased Premises and all water and sewer charges, and gas charges, if applicable, at its own cost and expense. In the event Landlord, who shall have the option to do so, shall elect to supply any one or more or all of said services, Tenant shall purchase the use of said services as are tendered by Landlord and shall pay the rates, including any

established minimum charges, established by Landlord for such services, but the rate shall be no more than those charged by the public utility furnishing such services in the area. The charges for such services as are so furnished shall be deemed Additional Rent due and payable on the first day of the calendar month following rendition of a bill therefor. Landlord may discontinue furnishing such services if payment for same is not received by Landlord upon not less than five (5) days written notice, and no such discontinuation shall be deemed an eviction or render Landlord liable to Tenant for damages or relieve Tenant from performance of its obligations hereunder. In the event Landlord shall elect to furnish one or more of such services, from time to time, Landlord shall not be liable to Tenant in damages or otherwise if any one or more of said services is interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of Landlord. In any event, Landlord may cease to furnish any one or more of such services without any responsibility to Tenant, except to connect the service facilities with such other sources of supply as may be available for the services so discontinued. Tenant will not install any equipment which will exceed or overload the capacity of any utility facilities servicing the Leased Premises and if any equipment installed by Tenant shall require additional utility facilities, the same shall be installed and maintained at Tenant's expense in accordance with plans and specifications to be approved in writing by Landlord. In the event the Leased Premises are not separately metered for water and Tenant's use requires an excessive volume of water, at Landlord's discretion, a sub-meter will be installed at the Leased Premises at Tenant's expense.

SECTION 4.2. HEATING, VENTILATING AND COOLING

Tenant shall be solely responsible and shall pay for all charges rendered in connection with all heating, ventilating and cooling of the Leased Premises and shall promptly pay all bills for materials furnished or labor performed for Tenant or at Tenant's instance and request in connection with any repairs, replacements, alterations, improvements and installation of all fixtures and equipment in connection therewith on the Leased Premises, and shall keep said Leased Premises free from all claims for liens for work, labor or materials in connection therewith.

SECTION 4.3. OTHER SERVICES

In addition to the above and foregoing, Tenant shall be solely responsible for all garbage and sewage disposal and waste removal, janitorial and other services of any type or nature furnished to the Leased Premises, and shall pay promptly all bills for materials or labor performed in connection therewith. Tenant further covenants and agrees to keep the Leased Premises and the walks adjacent thereto at all times in a neat, clean and sanitary condition and free from snow, ice, waste or debris, and neither to commit or permit any waste or nuisance thereon.

ARTICLE V. COMMON AREAS AND FACILITIES

SECTION 5.1. COMMON AREAS AND FACILITIES

Landlord shall make available, from time to time, such areas and facilities of common benefit to the tenants and occupants of the Shopping Center as Landlord shall deem appropriate (the

“Common Areas”). Landlord shall operate, manage, equip, light, insure, repair and maintain the Common Areas and facilities for their intended purposes in such manner as Landlord shall, in its sole discretion, determine, and may, from time to time, change the size, location and nature of any Common Areas and facilities and may make installations therein and move and remove such installation. Landlord shall have the right to close the Common Areas, or any part thereof, on such business days as Landlord deems necessary for the improvement, maintenance or repair of the Common Areas and on such nonbusiness days or during such nonbusiness hours as Landlord shall, in its sole discretion, determine.

SECTION 5.2. USE OF COMMON AREAS

Tenant and its permitted concessionaires, officers, employees, agents, customers and invitees shall have the nonexclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant such rights, to use the Common Areas as designated from time to time by Landlord, subject to such reasonable regulations as Landlord may from time to time impose, including the designation of specific areas in which vehicles owned by Tenant, its permitted concessionaires, officers, employees and agents must be parked. Tenant agrees to abide by such regulations and to use its best efforts to cause its permitted concessionaires, officers, employees, agents, customers and invitees to conform thereto. Landlord may at any time close temporarily any part of the Common Areas to make repairs or changes, to prevent the acquisition of public rights in such area or to discourage noncustomer parking, and may do such other acts in and to the Common Areas as in its reasonable judgment may be desirable to improve the convenience thereof. Tenant shall upon request furnish to Landlord the license numbers and description of the vehicles operated by Tenant and its permitted concessionaires, officers and employees. Tenant shall not at any time interfere with the rights of Landlord and other tenants, its and their permitted concessionaires, officers, employees, agents, customers and invitees, to use any part of the parking areas and other part of the Common Areas.

SECTION 5.3. CHARGE FOR COMMON AREAS AND FACILITIES

Tenant shall pay to the Landlord, as Additional Rent, in the manner provided in Section 5.5 Tenant's prorata share, as defined in Section 5.4, of Common Areas maintenance cost as hereinafter defined including the cost of Capital Improvements designed to protect the health and safety of the tenants in the Leased Premises and the Shopping Center.

Common Areas maintenance cost shall be deemed to include all costs and expenses of every kind and nature paid or incurred by Landlord during the Lease Term (including appropriate reserves) in operating, managing, equipping, policing and protecting (if and to the extent provided by Landlord), insuring, servicing (including heating, ventilating and cooling any enclosed mall, in the event Landlord elects to enclose any Common Areas), lighting, repairing, replacing and maintaining the Common Areas and facilities in the Shopping Center. Such costs and expenses shall include, but not be limited to, such maintaining and repairing as shall be required in Landlord's judgment to preserve the utility of the Common Areas in condition and status the same as it was at the time of the completion of the original construction and installation thereof; all

exterior painting; all costs and expenses of security and fire protection; all costs of restriping, patching, repairing and maintaining parking areas, garages, entries, gutters and downspouts, the construction of new entries as required and work on roads, as needed, adjacent to the Shopping Center; pedestrian traffic direction and control; roof repairs; all costs and expenses of cleaning and removing of rubbish, dirt, debris, snow and ice; all costs and expenses of planting, maintaining, replanting and replacing flowers and landscaping; management fees; water and sewerage charges; premiums for liability and property damage, fire, extended coverage, malicious mischief, vandalism, workers' compensation and employer's liability, and any other casualty or risk insurance procured by Landlord in connection with Common Areas, wages, unemployment taxes, social security taxes, special assessments and personal property taxes attributable to the Common Areas; fees for audits, required licenses and permits; all costs and expenses incurred by Landlord in testing of sprinkler systems located in the Shopping Center, all charges for utility services for the Common Areas including all costs and expenses of maintaining lighting fixtures and providing electricity to the Common Areas and to Common Areas pole signage (including the cost of light bulbs and electric current); all costs, expenses, surcharges or other impositions or assessments incurred by Landlord in connection with environmental protection legislation or regulation assessed against or imposed on the Shopping Center or any part thereof with regard thereto; reasonable depreciation of equipment, machinery and facilities, rents paid for the leasing of equipment and finance charges paid under any installment purchase of equipment, machinery and facilities used in the operation of the Common Areas and administrative costs at the rate of Fifteen Percent (15%) of the total costs of operating and maintaining the Common Areas (except the appropriate reserves); and such other costs as Landlord may reasonably determine are required for the proper maintenance of the Common Areas, except that all Capital Improvement expenses shall be excluded therefrom.

SECTION 5.4. TENANT'S PRORATA SHARE

Tenant's prorata share of the Common Areas maintenance cost shall be determined by multiplying the total cost incurred or paid by Landlord by a fraction whose numerator is the gross leasable area of the Leased Premises as set forth in Section 2.2 and the denominator of which is the total square feet of gross leasable area within the Shopping Center. The "Gross Leasable Area" shall mean with respect to the Leased Premises and with respect to all other leasable areas, the number of square feet of floor area on all levels, including any mezzanines, basements, or balconies, but excluding "Common Areas" measured from the exterior face of exterior walls and/or the exterior face of service corridor walls, the exterior of building line from all frontage, and the center line of party walls. No deduction shall be made for columns, stairs, elevators, or any interior construction or equipment. Provided, however, for any Common Areas maintenance cost separately metered, billed to or paid directly by any Tenant, the floor area of such tenant space attributable to such Common Areas cost shall be deleted from the above proration for such separate cost. The Floor Area hereinabove provided shall not include the floor area of roof structures used for mechanical equipment.

SECTION 5.5. PAYMENT OF COMMON AREAS MAINTENANCE COST

The annual charges for Common Areas maintenance cost shall be paid in monthly installments on the first day of each calendar month in advance in an amount estimated by Landlord. Landlord shall furnish Tenant, upon Tenant's request, a statement in reasonable detail of the actual Common Areas maintenance cost paid or incurred by Landlord at the end of each calendar year and thereupon there shall be an adjustment between Landlord and Tenant with payment to Landlord or credit to Tenant against any current or future amounts due from Tenant to Landlord pursuant to this Lease, as the case may be, to the end that Landlord shall receive the precise amount of Tenant's prorata share of said costs for such period and no more.

ARTICLE VI. LANDLORD'S ADDITIONAL COVENANTS

SECTION 6.1. REPAIRS BY LANDLORD

Landlord covenants at its expense to keep the foundations and roof of the Leased Premises, and the structural soundness of the exterior walls thereof, in good order, repair and condition, unless any necessary work is required because of damage caused by any act, omission or negligence of Tenant, any permitted concessionaire or their respective employees, agents, invitees, licensees or contractors. Landlord shall not be required to commence any such repair until a reasonable time after written notice from Tenant that the same is necessary. The provisions of this section shall not apply in the case of damage or destruction by fire or other casualty or taking under the power of eminent domain, in which events the obligations of Landlord shall be controlled by Article VIII. Except as provided in this Section 6.1, Landlord shall not be obligated to make repairs, replacements or improvements of any kind upon the Leased Premises, or any equipment, facilities or fixtures contained therein, which shall be the responsibility of Tenant as hereinafter provided.

SECTION 6.2. QUIET ENJOYMENT

Landlord covenants and agrees that so long as Tenant has committed no default under this Lease, Tenant's peaceful and quiet possession of the Leased Premises during the Lease Term shall not be disturbed by Landlord or by anyone claiming by, through or under Landlord.

SECTION 6.3. LIMITATION ON RIGHT OF RECOVERY AGAINST LANDLORD

Tenant acknowledges and agrees that the liability of Landlord under this Lease shall be limited to Landlord's interest in the Shopping Center and any judgments rendered against Landlord shall be satisfied solely out of its interest in the Shopping Center. No personal judgment shall lie against Landlord upon extinguishment of its rights in the Shopping Center and any judgment so rendered shall not give rise to any right of execution or levy against Landlord's assets. The provisions hereof shall inure to Landlord's successors and assigns including any mortgagee of Landlord. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under the Lease, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or

remedy which may be awarded Tenant by law or under the Lease.

If Tenant claims or asserts that Landlord has violated or failed to perform a covenant of Landlord not to unreasonably withhold or delay Landlord's consent or approval, Tenant's sole remedy shall be an action for specific performance, declaratory judgment or injunction and in no event shall Tenant be entitled to any money damages for a breach of such covenant and in no event shall Tenant claim or assert any claim for any money damages in any action or by way of set off, defense or counterclaim, and Tenant hereby specifically waives the right to any money damages or other remedies.

ARTICLE VII. TENANT'S ADDITIONAL COVENANTS

SECTION 7.1. TENANT'S COVENANTS

Tenant covenants, at its expense, at all times during the Lease Term and at such further time as Tenant occupies the Leased Premises or any part thereof:

A. To perform promptly all of the obligations of Tenant set forth in this Lease; and pay when due the Fixed Minimum Rent, Additional Rent, and all charges, rates and other sums which by the terms of this Lease are to be paid by Tenant, without any right of recoupment, set-off, deduction or counterclaim whatsoever.

B. To open for business within thirty (30) days after the Lease Commencement Date; to use the Leased Premises only for the use provided in Section 1.1 and in compliance with the Rules and Regulations set forth in Exhibit D; not to use the Leased Premises for any exclusive use granted by Landlord to any other tenant in the Shopping Center; to keep its business located upon the Leased Premises open at all times throughout the term of this Lease during minimum Standard Operating Hours as set for in Section 1.1.Q; that it will not cease operations at said Leased Premises for a period of more than three (3) consecutive days or five (5) days in any Lease Year, without the express written consent of Landlord, which consent may be granted or withheld at Landlord's sole discretion, unless prevented from doing business therein by reason of applicable ordinances or other acts of governmental authority or acts of God.

C. Except for repairs required in Section 6.1 to be performed by Landlord, to keep the Leased Premises, including, but not limited to all partitions, doors, fixtures, equipment, apparatus and appurtenances thereof (including lighting, plumbing fixtures, sewer lines and the HVAC systems), clean, neat and safe, and in good order, repair and condition (including all necessary painting and decorating), and to keep all glass, including that in windows, doors, fixtures and skylights, clean and in good condition, and to replace glass which may be damaged or broken with glass of the same quality, damage by fire or other casualty covered by Landlord's insurance excepted. Tenant shall store all trash and garbage within the Leased Premises and arrange for the regular pickup of such trash and garbage at the Tenant's expense. Tenant shall not burn any trash or garbage at any time in or about the building and Tenant shall attend to the daily disposal thereof in the manner designated by Landlord. If Landlord shall provide any services or facilities for such pickup, the

Tenant shall be obligated to use the same and shall pay a proportionate share of the actual cost thereof within ten (10) days after being billed therefor. (See Exhibit B "Landlord and Tenant's Work" for additional requirements.)

D. To make all repairs, alterations, additions or replacements to the Leased Premises required by any law or ordinance or any order or regulation of any public authority, or fire underwriters or underwriters' fire prevention engineers; to keep the Leased Premises equipped with all safety appliances so required because of such use; to procure any licenses and permits required for any such use; and to comply with the orders and regulations of all governmental authorities.

E. To the extent permissible by state law and except for Landlord's negligence or willful misconduct, Tenant waives and releases Landlord and Landlord's agents and employees from all claims for damage to person or property sustained by Tenant and/or any person claiming through Tenant resulting from any accident or occurrence in or upon the Leased Premises or the building of which it shall be a part, or any other part of the Shopping Center, including, but not limited to, claims for damage resulting from: (i) any equipment or appurtenances becoming out of repair; (ii) Landlord's failure to keep said building or the Leased Premises in repair; (iii) injury done or occasioned by wind, water or other natural elements; (iv) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water and steam pipes, stairs, porches, railings or walks; (v) broken glass; (vi) the backing up of any sewer pipe or downspout; (vii) the bursting, leaking or running of any tank, tub, sink, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or Leased Premises; (viii) the escape of steam or hot water; (ix) water, snow or ice being upon or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near such building or the Leased Premises or otherwise; (x) the falling of any fixture, plaster or stucco; and (xi) any act, omission or negligence of co-tenants or of other persons or occupants of said buildings or of adjoining or contiguous buildings or of owners of adjacent or contiguous property.

F. To permit Landlord and its agents, upon reasonable notice, except in the event of an emergency, to enter the Leased Premises at reasonable times for the purpose of inspecting same, making repairs, additions or alterations thereto or to the building in which the same are located and of showing the Leased Premises to prospective purchasers, lenders and tenants.

G. To remove, at the termination of this Lease or earlier vacation of the Leased Premises, such of Tenant's goods and effects as are not permanently affixed to the Leased Premises; to remove such of the alterations and additions made by Tenant as Landlord may request; to repair any damage caused by such removal; and peaceably to yield up the Leased Premises and all alterations and additions thereto (except such as Landlord has requested Tenant to remove) and all fixtures, furnishings, floor coverings and equipment which are permanently affixed to the Leased Premises which shall thereupon become the property of Landlord, in clean and good order, repair and condition, damage by fire or other unavoidable casualty and ordinary wear and tear excepted. Any personal property of Tenant not removed within five (5) days following such termination or earlier vacation of the Leased Premises shall, at Landlord's option, become the property of Landlord.

H. If any mortgagee or trustee named in any first mortgage or trust deed hereafter placed upon the Shopping Center or any portion thereof shall elect to subject and subordinate the rights and

interests of the Tenant under this Lease (in whole or in part) to the lien of its mortgage or trust deed, the rights and interests of Tenant under this Lease shall be so subject and subordinate automatically without further action needing to occur, provided that the mortgagee or trustee shall agree in writing to recognize this Lease of Tenant in the event of foreclosure if Tenant is not in default. Any mortgagee or trustee may in the alternative elect to give some or all of the rights and interest of Tenant under this Lease priority over the lien of its mortgage or trust deed. This election of such mortgagee or trustee shall be binding upon Tenant whether this Lease is dated prior to or subsequent to the date of said mortgage or trust deed. Tenant shall execute and deliver whatever instruments may be required for such purposes, and in the event Tenant fails so to do within ten (10) days after demand in writing, Tenant does hereby make, constitute and irrevocably appoint Landlord as its attorney-in-fact and in its name, place and stead so to do.

I. To promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition whenever requested by Landlord.

J. To give Landlord prompt written notice of any accident, casualty, damage or other similar occurrence in or to the Leased Premises or in or to the Common Areas of which Tenant has knowledge.

K. To pay on demand the prevailing party's expenses, including reasonable attorney's fees and court costs incurred either directly or indirectly in enforcing any obligation of either party under this Lease in curing any default by the other party as provided herein and in defending or otherwise participating in any legal proceedings initiated by or on behalf of either party against the other.

L. Not to make any nonstructural alterations, additions or improvements to the Leased Premises in excess of Five Thousand and no/100 Dollars (\$5,000.00), nor to make any structural changes whatsoever without first obtaining Landlord's written consent.

M. Not to suffer or allow any mechanic's lien to be filed against the Leased Premises or the Shopping Center or any interest therein by reason of any work, labor, services or materials performed at or furnished to the Leased Premises. If any such mechanic's lien shall at any time be filed, Tenant shall forthwith cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, but Tenant shall have the right to contest any and all such liens, provided security satisfactory to Landlord is deposited with Landlord. If Tenant shall fail to contest the same with due diligence (having secured Landlord as herein provided) or shall fail to cause such lien to be discharged within thirty (30) days after being notified of the filing thereof and in any case before judgment of sale thereunder, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by Landlord, and the amount so paid by Landlord and/or all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in procuring the discharge of such lien, shall be deemed to be Additional Rent and together with interest thereon as provided in Section 9.2 shall be due and payable by Tenant to Landlord on the first day of the next following month. Nothing in this Lease shall be construed as a consent on the part of the Landlord to subject Landlord's estate in the Leased Premises to any lien or liability under the mechanic's lien law of the state.

N. Not to affix or maintain upon the glass panes and supports of the show windows, doors and the exterior of the Leased Premises any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items except such as shall have first received the written approval of Landlord as to size, type, color, location, copy, nature and display qualities. Anything to the contrary in this Lease notwithstanding, the Tenant shall not affix any sign to the roof of the Leased Premises.

SECTION 7.2. TENANT'S INSURANCE

Tenant covenants, at its expense, at all times during the Lease Term and at such further time as Tenant occupies the Leased Premises or any part thereof, to indemnify, save and hold Landlord and Landlord's agents harmless from and against all liability, injury, loss, cost, damage and/or expense (including reasonable attorneys' fees) in respect of any injury to, or death of, any person, and/or damage to, or loss or destruction of, any property while on the Leased Premises or any other part of the Shopping Center occasioned by any act or omission of Tenant, or anyone claiming by, through or under Tenant including without limitation, Tenant's agents, contractors, employees, licensees, and suppliers. Tenant further covenants to maintain, in responsible companies approved by Landlord, public liability insurance insuring Tenant and Landlord and Landlord's agents, as their interests may appear, as Additional Insured, against all claims, demands or actions for injury to or death of any one person in an amount of not less than One Million Dollars (\$1,000,000) and for injury or death of more than one person in any one occurrence in an amount of not less than One Million Dollars (\$1,000,000) and for damage to property in an amount of not less than Five Hundred Thousand Dollars (\$500,000) made by or on behalf of any persons, firm or corporation, arising from, related to, or connected with the conduct and operations of Tenant's business in the Leased Premises, and in addition, and in like amounts covering Tenant's contractual liability under the aforesaid indemnity and hold harmless clause; to carry like coverage against loss or damage by boiler or compressor or internal explosion of boilers or compressors, if there is a boiler or compressor in the Leased Premises; to maintain plate glass insurance covering all exterior plate glass in the Leased Premises and fire insurance with usual extended coverage endorsements covering all of Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings and equipment in the Leased Premises. Tenant shall be responsible for and shall insure against damage to the buildings occasioned by theft of Tenant's property. All of said insurance shall be in form and in responsible companies satisfactory to Landlord and shall provide that it will not be subject to cancellation, termination or change except after at least thirty (30) days prior written notice to Landlord. *A duly executed Certificate of Insurance clearly stating the insurance requirements provided for herein, naming Landlord and Landlord's agent as Additional Insured (which shall evidence the insurer's waiver of subrogation) together with satisfactory evidence of the payment of the premium thereon, shall be deposited with Landlord on or before the date of delivery of the Leased Premises to Tenant and upon renewals of such policies, not less than thirty (30) days prior to the expiration of the term of such coverage;* and that if Tenant fails to comply with such requirements, Landlord may obtain such insurance and keep the same in effect, and Tenant shall pay Landlord the premium cost thereof upon demand.

SECTION 7.3. ASSIGNMENT OF LEASE

Tenant shall not mortgage, pledge or assign this Lease or sublet the whole or any part of the Leased

Premises, or permit any other person to occupy same or any part thereof, without prior written consent of Landlord, which consent shall not be unreasonably withheld so long as the assignee or sublessee has equal or better credit and business experience. Any assignment or sub-letting, even with Landlord's consent, shall not relieve Tenant from liability for payment of Fixed Minimum Rent, Additional Rent and all charges, rates and other sums; or from the obligations of Tenant set forth in this Lease.

In the event any assignment or subletting, even with the consent of Landlord, results in rental income or other lease charges in an amount greater than that provided for in this Lease, then such excess shall belong to Landlord and shall be payable to Landlord as Additional Rent herein reserved. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease, or to be a consent to any assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior written consent of Landlord.

In the event Tenant wishes to assign this Lease and Landlord consents to such assignment, Landlord may charge a reasonable fee, not to exceed Seven Hundred Fifty and no/100 Dollars (\$750.00), to help offset any costs Landlord may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. If Tenant desires to assign the Lease or sublease all or part of the Leased Premises, Tenant shall submit to Landlord, at least sixty (60) days prior to the effective date of the proposed assignment or sublease, a written notice of its intent, which notice shall; (a) state the name of the proposed assignee or sublessee; (b) state the nature and character of the business of the proposed assignee or sublessee; (c) state the term, use, rental rate and other particulars of the proposed assignment or sublease, including, without limitation, evidence satisfactory to Landlord that the proposed assignee or sublessee is financially responsible and will immediately occupy and thereafter use the Leased Premises for the use stated in Section 1.1 and in accordance with Section 7.1.B; and (d) be accompanied by a copy of the proposed assignment or sublease documents. Upon receipt of said notice including items (a)—(d) above, Landlord shall have the right, at Landlord's sole discretion, within thirty (30) days after receipt of such notice, to approve or disapprove the proposed assignment or sublease, or to terminate this Lease effective as of the proposed effective date of the assignment or sublease (provided, however, that Tenant may nullify Landlord's termination right by withdrawing the proposed assignment or sublease). No assignee of the Lease or sublessee of the Leased Premises or any portion thereof may further assign or sublet the Leased Premises or any portion thereof. In the event Landlord consents to any assignment or subletting, any Renewal Options provided for in this Lease shall become null and void.

ARTICLE VIII. FIRE AND EXTENDED COVERAGE INSURANCE; DAMAGE OR EMINENT DOMAIN

SECTION 8.1. FIRE AND EXTENDED COVERAGE INSURANCE

From and after the Lease Commencement Date of the Lease and throughout the remainder of the Term of this Lease, Landlord shall procure and pay for windstorm, fire and extended coverage insurance, insuring the Shopping Center building in which the Leased Premises are located for

such amount as Landlord's lender shall require, in a responsible insurance company authorized to do business in the State in which the Shopping Center exists. Such insurance policy may insure against loss or damage from fire, windstorm, tornado, hail, disaster, earthquake, vandalism, riot, malicious mischief (and including boiler insurance and war risk insurance if then available), insurance against floods if required by the Federal Flood Disaster Protection Act of 1973 and Regulations issued thereunder, and such other insurance as commonly, or in the judgment of Landlord prudently, maintained by those whose business, improvement to and use of the Leased Premises is similar to that of the Tenant. Such insurance may contain the so-called "Replacement Cost" or "Restoration Endorsement," a provision to the effect that the waiver of subrogation rights by the insured does not void the coverage, and such special endorsements as reasonably requested by Landlord. Tenant shall pay to Landlord, as Additional Rent hereunder, on the first day of each calendar month Tenant's prorata share of the premiums for said fire and extended coverage insurance, Tenant's prorata share to be the same as its prorata share of Common Areas expense.

SECTION 8.2. FIRE, EXPLOSION OR OTHER CASUALTY

In the event the Leased Premises are damaged by fire, explosion or any other casualty to an extent which is less than Fifty Percent (50%) of the cost of replacement of the Leased Premises, the damage shall promptly be repaired by Landlord at Landlord's expense, provided that Landlord shall not be obligated to expend for such repair an amount in excess of the insurance proceeds recovered or recoverable as a result of such damage, and that in no event shall Landlord be required to repair or replace Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings and equipment. In the event of any such damage and (i) Landlord is not required to repair as hereinabove provided, or (ii) the Leased Premises shall be damaged to the extent of Fifty Percent (50%) or more of the cost of replacement, or (iii) the building of which the Leased Premises are a part is damaged to the extent of Twenty Five Percent (25%) or more of replacement, or (iv) the buildings (taken in the aggregate) in the Shopping Center shall be damaged to the extent of more than Twenty Five Percent (25%) of the aggregate cost of replacement, Landlord may elect either to repair or rebuild the Leased Premises or the building or buildings, or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the occurrence of the event causing the damage. If the casualty, repairing or rebuilding shall render the Leased Premises untenable, in whole or in part, and the damage shall not have been due to the act or omission of Tenant, a proportionate abatement of the Fixed Minimum Rent shall be allowed from the date when the damage occurred until the date Landlord completes its work, plus the earlier of (i) sixty (60) days or (ii) the date Tenant reopens for business, however, Tenant shall pay all Additional Rent charges beginning on the date Landlord completes its works, said proportion to be computed on the basis of the relation which the gross square foot area of the space rendered untenable bears to the floor space of the Leased Premises. In the event the Leased Premises shall be damaged or destroyed and the same are not repaired or rebuilt by Landlord within three hundred sixty-five (365) days after the date of the damage or destruction, unless said repair is held up by Tenant, or in the event that Thirty Percent (30%) or more of the Gross Leasable Area of the Shopping Center shall be damaged or destroyed and the same is not repaired or rebuilt within four hundred fifty-five (455) days after the date of damage or destruction, or in the event of any material damage or destruction to the Leased Premises during the last year of the Lease Term, then, in such event, Tenant shall have the right to terminate this Lease upon written notice to Landlord.

SECTION 8.3. EMINENT DOMAIN

If the whole of the Leased Premises shall be taken by any public authority by the exercise, or under the threat of the exercise, of the power of eminent domain, the Lease Term shall cease as of the day the right to possession shall be taken by such public authority, and Tenant shall pay rent up to that date with an appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date the right of possession is taken. If less than all of the Floor Area of the Leased Premises shall be so taken, the Lease Term shall cease only on the parts so taken as of the day the right to possession shall be taken by such public authority, and Tenant shall pay rent up to that date with appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date the right to possession is taken and thereafter the Fixed Minimum Rent shall be equitably adjusted. Landlord shall, at its expense, make all necessary repairs or alterations to the basic building and exterior work so as to constitute the remaining premises a complete architectural unit, provided that Landlord shall not be obligated to undertake any such repairs and alterations if the cost thereof exceeds the award received by Landlord. If the Floor Area of the Leased Premises so taken leaves space no longer suitable for the use set forth in Section 1.1, then the Lease Term shall cease and Tenant shall pay rent up to the date the right to possession is taken, with an appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date of the taking of the right to possession. If more than Twenty Five Percent (25%) of the Floor Area of the building in which the Leased Premises are located, or more than Twenty Five Percent (25%) of the aggregate Floor Area of all buildings in the Shopping Center, shall be taken by the exercise, or under the threat of the exercise, of the power of eminent domain, Landlord may, by notice in writing to Tenant delivered on or before the day of surrendering the right to possession to the public authority, terminate this Lease and rent shall be paid or refunded as of the date of termination. In the event fifty percent (50%) of the Shopping Center is lost due to such taking and such taking significantly impairs Tenant's ability to do business in the Leased Premises, Tenant shall have the right to terminate this Lease by sending a written notice ("Termination Notice") to Landlord setting forth the grounds for such termination and setting a date for such termination ("Termination Date") at least ninety (90) days prior to such Termination Date. All compensation awarded for any taking under the power of eminent domain, whether for the whole or a part of the Leased Premises, shall be the property of Landlord, whether such damages shall be awarded as compensation for diminution in the value of the leasehold or to the fee of the Leased Premises or otherwise, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such compensation.

ARTICLE IX. DEFAULTS BY TENANT AND REMEDIES

SECTION 9.1. DEFAULTS BY TENANT

Without further notice, Landlord may terminate this Lease:

- (i) five (5) days after notice of default, if any default by Tenant continues after notice of default, in case of nonpayment of rent or the nonpayment of any other charges or payments to be made hereunder by Tenant, for more than five (5) days (except no notice need be given for a monetary

default occurring after the second such monetary default in any Lease Year); or

(ii) thirty (30) days after notice of default, if Tenant does not cure any nonmonetary default within a reasonable time, but in any event no later than thirty (30) days after notice of default; or

(iii) immediately if Tenant makes any assignment for the benefit of creditors, commits any act of bankruptcy or files or is subject to a petition under any bankruptcy or insolvency law, and if such a petition filed against Tenant is not dismissed within ninety (90) days; or

(iv) immediately if a receiver or similar officer becomes entitled to this leasehold; or

(v) immediately if Tenant's interest in this Lease is taken upon execution or other process of law in any action against Tenant; or

(vi) immediately if the Leased Premises are levied upon by any revenue officer or similar officer; or

(vii) immediately if Tenant does, or permits to be done, any act which creates a mechanic's lien or claim therefor against the land or building of which the Leased Premises are a part and Tenant does not comply with the provisions of Section 7.1.M; or

(viii) immediately if Tenant shall abandon, vacate or cease to continually operate its business within said Leased Premises during the term of this Lease for a period of more than three (3) consecutive days or five (5) days in any Lease Year; or

(ix) immediately if Tenant fails to open for business within thirty (30) days after the Lease Commencement Date.

Upon termination of this Lease, Landlord may re-enter the Leased Premises with or without process of law, using such force as may be necessary, and remove all persons, fixtures and chattels therefrom, and Landlord shall not be liable for any damages resulting therefrom. Upon such repossession of the Leased Premises, Landlord shall not be liable for any damages resulting therefrom. Upon such repossession of the Leased Premises, Landlord shall be entitled to recover as liquidated damages and not as a penalty, immediately and upon demand, a lump sum of money equal to (a) the value of the Fixed Minimum Rent and other sums provided herein to be paid by Tenant to Landlord for the remainder of the Lease Term where recoverable under applicable state law (the "Total Rent Amount") or (b) the Total Rent Amount, less the fair rental value of the Leased Premises for said period. Upon the happening of any one or more of the above-mentioned events, Landlord may repossess the Leased Premises by forcible entry or detainer suit, or otherwise, without demand or notice of any kind to Tenant (except as hereinabove expressly provided for) and without terminating this Lease, in which event Landlord may, but shall be under no obligation so to do, relet all or any part of the Leased Premises for such rent and upon such terms as shall be satisfactory to Landlord (including the right to relet the Leased Premises for a term greater or lesser than that remaining under the Lease Term, and the right to relet the Leased Premises as a part of a larger area, and the right to change the character or use made of the Leased Premises). For the purpose of such reletting, Landlord may decorate and make any repairs,

changes, alterations or additions in or to the Leased Premises that may be necessary or convenient. If Landlord does not relet the Leased Premises, Tenant shall pay to Landlord on demand as liquidated damages and not as a penalty a sum equal to the amount of the Fixed Minimum Rent, and other sums provided herein to be paid by Tenant for the remainder of the Lease Term. If the Leased Premises are relet and a sufficient sum shall not be realized from such reletting, after paying all of the expenses of such decorations, repairs, changes, alterations, additions, the expenses of such reletting and the collection of the rent accruing therefrom, to satisfy the rent herein provided to be paid for the remainder of the Lease Term, Tenant shall pay to Landlord, on demand, any deficiency and Tenant agrees that Landlord may file suit from time to time to recover any sums falling due under the terms of this section. Any recovery under this section shall be without relief from valuation and appraisal laws.

SECTION 9.2. INTEREST ON LATE PAYMENT; LATE CHARGE

Any payment due Landlord by Tenant pursuant to the terms and conditions of this lease including but not limited to all Fixed Minimum Rent, and Additional Rent which shall not be paid when due shall bear interest at the maximum rate payable by Tenant under state law, or in the absence of a maximum rate, at the rate of Eighteen Percent (18%) per annum from the date when the same is payable under the terms of this Lease until the same shall be paid. In the event any monetary payment is made more than seven (7) days after its due date, Landlord shall be entitled to a late payment fee of ONE HUNDRED and no/100 DOLLARS (\$100.00) in addition to such interest charge as hereinabove set forth.

SECTION 9.3. HOLDOVER BY TENANT

In the event Tenant remains in possession of the Leased Premises after the expiration of the tenancy created hereunder, and without the execution of a new lease, Tenant shall be deemed to be occupying the Leased Premises as a tenant from month-to-month at One Hundred Fifty Percent (150%) of the Fixed Minimum Rent subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

SECTION 9.4. LANDLORD'S RIGHT TO CURE DEFAULTS

Landlord may, but shall not be obligated to, cure at any time, without notice, any default by Tenant under this Lease at Tenant's expense. Such cost to be immediately reimbursed upon written notice from Landlord that such expense has been paid.

SECTION 9.5. EFFECT OF WAIVERS OF DEFAULT

No consent or waiver, expressed or implied, by Landlord to or of any breach of any covenant, condition or duty of Tenant shall be construed as a consent of waiver to or of any other breach of the same or other covenant, condition or duty.

SECTION 9.6. REMEDIES CUMULATIVE

No remedy herein or otherwise conferred upon or reserved to Landlord shall be considered to exclude or suspend any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to Landlord may be exercised, from time to time, and so often as occasion may arise or as may be deemed expedient.

SECTION 9.7. TERMINATION OF TENANT'S ADDITIONAL RIGHTS

In consideration for the faithful observance of the terms of this Lease, and any extension hereof, Tenant has negotiated for (and Landlord has granted herein) certain option rights at Section 1.1.S. (referred to in this Section as "Tenant's Additional Rights"). For so long as no event of default occurs and remains uncured beyond the cure period, if any, set out in Section 9.1 of this Lease, Tenant's Additional Rights shall remain in full force and effect. However, should an event of default occur at any time during the term hereof or any extension(s) (and remain uncured beyond the applicable cure period, if any) Tenant's Additional Rights shall terminate, and the same shall be deemed null and void thereafter. Said termination shall occur as provided herein without further notice from Landlord, and Tenant's subsequent cure after the expiration of the appropriate cure period shall not reinstate or otherwise preserve Tenant's terminated rights.

ARTICLE X. MISCELLANEOUS PROVISIONS

SECTION 10.1. MUTUAL WAIVER OF SUBROGATION RIGHTS

Whenever (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Lease in connection with the Leased Premises, and (ii) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense, then the party so insured hereby releases the other party from any liability it may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance and waives any right of subrogation which might otherwise exist in or accrue to any person or account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost thereupon keeping such release and waiver in full force and effect).

SECTION 10.2. NOTICES FROM ONE PARTY TO THE OTHER

All notices provided for in the Lease shall be in writing and shall be deemed to be given (a) upon the earlier of (i) actual receipt; (ii) refusal thereof; or (iii) three (3) days after having been sent, if notice was sent by prepaid registered or certified mail, return receipt requested; or (b) one (1) day after having been sent, if notice was sent by a nationally recognized overnight courier service which requires the recipient to sign a receipt; addressed, if to Tenant, at the address of Tenant set forth in Section 1.1.F, or such other address as Tenant shall have last designated by notice in

writing to Landlord (which written notice to Landlord must clearly be labeled "Change of Tenant's Address for Notice Purposes"), and if to Landlord, to the place then established for the payment of rent, or such other address as Landlord shall have last designated by notice in writing to Tenant. The customary receipt shall be conclusive evidence of such service.

SECTION 10.3. BROKERAGE

Tenant warrants that it has had no dealings with any broker in connection with this Lease other than the City of Flowery Branch, and covenants to pay, hold harmless and indemnify Landlord from and against any and all costs (including reasonable attorneys' fees), expense or liability for any compensation, commissions and charges claimed by any other broker or other agent with respect to this Lease or the negotiation thereof.

SECTION 10.4. RELATIONSHIP TO THE PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto or any other relationship, other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

SECTION 10.5. ESTOPPEL CERTIFICATES

At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to execute, acknowledge and deliver to Landlord no later than ten (10) days after such request, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates through which the Fixed Minimum Rent, Additional Rent, and other charges have been paid, and making such other reasonable certifications as Landlord, Landlord's mortgagee or Landlord's potential mortgagee may require.

SECTION 10.6. APPLICABLE LAW AND CONSTRUCTION

The laws of the State in which the Shopping Center exists shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. The headings of the several articles and sections contained herein are for convenience only and do not define, limit or construe the contents of such articles or sections.

SECTION 10.7. FORCE MAJEURE

Whenever a period of time is provided in this Lease for either party to do or perform any act or

thing, said party shall not be liable or responsible for any delay due to strikes, lockouts, casualties, acts of God, war, governmental regulation or control or other causes beyond the reasonable control of said party, and in any such event said time period shall be extended for the amount of time said party is so delayed, provided that this section shall not apply to Tenant's covenants to pay Rent and other charges hereunder.

SECTION 10.8. EXECUTION OF LEASE BY LANDLORD

The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Leased Premises and this document becomes effective and binding only upon the execution and delivery hereof by Landlord and by Tenant. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or other agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

SECTION 10.9. BINDING EFFECT OF LEASE

The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns. Landlord, at any time and from time to time, may make an assignment of its interest in this Lease, and in the event of such assignment and the assumption by the assignee of the covenants and agreements to be performed by Landlord herein, Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

SECTION 10.10. SURVIVAL

All representations, warranties, covenants, conditions and agreements contained herein which either expressly survive the expiration or termination of this Lease or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Lease, shall survive the termination or expiration of this Lease.

SECTION 10.11. NO MODIFICATION

This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. No course of prior dealings between the parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. No representations, understandings or agreements have been made or relied upon in the

making of this Lease other than those specifically set forth herein. This Lease can be modified only by a writing signed by the party against whom the modification is enforceable.

SECTION 10.12. SEVERABILITY

If any portion of any term or provision of this Lease, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

SECTION 10.13. SIGN CRITERIA

Within fifteen (15) days after full Lease execution, Tenant shall submit to Landlord two (2) sets of drawings for all proposed signage. The drawings shall clearly show location of sign on storefront elevation, graphics, colors and materials. No signs of any type or description shall be erected, placed or painted in or about the Leased Premises except those signs submitted to Landlord in writing and approved by Landlord in writing, and which signs are in conformity with all applicable laws, regulations, codes and ordinances and in conformity with Landlord's sign criteria as stated in Exhibit E (including without limitation restrictions on duration of posting of sale signs or other signs by Tenant) established for the Shopping Center. Landlord reserves the right to remove, at Tenant's expense, all signs other than signs approved in writing by Landlord under this Section 10.13, without notice to Tenant and without liability to Tenant for any damages sustained by Tenant as a result thereof, and Tenant shall repair any damage caused by such removal. Tenant shall have thirty (30) days from the Possession Date in which to install approved signage on the building facade or Tenant shall be deemed in default.

SECTION 10.14. SALES AND RENTAL TAX

Tenant covenants and agrees to pay to Landlord any and all sales and/or rental taxes imposed by the State in which the Shopping Center exists or any other governmental agency with respect to all Fixed Minimum Rent, Additional Rent, and all other payments of monies, including but not limited to, Common Areas maintenance charges and Real Estate Taxes paid by Tenant to Landlord pursuant to the terms of this Lease.

SECTION 10.15. FAILURE OF TENANT TO OPEN

If Tenant fails to open for business within thirty (30) days after the Lease Commencement Date, then Landlord may terminate this Lease, at Landlord's option, and all monies paid to Landlord shall remain the property of Landlord.

SECTION 10.16. HAZARDOUS MATERIALS

Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances, or materials. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Leased Premises any such materials or substances. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.A. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C.A. §§ 6901 et seq., and any applicable state or local laws and the regulations adopted under these acts. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional charges if such requirement applies to acts and/or omissions of the Tenant. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on the Leased Premises. In all events, Tenant shall indemnify and hold Landlord harmless in the manner elsewhere provided in this Lease from any release of hazardous materials on the Leased Premises occurring while Tenant is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The within covenants shall survive the expiration or earlier termination of the Lease term.

Landlord, to the best of Landlord's knowledge and belief, states that there are no hazardous materials within the Leased Premises as of the date of this Lease.

Landlord acknowledges that materials potentially presenting a biohazard risk may be present on the site during the course of Tenant's business activities and that such biohazardous material will be collected and stored in containers using the universal biohazardous symbol in the Leased Premises prior to proper disposal. Tenant will at all times store such material in the required manner and shall assure that the material is disposed of as required by all governmental agencies. The parties acknowledge that Landlord shall not be responsible for the disposal or storage of any such materials and that in the event Landlord, its agents or employees shall enter the Leased Premises such party shall use best efforts and caution to deal in a reasonable manner with any such materials if required to do so.

SECTION 10.17. RIGHT TO RELOCATE

In the event Landlord shall add additional buildings to the Shopping Center or expand any of the buildings currently contained therein or renovate or reconfigure any part of the Shopping Center in the vicinity of the Leased Premises, Landlord shall have the right, subject to Tenant's right of termination as set forth below to relocate Tenant's operation to other premises (the "New Premises") in another part of the Shopping Center or building in accordance with the following:

Landlord shall notify Tenant, at least one hundred fifty (150) days prior to the proposed relocation

date, of Landlord's intention to relocate Tenant's operation to the New Premises; the proposed relocation date and the size, configuration and location of the New Premises shall be set forth in Landlord's notice; and the New Premises shall be substantially the same in size and configuration as the Leased Premises described in the Lease.

In the event Landlord relocates Tenant and has completed the Tenant Improvements at Landlord's expense, Tenant shall enter into a new lease agreement with Landlord for a period of five (5) years under the same terms and conditions of this Lease.

In the event the New Premises described in Landlord's relocation notice are unacceptable to Tenant, Tenant shall have the right, exercisable by written notice to Landlord, given thirty (30) days following receipt of Landlord's relocation notice, to reject the relocation request. Upon Landlord's receipt of Tenant's rejection Landlord shall, in its sole discretion, have the right to terminate this Lease, such termination to be effective as of the proposed relocation date as set forth in Landlord's notice or to retract the relocation request and this Lease shall continue in full force and effect. Failure by Tenant to timely exercise such right shall be deemed a waiver with respect thereto and confirmation that the New Premises are acceptable to Tenant. Tenant shall have the right to accept the New Premises only for the unexpired term of this Lease.

Landlord has made no representation as to any additional improvements or stores or any existing stores in the Shopping Center and this provision does not create any rights of option, first refusal or otherwise with respect to any present or future space in the Shopping Center.

SECTION 10.18. AMERICANS WITH DISABILITIES ACT

Landlord agrees that at the time of delivery to Tenant all common areas, such as sidewalks and parking lots to the best of Landlord's knowledge will comply with the Americans with Disabilities Act of 1990 and the regulations promulgated thereunder. At Tenant's expense, Tenant agrees to design, furnish, and construct the Leased Premises to comply with the Americans with Disabilities Act of 1990.

Within ten (10) days after receipt, Landlord and Tenant shall advise the other party in writing, and provide the other with copies of (as applicable), any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Property or of the Leased Premises; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Property or of the Leased Premises; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Property or the Leased Premises.

SECTION 10.19. RECORDATION

Neither this Lease nor a short form or memorandum thereof shall be recorded in the public records.

SECTION 10.20. LANDLORD'S RESTRICTIONS

Except as permitted by existing leases, Landlord, to the best of Landlord's ability, agrees that no part of the Shopping Center shall be occupied by an adult book or adult video store or other businesses which sell or display pornographic material, however, any sale of adult magazines or rental of adult videos in less than ten percent (10%) of the sales floor area of any tenant shall not be considered a violation of this agreement.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease the day and year first above written.

Date: October 5, 2023

Date: October 5, 2023

LANDLORD: City of Flowery Branch, GA

TENANT: Giustino's Deli

Edward R. Asbridge

By: Edward R. Asbridge, Mayor

Angela Santiago

By: Teresa Ali/Angela Santiago

ATTEST:

Shelia R. Cooper

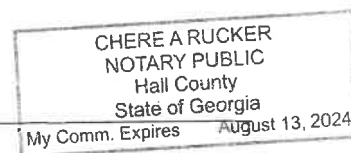
By: Shelia Cooper, City Clerk

Sworn to and subscribed before me
this 5TH day of OCTOBER, 2023.

[Signature]

NOTARY PUBLIC

My Commission Expires:



[NOTARY SEAL]

EXHIBIT A
SITE PLAN

This Exhibit is solely for the purpose of showing the approximate location of the Leased Premises within the Shopping Center and for no other reason whatsoever. Landlord reserves the right to relocate, change, expand or delete parking spaces or parking areas, curb cuts, entrances, service areas, total building area, frontage, etc., including expansion or demolition of existing or new buildings.

5509 Main Street

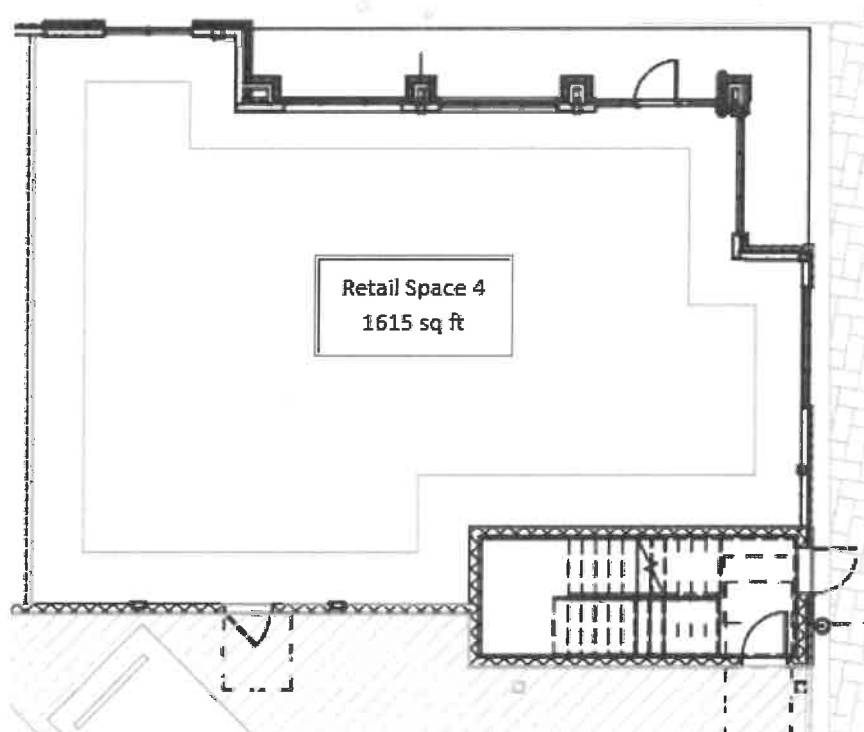


EXHIBIT B

LANDLORD AND TENANT'S WORK

Landlord's Work

1. Notwithstanding anything to the contrary contained herein, Tenant acknowledges and agrees to accept delivery of possession of the Leased Premises in the present "AS IS" condition, without any representation or warranty as to said condition, it being understood that Landlord has no obligation to perform any work or repairs in connection with the preparation of the Leased Premises for Tenant's occupancy, except as set forth below:

a. Landlord shall deliver the major components of the internal grease trap, sanitary sewer stub, ventilation chase for hood exhaust and an undistributed HVAC system in good working order.

2. Provided Tenant is not in default hereunder and shall have completed Tenant's Work in compliance with the plans and specifications approved by Landlord and in compliance with all governmental codes, ordinances and the terms hereof, Landlord shall pay to Tenant a sum up to Eighty Thousand, Seven Hundred Fifty and No/100 Dollars (\$80,750.00) as a construction allowance (the "Tenant Improvement Allowance"), in no event to exceed the actual costs of improvements constituting Tenant's Work which are installed in the Leased Premises. The Tenant Improvement Allowance shall be paid by Landlord in four installments at the following times: (a) completion of 25% of the Tenant Work; (b) completion of 50% of the Tenant Work; (c) completion of 75% Tenant Work; and (d) the date Tenant opens the Leased Premises to the public. The payment of all installments shall be subject to Landlord's inspection confirming the percentage of Tenant Work has been completed in compliance with all applicable laws, codes, rules, and regulations. Additionally, the payment of the final installment is conditioned upon the Tenant delivers to Landlord the following documentation: (i) a certificate of occupancy for the Leased Premises, (ii) waivers of lien in form and substance satisfactory to Landlord, (iii) paid invoices for Tenant's Work for which the Tenant Improvement Allowance will be or has been applied, (iv) proof of installation of a Landlord approved exterior sign on the Leased Premises which identifies Tenant's business. Any portion of the Tenant Improvement Allowance not utilized by Tenant in connection with initial improvement of the Leased Premises in accordance with the provisions of this Work Schedule shall be retained by Landlord for Landlord's benefit. No portion of the Tenant Improvement Allowance shall be applied toward Tenant's moving expenses, furniture, trade fixtures, equipment or any other personal property of Tenant. In the event of default under this Lease by Tenant, which default shall not have been fully cured by Tenant within any applicable cure period allowed under this Lease, any and all portions of the Tenant Improvement Allowance which shall have theretofore been disbursed to Tenant shall constitute additional rent and shall be immediately due and payable as such to Landlord.

3. During the construction of the Tenant Improvements, Landlord shall make disbursements of the Tenant Improvement Allowance for the benefit of Tenant in installments as set forth in Paragraph 2 above and shall authorize the release of monies for the benefit of the Tenant as follows:

During the construction of the Tenant Improvements (or such other date as the Landlord may designate), Tenant shall deliver to Landlord: (a) a request for reimbursement of amounts paid to the contractor, approved by Tenant in a form to be provided by landlord, showing the schedule, by trade, of percentage of completion of the Tenant Improvements in the Premises, detailing the portion of the work completed and the portion not completed, (b) all invoices for labor rendered and materials for the Premises, (c) executed mechanic's lien releases as applicable, from all of Tenant's agents performing work in the Premises, and (d) all other information reasonably required by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in the Tenant's reimbursement request. Within thirty (30) days thereafter, Landlord shall deliver a check to Tenant made payable to Tenant in payment of the lesser of (i) the amounts so requested by Tenant as, or (ii) the balance of any remaining available portion of the Tenant Improvement Allowance balance provided that Landlord does not dispute any request for payment based on non-compliance of any work with the plans and specifications or due to any substandard work. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplies as set forth in Tenant's payment request. Upon completion of the construction of the Tenant Improvements, Tenant shall deliver to Landlord properly executed mechanic's liens for work furnished and/or the materials supplied.

Tenant's Work

1. Tenant agrees to submit to Landlord plans and specifications covering the Tenant Improvements in such detail as Landlord or Managing Agent may require within fifteen (15) days of execution of this Lease and Tenant agrees not to commence work on any of the Tenant Improvements until Landlord has approved such plans and specifications in writing. On or before the Possession Date, Tenant shall deposit with Landlord a certificate of insurance clearly stating the insurance requirements specified in Section 7.2, Tenant shall commence Tenant's Work and proceed diligently and continuously to completion, including installation of fixtures and equipment in the Leased Premises. At all times during Tenant's construction, Landlord and its representatives shall have the right to enter upon the Leased Premises for the purpose of inspecting construction and progress of the Tenant Improvements. Tenant, at its sole cost, shall complete all interior improvements needed to operate its business.

2. Heating and Air Conditioning Maintenance Provisions:

Tenant, at its sole cost, shall maintain the air conditioning (includes heating) units(s) for the Leased Premises in good condition and repair throughout the term of this Lease.

As a part of its air conditioning maintenance obligation, Tenant shall enter into an annual contract with an air conditioning repair firm, fully licensed to repair air conditioning units in the State in which the Shopping Center exists, which firm shall:

a. Regularly service the air conditioning unit(s) on the Leased Premises on a monthly basis, changing belts, filters and other parts as required; and supply Landlord with copies of the maintenance reports should Landlord request them to do so.

b. Perform energy and extraordinary repairs on the air conditioning unit(s).

c. Keep a detailed record of all services performed on the Leased Premises and prepare an annual service report to be furnished to the Tenant at the end of each calendar year.

Tenant shall furnish to Landlord at the end of each calendar year, a copy of said annual service report. Not later than thirty (30) days prior to the Lease Commencement Date of the term of this Lease and annually thereafter, Tenant shall furnish to Landlord a copy of the air conditioning maintenance contract described above, and proof that the annual premium for the maintenance contract has been paid. Nothing stated herein above shall limit Tenant's obligation to maintain the air conditioning unit(s) in good condition and repair throughout the Term of this Lease.

EXHIBIT C
LEGAL DESCRIPTION

All that tract or parcel of land lying and being in GMD 1270, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

The Retail Master Unit of the FB Main Street Master Condominium, as established by the Declaration of Condominium for FB Main Street, A Master Condominium, of record in Deed Book 8924, Page 507-595, Hall County, Georgia records, together with the undivided percentage of interest in the Common Elements appurtenance to said Unit as set forth in Exhibit B of the Declaration of Condominium for FB Main Street, A Master Condominium. Reference is hereby made to the plat of FB Main Street, A Master Condominium of record in Plat Book 880, Page 440 in Plat Book 880, Pages 441-445 Hall County, Georgia records, for a more complete identification and description of the Retail Master Unit.

EXHIBIT D
RULES AND REGULATIONS

Tenant covenants and agrees that Tenant, at its own cost and expense:

- (a) Will keep all exterior and interior store front surfaces clean and will maintain the rest of the Leased Premises and all corridors and loading areas immediately adjoining the Leased Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests;
- (b) Will not permit accumulations of any refuse, but will remove the same and keep such refuse in odor-proof, rat-proof containers within the interior of the Leased Premises shielded from the view of the general public until removed and will not burn any refuse whatsoever but will cause all such refuse to be removed by such person or companies, including Landlord, as may be designated in writing by Landlord and will pay all charges therefor, which shall in all events be competitive within the same geographical area for similar services performed by a reputable person or company; provided, however that Landlord may decline to designate any such person or company in which event all such refuse shall be removed by such person or company as Tenant, subject to Landlord's prior written approval, shall select;
- (c) Will promptly replace, any plate glass or window glass of the Leased Premises which may become cracked or broken, with glass of a like kind and quality;
- (d) Will not, without Landlord's prior written consent, place or maintain any merchandise or other articles in any vestibule or entry of the Leased Premises or within two (2) feet of any entrance from the Leased Premises, on the foot walk adjacent thereto or elsewhere on the exterior thereof;
- (e) Will not use or permit the use of any apparatus, or sound reproduction or transmission, or any musical instrument in such manner that the sound so produced, transmitted or reproduced shall be audible beyond the confines of the Leased Premises, and will not use any other advertising medium, including without limitation flashing lights, or search lights which may be heard or seen outside of the Leased Premises;
- (f) Will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the Leased Premises;
- (g) Will not cause or permit objectionable odors to emanate or be dispelled from the Leased Premises;
- (h) Will not solicit business, distribute handbills or other advertising matter or hold demonstrations in the parking areas or other Common Areas;
- (i) Will not permit the parking of delivery vehicles so as to interfere with the use of any driveway, walk, parking area, or other Common Areas in the Shopping Center;
- (j) Will comply with all laws, rules, regulations, guidelines, orders and ordinances of applicable

federal, state and local governmental authorities, commissions, boards and agencies with respect to this Lease, the use of Leased Premises or any work to be performed in the Leased Premises by Tenant and Tenant shall secure all permits, leases and approvals required for Tenant's use of the Leased Premises. In addition, Tenant shall also comply with all recommendations of the Association of Fire Underwriters, Factory Mutual Insurance Companies, the Insurance Services Organization, or other similar body establishing standards for fire insurance ratings with respect to the use occupancy of the Leased Premises by Tenant, and will participate in periodic fire brigade instructions and drills at the request of Landlord and will supply, maintain, repair and replace for the Leased Premises any fire extinguisher or other fire prevention equipment and safety equipment (including insulation of approved hoods and ducts if cooking activity is conducted in the Leased Premises) required by the aforementioned rules, regulations and associations or other body in order to obtain insurance at the lowest available premium rate throughout the Term of the Lease;

(k) Will keep all outside areas immediately adjoining the Leased Premises including, but not limited to, sidewalks and loading docks free from ice and snow and Tenant hereby agrees that Tenant is solely liable for any accidents occurring on said outside areas due or alleged to be due to any accumulation of ice and snow;

(l) Will not use the plumbing facilities for any other purpose than that for which they are constructed and will not permit any foreign substance of any kind to be thrown therein and the expense of repairing any breakage, stoppage, seepage or damage, whether occurring on or off the Leased Premises, resulting from a violation of this provision by Tenant or Tenant's employees, agents or invitees shall be borne by Tenant. All grease traps and other plumbing traps shall be kept clean and operable by Tenant at Tenant's own cost and expense;

(m) Will not permit any shopping carts in the Common Areas even if taken there by customers;

(n) Will not place or cause or permit to be placed within the Leased Premises, pay telephones, vending machines (except those for the exclusive use of this Tenant's employees) or amusement devices of any kind without the prior written consent of Landlord;

(o) Will comply with all obligations of the FB Main Street – A Master Condominium Declaration of Covenants and By-Laws.

EXHIBIT E
SIGN CRITERIA

Signs shall be furnished and installed by Tenant according to the following:

1. Landlord may erect and maintain such suitable signs or signage as Landlord, in its sole discretion, may deem appropriate to advertise the Premises.
2. Tenant may erect and maintain, at its sole cost and expense, not more than one (1) sign upon the exterior of the Premises, identifying Tenant's business by name. No such sign erected by Tenant shall contain a listing of merchandise or service or any slogan related to Tenant's business.
3. Tenant shall submit sign layout to Landlord for approval prior to its fabrication and installation.
4. All signs and sign locations must be approved by Landlord prior to installation, and Landlord reserves the right, in its sole discretion, to reject any sign proposed by Tenant that does not meet Landlord's requirements.
5. All signs must comply with applicable government regulations and requirements, and Tenant shall keep all signs property maintained and in good working order.
6. Care should be taken to prevent damage to the façade during sign installation.
7. Signage shall be installed in a manner so as not to create leaks through penetrations of the façade.
8. All permits and licenses for sign installation shall be the responsibility of Tenant or sign contractor.

EXHIBIT F

GUARANTY OF LEASE

LANDLORD:	CITY OF FLOWERY BRANCH, GEORGIA
TENANT:	GIUSTINO'S DELI
LEASE DATE:	October 5, 2023

GUARANTY

FOR VALUE RECEIVED, and in consideration of, and as an inducement for the execution and delivery of the Lease dated above, for demising store premises in the FB Main Street – A Master Condominium Shopping Center (hereinafter called the “Lease”), by and between CITY OF FLOWERY BRANCH, GEORGIA, (hereinafter called “Landlord”), and GIUSTINO’S DELI, (hereinafter called “Tenant”), the undersigned, THERESA ALI AND ANGELA SANTIAGO, individuals, (hereinafter called “Guarantor”), hereby guarantees to Landlord, its successors and assigns, the full and prompt payment of rent, including, but not limited to, the Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant’s share of special assessments, and further hereby guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements herein provided to be performed and observed by Tenant, its successors and assigns; and Guarantor hereby covenants and agrees to and with Landlord, its successors and assigns, that if default shall at any time be made by Tenant, its successors and assigns, in the payment of any such Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant’s share of special assessments, or if Tenant should default in the performance and observance of any of the terms, covenants, provisions or conditions contained in said Lease, Guarantor will forthwith pay such Fixed Minimum Rent, Additional Rent and other such sums and charges to Landlord, its successors and assigns, and any arrearages thereof, and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and provisions, and will forthwith pay to Landlord all damages that may arise in consequence of any default by Tenant, its successors and assigns, under said Lease, including, without limitation, all reasonable attorneys’ fees, disbursements incurred by Landlord or caused by any such default and/or by the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guarantee of payment and of performance. It shall be enforceable against Guarantor without the necessity of any suit or proceedings on Landlord’s part of any kind or nature whatsoever against Tenant, its successors and assigns, and without the necessity of any notice of nonpayment, nonperformance or nonobservance or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in nowise be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against

Tenant, or against Tenant's successors and assigns, of any of the rights or remedies reserved to Landlord pursuant to the provisions of said Lease.

This Guaranty shall be a continuing guaranty and the liability of Guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the Lease or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Lease, or by reason of any extension of time that may be granted by Landlord to Tenant, its successors or assigns, or a changed or different use of the Leased Premises consented to in writing by Landlord, or by reason of any dealings or transactions or matter or thing occurring between Landlord and Tenant, its successors or assigns, whether or not notice thereof is given to Guarantor. Guarantor shall promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition whenever requested by Landlord.

Landlord's consent to any assignment or assignments, and successive assignments by Tenant, of the Lease made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

The assignment by Landlord of the Lease and/or the avails and proceeds thereof made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

All of Landlord's rights and remedies under the said Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others. If there is more than one Guarantor hereunder, each Guarantor is jointly and severally liable hereunder, and they are collectively herein referred to as the Guarantor.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty the date above set forth

GUARANTOR(S):

TERESA ALI, INDIVIDUALLY



By: Teresa Ali, an Individual
Address: 5752 Shore Isle Court
Flowery Branch, GA 30542
Social Security Number: *[Insert]*

ANGELA SANTIAGO, INDIVIDUALLY



By: Angela Santiago, an Individual
Address: 5752 Shore Isle Court
Flowery Branch, GA 30542
Social Security Number: *[Insert]*

Notary Signature continued on next page

Sworn to and subscribed before me
this is 5th day of OCTOBER, 2023.



NOTARY PUBLIC

My Commission Expires:

[SEAL]

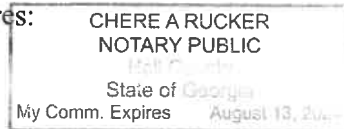


EXHIBIT G
RENT SCHEDULE

**FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY**

**SUBJECT: FIRST AMENDMENT TO LEASE AGREEMENT FOR 5509 MAIN STREET
FOR GIUSTINO'S DELI**

DATE: APRIL 18, 2024

**(X) RECOMMENDATION
() POLICY DISCUSSION
() STATUS REPORT
() OTHER**

**BUDGET INFORMATION:
ANNUAL-
CAPITAL-**

COUNCIL ACTION REQUESTED ON: APRIL 18, 2024

PURPOSE: The purpose of this agenda item is to request council to amend the original lease agreement with Giustino's Deli at 5509 Main Street in Flowery Branch, within the Shopping Center on Main Street.

HISTORY: Giustino's Deli began its lease agreement with the City of Flowery Branch on June 16, 2023 in the Main Street A Master Condominium Shopping Center. The commercial portion is city-owned and the residential is privately owned and leased. This is the former site of the City of Flowery Branch City Hall, Police Station, and various other retail spaces. The entirety of the site was demolished in 2019. In September 2021 the final certificate of occupancy was issued. The apartments are fully occupied, and Giustino's Deli completes the final leased retail spaces.

FACTS AND ISSUES: Giustino's Deli is eager to continue the build-out process. Giustino's Deli is asking for an extension of the Fixed Rent Commencement date for an additional 6 months. This will allow them to focus solely on the build-out and getting the business open.

OPTIONS: 1) Authorize the amendment to the existing lease as presented.
2) Do not authorize the amendment of the lease as presented and suggest other terms.
3) Do not authorize the amendment of the lease.

RECOMMENDED SAMPLE MOTION: I move to approve the first amendment to the lease agreement for 5509 Main Street for Giustino's Deli

DEPARTMENT: Administration

Prepared by: Renee Carden

FIRST AMENDMENT TO FB MAIN STREET
A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT

THIS FIRST AMENDMENT TO FB MAIN STREET A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT (this “Amendment”), is made and entered into effective the ____ day of April, 2024, by and between the CITY OF FLOWERY BRANCH (hereinafter referred to as “Landlord”) and GIUSTINO’S, LLC a limited liability company, (hereinafter referred to as “Tenant”).

WHEREAS, Landlord and Tenant entered into that certain lease agreement dated October 5, 2023 (the “Original Lease”), for that certain property commonly known as 5509 Main Street, Flowery Branch, Georgia (the “Demised Premises”); and

WHEREAS, Landlord and Tenant desire to amend the Original Lease, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, AND IN CONSIDERATION of the sum of One and No/100 Dollars (\$1.00), each to the other paid, the receipt and adequacy and sufficiency of which is hereby acknowledged, and the mutual covenants flowing between the parties hereto, the Original Lease is hereby amended as follows:

1. Recitals. Each of the foregoing recitals and representations in this Amendment form a material part of this Amendment and are incorporated herein by this reference, and such recitals and representations and the Original Lease are hereby ratified.
2. Basic Lease Provisions. Section 1.1. K. FIXED MINIMUM RENT COMMENCEMENT DATE is deleted in its entirety and replaced with the following: “Earlier of (i) Tenant opening for business or (ii) twelve (12) months following the Lease Commencement Date.”

EXCEPT AS HEREIN PROVIDED, all other terms and conditions of the Original Lease shall remain the same and the parties hereto do hereby ratify the Original Lease.

IN WITNESS WHEREOF, Landlord and Tenant have carefully read and reviewed this Amendment and each term and provision contained herein, and by the execution of this Amendment shows their informed and voluntary consent thereto. The parties hereby agree that, at the time this Amendment is executed, the terms of this Amendment are commercially reasonable and effectuate the intent and purpose of Landlord and Tenant with respect to the Demised Premises.

This ____ day of April, 2024.

Signatures Next Page

LANDLORD: CITY OF FLOWERY BRANCH,
GEORGIA

By: _____
Edward R. Asbridge, Mayor

ATTEST:

Shelia Cooper, City Clerk

TENANT: GIUSTINO'S, LLC

By: _____
Teresa Ali

By: _____
Angela Santiago

Sworn to and subscribed before me
this _____ day of April, 2024.

NOTARY PUBLIC
My commission expires: _____



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider March 2024 Per Diem for Mayor Asbridge

COUNCIL MEETING DATE: April 18, 2024

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$150.00 Council/Meeting Per Diem

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [March 2024 Mayor Asbridge Per Diem.pdf](#)



**City of Flowery Branch
Mayor & Council Attendance Sheet Per Diem Pay**

Name: Mayor Edward Asbridge Month/Year: March 2024

Meeting Date	Description of Meeting
March 8, 2024	Chamber – EDC Meeting, Oakwood
March 13, 2024	Chamber Small Business Coalition, Gainesville
March 28, 2024	Chamber – BOD Meeting, Gainesville

My signature certifies that I am eligible to be paid for 3 meeting dates, a maximum of 5 per month, in accordance with the Per Diem Pay as described in Ordinance 477 and at a rate of \$50.00 per meeting.

Total of \$150.00

Signature



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider April 2, 2024 Special Called Meeting Minutes

COUNCIL MEETING DATE: April 18, 2024

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Unofficial April 2, 2024 Special Called Meeting Minutes.pdf](#)



**City of Flowery Branch
Special Called City Council Meeting
Tuesday, April 2, 2024, 5:00 PM
City of Flowery Branch City Hall
5410 Pine Street, Flowery Branch, GA 30542**



CALL TO ORDER:

Mayor Asbridge called the special called council meeting to order at 5:00 p.m.

Present: Mayor Asbridge and Council Members Joe Anglin, Oliver McClellan, Joseph Mezzanotte, and Chris Mundy.

Also present were City Manager Tonya Parrish, City Clerk Shelia Cooper, Planning & Community Development Director Rich Atkinson, Human Resources Director Krystle Hightower, Deputy Chief Todd Templeton, and City Attorney Frank Hartley.

Absent: Council Member William McDaniel

PLEDGE OF ALLEGIANCE:

Mayor Asbridge led the Pledge of Allegiance.

ADOPTION OF AGENDA:

There was a motion made to approve the agenda as presented.

MOTION: Joseph Mezzanotte

SECOND: Joe Anglin

AYES: Joe Anglin, Oliver McClellan, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

NEW BUSINESS - WORK SESSION:

Discussion of the Zoning Ordinance

Director Atkinson led a presentation and asked for guidance on the zoning ordinance. In Spring of 2023, Council considered lowering density and removing the PUD and R-3 zoning districts. Council also directed staff to increase the landscaping requirements, change how new residential roads are designed, update open space requirements, and enhance architectural requirements for new residential homes. Later in 2023, staff submitted, and Council approved an updated zoning ordinance which included deletion of R-3 and PUD and added MU to name a few.

Council held a discussion with Director Atkinson. Council would like Director Atkinson to update the zoning ordinance to focus on density and create design standards.

PUBLIC COMMENTS: There were no public comments.

EXECUTIVE SESSION:

There was a motion made to enter executive session for matters related to the acquisition/disposition of real estate at 6:55 p.m.

MOTION: Joe Anglin
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

There was a motion made to exit executive session at 7:01 p.m.

MOTION: Oliver McClellan
SECOND: Chris Mundy
AYES: Joe Anglin, Oliver McClellan, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

ADJOURNMENT:

There was a motion made to adjourn the meeting at 7:01 p.m.

MOTION: Chris Mundy
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver, McClellan, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Edward R. Asbridge, Mayor

Date

Shelia Cooper, City Clerk



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider April 2, 2024 Executive Session Minutes

COUNCIL MEETING DATE: April 18, 2024

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

•



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider April 4, 2024 City Council Meeting Minutes

COUNCIL MEETING DATE: April 18, 2024

HISTORY:

FACTS AND ISSUES:

OPTIONS:

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [Unofficial April 4, 2024 City Council Meeting Minutes.pdf](#)



**City of Flowery Branch
City Council Meeting
Thursday, April 4, 2024, 6:00 PM
City of Flowery Branch City Hall
5410 Pine Street, Flowery Branch, GA 30542**



CALL WORK SESSION TO ORDER:

Mayor Asbridge called the council meeting to order at 6:01 p.m.

Present: Mayor Asbridge and Council Members Joe Anglin, Oliver McClellan, Joseph Mezzanotte and Chris Mundy.

Also present were City Manager Tonya Parrish, City Clerk Shelia Cooper, Planning & Community Development Director Rich Atkinson, Human Resources Director Krystle Hightower, Public Works & Utilities Director Bill Whidden, Police Chief Hulsey, Director of Fun Renee Carden, and City Attorney Ted Baggett

Absent: Council Member William McDaniel

PLEDGE OF ALLEGIANCE:

Mayor Asbridge led the Pledge of Allegiance.

ADOPTION OF AGENDA:

There was a motion made to approve the agenda as presented.

MOTION: Chris Mundy

SECOND: Joe Anglin

AYES: Joe Anglin, Oliver McClellan, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

AWARDS & RECOGNITIONS: There were no awards or recognitions.

NEW BUSINESS -WORK SESSION:

Presentation of Potential Funding Source for WRF Expansion.

Trey Monroe from Stifel presented potential financing options for WRF Expansion. GEFA has changed their lending policies, and the city has a couple of options for funding. One option is to issue bonds and the other options would be acquiring another GEFA loan and issuing bonds.

Funding will need to be secured prior to issuing a notice to proceed on the new plant which is currently scheduled for June 2024.

Council held a discussion with Mr. Monroe.

Consideration of proposals by Georgia Safe Sidewalks to repair sidewalks in Sterling on the Lake.

City Manager Parrish led a presentation for a proposal from Georgia Safe Sidewalks to repair sidewalks in Sterling on the Lake. There are several sidewalks throughout the city, and as a part of our sidewalk repair program, quotes were requested for the next, oldest pods in Sterling on the Lake. The city has sought quotes from Georgia Safe Sidewalks as the preparation for the quotes is free although very detailed. The city has been pleased with the professional services provided by Georgia Safe Sidewalks. The quotes are for Pods B and C, Pods D and E, and Pod H.

Council held a discussion with City Manager Parrish and Director Whidden.

Consider the First Reading of Ordinance 710 GMEBS Restated Defined Benefit Retirement Plan Adoption Agreement

Director Hightower presented the first reading of Ordinance 710; City of Flowery Branch Restated Defined Benefit Retirement Plan Adoption Agreement. The City of Flowery Branch has previously adopted the GMEBS Defined Benefit Retirement Plan. The plan is considered a “qualified plan” under the Internal Revenue Code. This is important to ensure the tax-exempt status of the trust fund. To protect this status, GMEBS filed draft restated plan documents to reflect recent amendments and to comply with changes in the federal tax law. On August 31, 2023, the IRS issued a favorable opinion letter for the restated plan documents. To ensure continued tax-qualified status for all GMEBS-member retirement plans, all participating employers must readopt their plans using the most recent IRS-approved Adoption Agreement.

DEPARTMENT REPORTS:

Department of Fun Report:

Director Carden noted upcoming events.

Police Department Report:

Investigator Newberry advised that April is National Autism Acceptance Month. The police officers are wearing blue badges during the month of April in support of Autism Acceptance Month. He explained that one in thirty-six children are diagnosed with autism. City staff will be wearing blue to show support of understanding and acceptance for people with autism on Fridays during the month of April.

Public Works & Utilities Report:

Director Whidden gave an update on railroad repairs.

Attorney Report:

Attorney Baggett noted in the proposed minutes in the voting section there are scrivener's errors that have been corrected in Ordinance 706 and 707 and those are going to be adopted as corrected as part of the minutes when they are approved on the voting session.

ADJOURNMENT WORK SESSION:

Mayor Asbridge adjourned the work session at 6:37p.m.

VOTING SESSION AGENDA

CALL VOTING SESSION TO ORDER:

Mayor Asbridge called the voting session to order at 6:37 p.m.

PUBLIC COMMENTS: There were no public comments.

CONSENT AGENDA:

Consider March 21, 2024 City Council Meeting Minutes

Consider March 21, 2024 Executive Session Minutes

There was a motion made to approve the consent agenda as presented.

MOTION: Joe Anglin

SECOND: Oliver McClellan

AYES: Joe Anglin, Oliver McClellan, Joseph Mezzanotte, Chris Mundy

NAYS: None

Motion carried

UNFINISHED BUSINESS - VOTING SESSION:

Consider the Second Reading of Ordinance 709, Adoption of the City of Flowery Branch Zoning Map.

Clerk Cooper read the caption for Ordinance 709.

There was a motion made to approve the second reading of Ordinance 709, adoption of the City of Flowery Branch Zoning Map.

MOTION: Chris Mundy
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

NEW BUSINESS - VOTING SESSION:

Consideration of proposals by Georgia Safe Sidewalks to repair sidewalks in Sterling on the Lake.

There was a motion made to approve the quotes from Georgia Safe Sidewalks in an amount not to exceed \$94,235 and authorize the mayor or city manager to sign the documents accepting the quote.

MOTION: Oliver McClellan
SECOND: Chris Mundy
AYES: Joe Anglin, Oliver McClellan, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Consider the First Reading of Ordinance 710 GMEBS Restated Defined Benefit Retirement Plan Adoption Agreement

Clerk Cooper read the caption for Ordinance 710.

There was a motion made to approve the first reading of Ordinance 710 FOR GMEBS; City of Flowery Branch Restated Defined Benefit Retirement Plan Adoption Agreement as presented.

MOTION: Joe Anglin
SECOND: Chris Mundy
AYES: Joe Anglin, Oliver McClellan, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Consider the First Reading of Ordinance 711, an Annexation Request submitted by Mr. Carson Smith.

Clerk Cooper read the caption for Ordinance 711.

There was a motion made to deny the first reading of Ordinance 711, an annexation request submitted by Mr. Carson Smith.

MOTION: Chris Mundy
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Consider the First Reading of Ordinance 712, a Rezoning Request submitted by Mr. Carson Smith.

Clerk Cooper read the caption for Ordinance 712.

There was a motion made to deny the first reading of Ordinance 712, a rezoning request submitted by Mr. Carson Smith.

MOTION: Oliver McClellan
SECOND: Joe Anglin
AYES: Joe Anglin, Oliver McClellan, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

EXECUTIVE SESSION: There was no executive session.

ADJOURNMENT:

There was a motion made to adjourn at 6:42 p.m.

MOTION: Joe Anglin
SECOND: Oliver McClellan
AYES: Joe Anglin, Oliver McClellan, Joseph Mezzanotte, Chris Mundy
NAYS: None
Motion carried

Edward R. Asbridge, Mayor

Date

Shelia Cooper, City Clerk



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consider the Second Reading of Ordinance 710 GMEBS Restated Defined Benefit Retirement Plan Adoption Agreement

COUNCIL MEETING DATE: April 18, 2024

HISTORY:

The City of Flowery Branch previously adopted the Georgia Municipal Employees Benefit System (“GMEBS”) Defined Benefit Retirement Plan (“Plan”), which is comprised of the Basic Plan document and Adoption Agreement. The Plan is considered a “qualified plan” under the Internal Revenue Code, which is important to ensure the tax-exempt status of the trust fund. To protect the Plan’s tax-qualified status, GMEBS filed draft restated Plan documents, updated to reflect recent amendments and comply with changes in federal tax law, with the IRS on June 29, 2022. On August 31, 2023, the IRS issued a favorable opinion letter (“IRS opinion letter”) for the restated plan documents. The IRS opinion letter provides assurance to employers providing retirement benefits through the GMEBS Plan that GMEBS is maintaining a qualified pension benefit program that allows employees to accrue benefits tax-free until retirement benefits are distributed to them.

FACTS AND ISSUES:

To ensure continued tax-qualified status for all GMEBS-member retirement plans, all participating employers must readopt their plans using the most recent IRS-approved Adoption Agreement. Attached is a copy of the Master Plan and Amendment 1 received from GMEBS, a Summary of Key Amendments that have been made to the Plan since it was last approved by the IRS in 2023, as well as a restated Adoption Agreement. Please note that per O.C.G.A. § 47-5-40, the Adoption Agreement has been drafted in the form of an ordinance. The City does not need to adopt the Basic Plan Document or Amendment 1. All plan documents and summary of amendments are attached for reference. If the draft document is acceptable, the City will need to execute where indicated (p. 37) and return the entire Adoption Agreement no later than May 20, 2024.

OPTIONS:

1. Approve the GMEBS; City of Flowery Branch Restated Defined Benefit Retirement Plan Adoption Agreement as presented.
2. Provide alternative amendments.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

Funding not involved

RECOMMENDATION:

Approve the second reading of Ordinance 710 GMEBS Restated Defined Retirement Plan Adoption Agreement as presented.

SAMPLE MOTION:

I make a motion to approve the second reading of Ordinance 710 for GMEBS; City of Flowery Branch Restated Defined Benefit Retirement Plan Adoption Agreement as presented.

COLLABORATING DEPARTMENT:

DEPARTMENT: Human Resources

Prepared by: Shelia Cooper

ATTACHMENTS

- [Executive Summary 2nd Read Ordinance 710 GMEBS Restated Adoption Agreement 2023.pdf](#)
- [Flowery Branch Cover Memo 3 20 2024.pdf](#)
- [Flowery Branch Adoption Agreement 3 20 2024.pdf](#)
- [Georgia Amendment 1 to DB Basic Plan Document.pdf](#)
- [Georgia GMEBS DB Pre-Approved Basic Plan Document for Third 6-Year Cycle \(Final\).pdf](#)
- [Georgia Opinion Letter Defined Benefit Plan Third Cycle \(2020 Cumulative List\) \(4877-9792-2173.v1\) \(002\).pdf](#)
- [Summary of Amendments 9 15 2023.pdf](#)



**FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY**



SUBJECT: Consideration of Second Reading of Ordinance 710: GMEBS; City of Flowerly Branch Restated Defined Benefit Retirement Plan Adoption Agreement

DATE: March 24, 2024

(X)RECOMMENDATION

() POLICY DISCUSSION

BUDGET INFORMATION:

() STATUS REPORT

ANNUAL-

() OTHER

CAPITAL-

COMMISSION ACTION REQUESTED ON: April 18, 2024

PURPOSE: To Consider Approval of First Reading of Ordinance 710 for GMEBS; City of Flowerly Branch Restated Defined Benefit Retirement Plan Adoption Agreement.

HISTORY: The City of Flowerly Branch previously adopted the Georgia Municipal Employees Benefit System (“GMEBS”) Defined Benefit Retirement Plan (“Plan”), which is comprised of the Basic Plan document and Adoption Agreement. The Plan is considered a “qualified plan” under the Internal Revenue Code, which is important to ensure the tax-exempt status of the trust fund.

To protect the Plan’s tax-qualified status, GMEBS filed draft restated Plan documents, updated to reflect recent amendments and comply with changes in federal tax law, with the IRS on June 29, 2022. On August 31, 2023, the IRS issued a favorable opinion letter (“IRS opinion letter”) for the restated plan documents. The IRS opinion letter provides assurance to employers providing retirement benefits through the GMEBS Plan that GMEBS is maintaining a qualified pension benefit program that allows employees to accrue benefits tax-free until retirement benefits are distributed to them.

FACTS AND ISSUES:

To ensure continued tax-qualified status for all GMEBS-member retirement plans, all participating employers must readopt their plans using the most recent IRS-approved Adoption Agreement. Attached is a copy of the Master Plan and Amendment 1 received from GMEBS, a Summary of Key Amendments that have been made to the Plan since it was last approved by the IRS in 2023, as well as a restated Adoption Agreement.

Please note that per O.C.G.A. § 47-5-40, the Adoption Agreement has been drafted in the form of an ordinance. The City does not need to adopt the Basic Plan Document or Amendment 1. All plan documents and summary of amendments are attached for reference.

If the draft document is acceptable, the City will need to execute where indicated (p. 37) and return the entire Adoption Agreement no later than May 20, 2024.



OPTIONS:

1. Approve the GMEBS; City of Flowery Branch Restated Defined Benefit Retirement Plan Adoption Agreement as presented.
2. Provide alternative amendments.

RECOMMENDED SAMPLE MOTION: I make a motion to approve the second reading of Ordinance 710 for GMEBS; City of Flowery Branch Restated Defined Benefit Retirement Plan Adoption Agreement as presented.

DEPARTMENT: Human Resources

Prepared by: Krystle Hightower



**RISK MANAGEMENT AND
EMPLOYEE BENEFITS
SERVICES**

BOARD OF TRUSTEES

Chair
Marcia Hampton
City Manager, Douglasville

Vice-Chair
Shelly Berryhill
Commissioner, Hawkinsville

Secretary-Treasurer
Larry H. Hanson
CEO and Executive Director

Trustees:

Chris Hobby
City Manager, Bainbridge

Jason Holt
Mayor, Fitzgerald

Meg Kelsey
Asst. City Manager, Newnan

Jessica O'Connor
City Manager, Griffin

W.D. Palmer, III
Councilmember, Camilla

James F. Palmer
Mayor, Calhoun

John Reid
Mayor, Eatonton

Julie Smith
Mayor, Tifton

JoAnne Taylor
Mayor, Dahlonaga

Albert Thurman
Mayor, Powder Springs

Rebecca L. Tydings
City Attorney, Centerville

Clemontine Washington
Mayor Pro Tem, Midway

Vince Williams
Mayor, Union City

EXECUTIVE STAFF

Randy Logan
Deputy Executive Director

March 20, 2024

MEMORANDUM VIA E-MAIL
(khightower@flowerybranchga.org)

TO: Ms. Krystle Hightower
Human Resources Director

FROM: Mr. Kevin Jeselnik
Assistant General Counsel

SUBJECT: **Action Required: Georgia Municipal Employees Benefit System
Defined Benefit Retirement Plan Restatement**

The city of Flowery Branch previously adopted the Georgia Municipal Employees Benefit System ("GMEBS") Defined Benefit Retirement Plan ("Plan"), which is comprised of the Basic Plan Document and Adoption Agreement. The Plan is considered a "qualified plan" under the Internal Revenue Code, which is important to ensure the tax-exempt status of the trust fund.

To protect the Plan's tax-qualified status, GMEBS filed draft restated Plan documents, updated to reflect recent amendments and comply with changes in federal tax law, with the IRS on June 29, 2022. On August 31, 2023, the IRS issued a favorable opinion letter ("IRS opinion letter") for the restated Plan documents. The IRS opinion letter provides assurance to employers providing retirement benefits for their employees through the GMEBS Plan that GMEBS is maintaining a qualified pension benefit program that allows employees to accrue benefits tax-free until retirement benefits are distributed to them.

To ensure continued tax-qualified status for all GMEBS-member retirement plans, all participating employers must readopt their plans using the most recent IRS-approved Adoption Agreement. To that end, we have completed the attached Adoption Agreement to include the benefit and eligibility provisions that you currently have in place.

If the draft document is acceptable, please have the designated representatives sign and date where indicated (p. 37). Next, please scan and email the document to Gina Gresham at rgresham@gacities.com no later than **May 20, 2024**. We will then countersign it and return an electronic copy to you. Please note, GMEBS will not execute documents that have been edited by the city. If the Adoption Agreement requires revisions, please let us know before adopting it.

Ms. Krystle Hightower

March 20, 2024

Page 2

The draft Adoption Agreement will take effect on the date of its approval by the governing authority. **Please note that per O.C.G.A. § 47-5-40, the Adoption Agreement has been drafted in the form of an ordinance.**

We have also attached a copy of the restated Basic Plan Document and Amendment 1, which do not need to be adopted by the city. Finally, we have included a summary of key amendments to the Plan relating to the restatement.

If you have any questions about the information provided in this letter or require further information, please contact Gina Gresham.

Encl.

C: Mr. Ted Baggett, City Attorney, City of Flowery Branch (w/ encl.)

Ms. Marinetty Bienvenu, Director, Retirement Quality Assurance (w/o encl.)

Ms. Michelle Warner, Director, GMEBS Retirement and DC Programs (w/o encl.)

Ms. Gwin Hall, Senior Associate General Counsel (w/o encl.)

GEORGIA MUNICIPAL EMPLOYEES
BENEFIT SYSTEM

DEFINED BENEFIT RETIREMENT PLAN

AN ORDINANCE
and
ADOPTION AGREEMENT
for

City of Flowery Branch

Ordinance 710

Form Pre-approved Plan Adoption Agreement
Amended and Restated for Third Six-Year Cycle, 2020 Cumulative List

TABLE OF CONTENTS

	<u>PAGE</u>
I. AN ORDINANCE	1
II. GMEBS DEFINED BENEFIT RETIREMENT PLAN	
ADOPTION AGREEMENT	2
1. ADMINISTRATOR	2
2. ADOPTING EMPLOYER.....	2
3. GOVERNING AUTHORITY	2
4. PLAN REPRESENTATIVE.....	2
5. PENSION COMMITTEE	3
6. TYPE OF ADOPTION	3
7. EFFECTIVE DATE.....	3
8. PLAN YEAR	5
9. CLASSES OF ELIGIBLE EMPLOYEES.....	5
A. Eligible Regular Employees	5
B. Elected or Appointed Members of the Governing Authority	5
10. ELIGIBILITY CONDITIONS.....	6
A. Hours Per Week (Regular Employees).....	6
B. Months Per Year (Regular Employees)	6
11. WAITING PERIOD.....	7
12. ESTABLISHING PARTICIPATION IN THE PLAN	7
13. CREDITED SERVICE	7
A. Credited Past Service with Adopting Employer	8
B. Prior Military Service	9
C. Prior Governmental Service.....	10
D. Leave Conversion for Unused Paid Time Off (e.g., Sick, Vacation, or Personal Leave).....	12
14. RETIREMENT ELIGIBILITY.....	14
A. Early Retirement Qualifications	14
B. Normal Retirement Qualifications.....	14
C. Alternative Normal Retirement Qualifications	16
D. Disability Benefit Qualifications	20
15. RETIREMENT BENEFIT COMPUTATION.....	21
A. Maximum Total Credited Service.....	21
B. Monthly Normal Retirement Benefit Amount.....	21
C. Monthly Early Retirement Benefit Amount	24
D. Monthly Late Retirement Benefit Amount (check one):	25
E. Monthly Disability Benefit Amount	25
F. Minimum/Maximum Benefit For Elected Officials	26
16. SUSPENSION OF BENEFITS FOLLOWING BONA FIDE SEPARATION OF SERVICE; COLA.....	27

A.	Re-Employment as Eligible Employee After Normal, Alternative Normal, or Early Retirement and Following Bona Fide Separation of Service (see Basic Plan Document Section 6.06(c) Regarding Re-Employment as an Ineligible Employee and Basic Plan Document Section 6.06(e) and (f) Regarding Re-Employment After Disability Retirement)	27
B.	Cost Of Living Adjustment.....	28
17.	TERMINATION OF EMPLOYMENT BEFORE RETIREMENT; VESTING	29
A.	Eligible Regular Employees	29
B.	Elected or Appointed Members of the Governing Authority	30
18.	PRE-RETIREMENT DEATH BENEFITS	30
A.	In-Service Death Benefit.....	30
B.	Terminated Vested Death Benefit.....	32
19.	EMPLOYEE CONTRIBUTIONS	32
20.	MODIFICATION OF THE TERMS OF THE ADOPTION AGREEMENT	33
21.	TERMINATION OF THE ADOPTION AGREEMENT	34
22.	EMPLOYER ADOPTION AND AUTHORIZATION FOR AMENDMENTS	34

I. AN ORDINANCE

An Ordinance to amend and restate the Retirement Plan for the Employees of the City of Flowery Branch, Georgia, in accordance with and subject to the terms and conditions set forth in the attached Adoption Agreement, any Addendum to the Adoption Agreement, the Georgia Municipal Employees Benefit System (GMEBS) Basic Plan Document, and the GMEBS Trust Agreement. When accepted by the authorized officers of the City and GMEBS, the foregoing shall constitute a Contract between the City and GMEBS, all as authorized and provided by O.C.G.A. § 47-5-1 et seq.

BE IT ORDAINED by the Mayor and Council of the City of Flowery Branch, Georgia, and it is hereby ordained by the authority thereof:

Section 1. The Retirement Plan for the Employees of the City of Flowery Branch, Georgia, is hereby amended and restated as set forth in and subject to the terms and conditions stated in the following Adoption Agreement, any Addendum to the Adoption Agreement, the Georgia Municipal Employees Benefit System (GMEBS) Basic Plan Document, and the GMEBS Trust Agreement.

Ordinance continued on page 37

II. GMEBS DEFINED BENEFIT RETIREMENT PLAN **ADOPTION AGREEMENT**

1. ADMINISTRATOR

Georgia Municipal Employees Benefit System
201 Pryor Street, SW
Atlanta, Georgia 30303
Telephone: 404-688-0472
Facsimile: 404-577-6663

2. ADOPTING EMPLOYER

Name: **City of Flowery Branch, Georgia**

3. GOVERNING AUTHORITY

Name: **Mayor and Council**
Address: **5410 Pine Street, Flowery Branch, GA 30542**
Phone: **(770) 967-6371**
Facsimile: **(770) 967-6481**

4. PLAN REPRESENTATIVE

[To represent Governing Authority in all communications with GMEBS and Employees]
(See Section 2.49 of Basic Plan Document)

Name: **City Manager**
Address: **5410 Pine Street, Flowery Branch, GA 30542**
Phone: **(770) 967-6371**
Facsimile: **(770) 967-6481**

5. PENSION COMMITTEE

[Please designate members by position. If not, members of Pension Committee shall be determined in accordance with Article XIV of the Basic Plan Document]

Position:

Position:

Position:

Position:

Position:

Pension Committee Secretary: **Human Resources Director**

Address: **5410 Pine Street, Flowery Branch, GA 30542**

Phone: **(770) 967-6371**

Facsimile: **(770) 967-6481**

6. TYPE OF ADOPTION

This Adoption Agreement is for the following purpose (**check one**):

- ☐ This is a new defined benefit plan adopted by the Adopting Employer for its Employees. This plan does not replace or restate an existing defined benefit plan.
- ☐ This is an amendment and restatement of the Adopting Employer's preexisting non-GMEBS defined benefit plan.
- ☒ This is an amendment and restatement of the Adoption Agreement previously adopted by the Employer, as follows (**check one or more as applicable**):
 - ☒ To update the Plan to comply with the PATH Act, and other applicable federal laws and guidance under IRS Notice 2020-14 (the 2020 Cumulative List).
 - ☐ To make the following amendments to the Adoption Agreement (**must specify below revisions made in this Adoption Agreement; all provisions must be completed in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): _____

7. EFFECTIVE DATE

NOTE: This Adoption Agreement and any Addendum, with the accompanying Basic Plan Document, is designed to comply with Internal Revenue Code Section 401(a), as applicable to a governmental qualified defined benefit plan, and is part of the GMEBS Defined Benefit Retirement Plan. Plan provisions designed to comply with certain provisions of the Protecting Americans from Tax Hikes Act of 2015 ("PATH Act"); and Plan provisions designed to comply with certain provisions of additional changes in federal law and guidance from the Internal Revenue Service under Internal Revenue Service Notice 2020-14 (the 2020 Cumulative List) are effective as of the applicable effective dates set forth in the Adoption Agreement and Basic Plan

Document. By adopting this Adoption Agreement, with its accompanying Basic Plan Document, the Adopting Employer is adopting a plan document intended to comply with Internal Revenue Code Section 401(a), as updated by the PATH Act and the 2020 Cumulative List with the applicable effective dates.

- (1) Complete this item (1) only if this is a new defined benefit plan which does not replace or restate an existing defined benefit plan.**

The effective date of this Plan is ____.

(insert effective date of this Adoption Agreement but not earlier than the first day of the current Plan Year in which the Plan is adopted).

- (2) Complete this item (2) only if this Plan is being adopted to replace a non-GMEBS defined benefit plan.**

Except as otherwise specifically provided in the Basic Plan Document or in this Adoption Agreement, the effective date of this restatement shall be ____ **(insert effective date of this Adoption Agreement but not earlier than the first day of the current Plan Year in which the Plan is adopted (unless a retroactive corrective amendment is permitted under EPCRS, Rev. Proc. 2021-30 (or subsequent updated guidance))).** This Plan is intended to replace and serve as an amendment and restatement of the Employer's preexisting plan, which became effective on ____ **(insert original effective date of preexisting plan).**

- (3) Complete this item (3) only if this is an amendment and complete restatement of the Adopting Employer's existing GMEBS defined benefit plan.**

Except as otherwise specifically provided in the Basic Plan Document or in this Adoption Agreement, the effective date of this restatement shall be **the date of its approval by the Governing Authority** **(insert effective date of this Adoption Agreement but not earlier than the first day of the current Plan Year in which the Plan is adopted (unless a retroactive corrective amendment is permitted under EPCRS, Rev. Proc. 2021-30 (or subsequent updated guidance))).**

This Plan is adopted as an amendment and restatement of the Employer's preexisting GMEBS Adoption Agreement, which became effective on **September 1, 2023** **(insert effective date of most recent Adoption Agreement preceding this Adoption Agreement).**

The Employer's first Adoption Agreement became effective **November 1, 2014** **(insert effective date of Employer's first GMEBS Adoption Agreement).** The Employer's GMEBS Plan was originally effective **November 1, 2014** **(insert effective date of Employer's original GMEBS Plan).** (If the Employer's Plan was originally a non-GMEBS Plan, then the Employer's non-GMEBS Plan was originally effective ____ **(if applicable, insert effective date of Employer's original non-GMEBS Plan).**)

8. PLAN YEAR

Plan Year means (**check one**):

- ☐ Calendar Year
- ☐ Employer Fiscal Year commencing _____.
- ☒ Other (**must specify month and day commencing**): July 1.

9. CLASSES OF ELIGIBLE EMPLOYEES

Only Employees of the Adopting Employer who meet the Basic Plan Document's definition of "Employee" may be covered under the Adoption Agreement. Eligible Employees shall not include non-governmental employees, independent contractors, leased employees, nonresident aliens, or any other ineligible individuals, and this Section 9 must not be completed in a manner that violates the "exclusive benefit rule" of Internal Revenue Code Section 401(a)(2).

A. Eligible Regular Employees

Regular Employees include Employees, other than elected or appointed members of the Governing Authority or Municipal Legal Officers, who are regularly employed in the services of the Adopting Employer. Subject to the other conditions of the Basic Plan Document and the Adoption Agreement, the following Regular Employees are eligible to participate in the Plan (**check one**):

- ☒ **ALL** - All Regular Employees, provided they satisfy the minimum hour and other requirements specified under "Eligibility Conditions" below.
- ☐ **ALL REGULAR EMPLOYEES EXCEPT** for the following employees (**must specify; specific positions are permissible; specific individuals may not be named**): _____.

B. Elected or Appointed Members of the Governing Authority

An Adopting Employer may elect to permit participation in the Plan by elected or appointed members of the Governing Authority and/or Municipal Legal Officers, provided they otherwise meet the Basic Plan Document's definition of "Employee" and provided they satisfy any other requirements specified by the Adopting Employer. Municipal Legal Officers to be covered must be specifically identified by position. Subject to the above conditions, the Employer hereby elects the following treatment for elected and appointed officials:

(1) Elected or Appointed Members of the Governing Authority (check one):

- ☒ **ARE NOT** eligible to participate in the Plan.
- ☐ **ARE** eligible to participate in the Plan.

Please specify any limitations on eligibility to participate here (e.g., service on or after certain date, or special waiting period provision): _____.

(2) **Municipal Legal Officers (check one):**

- ☒ **ARE NOT** eligible to participate in the Plan.
- ☐ **ARE** eligible to participate in the Plan. The term "Municipal Legal Officer" shall include only the following positions (**must specify - specific positions are permissible; specific individuals may not be named**): _____.

Please specify any limitations on eligibility to participate here (e.g., service on or after certain date) (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): _____.

10. ELIGIBILITY CONDITIONS

A. **Hours Per Week (Regular Employees)**

The Adopting Employer may specify a minimum number of work hours per week which are required to be scheduled by Regular Employees in order for them to become and remain "Eligible Regular Employees" under the Plan. **It is the responsibility of the Adopting Employer to determine whether these requirements are and continue to be satisfied.** The Employer hereby elects the following minimum hour requirement for Regular Employees:

- ☐ No minimum
- ☐ 20 hours/week (regularly scheduled)
- ☐ 30 hours/week (regularly scheduled)
- ☒ Other: **40 hours/week** (must not exceed 40 hours/week regularly scheduled)

Exceptions: If a different minimum hour requirement applies to a particular class or classes of Regular Employees, please specify below the classes to whom the different requirement applies and indicate the minimum hour requirement applicable to them.

Class(es) of Regular Employees to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): _____.

Minimum hour requirement applicable to excepted Regular Employees:

- ☐ No minimum
- ☐ 20 hours/week (regularly scheduled)
- ☐ 30 hours/week (regularly scheduled)
- ☐ Other: _____ (must not exceed 40 hours/week regularly scheduled)

B. **Months Per Year (Regular Employees)**

The Adopting Employer may specify a minimum number of work months per year which are required to be scheduled by Regular Employees in order for them to become and remain "Eligible Employees" under the Plan. **It is the responsibility of the Adopting Employer to determine whether these requirements are and continue to be satisfied.** The Employer hereby elects the following minimum requirement for Regular Employees:

- ☐ No minimum
- ☒ At least 6 months per year (regularly scheduled)

Exceptions: If different months per year requirements apply to a particular class or classes of Regular Employees, the Employer must specify below the classes to whom the different requirements apply and indicate below the requirements applicable to them.

Regular Employees to whom exception applies **(must specify - specific positions are permissible; specific individuals may not be named):** _____.

The months to year requirement for excepted class(es) are:

- ☐ No minimum
- ☐ At least _____ months per year (regularly scheduled)

11. WAITING PERIOD

Except as otherwise provided in Section 4.02(b) of the Basic Plan Document, Eligible Regular Employees shall not have a waiting period before participating in the Plan. Likewise, elected or appointed members of the Governing Authority and Municipal Legal Officers, if eligible to participate in the Plan, shall not have a waiting period before participating in the Plan.

12. ESTABLISHING PARTICIPATION IN THE PLAN

Participation in the Plan is considered mandatory for all Eligible Employees who satisfy the eligibility conditions specified in the Adoption Agreement, except as provided in Section 4.03(e) of the Basic Plan Document. However, the Employer may specify below that participation is optional for certain classes of Eligible Employees, including Regular Employees, elected or appointed members of the Governing Authority, Municipal Legal Officers, City Managers, and/or Department Heads. If participation is optional for an Eligible Employee, then in order to become a Participant, the Employee must make a written election to participate within 120 days after employment, election or appointment to office, or if later, the date the Employee first becomes eligible to participate in the Plan. The election is irrevocable, and the failure to make the election within the 120 day time limit shall be deemed an irrevocable election not to participate in the Plan.

Classes for whom participation is optional **(check one):**

- ☒ None (Participation is mandatory for all Eligible Employees except as provided in Section 4.03(e) of the Basic Plan Document).
- ☐ Participation is optional for the following Eligible Employees **(must specify - specific positions are permissible; specific individuals may not be named; all positions or classes specified must be Eligible Employees):** _____.

13. CREDITED SERVICE

In addition to Current Credited Service the Adopting Employer may include as Credited Service the following types of service:

A. Credited Past Service with Adopting Employer

Credited Past Service means the number of years and complete months of Service with the Adopting Employer prior to the date an Eligible Employee becomes a Participant which are treated as credited service under the Plan.

(1) Eligible Employees Employed on Original Effective Date of GMEBS Plan.

With respect to Eligible Employees who are employed by the Adopting Employer on the original Effective Date of the Employer's GMEBS Plan, Service with the Adopting Employer prior to the date the Eligible Employee becomes a Participant (including any Service prior to the Effective Date of the Plan) shall be treated as follows **(check one)**:

- ☐ All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service).
- ☐ All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), except for Service rendered prior to _____ **(insert date)**.
- ☒ All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), except as follows **(must specify other limitation in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: **Participants who were employed as of November 1, 2014, will be entitled to receive up to five (5) years of credit (at no cost to the Participant) for their Service with the City of Flowery Branch prior to November 1, 2014, which will be counted for all purposes under the Plan (i.e. meeting the minimum Service requirements for participation and Vesting under the Plan, meeting the minimum Service requirements for Retirement and death benefit eligibility under the Plan, and computing the amount of Retirement or death benefits under the Plan).**
- ☐ No Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service).

(2) Previously Employed, Returning to Service after Original Effective Date. If an Eligible Employee is not employed on the original Effective Date of the Employer's GMEBS Plan, but returns to Service with the Adopting Employer sometime after the Effective Date, said Eligible Employee's Service prior to becoming a Participant (including any Service prior the Effective Date) shall be treated as follows **(check one)**:

- ☐ All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), subject to any limitations imposed above with respect to Eligible Employees employed on the Effective Date.
- ☐ All Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service), provided that after returning to employment, the Eligible Employee performs Service equal to the period of the break in

Service or one (1) year, whichever is less. Any limitations imposed above with respect to Eligible Employees employed on the Effective Date shall also apply.

- ☒ No Service prior to the date the Eligible Employee becomes a Participant shall be credited (as Credited Past Service).

Other limitation(s) on Recognition of Credited Past Service **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: ____.

(3) Eligible Employees Initially Employed After Effective Date. If an Eligible Employee's initial employment date is after the original Effective Date of the Employer's GMEBS Plan, said Employee's Credited Past Service shall include only the number of years and complete months of Service from the Employee's initial employment date to the date the Employee becomes a Participant in the Plan.

(4) Newly Eligible Classes of Employees. If a previously ineligible class of Employees becomes eligible to participate in the Plan, the Employer must specify in an addendum to this Adoption Agreement whether and to what extent said Employees' prior service with the Employer shall be treated as Credited Past Service under the Plan.

B. Prior Military Service

Note: This Section does not concern military service required to be credited under USERRA – See Section 3.02 of the Basic Plan Document for rules on the crediting of USERRA Military Service.

(1) Credit for Prior Military Service.

The Adopting Employer may elect to treat military service rendered prior to a Participant's initial employment date or reemployment date as Credited Service under the Plan. Unless otherwise specified by the Employer under "Other Conditions" below, the term "Military Service" shall be as defined in the Basic Plan Document. Except as otherwise required by federal or state law or under "Other Conditions" below, Military Service shall not include service which is credited under any other local, state, or federal retirement or pension plan.

Military Service credited under this Section shall not include any service which is otherwise required to be credited under the Plan by federal or state law. Prior Military Service shall be treated as follows **(check one)**:

- ☒ Prior Military Service is **not** creditable under the Plan **(if checked, skip to Section 13.C. – Prior Governmental Service)**.
- ☐ Prior Military Service shall be counted as Credited Service for the following purposes (check one or more as applicable):
- ☐ Computing amount of benefits payable.
 - ☐ Meeting minimum service requirements for vesting.
 - ☐ Meeting minimum service requirements for benefit eligibility.

(2) Maximum Credit for Prior Military Service.

Credit for Prior Military Service shall be limited to a maximum of _____ years **(insert number)**.

(3) Rate of Accrual for Prior Military Service.

Credit for Prior Military Service shall accrue at the following rate **(check one)**:

- ☐ One month of military service credit for every _____ month(s) **(insert number)** of Credited Service with the Adopting Employer.
- ☐ One year of military service credit for every _____ year(s) **(insert number)** of Credited Service with the Adopting Employer.
- ☐ All military service shall be creditable (subject to any caps imposed above) after the Participant has completed _____ years **(insert number)** of Credited Service with the Employer.
- ☐ Other requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

(4) Payment for Prior Military Service Credit (check one):

- ☐ Participants shall **not** be required to pay for military service credit.
- ☐ Participants shall be required to pay for military service credit as follows:
 - ☐ The Participant must pay _____% of the actuarial cost of the service credit (as defined below).
 - ☐ The Participant must pay an amount equal to **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

Other Conditions for Award of Prior Military Service Credit **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

(5) Limitations on Service Credit Purchases. Unless otherwise specified in an Addendum to the Adoption Agreement, for purposes of this Section and Section 13.C. concerning prior governmental service credit, the term "actuarial cost of service credit" is defined as set forth in the Service Credit Purchase Addendum. In the case of a service credit purchase, the Participant shall be required to comply with any rules and regulations established by the GMEBS Board of Trustees concerning said purchases.

C. Prior Governmental Service

Note: A Participant's prior service with other GMEBS employers shall be credited for purposes of satisfying the minimum service requirements for Vesting and eligibility for

Retirement and pre-retirement death benefits as provided under Section 9.05 of the Basic Plan Document, relating to portability service. This Section 13(C) does not need to be completed in order for Participants to receive this portability service credit pursuant to Section 9.05 of the Basic Plan Document.

(1) Credit for Prior Governmental Service.

The Adopting Employer may elect to treat governmental service rendered prior to a Participant's initial employment date or reemployment date as creditable service under the Plan. Subject to any limitations imposed by law, the term "prior governmental service" shall be as defined by the Adopting Employer below. The Employer elects to treat prior governmental service as follows **(check one)**:

- ☒ Prior governmental service is **not** creditable under the Plan **(if checked, skip to Section 13.D. – Unused Sick/Vacation Leave)**.
- ☐ Prior governmental service shall be counted as Credited Service for the following purposes under the Plan **(check one or more as applicable)**:
 - ☐ Computing amount of benefits payable.
 - ☐ Meeting minimum service requirements for vesting.
 - ☐ Meeting minimum service requirements for benefit eligibility.

(2) Definition of Prior Governmental Service.

Prior governmental service shall be defined as follows: **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

Unless otherwise specified above, prior governmental service shall include only full-time service (minimum hour requirement same as that applicable to Eligible Regular Employees).

(3) Maximum Credit for Prior Governmental Service.

Credit for prior governmental service shall be limited to a maximum of _____ years **(insert number)**.

(4) Rate of Accrual for Prior Governmental Service Credit.

Credit for prior governmental service shall accrue at the following rate **(check one)**:

- ☐ One month of prior governmental service credit for every _____ month(s) **(insert number)** of Credited Service with the Adopting Employer.
- ☐ One year of prior governmental service credit for every _____ year(s) **(insert number)** of Credited Service with the Adopting Employer.
- ☐ All prior governmental service shall be creditable (subject to any caps imposed above) after the Participant has completed _____ years **(insert number)** of Credited Service with the Adopting Employer.

- ☐ Other requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)):** _____.

(5) Payment for Prior Governmental Service Credit.

- ☐ Participants shall **not** be required to pay for governmental service credit.
- ☐ Participants shall be required to pay for governmental service credit as follows:
 - ☐ The Participant must pay ____% of the actuarial cost of the service credit.
 - ☐ The Participant must pay an amount equal to **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)):** _____.

Other Conditions for Award of Prior Governmental Service Credit **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)):** _____.

D. Leave Conversion for Unused Paid Time Off (e.g., Sick, Vacation, or Personal Leave)

(1) Credit for Unused Paid Time Off.

Subject to the limitations in Section 3.01 of the Basic Plan Document, an Adopting Employer may elect to treat accumulated days of unused paid time off for a terminated Participant, for which the Participant is not paid, as Credited Service. The only type of leave permitted to be credited under this provision is leave from a paid time off plan which qualifies as a bona fide sick and vacation leave plan (which may include sick, vacation or personal leave) and which the Participant may take as paid leave without regard to whether the leave is due to illness or incapacity. The Credited Service resulting from the conversion of unused paid time off must not be the only Credited Service applied toward the accrual of a normal retirement benefit under the Plan. The Pension Committee shall be responsible to certify to GMEBS the total amount of unused paid time off that is creditable hereunder.

Important Note: Leave cannot be converted to Credited Service in lieu of receiving a cash payment. If the Employer elects treating unused paid time off as Credited Service, the conversion to Credited Service will be automatic, and the Participant cannot request a cash payment for the unused paid time off.

The Employer elects the following treatment of unused paid time off:

- ☒ Unused paid time off shall **not** be treated as Credited Service **(if checked, skip to Section 14 – Retirement Eligibility).**

- ☐ The following types of unused paid time off for which the Participant is not paid shall be treated as Credited Service under the Plan **(check one or more as applicable)**:
- ☐ Unused sick leave
 - ☐ Unused vacation leave
 - ☐ Unused personal leave
 - ☐ Other paid time off **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

(2) Minimum Service Requirement.

In order to receive credit for unused paid time off, a Participant must meet the following requirement at termination **(check one)**:

- ☐ The Participant must be 100% vested in a normal retirement benefit.
- ☐ The Participant must have at least _____ years **(insert number)** of Total Credited Service (not including leave otherwise creditable under this Section).
- ☐ Other **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

(3) Use of Unused Paid Time Off Credit. Unused paid time off for which the Participant is not paid shall count as Credited Service for the following purposes under the Plan **(check one or more as applicable)**:

- ☐ Computing amount of benefits payable.
- ☐ Meeting minimum service requirements for vesting.
- ☐ Meeting minimum service requirements for benefit eligibility.

(4) Maximum Credit for Unused Paid Time Off.

Credit for unused paid time off for which the Participant is not paid shall be limited to a maximum of _____ months **(insert number)**.

(5) Computation of Unused Paid Time Off.

Unless otherwise specified by the Adopting Employer under "Other Conditions" below, each twenty (20) days of creditable unused paid time off shall constitute one (1) complete month of Credited Service under the Plan. Partial months shall not be credited.

(6) Other Conditions (please specify, subject to limitations in Section 3.01 of Basic Plan Document; must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): _____.

14. RETIREMENT ELIGIBILITY

A. Early Retirement Qualifications

Early retirement qualifications are **(check one or more as applicable)**:

- ☒ Attainment of age 55 **(insert number)**
- ☒ Completion of 10 years **(insert number)** of Total Credited Service

Exceptions: If different early retirement eligibility requirements apply to a particular class or classes of Eligible Employees, the Employer must specify below the classes to whom the different requirements apply and indicate below the requirements applicable to them.

Eligible Employees to whom exception applies **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

Early retirement qualifications for excepted class(es) are **(check one or more as applicable)**:

- ☐ Attainment of age _____ **(insert number)**
- ☐ Completion of _____ years **(insert number)** of Total Credited Service

B. Normal Retirement Qualifications

Note: Please complete this Section and also list "Alternative" Normal Retirement Qualifications, if any, in Section 14.C.

(1) Regular Employees

Normal retirement qualifications for Regular Employees are **(check one or more as applicable)**:

- ☒ Attainment of age 65 **(insert number)**
- ☒ Completion of 5 years **(insert number)** of Total Credited Service
- ☐ In-Service Distribution to Eligible Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and satisfies the minimum age parameters for In-Service Distribution described in Section 6.06(a)(3) of the Basic Plan Document, subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

Exceptions: If different normal retirement qualifications apply to a particular class or classes of Regular Employees, the Employer must specify below the classes to whom the different requirements apply and indicate below the requirements applicable to them.

Class(es) of Regular Employees to whom exception applies **(must specify - specific positions are permissible; specific individuals may not be named):** The Eligible Regular Employee employed in the position of City Manager on March 3, 2022.

Normal retirement qualifications for excepted class(es) are **(check one or more as applicable):**

- ☒ Attainment of age **65 (insert number)**
- ☐ Completion of _____ years **(insert number)** of Total Credited Service
- ☐ In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and satisfies the minimum age parameters for In-Service Distribution described in Section 6.06(a)(3) of the Basic Plan Document, subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one):** ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named):** _____.

(2) Elected or Appointed Members of Governing Authority

Complete this Section only if elected or appointed members of the Governing Authority or Municipal Legal Officers are permitted to participate in the Plan. Normal retirement qualifications for this class are **(check one or more as applicable):**

- ☐ Attainment of age _____ **(insert number)**
- ☐ Completion of _____ years **(insert number)** of Total Credited Service
- ☐ In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and satisfies the minimum age parameters for In-Service Distribution described in Section 6.06(a)(3) of the Basic Plan Document, subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one):** ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named):**_____.

Exceptions: If different normal retirement qualifications apply to particular elected or appointed members of the Governing Authority or Municipal Legal Officers, the Employer must specify below to whom the different requirements apply and indicate below the requirements applicable to them.

Particular elected or appointed members of the Governing Authority or Municipal Legal Officers to whom exception applies **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

Normal retirement qualifications for excepted elected or appointed members of the Governing Authority or Municipal Legal Officers are **(check one or more as applicable)**:

- ☐ Attainment of age _____ **(insert number)**
- ☐ Completion of _____ years **(insert number)** of Total Credited Service
- ☐ In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant meets minimum age and service requirements specified immediately above and satisfies the minimum age parameters for In-Service Distribution described in Section 6.06(a)(3) of the Basic Plan Document, subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**:_____.

C. Alternative Normal Retirement Qualifications

The Employer may elect to permit Participants to retire with unreduced benefits after they satisfy service and/or age requirements other than the regular normal retirement qualifications specified above. The Employer hereby adopts the following alternative normal retirement qualifications:

Alternative Normal Retirement Qualifications (check one or more, as applicable):

- (1) ☒ Not applicable (the Adopting Employer does not offer alternative normal retirement benefits under the Plan).
- (2) ☐ **Alternative Minimum Age & Service Qualifications (if checked, please complete one or more items below, as applicable):**
 - ☐ Attainment of age _____ **(insert number)**
 - ☐ Completion of _____ years **(insert number)** of Total Credited Service
 - ☐ In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if Participant

meets minimum age and service requirements specified immediately above and satisfies the minimum age parameters for In-Service Distribution described in Section 6.06(a)(3) of the Basic Plan Document, subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: ____.

This alternative normal retirement benefit is available to:

- ☐ All Participants who qualify.
- ☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

A Participant **(check one)**: ☐ is required ☐ is not required to be in the service of the Employer at the time the Participant satisfies the above qualifications in order to qualify for this alternative normal retirement benefit.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

- (3) ☐ **Rule of _____ (insert number).** The Participant's combined Total Credited Service and age must equal or exceed this number. Please complete additional items below:

To qualify for this alternative normal retirement benefit, the Participant **(check one or more items below, as applicable)**:

- ☐ Must have attained at least age _____ **(insert number)**
- ☐ Must not satisfy any minimum age requirement
- ☐ In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets the minimum age and service requirements specified immediately above and satisfies the minimum age parameters for In-Service Distribution described in Section 6.06(a)(3) of the Basic Plan Document, subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

This alternative normal retirement benefit is available to:

- ☐ All Participants who qualify.
- ☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

A Participant **(check one)**: ☐ is required ☐ is not required to be in the service of the Employer at the time the Participant satisfies the Rule in order to qualify for this alternative normal retirement benefit.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

- (4) ☐ **Alternative Minimum Service.** A Participant is eligible for an alternative normal retirement benefit if the Participant has at least _____ years **(insert number)** of Total Credited Service, regardless of the Participant's age.

- ☐ In-Service Distribution to Eligible Employees permitted (*i.e.*, a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets the minimum service requirement specified immediately above and satisfies the minimum age parameters for In-Service Distribution described in Section 6.06(a)(3) of the Basic Plan Document, subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

This alternative normal retirement benefit is available to:

- ☐ All Participants who qualify.
- ☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

A Participant **(check one)**: ☐ is required ☐ is not required to be in the service of the Employer at the time the Participant satisfies the qualifications for this alternative normal retirement benefit.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

- (5) ☐ **Other Alternative Normal Retirement Benefit.**

Must specify qualifications (in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): _____.

- ☐ In-Service Distribution to Eligible Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets minimum age and service requirements specified immediately above and satisfies the minimum age parameters for In-Service Distribution described in Section 6.06(a)(3) of the Basic Plan Document, subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

This alternative normal retirement benefit is available to:

- ☐ All Participants who qualify.
- ☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

A Participant **(check one)**: ☐ is required ☐ is not required to be in the service of the Employer at the time the Participant satisfies the qualifications for this alternative normal retirement benefit.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

(6) ☐ Other Alternative Normal Retirement Benefit for Public Safety Employees Only.

Must specify qualifications (in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): _____.

- ☐ In-Service Distribution to Eligible Employees who are Public Safety Employees permitted (i.e., a qualifying Participant may commence receiving retirement benefits while in service without first incurring a Bona Fide Separation from Service), if the Participant meets minimum age and service requirements specified immediately above and satisfies the minimum age parameters for In-Service Distribution Described in Section 6.06(a)(3) of the Basic Plan Document, subject to applicable Plan provisions concerning recalculation and offset applied at re-retirement to account for the value of benefits received prior to re-retirement. This rule

shall apply to **(check one)**: ☐ all Participants ☐ only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

This alternative normal retirement benefit is available to:

- ☐ All public safety employee Participants who qualify.
- ☐ Only the following public safety employee Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

A public safety employee Participant **(check one)**: ☐ is required ☐ is not required to be in the service of the Employer at the time the Participant satisfies the qualifications for this alternative normal retirement benefit.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

Note: "Public safety employees" are defined under the Internal Revenue Code for this purpose as employees of a State or political subdivision of a State who provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.

D. Disability Benefit Qualifications

Subject to the other terms and conditions of the Basic Plan Document and except as otherwise provided in an Addendum to this Adoption Agreement, disability retirement qualifications are based upon Social Security Administration award criteria or as otherwise provided under Section 2.23 of the Basic Plan Document. The Disability Retirement benefit shall commence as of the Participant's Disability Retirement Date under Section 2.24 of the Basic Plan Document.

To qualify for a disability benefit, a Participant must have the following minimum number of years of Total Credited Service **(check one)**:

- ☒ Not applicable (the Adopting Employer does not offer disability retirement benefits under the Plan).
- ☐ No minimum.
- ☐ _____ years **(insert number)** of Total Credited Service.

Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

15. RETIREMENT BENEFIT COMPUTATION

A. Maximum Total Credited Service

The number of years of Total Credited Service which may be used to calculate a benefit is (check one or all that apply):

- ☐ not limited.
- ☐ limited to _____ years for all Participants.
- ☐ limited to _____ years for the following classes of Eligible Regular Employees:
 - ☐ All Eligible Regular Employees.
 - ☐ Only the following Eligible Regular Employees: _____.
- ☐ limited to _____ years as an elected or appointed member of the Governing Authority.
- ☐ limited to _____ years as a Municipal Legal Officer.
- ☒ Other (must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)): The number of years of Total Credited Service which may be used to calculate a benefit is limited to 30 years for all Eligible Regular Employees. Notwithstanding the foregoing, the number of years of Total Credited Service which may be used to calculate a benefit shall not be limited with respect to calculation of benefits using the 2.0% alternative flat percentage formula below, only for those Eligible Regular Employees who were in Service as of August 1, 2023, Terminate on or after September 1, 2023, are not thereafter reemployed, and have more than 37.5 years of Total Credited Service with the City (including Credited Service granted pursuant to Section 13(A)(1) of the Adoption Agreement).

B. Monthly Normal Retirement Benefit Amount

(1) Regular Employee Formula

The monthly normal retirement benefit for Eligible Regular Employees shall be 1/12 of (check and complete one or more as applicable):

- ☒ (a) **Flat Percentage Formula.** 2.5% (insert percentage) of Final Average Earnings multiplied by years of Total Credited Service as an Eligible Regular Employee.

This formula applies to:

- ☒ All Participants who are Regular Employees.
- ☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named):** _____.

- ☒ (b) **Alternative Flat Percentage Formula. 2.0% (insert percentage) of Final Average Earnings multiplied by years of Total Credited Service as an Eligible Regular Employee. This formula applies to the following Participants (must specify - specific positions are permissible; specific individuals may not be named): Eligible Regular Employees who have at least 37.5 years of Total Credited Service with the City (including Credited Service granted pursuant to Section 13(A)(1) of the Adoption Agreement), and Terminate on or after September 1, 2023, and are not thereafter reemployed.**

- ☐ (c) **Split Final Average Earnings Formula. _____ % (insert percentage) of Final Average Earnings up to the amount of Covered Compensation (see subsection (2) below for definition of Covered Compensation), plus _____ % (insert percentage) of Final Average Earnings in excess of said Covered Compensation, multiplied by years of Total Credited Service as an Eligible Regular Employee.**

This formula applies to:

- ☐ All Participants who are Regular Employees.
- ☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named):** _____.

- ☐ (d) **Alternative Split Final Average Earnings Formula. _____ % (insert percentage) of Final Average Earnings up to the amount of Covered Compensation (see subsection (2) below for definition of Covered Compensation), plus _____ % (insert percentage) of Final Average Earnings in excess of said Covered Compensation, multiplied by years of Total Credited Service as an Eligible Regular Employee.**

This formula applies to:

- ☐ All Participants.
- ☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named):** _____.

[Repeat above subsections as necessary for each applicable benefit formula and Participant class covered under the Plan.]

(2) Covered Compensation (complete only if Split Formula(s) is checked above):

Covered Compensation is defined as (check one or more as applicable):

- ☐ (a) **A.I.M.E. Covered Compensation** as defined in Section 2.18 of the Basic Plan Document. This definition of Covered Compensation shall apply to **(check one)**:
- ☐ All Participants who are Regular Employees.
- ☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.
- ☐ (b) **Dynamic Break Point** Covered Compensation as defined in Section 2.19 of the Basic Plan Document. This definition of Covered Compensation shall apply to **(check one)**:
- ☐ All Participants who are Regular Employees.
- ☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.
- ☐ (c) **Table Break Point** Covered Compensation as defined in Section 2.20 of the Basic Plan Document. This definition of Covered Compensation shall apply to **(check one)**:
- ☐ All Participants who are Regular Employees.
- ☐ Only the following class(es) of Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.
- ☐ (d) **Covered Compensation** shall mean a Participant's annual Earnings that do not exceed \$_____ **(specify amount)**. This definition shall apply to **(check one)**:
- ☐ All Participants who are Regular Employees.
- ☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

(3) Final Average Earnings

Unless otherwise specified in an Addendum to the Adoption Agreement, Final Average Earnings is defined as the monthly average of Earnings paid to a Participant by the Adopting Employer for the **36 (insert number not to exceed 60)** consecutive months of Credited Service preceding the Participant's most recent Termination in which the Participant's Earnings were the highest, multiplied by 12. Note: GMEBS has prescribed forms for calculation of Final Average Earnings that must be used for this purpose.

This definition of Final Average Earnings applies to:

- ☒ All Participants who are Regular Employees.
- ☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

[Repeat above subsection as necessary for each applicable definition and Participant class covered under the Plan.]

(4) Formula for Elected or Appointed Members of the Governing Authority

The monthly normal retirement benefit for members of this class shall be as follows **(check one)**:

- ☒ Not applicable (elected or appointed members of the Governing Authority or Municipal Legal Officers are not permitted to participate in the Plan).
- ☐ \$ _____ **(insert dollar amount)** per month for each year of Total Credited Service as an elected or appointed member of the Governing Authority or Municipal Legal Officer (service of at least 6 months and 1 day is treated as a year of Total Credited Service; provided, however, than an elected or appointed member of the Governing Authority or Municipal Legal Officer may accrue a maximum of one year of Total Credited Service for every 12-month period of Service as an elected or appointed member of the Governing Authority or Municipal Legal Officer).

This formula applies to:

- ☐ All elected or appointed members of the Governing Authority or Municipal Legal Officers eligible to participate.
- ☐ Only the following elected or appointed members of the Governing Authority or Municipal Legal Officers eligible to participate **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

[Repeat above subsection as necessary for each applicable formula for classes of elected or appointed members covered under the Plan.]

C. Monthly Early Retirement Benefit Amount

Check and complete one or more as applicable:

- ☒ (1) **Standard Early Retirement Reduction Table.** The monthly Early Retirement benefit shall be computed in the same manner as the monthly Normal Retirement benefit, but the benefit shall be reduced on an Actuarially Equivalent basis in accordance with Section 12.01 of the Basic Plan Document to account for early commencement of benefits. This provision shall apply to:
 - ☒ All Participants.
 - ☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**:_____.
- ☐ (2) **Alternative Early Retirement Reduction Table.** The monthly Early Retirement benefit shall be computed in the same manner as the monthly Normal Retirement benefit, but the benefit shall be reduced to account for early commencement of benefits based on the following table. This table shall apply to:
 - ☐ All Participants.
 - ☐ Only the following Participants **(must specify - specific positions are permissible; specific individuals may not be named)**:_____.

Alternative Early Retirement Reduction Table

<u>Number of Years Before</u> <u>[Age (Insert Normal</u> <u>Retirement Age)]</u> (check as applicable)	<u>Percentage of</u> <u>Normal Retirement Benefit*</u> (complete as applicable)
☐ 0	1.000
☐ 1	0.____
☐ 2	0.____
☐ 3	0.____
☐ 4	0.____
☐ 5	0.____
☐ 6	0.____
☐ 7	0.____
☐ 8	0.____
☐ 9	0.____
☐ 10	0.____
☐ 11	0.____
☐ 12	0.____
☐ 13	0.____
☐ 14	0.____
☐ 15	0.____

*Interpolate for whole months

D. Monthly Late Retirement Benefit Amount (check one):

- ☒ (1) The monthly Late Retirement benefit shall be computed in the same manner as the Normal Retirement Benefit, based upon the Participant's Accrued Benefit as of the Participant's Late Retirement Date.
- ☐ (2) The monthly Late Retirement benefit shall be the greater of: (1) the monthly retirement benefit accrued as of the Participant's Normal Retirement Date, actuarially increased in accordance with the actuarial table contained in Section 12.05 of the Basic Plan Document; or (2) the monthly retirement benefit accrued as of the Participant's Late Retirement Date, without further actuarial adjustment under Section 12.06 of the Basic Plan Document.

E. Monthly Disability Benefit Amount

The amount of the monthly Disability Benefit shall be computed in the same manner as the Normal Retirement benefit, based upon the Participant's Accrued Benefit as of the Participant's Disability Retirement Date.

Minimum Disability Benefit. The Adopting Employer may set a minimum Disability Benefit. The Employer elects the following minimum Disability benefit **(check one)**:

- ☒ Not applicable (the Adopting Employer does not offer disability retirement benefits under the Plan).
- ☐ No minimum is established.
- ☐ No less than **(check one):** ☐ 20% ☐ 10% ☐ ____% **(if other than 20% or 10% insert percentage amount)** of the Participant's average monthly Earnings for the 12 calendar month period (excluding any period of unpaid leave of absence) immediately preceding the Participant's Termination of Employment as a result of a Disability. (Unless otherwise specified in an Addendum to the Adoption Agreement, no minimum will apply to elected or appointed members of the Governing Authority or Municipal Legal Officers.)
- ☐ No less than **(check one):** ☐ 66 2/3 % ☐ ____% **(if other than 66 2/3%, insert percentage amount)** of the Participant's average monthly Earnings for the 12 calendar month period (excluding any period of unpaid leave of absence) immediately preceding the Participant's Termination of Employment as a result of a Disability, less any monthly benefits paid from federal Social Security benefits as a result of disability as reported by the Employer. (Unless otherwise specified in an Addendum to the Adoption Agreement, no minimum will apply to elected or appointed members of the Governing Authority or Municipal Legal Officers.)

F. Minimum/Maximum Benefit For Elected Officials

In addition to any other limitations imposed by federal or state law, the Employer may impose a cap on the monthly benefit amount that may be received by elected or appointed members of the Governing Authority. The Employer elects **(check one):**

- ☒ Not applicable (elected or appointed members of the Governing Authority do not participate in the Plan).
- ☐ No minimum or maximum applies.
- ☐ Monthly benefit for Service as an elected or appointed member of the Governing Authority may not exceed 100% of the Participant's final salary as an elected or appointed member of the Governing Authority.
- ☐ Other minimum or maximum **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)):** _____.

G. Multiple Plans

In the event that the Employer maintains multiple plans, the following provisions will apply to the extent necessary to satisfy Code § 415.

16. SUSPENSION OF BENEFITS FOLLOWING BONA FIDE SEPARATION OF SERVICE; COLA

A. Re-Employment as Eligible Employee After Normal, Alternative Normal, or Early Retirement and Following Bona Fide Separation of Service (see Basic Plan Document Section 6.06(c) Regarding Re-Employment as an Ineligible Employee and Basic Plan Document Section 6.06(e) and (f) Regarding Re-Employment After Disability Retirement)

(1) Reemployment After Normal or Alternative Normal Retirement. In the event that a Retired Participant 1) is reemployed with the Employer as an Eligible Employee (as defined in the Plan) after the Participant's Normal or Alternative Normal Retirement Date and after a Bona Fide Separation from Service, or 2) is reemployed with the Employer in an Ineligible Employee class, and subsequently again becomes an Eligible Employee (as defined in the Plan) due to the addition of such class to the Plan after the Participant's Normal or Alternative Normal Retirement Date, the following rule shall apply **(check one)**:

- ☒ (a) The Participant's benefit shall be suspended in accordance with Section 6.06(a)(1) of the Basic Plan Document for as long as the Participant remains employed.
- ☐ (b) The Participant may continue to receive retirement benefits in accordance with Section 6.06(b) of the Basic Plan Document. This rule shall apply to **(check one)**: ☐ all Retired Participants ☐ only the following classes of Retired Participants **(must specify (specific positions are permissible; specific individuals may not be named) - benefits of those Retired Participants not listed shall be suspended in accordance with Section 6.06(a) of the Basic Plan Document if they return to work with the Employer)**: _____.

(2) Reemployment After Early Retirement. In the event a Participant Retires with an Early Retirement benefit after a Bona Fide Separation from Service 1) is reemployed with the Employer as an Eligible Employee before the Participant's Normal Retirement Date; or 2) is reemployed with the Employer in an Ineligible Employee class, and subsequently again becomes an Eligible Employee (as defined in the Plan) before the Participant's Normal Retirement Date due to the addition of such class to the Plan, the following rule shall apply **(check one or more as applicable)**:

- (a) ☒ The Participant's Early Retirement benefit shall be suspended in accordance with Section 6.06(a)(1) of the Basic Plan Document for as long as the Participant remains employed.

This rule shall apply to **(check one)**: ☒ all Retired Participants; ☐ only the following classes of Retired Participants **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

- (b) ☐ The Participant's Early Retirement benefit shall be suspended in accordance with Section 6.06(a)(1) of the Basic Plan Document. However, the Participant may begin receiving benefits after satisfying the qualifications for Normal Retirement or Alternative Normal Retirement, as applicable, and after satisfying the minimum age parameters of Section 6.06(a)(3) of the Basic Plan Document, in accordance with Section 6.06(b)(2)(B)(i) of the Basic Plan Document.

This rule shall apply to **(check one)**: ☐ all Retired Participants; ☐ only the following classes of Retired Participants **(must specify - specific positions are permissible; specific individuals may not be named)**:

_____.

- (c) ☐ The Participant's Early Retirement benefit shall continue in accordance with Section 6.06(b)(2)(B)(ii) of the Basic Plan Document.

This rule shall apply to **(check one)**: ☐ all Retired Participants; ☐ only the following classes of Retired Participants **(must specify - specific positions are permissible; specific individuals may not be named)**:

_____.

B. Cost Of Living Adjustment

The Employer may elect to provide for an annual cost-of-living adjustment (COLA) in the amount of benefits being received by Retired Participants and Beneficiaries, which shall be calculated and paid in accordance with the terms of the Basic Plan Document. The Employer hereby elects the following **(check one)**:

- ☒ (1) No cost-of-living adjustment.
- ☐ (2) Variable Annual cost-of-living adjustment not to exceed _____% **(insert percentage)**.
- ☐ (3) Fixed annual cost-of-living adjustment equal to _____% **(insert percentage)**.

The above cost-of-living adjustment shall apply with respect to the following Participants (and their Beneficiaries) **(check one)**:

- ☒ All Participants (and their Beneficiaries).
- ☐ Participants (and their Beneficiaries) who terminate employment on or after _____ **(insert date)**.
- ☐ Other **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**; specific positions are permissible; specific individuals may not be named): _____.

The Adjustment Date for the above cost-of-living adjustment shall be (if not specified, the Adjustment Date shall be January 1): _____.

17. TERMINATION OF EMPLOYMENT BEFORE RETIREMENT; VESTING

A. Eligible Regular Employees

Subject to the terms and conditions of the Basic Plan Document, a Participant who is an Eligible Regular Employee and whose employment is terminated for any reason other than death or retirement shall earn a vested right in the Participant's accrued retirement benefit in accordance with the following schedule (**check one**):

- ☐ **No vesting schedule (immediate vesting).**
- ☒ **Cliff Vesting Schedule.** Benefits shall be 100% vested after the Participant has a minimum of 5 years (**insert number not to exceed 10**) of Total Credited Service. Benefits remain 0% vested until the Participant satisfies this minimum.
- ☐ **Graduated Vesting Schedule.** Benefits shall become vested in accordance with the following schedule (**insert percentages**):

<u>COMPLETED YEARS OF TOTAL CREDITED SERVICE</u>	<u>VESTED PERCENTAGE</u>
1	%
2	%
3	%
4	%
5	%
6	%
7	%
8	%
9	%
10	%

Exceptions: If a vesting schedule other than that specified above applies to a special class(es) of Regular Employees, the Employer must specify the different vesting schedule below and the class(es) to whom the different vesting schedule applies.

Regular Employees to whom exception applies (**must specify - specific positions are permissible; specific individuals may not be named**): **The Eligible Regular Employee employed in the position of City Manager on March 3, 2022.**

Vesting Schedule for excepted class (**Must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i). Must be at least as favorable as one of the following schedules: (i) 15-year cliff vesting, (ii) 20-year graded vesting, or (iii) for qualified public safety employees, 20-year cliff vesting.**): **No Vesting schedule (immediate Vesting).**

B. Elected or Appointed Members of the Governing Authority

Subject to the terms and conditions of the Basic Plan Document, a Participant who is an elected or appointed member of the Governing Authority or a Municipal Legal Officer shall earn a vested right in the Participant's accrued retirement benefit for Credited Service in such capacity in accordance with the following schedule (**check one**):

- ☒ Not applicable (elected or appointed members of the Governing Authority are not permitted to participate in the Plan).
- ☐ No vesting schedule (immediate vesting).
- ☐ Other vesting schedule (**Must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i). Must be at least as favorable as one of the following schedules: (i) 15-year cliff vesting, (ii) 20-year graded vesting, or (iii) for qualified public safety employees, 20-year cliff vesting.**): _____.

18. PRE-RETIREMENT DEATH BENEFITS

A. In-Service Death Benefit

Subject to the terms and conditions of the Basic Plan Document, the Employer hereby elects the following in-service death benefit, to be payable in the event that an eligible Participant's employment with the Employer is terminated by reason of the Participant's death prior to Retirement (**check and complete one**):

- (1) ☒ **Auto A Death Benefit.** A monthly benefit payable to the Participant's Pre-Retirement Beneficiary, equal to the decreased monthly retirement benefit that would have otherwise been payable to the Participant, had the Participant elected a 100% joint and survivor benefit under Section 7.03 of the Basic Plan Document. In order to be eligible for this benefit, a Participant must meet the following requirements (**check one**):
- ☒ The Participant must be vested in a normal retirement benefit.
 - ☐ The Participant must have _____ years (**insert number**) of Total Credited Service.
 - ☐ The Participant must be eligible for Early or Normal Retirement.
 - ☐ Other eligibility requirement (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i)**): _____.
- (2) ☐ **Actuarial Reserve Death Benefit.** A monthly benefit payable to the Participant's Pre-Retirement Beneficiary, actuarially equivalent to the reserve required for the

Participant's anticipated Normal Retirement benefit, provided the Participant meets the following eligibility conditions **(check one)**:

- ☐ The Participant shall be eligible upon satisfying the eligibility requirements of Section 8.02(c) of the Basic Plan Document.
- ☐ The Participant must have _____ years **(insert number)** of Total Credited Service.
- ☐ Other eligibility requirement **(must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

Imputed Service. For purposes of computing the actuarial reserve death benefit, the Participant's Total Credited Service shall include **(check one)**:

- ☐ Total Credited Service accrued prior to the date of the Participant's death.
- ☐ Total Credited Service accrued prior to the date of the Participant's death, plus **(check one)**: ☐ one-half ($\frac{1}{2}$) ☐ _____ **(insert other fraction)** of the Service between such date of death and what would otherwise have been the Participant's Normal Retirement Date. **(See Basic Plan Document Section 8.02(b) regarding 10-year cap on additional Credited Service.)**

Minimum In-Service Death Benefit for Vested Employees Equal to Terminated Vested Death Benefit. Unless otherwise specified under "Exceptions" below, if a Participant's employment is terminated by reason of the Participant's death prior to Retirement, and if as of the date of death the Participant is vested but does not qualify for the in-service death benefit, then the Auto A Death Benefit will be payable, provided the Auto A Death Benefit is made available to terminated vested employees under the Adoption Agreement (see "Terminated Vested Death Benefit" below).

(3) Exceptions: If an in-service death benefit other than that specified above applies to one or more classes of Participants, the Employer must specify below the death benefit payable, the class(es) to whom the different death benefit applies, and the eligibility conditions for said death benefit.

Alternative Death Benefit **(must specify formula that satisfies the definite written program and definitely determinable requirements of Treasury Regulations Sections 1.401-1(a)(2) and 1.401-1(b)(1)(i) and does not violate limits applicable to governmental plans under Code Sections 401(a)(17) and 415)**: _____.

Participants to whom alternative death benefit applies **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

Eligibility conditions for alternative death benefit (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i):** _____).

B. Terminated Vested Death Benefit

(1) Complete this Section only if the Employer offers a terminated vested death benefit. The Employer may elect to provide a terminated vested death benefit, to be payable in the event that a Participant who is vested dies after termination of employment but before Retirement benefits commence. Subject to the terms and conditions of the Basic Plan Document, the Employer hereby elects the following terminated vested death benefit (**check one**):

- ☒ **Auto A Death Benefit.** A monthly benefit payable to the Participant's Pre-Retirement Beneficiary, equal to the decreased monthly retirement benefit that would have otherwise been payable to the Participant had the Participant elected a 100% joint and survivor benefit under Section 7.03 of the Basic Plan Document.
- ☐ **Accrued Retirement Benefit.** A monthly benefit payable to the Participant's Pre-Retirement Beneficiary which shall be actuarially equivalent to the Participant's Accrued Normal Retirement Benefit determined as of the date of death.

(2) Exceptions: If a terminated vested death benefit other than that specified above applies to one or more classes of Participants, the Employer must specify below the death benefit payable, the class(es) to whom the different death benefit applies, and the eligibility conditions for said death benefit.

Alternative Death Benefit (**must specify formula that satisfies the definite written program and definitely determinable requirements of Treasury Regulations Sections 1.401-1(a)(2) and 1.401-1(b)(1)(i) and does not violate limits applicable to governmental plans under Code Sections 401(a)(17) and 415):** _____.

Participants to whom alternative death benefit applies (**must specify - specific positions are permissible; specific individuals may not be named**): _____.

Eligibility conditions for alternative death benefit (**must specify in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i):** _____).

19. EMPLOYEE CONTRIBUTIONS

(1) Employee contributions (check one):

- ☒ Are not required.
- ☐ Are required in the amount of _____ % (**insert percentage**) of Earnings for all Participants.

- ☐ Are required in the amount of _____ % **(insert percentage)** of Earnings for Participants in the following classes **(must specify - specific positions are permissible; specific individuals may not be named)**: _____.

[Repeat above subsection as necessary if more than one contribution rate applies.]

(2) Pre-Tax Treatment of Employee Contributions. If Employee Contributions are required in Subsection (1) above, an Adopting Employer may elect to "pick up" Employee Contributions to the Plan in accordance with IRC Section 414(h). In such case, Employee Contributions shall be made on a pre-tax rather than a post-tax basis, provided the requirements of IRC Section 414(h) are met. If the Employer elects to pick up Employee Contributions, it is the Employer's responsibility to ensure that Employee Contributions are paid and reported in accordance with IRC Section 414(h). The Adopting Employer must not report picked up contributions as wages subject to federal income tax withholding.

The Employer hereby elects **(check one)**:

- ☐ To pick up Employee Contributions. By electing to pick up Employee Contributions, the Adopting Employer specifies that the contributions, although designated as Employee Contributions, are being paid by the Employer in lieu of Employee Contributions. The Adopting Employer confirms that the executor of this Adoption Agreement is duly authorized to take this action as required to pick up contributions. This pick-up of contributions applies prospectively, and it is evidenced by this contemporaneous written document. On and after the date of the pick-up of contributions, a Participant does not have a cash or deferred election right (within the meaning of Treasury Regulation Section 1.401(k)-1(a)(3)) with respect to the designated Employee Contributions, which includes not having the option of receiving the amounts directly instead of having them paid to the Plan.
- ☐ Not to pick up Employee Contributions.

(3) Interest on Employee Contributions. The Adopting Employer may elect to pay interest on any refund of Employee Contributions.

- ☐ Interest shall not be paid.
- ☐ Interest shall be paid on a refund of Employee Contributions at a rate established by GMEBS from time to time.
- ☐ Other rate of interest **(must specify rate in a manner that satisfies the definite written program requirement of Treasury Regulation 1.401-1(a)(2) and the definitely determinable requirement of Treasury Regulation 1.401-1(b)(1)(i))**: _____.

20. MODIFICATION OF THE TERMS OF THE ADOPTION AGREEMENT

If an Adopting Employer desires to amend any of its elections contained in this Adoption

Agreement (or any Addendum), the Governing Authority by official action must adopt an amendment of the Adoption Agreement (or any Addendum) or a new Adoption Agreement (or Addendum) must be adopted and forwarded to the Board for approval. The amendment of the new Adoption Agreement (or Addendum) is not effective until approved by the Board and other procedures required by the Plan have been implemented.

The Administrator will timely inform the Adopting Employer of any amendments made by the Board to the Plan.

21. TERMINATION OF THE ADOPTION AGREEMENT

This Adoption Agreement (and any Addendum) may be terminated only in accordance with the Plan. The Administrator will inform the Adopting Employer in the event the Board should decide to discontinue this pre-approved plan program.

22. EMPLOYER ADOPTION AND AUTHORIZATION FOR AMENDMENTS

Adoption. The Adopting Employer hereby adopts the terms of the Adoption Agreement and any Addendum, which is attached hereto and made a part of this ordinance. The Adoption Agreement (and, if applicable, the Addendum) sets forth the Employees to be covered by the Plan, the benefits to be provided by the Adopting Employer under the Plan, and any conditions imposed by the Adopting Employer with respect to, but not inconsistent with, the Plan. The Adopting Employer reserves the right to amend its elections under the Adoption Agreement and any Addendum, so long as the amendment is not inconsistent with the Plan or the Internal Revenue Code or other applicable law and is approved by the Board of Trustees of GMEBS. The Adopting Employer acknowledges that it may not be able to rely on the pre-approved plan opinion letter if it makes certain elections under the Adoption Agreement or the Addendum, and that the failure to properly complete the Adoption Agreement may result in a failure of the Adopting Employer's Plan to be a qualified plan.

The Adopting Employer hereby agrees to abide by the Basic Plan Document, Trust Agreement, and rules and regulations adopted by the Board of Trustees of GMEBS, as each may be amended from time to time, in all matters pertaining to the operation and administration of the Plan. It is intended that the Act creating the Board of Trustees of GMEBS, this Plan, and the rules and regulations of the Board are to be construed in harmony with each other. In the event of a conflict between the provisions of any of the foregoing, they shall govern in the following order:

- (1) The Act creating the Board of Trustees of The Georgia Municipal Employees' Benefit System, O.C.G.A. Section 47-5-1 *et seq.* (a copy of which is included in the Appendix to the Basic Defined Benefit Plan Document) and any other applicable provisions of O.C.G.A. Title 47;
- (2) The Basic Defined Benefit Plan Document and Trust Agreement;
- (3) This Ordinance and Adoption Agreement (and any Addendum); and
- (4) The rules and regulations of the Board.

In the event that any section, subsection, sentence, clause or phrase of this Plan shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the previously existing provisions or the other section or sections, subsections, sentences, clauses or phrases of this Plan, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudicated invalid or unconstitutional were not originally a part hereof. The Governing Authority hereby declares that it would have passed the remaining parts of this Plan or retained the previously existing provisions if it had known that such part or parts hereof would be declared or adjudicated invalid or unconstitutional.

This Adoption Agreement (and any Addendum) may only be used in conjunction with Georgia Municipal Employees Benefit System Basic Defined Benefit Retirement Plan Document approved by the Internal Revenue Service under opinion letter Q705465a dated August 31, 2023. The Adopting Employer understands that failure to properly complete this Adoption Agreement (or any Addendum), or to operate and maintain the Plan and Trust in accordance with the terms of the completed Adoption Agreement (and any Addendum), Basic Plan Document and Trust, may result in disqualification of the Adopting Employer's Plan under the Internal Revenue Code. Inquiries regarding the adoption of the Plan, the meaning of Plan provisions, or the effect of the IRS opinion letter should be directed to the Administrator. The Administrator is Georgia Municipal Employees Benefit System, with its primary business offices located at: 201 Pryor Street, SW, Atlanta, Georgia, 30303. The business telephone number is: (404) 688-0472. The primary person to contact is: GMEBS Legal Counsel.

Authorization for Amendments. Effective on and after February 17, 2005, the Adopting Employer hereby authorizes the pre-approved plan provider who sponsors the Plan on behalf of GMEBS to prepare amendments to the Plan, for approval by the Board, on its behalf as provided under Revenue Procedure 2005-16, as superseded by Revenue Procedure 2015-36, Revenue Procedure 2011-49, and Announcement 2005-37. Effective January 1, 2013, Georgia Municipal Association, Inc., serves as the pre-approved plan provider for the Plan. Employer notice and signature requirements were met for the Adopting Employer before the effective date of February 17, 2005. The Adopting Employer understands that the implementing amendment reads as follows:

On and after February 17, 2005, the Board delegates to the Provider the authority to advise and prepare amendments to the Plan, for approval by the Board, on behalf of all Adopting Employers, including those Adopting Employers who have adopted the Plan prior to the January 1, 2013, restatement of the Plan, for changes in the Code, the regulations thereunder, revenue rulings, other statements published by Internal Revenue Service, including model, sample, or other required good faith amendments (but only if their adoption will not cause such Plan to be individually designed), and for corrections of prior approved plans. These amendments shall be applied to all Adopting Employers. Employer notice and signature requirements have been met for all Adopting Employers before the effective date of February 17, 2005. In any event, any amendment prepared by the Practitioner and approved by the Board will be provided by the Administrator to Adopting Employers.

Notwithstanding the foregoing paragraph, no amendment to the Plan shall be prepared on behalf of any Adopting Employer as of either:

- the date the Internal Revenue Service requires the Adopting Employer to file Form 5300 as an individually designed plan as a result of an amendment by the Adopting Employer to incorporate a type of Plan not allowable in a pre-approved plan as described in Revenue Procedure 2017-41; or
- as of the date the Plan is otherwise considered an individually designed plan due to the nature and extent of the amendments.

If the Adopting Employer is required to obtain a determination letter for any reason in order to maintain reliance on the opinion letter, the Provider's authority to amend the Plan on behalf of the Adopting Employer is conditioned on the Plan receiving a favorable determination letter.

The Adopting Employer further understands that, if it does not give its authorization hereunder or, in the alternative, adopt another pre-approved plan, its Plan will become an individually designed plan and will not be able to rely on the pre-approved plan opinion letter.

Reliance on Opinion Letter. As provided in Revenue Procedure 2017-41, the Adopting Employer may rely on the Plan's opinion letter, provided that the Adopting Employer's Plan is identical to the GMEBS Plan, and the Adopting Employer has not amended or made any modifications to the Plan other than to choose the options permitted under the Plan, Adoption Agreement, and any Addendum.

AN ORDINANCE (continued from page 1)

Section 2. Except as otherwise specifically required by law or by the terms of the Basic Plan Document or Adoption Agreement (or any Addendum), the rights and obligations under the Plan with respect to persons whose employment with the City was terminated or who vacated office with the City for any reason whatsoever prior to the effective date of this Ordinance are fixed and shall be governed by such Plan, if any, as it existed and was in effect at the time of such termination.

Section 3. The effective date of this Ordinance shall be the date of its approval by the Governing Authority **(not earlier than the first day of the current Plan Year in which the Plan is adopted, unless a retroactive corrective amendment is permitted under EPCRS, Rev. Proc. 2021-30 (or subsequent updated guidance))**.

Section 4. All Ordinances and parts of ordinances in conflict herewith are expressly repealed.

Approved by the Mayor and Council of the City of Flowery Branch, Georgia, this _____ day of _____, 20____.

Attest:

CITY OF FLOWERY BRANCH, GEORGIA

City Clerk

Mayor

(SEAL)

Approved:

City Attorney

The terms of the foregoing Adoption Agreement are approved by the Board of Trustees of Georgia Municipal Employees Benefit System.

IN WITNESS WHEREOF, the Board of Trustees of Georgia Municipal Employees Benefit System has caused its Seal and the signatures of its duly authorized officers to be affixed this _____ day of _____, 20____.

Board of Trustees
Georgia Municipal Employees
Benefit System

(SEAL)

Secretary

**RESOLUTION OF THE
BOARD OF TRUSTEES OF THE
GEORGIA MUNICIPAL EMPLOYEES BENEFIT SYSTEM**

**APPROVAL OF AMENDMENT 1 TO THE THIRD CYCLE
RESTATED GMEBS DEFINED BENEFIT RETIREMENT PLAN
(APPROVED BY THE IRS AUGUST 31, 2023)**

WHEREAS, the Board of Trustees (“Board”) of the Georgia Municipal Employees Benefit System (“GMEBS”) previously adopted the GMEBS Defined Benefit Retirement Plan (“Plan”), which received a favorable advisory letter from the Internal Revenue Service (“IRS”) on March 30, 2018, and was most recently amended by the Board on December 2, 2022, through the Board’s approval of Amendment 4 to the Restated GMEBS Defined Benefit Retirement Plan;

WHEREAS, the Board periodically updates and restates the Plan with the IRS to ensure the qualified status of the Plan under Section 401(a) of the Internal Revenue Code;

WHEREAS, GMEBS most recently submitted the Plan to the IRS for restatement purposes on June 29, 2022;

WHEREAS, on August 31, 2023, the IRS issued a favorable opinion letter for the Plan;

WHEREAS, under the IRS’s practices and procedures relating to plan restatements, certain amendments the Board had previously made to the Plan to implement applicable provisions of the SECURE Act of 2019 and SECURE Act 2.0 concerning the beginning age for required minimum distributions, were not included in the Plan documents submitted to the IRS for restatement purposes;

WHEREAS, the Board has reserved the right to amend the Plan on behalf of Adopting Employers to retain the qualified status of the Plan in Section 18.02 of the Basic Plan Document;
and

WHEREAS, the Trustees now wish to amend the newly restated Plan (“Third Cycle Restated GMEBS Defined Benefit Retirement Plan”) to implement applicable provisions of the SECURE Act of 2019 and SECURE Act 2.0 concerning the beginning age for required minimum distributions.

NOW, THEREFORE BE IT RESOLVED, this Amendment 1 is hereby adopted to amend the Basic Plan Document effective as set forth herein:

1. Section 10.01(b), concerning distribution rules imposed by federal law, are amended to update the age for a Participant’s required beginning date, as follows:

(a) A Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date. For purposes of this Section, "required beginning date" means April 1 of the calendar year following the later of (i) the calendar year in which the Participant reaches the applicable age or (ii) the calendar year in which the Participant Retires. For purposes of this Section, “applicable age” (as defined under Code Section 401(a)(9)(C)(v)) means:

- (1) Age seventy and one-half (70 ½) (for a Participant who was born on or before June 30, 1949);
- (2) Age seventy-two (72) (for a Participant who was born on or after July 1, 1949, but before 1951); or
- (3) Age seventy-three (73) or the otherwise applicable age under Section 401(a)(9)(C)(v) of the Internal Revenue Code (for a Participant who was born in 1951 or later).

2. Section 10.01(c)(1), concerning distribution rules imposed by federal law, are amended to update the Participant’s age for the purpose of distributions to his or her surviving spouse when said surviving spouse is the sole Designated Beneficiary, as follows:

(b) If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

- (1) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained the applicable age, if later.

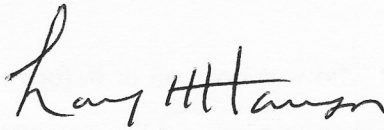
RESOLVED FURTHER by the Board that the appropriate officers and employees of GMA or the Administrator are authorized to take any and all actions that they deem appropriate or necessary to effectuate the foregoing resolutions on behalf of the Board, including but not limited to making non-substantive modifications to Plan documents as necessary, and that all prior actions taken in effectuating the Restated Plan documents and cooperation with IRS requests and directives are hereby ratified and confirmed in all respects.

RESOLVED FURTHER that the amendments herein shall take effect October 1, 2023.

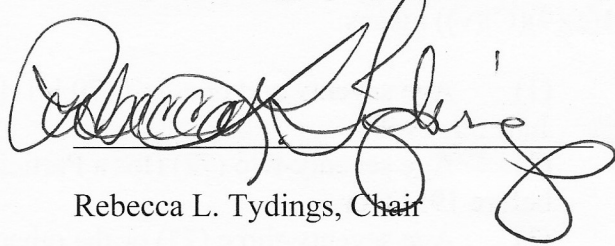
The terms of this Resolution are approved and agreed to by the Board of Trustees of the Georgia Municipal Employees Benefit System this 22 day of September, 2023.

Attest:

Georgia Municipal Employees Benefit System



Larry Hanson, Secretary-Treasurer



Rebecca L. Tydings, Chair

Adopted by the Board of Trustees at the meeting held on September 22, 2023.

**GEORGIA MUNICIPAL EMPLOYEES
BENEFIT SYSTEM**

**BASIC DEFINED BENEFIT RETIREMENT PLAN
DOCUMENT**

AMENDED AND RESTATED

Third Six-Year Cycle, 2020 Cumulative List

**Administered by:
Georgia Municipal Employees Benefit System
201 Pryor Street, SW
Atlanta, Georgia 30303
Telephone: 404-688-0472
Facsimile: 678-686-6289**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. PURPOSE OF PLAN	1
ARTICLE II. DEFINITIONS	2
Section 2.01. "Accrued Benefit"	3
Section 2.02. "Actuarial Equivalent"	3
Section 2.03. "Actuary"	3
Section 2.04. "Addendum"	3
Section 2.05. "Adjustment Date"	3
Section 2.06. "Administrator"	3
Section 2.07. "Adopting Employer"	3
Section 2.08. "Adoption Agreement"	3
Section 2.09. "Applicable Form"	4
Section 2.10. "Board of Trustees" or "Board"	4
Section 2.11. "Bona Fide Separation from Service"	4
Section 2.12. "Child" or "Children"	4
Section 2.13. "Code"	5
Section 2.14. "Code Section 415(d) Cost of Living Adjustment"	5
Section 2.15. "Contract"	5
Section 2.16. "Contributions"	5
Section 2.17. "Cost of Living Base Figure"	5
Section 2.18. "Covered Compensation AIME"	6
Section 2.19. "Covered Compensation Dynamic Break Point"	6
Section 2.20. "Covered Compensation Table Break Point"	6
Section 2.21. "Current Average Cost-of-Living Index Figure"	7
Section 2.22. "Default Beneficiary"	7
Section 2.23. "Disability"	7
Section 2.24. "Disability Retirement Date"	9
Section 2.25. "Early Retirement Date"	10
Section 2.26. "Earnings"	10
Section 2.27. "Effective Date"	11
Section 2.28. "Eligible Employee"	11
Section 2.29. "Eligible Regular Employee"	11
Section 2.30. "Employee"	11
Section 2.31. "Employer"	11
Section 2.32. "Enrollment Date"	12
Section 2.33. "FMLA"	12
Section 2.34. "Firefighter"	12
Section 2.35. "Final Average Earnings"	12
Section 2.36. "Governing Authority"	13
Section 2.37. "In-Service Distribution"	13
Section 2.38. "Ineligible Employee"	13
Section 2.39. "Interest"	13

Section 2.40.	"Investment Fund" or "GMEBS Retirement Trust Fund"	14
Section 2.41.	"Late Retirement Date"	14
Section 2.42.	"Military Service"	14
Section 2.43.	"Monthly Retirement Benefit"	14
Section 2.44.	"Municipal Legal Officer"	14
Section 2.45.	"Normal Retirement Date" or "Alternative Normal Retirement Date"	14
Section 2.46.	"Participant" or "Participating Employee"	15
Section 2.47.	"Pension Committee"	15
Section 2.48.	"Plan"	15
Section 2.49.	"Plan Representative"	15
Section 2.50.	"Plan Year"	15
Section 2.51.	"Police Officer"	15
Section 2.52.	"Post-Retirement Beneficiary"	16
Section 2.53.	"Primary Pre-Retirement Beneficiary"	16
Section 2.54.	"Provider"	16
Section 2.55.	"Regular Employee"	16
Section 2.56.	"Resolution"	16
Section 2.57.	"Retired Participant"	16
Section 2.58.	"Retirement" or "Retires"	16
Section 2.59.	"Retirement System," "System," or "GMEBS"	16
Section 2.60.	"Secondary Pre-Retirement Beneficiary"	16
Section 2.61.	"Section"	17
Section 2.62.	"Spouse"	17
Section 2.63.	"Terminated Vested Participant"	17
Section 2.64.	"Termination," "Terminate Employment," "Termination of Employment," or "Terminated"	17
Section 2.65.	"Trust Fund"	18
Section 2.66.	"Vested," "Vesting," "Vested Right," or "Vested Benefit"	18
ARTICLE III.	SERVICE	18
Section 3.01.	"Current Credited Service"	18
Section 3.02.	"USERRA Military Service Credit"	19
Section 3.03.	"Credited Past Service"	22
Section 3.04.	"Prior Governmental Service"	22
Section 3.05.	"Prior Military Service"	22
Section 3.06.	"Service"	22
Section 3.07.	"Total Credited Service"	23
ARTICLE IV.	ELIGIBILITY, QUALIFICATION AND PARTICIPATION	24
Section 4.01.	Classes of Eligible Employees	24
Section 4.02.	Qualifications for Participation	24
Section 4.03.	Establishing Participation in the Plan	29
Section 4.04.	Change in Employment Status	31
Section 4.05.	Participant Leaves of Absence	32
Section 4.06.	Non-Vested Participant Breaks in Service	33

ARTICLE V.	RETIREMENT ELIGIBILITY	36
ARTICLE VI.	RETIREMENT BENEFITS	37
Section 6.01.	Normal Retirement Benefit.....	37
Section 6.02.	Early Retirement Benefit	38
Section 6.03.	Late Retirement Benefit.....	39
Section 6.04.	Disability Benefit.....	40
Section 6.05.	Cost of Living Adjustment	44
Section 6.06.	In-Service Distribution; Suspension of Benefits Following Return to Service	45
ARTICLE VII.	OPTIONAL FORMS OF RETIREMENT INCOME.....	59
Section 7.01.	Standard Benefit Payment Form; Other Payment Options.....	59
Section 7.02.	Designation of Post-Retirement Beneficiary	60
Section 7.03.	Description of Options.....	60
Section 7.04.	Cancellation of Election	64
Section 7.05.	Rule for Small Benefits	64
Section 7.06.	Distributions	65
Section 7.07.	Compliance with Internal Revenue Section 401(a)(9)	65
Section 7.08.	Compliance with Internal Revenue Section 415	65
ARTICLE VIII.	DEATH BENEFITS	66
Section 8.01.	Death in Service Prior to Retirement.....	66
Section 8.02.	Actuarial Reserve In-Service Death Benefit.....	66
Section 8.03.	Auto A In-Service Death Benefit	67
Section 8.04.	Designation of Beneficiary	70
Section 8.05.	Change of Beneficiary	71
Section 8.06.	Auto A In-Service Pre-Retirement Death Benefit; Default Beneficiary; Payment to Surviving Spouse or to Estate Where Benefit Not Payable to Designated Primary or Secondary Pre-Retirement Beneficiary.....	71
Section 8.07.	Actuarial Reserve In-Service Pre-Retirement Death Benefit; Payment to Surviving Spouse or to Estate Where Benefit Not Payable to Designated Primary or Secondary Pre-Retirement Beneficiary	72
Section 8.08.	Terminated Vested Death Benefits	73
Section 8.09.	Terminated Vested Auto A Death Benefit.....	74
Section 8.10.	Accrued Retirement Benefit	77
Section 8.11.	Designation of Terminated Vested Pre-Retirement Beneficiary	79
Section 8.12.	Participant Death After Retirement Benefit Commencement	79
ARTICLE IX.	TERMINATION BEFORE RETIREMENT; VESTING.....	81
Section 9.01.	Vesting Requirement for Deferred Retirement Benefit.....	81
Section 9.02.	Termination of Tenure of Office Before Retirement.....	82
Section 9.03.	Immediate Vesting in Disability Retirement.. ..	83
Section 9.04.	Involuntary Termination Without Cause.....	83
Section 9.05.	Portability between Adopting Employers.....	84

Section 9.06.	Forfeiture of Benefits for Certain Crimes.....	85
Section 9.07.	Forfeitures.....	86
ARTICLE X.	DISTRIBUTION AND ROLLOVER RULES.....	89
Section 10.01.	Distribution Rules Imposed by Federal Law	89
Section 10.02.	Rollover of Distributions	93
Section 10.03.	Acceptance of Eligible Rollover Distributions.....	95
Section 10.04.	Acceptance of Trustee-to-Trustee Transfers	96
ARTICLE XI.	LIMITATIONS ON BENEFITS	96
Section 11.01.	Effective Date	96
Section 11.02.	Limitation on Annual Benefit.....	96
Section 11.03.	Limitation on Annual Additions	106
Section 11.04.	Code Section 415(e) Limits	109
Section 11.05.	Limitations on Service Credit Purchases	109
Section 11.06.	Interpretation of this Article	113
ARTICLE XII.	ACTUARIAL EQUIVALENT CONVERSION TABLES.....	113
Section 12.01.	Early Retirement Reduction Table	113
Section 12.02.	Option B Tables.....	114
Section 12.03.	Option C Table	117
Section 12.04.	Life Annuity Factors to be Used in Computing Actuarial Reserve Death Benefit.....	118
Section 12.05.	Late Retirement Actuarial Increase Factors	119
Section 12.06.	"Offset Calculations"; Other Annuity Forms.....	120
Section 12.07.	Lump Sum Payments.....	122
ARTICLE XIII.	CONTRIBUTIONS	122
Section 13.01.	Adopting Employer Contributions	122
Section 13.02.	Employee Contributions	123
Section 13.03.	Withdrawal of Employee Contributions.....	123
Section 13.04.	Cessation of Contributions Without Penalty	126
Section 13.05.	Continued Contributions During Leave of Absence	126
Section 13.06.	Return of Contributions Upon Failure to Exhaust.....	126
ARTICLE XIV.	PENSION COMMITTEE.....	129
Section 14.01.	Creation and Composition	129
Section 14.02.	Responsibilities.....	129
Section 14.03.	Secretary	132
Section 14.04.	Legal Assistance	132
Section 14.05.	Plan Representative	132
ARTICLE XV.	BOARD OF TRUSTEES	133
Section 15.01.	Definitions	133
Section 15.02.	Powers.....	133
Section 15.03.	Composition and Election.....	133

Section 15.04.	Officers	133
Section 15.05.	Notice of Elections	133
Section 15.06.	Voting	134
Section 15.07.	Voting Representative for the Adopting Employer	134
Section 15.08.	Qualified Public Accountant.....	134
Section 15.09.	Fiduciary Insurance	135
ARTICLE XVI.	GMEBS TRUST AGREEMENT	135
Section 16.01.	General Provisions.....	135
Section 16.02.	Group Trust Participation	135
ARTICLE XVII.	CLAIMS AND LITIGATION.....	136
Section 17.01.	Disputes	136
Section 17.02.	Disputes involving Federal or State Law Compliance	137
Section 17.03.	Failure to Act	137
ARTICLE XVIII.	AMENDMENT AND TERMINATION	137
Section 18.01.	Amendment of the Plan by an Adopting Employer.....	137
Section 18.02.	Amendment of Plan by GMEBS	138
Section 18.03.	Termination by Adopting Employer.....	140
Section 18.04.	Amendment of the Plan to Transfer Assets; Termination of Contract	143
Section 18.05.	Involuntary Termination.....	147
Section 18.06.	Termination of the Basic Plan Document by the Board	151
ARTICLE XIX.	NON-ALIENATION OF BENEFITS	151
ARTICLE XX.	MISCELLANEOUS	152
Section 20.01.	Construction.....	152
Section 20.02.	Non-Diversion	154
Section 20.03.	Legally Incompetent; Power of Attorney	154
Section 20.04.	Benefits Supported Only by Trust Fund.....	155
Section 20.05.	Non-Discrimination	155
Section 20.06.	Limitation of Liability; Legal Actions.....	155
Section 20.07.	Claims	156
Section 20.08.	Errors in Benefits.....	156
Section 20.09.	Notice.....	161
Section 20.10.	Right of Recovery.....	161
Section 20.11.	Evidence of Action	161
Section 20.12.	Reliance	162
Section 20.13.	Information to Administrator.....	162
Section 20.14.	Participant Data to Administrator.....	162
Section 20.15.	Treatment of Vacated Court Orders	162
Section 20.16.	Entire Plan	163

APPENDIX – REFERENCED SECTIONS OF O.C.G.A.

BASIC PLAN DOCUMENT

ARTICLE I.

PURPOSE OF PLAN

The Georgia Municipal Employees Retirement System Plan ("Plan") is hereby amended and restated for the Third Six-Year Cycle, in compliance with the 2020 Cumulative List, pursuant to a resolution of the Board of Trustees of the Georgia Municipal Employees Benefit System. The Plan is a governmental qualified defined benefit plan under Internal Revenue Code Sections 401(a) and 414(d) and is intended to be adopted by Employers in Georgia.

The Plan is intended to comply with certain provisions of the Protecting Americans from Tax Hikes Act of 2015 ("PATH Act"); as well as the additional guidance included in the 2020 Cumulative List under Internal Revenue Service ("IRS") Notice 2020-14 to the extent applicable to the Plan. Except as otherwise specifically provided herein, the Plan establishes the rights and obligations with respect to individuals who are Employees on and after such dates, as applicable, and to transactions under the Plan on and after such dates, as applicable. Except as otherwise specifically provided herein, the rights and benefits, if any, of individuals who are not Employees on or after such dates, as applicable, shall be determined in accordance with the terms and provisions of the Plan that were in effect on the date that their employment terminated.

Any Municipal Corporation accepted by the Board as an Adopting Employer may become a party to the Plan as of the first day of any Plan Year, or such other date specified by the Adopting Employer, by delivering to the Administrator an appropriate Ordinance of the Governing Authority adopting the Plan. Any other Employer accepted by the Board as an Adopting Employer may become a party to the Plan as of the first day of any Plan Year, or such other date specified by the Adopting Employer, by delivering to the Administrator an appropriate resolution or ordinance (as applicable) of the Governing Authority adopting the Plan. With the

consent of the Board, such organization shall become an Adopting Employer hereunder, as of the specified date, and shall be subject to the terms and provisions of the Plan as then in effect and thereafter amended.

The Plan document consists of this Basic Plan Document, the Adoption Agreement, and any Addendum of each Employer and any amendments to the Basic Plan Document, the Adoption Agreement, and any Addendum. The Plan, generally effective as of the date set forth in the Adoption Agreement for each Employer, except as otherwise specifically provided herein, is established for the purpose of providing retirement and other benefits to Participants.

This Plan is intended to be a pre-approved plan, to be used with a completed Adoption Agreement.

ARTICLE II.

DEFINITIONS

This Article covers all generally applicable definitions used in this Plan, except for definitions related to service, which are in Article III. Except as otherwise provided in the Employer's Adoption Agreement or any Addendum, the definition of terms contained in this Article II and Article III shall govern the meaning of such terms used in the Adoption Agreement. When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows, unless a different meaning is plainly required by the content:

Section 2.01. **"Accrued Benefit"** shall mean, as of any date, the Normal Retirement benefit payable to a Participant at the Participant's Normal Retirement Date computed in accordance with the provisions of Article VI and the Adoption Agreement, based upon the Participant's Total Credited Service and Final Average Earnings (if applicable) as of the date that the Participant's Accrued Benefit is being determined.

Section 2.02. **"Actuarial Equivalent"** shall mean a benefit of approximately equal value when computed on the basis of the actuarial assumptions contained in Article XII.

Section 2.03. **"Actuary"** shall mean an individual, or firm, appointed or approved by the Board of Trustees to perform actuarial calculations necessary in the funding of the Plan.

Section 2.04. **"Addendum"** means any Addendum to an Adoption Agreement submitted to the IRS for review under the pre-approved program and entered into by an Adopting Employer.

Section 2.05. **"Adjustment Date"** means January 1 or such other date in a calendar year on which a Cost of Living Adjustment is applied to a Retired Participant's or Post-Retirement Beneficiary's benefit pursuant to an Adopting Employer's Adoption Agreement or any Addendum thereto.

Section 2.06. **"Administrator"** shall mean the Georgia Municipal Employees Benefit System or its designee.

Section 2.07. **"Adopting Employer"** shall mean an Employer who adopts this Plan through the adoption of the Adoption Agreement.

Section 2.08. **"Adoption Agreement"** shall mean the Adoption Agreement adopted by an Adopting Employer, which Adoption Agreement contains certain terms of the Plan, and

whenever applicable shall include any Addendum amending provisions of the Adoption Agreement.

Section 2.09. **"Applicable Form"** shall mean the appropriate form as designated and furnished by the Administrator to make the election or provide the notice required by the Plan. In those circumstances where a written election or consent is not required by the Plan or the Code, the Administrator may prescribe an oral, electronic, or telephonic form in lieu of or in addition to a written form.

Section 2.10. **"Board of Trustees"** or **"Board"** shall mean the Board of Trustees of the Georgia Municipal Employees Benefit System.

Section 2.11. **"Bona Fide Separation from Service"** shall mean, with respect to a Participant who Terminates employment on or after September 26, 2014, the Participant Terminated Employment with the Participant's Adopting Employer without an agreement for re-employment and did not return to service with the Adopting Employer as an Eligible Employee, Ineligible Employee, or independent contractor or in any other capacity, except as described below, for at least six (6) calendar months after the date of said Termination of Employment, provided that the Employer shall be required to provide any information to GMEBS necessary to verify an Employee's Bona Fide Separation from Service. A Bona Fide Separation from Service shall alternatively mean that an Eligible Employee Terminated Employment with the Adopting Employer and returned to service with the Adopting Employer as an elected or appointed member of the Governing Authority, even if such Employee did not incur a six (6) month break in service prior to becoming an elected or appointed member of the Governing Authority.

Section 2.12. **"Child"** or **"Children"** shall mean any natural or adopted child of the Participant or Terminated Vested Participant, as applicable, who is younger than age twenty-two

(22) as of the date of the Participant's or Terminated Vested Participant's death. The term "adopted child" shall include any child who is legally adopted by the Participant and any child who is a member of the Participant's household if placed with the Participant by an authorized placement agency for legal adoption by the Participant. The term "child" does not include a foster child.

Section 2.13. **"Code"** shall mean the Internal Revenue Code of 1986, as applicable to governmental plans, as amended from time to time, and the Internal Revenue Code of 1954, as applicable to governmental plans.

Section 2.14. **"Code Section 415(d) Cost of Living Adjustment"** shall mean the cost of living adjustment prescribed by the Secretary of the Treasury under Code Section 415(d) for any applicable year.

Section 2.15. **"Contract"** shall mean the entire contents of the Ordinance or Resolution adopting this Plan, the Employer's Adoption Agreement and any Addendum thereto, the Basic Plan Document, the GMEBS Trust Agreement, and any amendments made hereafter.

Section 2.16. **"Contributions"** shall mean payments made by Employers (and Employees, if applicable) to GMEBS to provide the benefits specified in the Plan.

Section 2.17. **"Cost of Living Base Figure"** shall mean, with respect to Employers who elect in the Adoption Agreement to provide cost-of-living adjustments in benefits received under the Plan, the Consumer Price Index figure (All Urban Consumers Table – All Items, 1982-1984 Base Period) issued by the Bureau of Labor Statistics of the United States Department of Labor for the month that is 14 months prior to the month of the Adjustment Date used to determine the Current Cost-of-Living Index Figure. However, if a Participant or Beneficiary has been drawing benefits for less than twelve (12) months, the Cost-of-Living Base

Figure shall mean the Consumer Price Index figure (All Urban Consumers Table – All Items, 1982-1984 Base Period) issued by the Bureau of Labor Statistics of the United States Department of Labor for the month that is two (2) months prior to the month when benefit payments commenced.

Section 2.18. "Covered Compensation AIME." shall mean the portion of the Average Indexed Monthly Earnings (A.I.M.E.), annualized, as defined by the December 1977 amendments to the federal Old-Age, Survivors, and Disability Insurance (O.A.S.D.I.), not subject to the fifteen percent (15%) benefit rate as defined in the amendments and as adjusted to the year of termination of employment as provided for in said amendments.

Section 2.19. "Covered Compensation Dynamic Break Point" shall mean, for any calendar year, the average of the maximum amount of earnings for which taxes are payable under the Social Security Act during the period of calendar years: (1) beginning with the later of 1959 or the calendar year thirty-five (35) years before the year for which Social Security Covered Compensation is being computed, and (2) ending with the calendar year preceding the year for which Social Security Compensation is being computed. The amount of Covered Compensation for a Participant shall be determined as of the date of the Participant's most recent Termination or the Participant's date of death, whichever is applicable.

Section 2.20. "Covered Compensation Table Break Point" shall mean the amount listed in the table below, opposite the year of birth of the Participant:

Year of Birth	Covered Compensation Amount	Year of Birth	Covered Compensation Amount	Year of Birth	Covered Compensation Amount
1903 or earlier	\$4,944	1916	\$6,432	1929	\$6,900
1904	5,160	1917	6,480	1930	6,984

1905	5,352	1918	6,528	1931	7,080
1906	5,520	1919	6,576	1932	7,176
1907	5,652	1920	6,612	1933	7,260
1908	5,784	1921	6,660	1934	7,332
1909	5,892	1922	6,696	1935	7,416
1910	6,000	1923	6,720	1936	7,500
1911	6,084	1924	6,756	1937	7,572
1912	6,168	1925	6,792	1938	7,656
1913	6,240	1926	6,816	1939	7,728
1914	6,312	1927	6,840	1940	7,764
1915	6,372	1928	6,864	1941	7,800
				or later	

Section 2.21. **"Current Average Cost-of-Living Index Figure"** shall mean, with respect to Employers who elect in the Adoption Agreement to provide cost-of-living adjustments in benefits received under the Plan, the Consumer Price Index figure (All Urban Consumers Table – All Items, 1982-1984 Base Period) that was most recently issued by the Bureau of Labor Statistics of the United States Department of Labor for the month that is two months prior to the month of the Adjustment Date.

Section 2.22. **"Default Beneficiary"** shall mean, with respect to a Participant who dies prior to July 1, 2015, the person(s) or entity to whom a pre-retirement death benefit is payable in the absence of a beneficiary designation by the Participant or in the event there is no designated Primary or Secondary Pre-Retirement Beneficiary to whom a pre-retirement death benefit is payable, determined in accordance with and subject to Section 8.06.

Section 2.23. **"Disability"** shall mean, with respect to those Adopting Employers who elect in the Adoption Agreement to provide disability retirement benefits and unless otherwise provided in an Addendum to the Adoption Agreement, the following:

(a) A physical or mental disability of a Participant who because of such disability becomes entitled to receive disability insurance benefits under the Federal Social Security Act, as amended, provided that the following conditions are satisfied:

(1) Such disability commenced on a specified date during the period of the Participant's employment with the Adopting Employer, as evidenced by a Social Security Administration (SSA) disability award submitted with the Participant's disability retirement application, reflecting a disability onset date on or before the Participant's Termination date; provided, however, that in the event a Participant has filed more than one disability application with the SSA and the SSA disability award reflects a disability onset date after the Participant's Termination date, and where due to SSA administrative res judicata rules the disability onset date reflected in the SSA disability award immediately follows the date that a prior SSA disability award was denied, then the Administrator may consider other documents submitted with the Participant's application for a SSA disability award to determine the disability onset date if the Participant provides such documents to the Administrator and the Administrator deems such documents sufficient to establish that the disability onset date is on or before the Participant's Termination date;

(2) In no event will the disability onset date be earlier than the latest disability onset date alleged by the Participant in the Participant's SSA disability application(s); and

(3) The Participant's disability was not intentionally self-inflicted, incurred in the commission of a felonious enterprise, or the result of the abuse or illegal use of narcotics or drugs; or

(b) A Participant who is not disabled in accordance with the definition under subsection (a) above solely because the Participant lacks the quarters of Social Security coverage required under the Federal Social Security Act, as amended, shall qualify for Disability if the Pension Committee determines that the Participant is permanently disabled on the basis of

a certificate signed by at least two (2) physicians, (one physician selected and paid by the disabled Participant and one selected and paid by the Employer) stating that:

(1) The Participant is permanently disabled as defined in Internal Revenue Code Section 72(m); and

(2) Such disability commenced on a specified date during the period of the Participant's employment with the Adopting Employer; and

(3) Such disability was not intentionally self-inflicted, incurred in the commission of a felonious enterprise, or the result of the abuse or illegal use of narcotics or drugs.

(c) Neither the Adopting Employer nor the Administrator is required to independently investigate or confirm the cause(es) of a Participant's disability.

Section 2.24. "Disability Retirement Date" shall mean, with respect to those Adopting Employers who elect to provide Disability retirement benefits in the Adoption Agreement and with respect to Participants who Terminate Employment due to Disability, the first day of the first calendar month coinciding with or next following: (a) the date on which a Participant becomes entitled to receive a monthly disability insurance benefit under the Federal Social Security Act, as amended; (b) the date on which the Participant's Disability is determined by the Pension Committee to have commenced, in the case of Disability determinations made by the Pension Committee pursuant to Section 2.23(b); or (c) the date determined in accordance with the provisions of an Employer's General Addendum, as applicable. However, in no event will the Disability Retirement Date be earlier than the first day of the calendar month coinciding with or next following the date of the Participant's Termination of Employment as a result of Disability.

Section 2.25. "Early Retirement Date" shall mean the first day of the month coinciding with or next following the day a Participant qualifies for Early Retirement as specified in the Adoption Agreement, as of which the Participant actually Retires.

Section 2.26. "Earnings" shall mean, unless otherwise specified by the Employer in an Addendum to the Adoption Agreement, the total gross earnings paid to a Participant by the Employer, as reflected in the Employer's payroll records and shall include salary, wages, bonuses, overtime, and compensation for unused sick, vacation, paid-time-off, personal, or any other paid leave. Earnings shall not be reduced for compensation deferred pursuant to Code Sections 401(k), 403(b) or 457, compensation redirected pursuant to Code Section 125 or 132(f)(4), or contributions picked-up under Code Section 414(h) during the Plan Year. Unless otherwise specified in an Addendum to the Adoption Agreement, Earnings shall not include perquisites or allowances for a car or house rent, or compensation for severance pay.

For any Plan Year beginning after December 31, 2001, the annual earnings of a Participant for any year taken into account under the Plan shall not exceed Two Hundred Thousand Dollars (\$200,000) (as increased by the Cost of Living Adjustment for the year, pursuant to Code Section 401(a)(17)(B)). Notwithstanding the provisions of this paragraph, in determining benefit accruals in Plan Years beginning after December 31, 2001, the limit hereunder for determination periods beginning before January 1, 2002, shall be Two Hundred Thousand Dollars (\$200,000).

Annual earnings means Earnings during the Plan Year or such other consecutive twelve (12) month period over which Earnings are otherwise determined under the Plan (the determination period). The Cost of Living Adjustment for a calendar year applies to annual earnings for the determination period that begins with or within such a calendar year. If a short

Plan Year occurs, the annual earnings limit is an amount equal to the otherwise applicable annual earnings limit multiplied by a fraction, the numerator of which is the number of months in the short Plan Year, and the denominator of which is twelve (12).

Section 2.27. **"Effective Date"** shall mean the original effective date of the Adopting Employer's GMEBS-administered defined benefit plan as specified in the Adoption Agreement.

Section 2.28. **"Eligible Employee"** shall mean any Employee who is designated as an Eligible Employee in the Adoption Agreement and who satisfies any eligibility conditions applicable to the class of Eligible Employees to which the Employee belongs.

Section 2.29. **"Eligible Regular Employee"** shall mean any Regular Employee who satisfies the minimum hour and other eligibility conditions applicable to Regular Employees in the Employer's Adoption Agreement.

Section 2.30. **"Employee"** shall mean any person who is regularly employed in the services of the Employer as an employee and shall include elected or appointed members of the Governing Authority and Municipal Legal Officers if they are included as Eligible Employees in the Adoption Agreement. However, notwithstanding any other provision of the Plan to the contrary, the term "Employee" does not include: (a) an individual who is a nonresident alien and who receives no earned income (within the meaning of Code Section 911(d)(2)) from an Employer which constitutes income from sources within the United States within the meaning of Code Section 861(a)(3); (b) a leased employee; or (c) any person treated in good faith by an Employer as an independent contractor, regardless of whether such person is later determined to be a common law employee for tax purposes.

Section 2.31. **"Employer"** shall mean an Employer as defined in O.C.G.A. § 47-5-2(9) (a copy of which is included in the Appendix hereto). No employer which is not

permitted to participate in a qualified governmental pension plan as defined in Code Section 401(a) and 414(d) shall be permitted to participate in this Plan.

Section 2.32. **"Enrollment Date"** shall mean the date that an Eligible Employee first becomes a Participant under this Plan.

Section 2.33. **"FMLA"** shall mean the Family and Medical Leave Act of 1993, as amended from time to time.

Section 2.34. **"Firefighter"** shall mean an Eligible Regular Employee of the Adopting Employer who is either certified as a firefighter pursuant to O.C.G.A. § 25-4-2(4) (a copy of which is included in the Appendix hereto) or who would otherwise be required to be certified as a firefighter but who is exempt pursuant to O.C.G.A. § 25-4-12 (a copy of which is included in the Appendix hereto).

Section 2.35. **"Final Average Earnings"** shall mean, unless otherwise elected in an Addendum to the Adoption Agreement, the arithmetic monthly average of the Earnings paid to a Participant by the Adopting Employer for a specified number of consecutive months of Credited Service preceding the Participant's most recent Termination in which the Participant's Earnings were the highest, multiplied by twelve (12). In computing Final Average Earnings, Earnings shall include, if applicable and authorized by the Adopting Employer in an Addendum to the Adoption Agreement, severance payments made prior to, on or after the Participant's Termination Date. The number of months to be used in determining Final Average Earnings shall be designated by the Adopting Employer in the Adoption Agreement or an Addendum thereto. The Administrator shall prescribe a formula for the determination of Final Average Earnings. Calculation of Final Average Earnings shall be subject to the following:

(a) If a Participant terminates employment or is on an unpaid leave of absence and later returns to employment with the Employer, the period(s) prior to and following such absence from employment shall be considered consecutive.

(b) If a Participant has not completed the number of consecutive months of Credited Service necessary to compute Final Average Earnings under this Section as of the date of such Participant's most recent Termination preceding Retirement, then Final Average Earnings shall be determined by dividing total Earnings for the Participant's entire period of Credited Service by such Participant's total number of months of Credited Service and multiplying the quotient by twelve (12). In computing the number of months of Credited Service for this purpose, incomplete months of Credited Service shall be converted to fractional equivalents of months and included in the computation.

Section 2.36. "Governing Authority" shall mean the entity named in the Adoption Agreement which is authorized to act for the Adopting Employer.

Section 2.37. "In-Service Distribution" shall mean commencement of benefits to a Participant who has satisfied the requirements for Retirement prior to the Participant's Termination of Employment or continuation of benefits to a Retired Participant who returns to service without first completing a Bona Fide Separation from Service.

Section 2.38. "Ineligible Employee" shall mean an Employee of the Adopting Employer who is not an Eligible Employee.

Section 2.39. "Interest" shall mean a pro rata share of any and all interest, dividends, and capital gains or losses earned on the invested or reinvested funds of the GMEBS Investment Fund.

Section 2.40. **"Investment Fund"** or **"GMEBS Retirement Trust Fund"** shall mean the total amounts of all Contributions plus Interest, invested or uninvested, held by the Board of Trustees in the GMEBS Retirement Trust Fund for all GMEBS Employers and their Employees where applicable.

Section 2.41. **"Late Retirement Date"** shall mean the first day of the month coinciding with or next following the day the Participant qualifies for Late Retirement, as specified in Section 6.03, as of which the Participant actually retires. The Plan shall not provide for a maximum retirement age.

Section 2.42. **"Military Service"** shall mean, unless otherwise specified in the Adoption Agreement, service performed while on active duty in the Armed Forces of the United States if the Participant was granted an honorable discharge. Except as otherwise required by federal or state law, Military Service shall not include service which is credited toward retirement under any other local, state, or federal retirement or pension plan.

Section 2.43. **"Monthly Retirement Benefit"** shall mean the monthly benefit as provided in Article VI or any optional benefit payable in lieu thereof as provided in Article VII.

Section 2.44. **"Municipal Legal Officer"** shall mean, with respect to those Employers who elect to include municipal legal officers as Eligible Employees, only those municipal legal officers specifically designated in the Adoption Agreement for inclusion as Eligible Employees, provided that such officer otherwise meets the Basic Plan Document's definition of Employee.

Section 2.45. **"Normal Retirement Date"** or **"Alternative Normal Retirement Date"** shall mean the first day of the month coinciding with or next following the date the Participant qualifies for Normal Retirement as specified in the Employer's Adoption Agreement.

An Employer may also establish alternative Normal Retirement qualifications in the Adoption Agreement. In such case, the Participant's Alternative Normal Retirement Date shall mean the first day of the month coinciding with or next following the date the Participant meets the alternative Normal Retirement qualifications.

Section 2.46. **"Participant"** or **"Participating Employee"** shall mean any Eligible Employee who is or may become eligible to receive a benefit of any type from the Plan and who has commenced participation in the Plan under Article IV.

Section 2.47. **"Pension Committee"** shall mean the committee named in the Adoption Agreement to represent the Adopting Employer in the administration of the Plan.

Section 2.48. **"Plan"** shall mean the provisions of this Basic Plan Document, along with the Employer's Adoption Agreement (including any Addendum to the Adoption Agreement, if applicable), setting forth the Employees to be covered, the benefits to be provided, and the conditions of retirement, and all amendments thereto which may hereafter be made.

Section 2.49. **"Plan Representative"** shall mean the Plan Representative designated in the Employer's Adoption Agreement. The Plan Representative must have full authority to represent the Governing Authority in all communications with GMEBS and the Adopting Employer's Employees. The Pension Committee Secretary may serve as the Plan Representative.

Section 2.50. **"Plan Year"** shall mean a twelve (12) consecutive month period specified as such in the Adoption Agreement.

Section 2.51. **"Police Officer"** shall mean an Eligible Regular Employee employed by the Adopting Employer's Police Department who is either certified or registered as a peace officer pursuant to O.C.G.A. § 35-8-2(8) (a copy of which is included in the Appendix hereto).

Section 2.52. **"Post-Retirement Beneficiary"** shall mean the person designated by the Participant, in writing and on the Applicable Form, to receive a post-retirement survivor benefit in accordance with and subject to the provisions of Article VII and Section 8.12.

Section 2.53. **"Primary Pre-Retirement Beneficiary"** shall mean the person designated by the Participant, in writing and on an Applicable Form, to receive a pre-retirement death benefit, in accordance with and subject to the provisions of Article VIII.

Section 2.54. **"Provider"** means the Georgia Municipal Association, Inc. who is the pre-approved plan provider sponsoring the Plan on behalf of GMEBS.

Section 2.55. **"Regular Employee"** shall mean any Employee, other than an elected or appointed member of the Governing Authority or Municipal Legal Officer, who is regularly employed in the services of the Adopting Employer.

Section 2.56. **"Resolution"** shall mean a resolution duly adopted by an Employer.

Section 2.57. **"Retired Participant"** shall mean any Participant who has Terminated Employment with the Employer and who is receiving a benefit provided under the Plan.

Section 2.58. **"Retirement"** or **"Retires"** shall mean withdrawal from Service with a retirement allowance granted under the provisions of the Plan.

Section 2.59. **"Retirement System," "System," or "GMEBS"** shall mean the Georgia Municipal Employees Benefit System created by O.C.G.A. Section 47-5-1 et seq. (a copy of which is included in the Appendix hereto).

Section 2.60. **"Secondary Pre-Retirement Beneficiary"** shall mean the person designated by the Participant, in writing and on the Applicable Form, to receive a pre-retirement death benefit in the event the Primary Pre-Retirement Beneficiary does not survive the Participant, in accordance with and subject to the provisions of Article VIII.

Section 2.61. **"Section"** shall mean, when not preceded by the word Code or ERISA, a section of the Basic Plan Document.

Section 2.62. **"Spouse"** shall mean, notwithstanding any other provision in an Adopting Employer's Adoption Agreement or Addendum to the contrary, (i) effective on or after September 16, 2013, to the extent required by federal law, and (ii) effective on or after September 26, 2014, for all purposes, a person who, as of the date of the Participant's, Retired Participant's or Terminated Vested Participant's death, as applicable, is lawfully joined with the Participant or Terminated Vested Participant in a marriage which is recognized under the laws of any state or foreign jurisdiction, whether opposite-sex or same-sex and regardless of whether or not the spouse resides in the state or foreign jurisdiction in which such marriage occurred.

Section 2.63. **"Terminated Vested Participant"** shall mean any Participant who has Terminated Employment with the Adopting Employer and who has a Vested Benefit under any provision of the Adopting Employer's Plan but is not yet a Retired Participant.

Section 2.64. **"Termination," "Terminate Employment," "Termination of Employment," or "Terminated"** shall mean a severance of employment with the Employer, including Retirement, resignation or discharge, lapse of recall rights after layoff, death, or vacation of office by a Regular Employee, an elected or appointed member of the Governing Authority or a Municipal Legal Officer. Provided, however, that Termination shall not include: (i) absence from active employment which is not treated by the Adopting Employer as a Termination of Employment; (ii) absence due to military service to the extent required under USERRA and Code Section 414(u)(8)(A), (iii) absence due to leave which qualifies as family or medical leave under the FMLA, to the extent required under the FMLA; or (iv) absence due to an authorized leave of absence for any reason if approved by the Adopting Employer. Unless

otherwise required by law or unless the terms of the leave otherwise specify, if an Employee on an authorized leave of absence fails to return to active employment upon expiration of the leave of absence, the Employee will be considered terminated as of the date immediately preceding the approved leave period.

Section 2.65. **"Trust Fund"** mean the total amounts, invested or uninvested, held at any time by the Board in trust for the Employer under the GMEBS Trust Agreement, a separate document for the establishment and administration of the Trust Fund.

Section 2.66. **"Vested," "Vesting," "Vested Right," or "Vested Benefit"** shall mean the rights of a Terminated Vested Participant as specified in Article IX.

ARTICLE III.

SERVICE

Section 3.01. **"Current Credited Service"** shall mean the number of years and complete months of Service of a Participant with the Adopting Employer from the Participant's Enrollment Date to the Participant's Termination, which are credited as Current Credited Service for purposes of meeting the Plan's requirements for vesting, retirement and death benefit eligibility, and/or for purposes of computing the amount of benefits payable under the Plan, determined in accordance with and subject to any limitations established in the Basic Plan Document and the Employer's Adoption Agreement or Addendum. Current Credited Service shall include unused paid time off which the Employer elects to treat as Current Credited Service for a Terminated Vested Participant for certain purposes, as provided and subject to any limitations contained in the Adoption Agreement; provided, however, that leave conversions will be permitted only if (i) the leave is for unused accrued paid time off for vacation and/or sick leave or for comparable paid-time-off under an established leave policy without regard to whether the leave is due to illness or incapacity, (ii) the leave policy qualifies as a bona fide sick

and/or vacation leave plan for purposes of Code Section 409A and Treasury Regulation § 1.409A-1(a)(5), (iii) the Plan provides for service credit for an Employee's unused paid time off, provided that the eligibility requirements for participation in the Plan do not permit an Employee to become a Participant only in the Plan Year in which the Employee terminates employment, (iv) the conversion is automatic, the employee has no right to request a cash payment for the leave, and no such payment is made, (v) the unused paid time off is converted to service credit under a formula specified in the Adoption Agreement and which satisfies the definitely determinable standard of Treasury Regulation § 1.401-1(b)(1)(i), (vi) the Adopting Employer's Plan otherwise provides for service credit unrelated to the conversion of any Employee's unused paid time off, and (vii) the Participant's annual benefit, as adjusted by the leave conversion, does not exceed the limit under Code Section 415(b).

Section 3.02. "USERRA Military Service Credit."

(a) USERRA Military Service Credit. Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u). Code Section 414(u) provides that: (i) individuals reemployed under the Uniform Services Employment and Reemployment Rights Act of 1994 ("USERRA") must be treated as not having incurred a break in Service because of qualified military service, (ii) periods of qualified military service must be counted for vesting and benefit accrual purposes, except that periods of qualified military service must not be counted for benefit accrual purposes where the individual would have been required to make Employee Contributions under the Adopting Employer's Plan if the individual had remained continuously employed by the Adopting Employer during said period of qualified military service and the individual fails to make-up said Employee Contributions as provided herein,

(iii) make-up of Employee Contributions up to the maximum the individual would have been required to make if continuously employed must be allowed, in one lump sum payment or in installments, during the period beginning on reemployment and lasting for the lesser of three (3) times the period of qualified military service or five (5) years, (iv) any Employer Contributions contingent on make-up Employee Contributions must be made by the Employer, if and to the extent the individual contributes make-up Employee Contributions as provided herein, (v) earnings are not required to be credited unless and until the Employee contributes make-up contributions, (vi) make-up Contributions are based on compensation the individual would have received during the period of qualified military service (if not reasonably certain, compensation for the 12 month period (or, if shorter, the period of employment) immediately preceding qualified military service can be used), and (vii) make-up Contributions are subject to the limitations of Code Sections 402(g), 415, and 404(a) for the year to which the contribution relates, not the year in which the contribution is made.

(b) Ordered Military Leave under Georgia Law. To the extent not provided under subsection (a), the Plan will grant Credited Service for a period of "ordered" military service in accordance with and subject to the requirements of O.C.G.A. § 38-2-279(f) (a copy of which is included in the Appendix hereto) to a Participant who was an Eligible Employee when such ordered military service commenced, if and to the extent that the Participant (or in case of the Participant's death during the period of military service, the Participant's Pre-Retirement Beneficiary or the legal representative of the Participant's estate) makes up any required Employee Contributions as provided herein. To obtain Credited Service for the period of ordered military service, the Participant must make-up the required Employee Contributions in one lump sum payment or in installments during a period that begins upon commencement of

such ordered military service and ends no later than five (5) years after the period of military service ends. If the Participant dies during the period of military service, the Participant's Pre-Retirement Beneficiary or the legal representative of the Participant's estate must make up the required Employee Contributions no later than one (1) year following proof of the Participant's death. The amount of Employee Contributions required to be made to receive Credited Service for a period of military service shall be determined in the same manner as provided under USERRA and HEART and subsection (a) above.

(c) Effective with respect to deaths occurring on or after January 1, 2007, while a Participant is performing qualified military service (as defined in chapter 43 of title 38, United States Code), to the extent required by Code Section 401(a)(37), survivors of the Participant are entitled to any additional benefits that the Plan would provide if the Participant had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the Participant's death while employed. In any event, a deceased Participant's period of qualified military service must be counted for vesting purposes.

(d) Beginning January 1, 2009, to the extent required by Code Sections 3401(h) and 414(u)(2), an individual receiving differential wage payments (while the individual is performing qualified military service (as defined in chapter 43 of title 38, United States Code)) from an Employer shall be treated as employed by that Employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under Code Section 415(c). This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(e) Effective with respect to deaths occurring on or after January 1, 2009, while a Participant is performing qualified military service (as defined in chapter 43 of title 38, United

States Code), to the extent permitted by Code Section 414(u)(8), for benefit accrual and vesting purposes, the Participant will be treated as having returned to employment on the day before the death and as having terminated on the date of death. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

Section 3.03. **"Credited Past Service"** shall mean the number of years and complete months of Service of a Participant with the Adopting Employer prior to the Participant's Enrollment Date which are treated as Credited Past Service under the Employer's Adoption Agreement for purposes of meeting the Plan's requirements for participation, vesting, retirement and death benefit eligibility, and/or or for purposes of computing the amount of benefits payable under the Plan, subject to any limitations established in the Basic Plan Document, Adoption Agreement or Addendum.

Section 3.04. **"Prior Governmental Service"** shall mean government service preceding the Eligible Employee's employment or reemployment date with the Adopting Employer, usually for an entity other than the Adopting Employer, which the Employer elects to treat as Credited Service for certain purposes, as provided and subject to any limitations contained in the Adoption Agreement

Section 3.05. **"Prior Military Service"** shall mean Military Service not covered by Section 3.02 which the Employer elects to treat as Credited Service for certain purposes, as provided and subject to any limitations contained in the Adoption Agreement.

Section 3.06. **"Service"** shall mean regular service rendered as an Eligible Employee of the Adopting Employer. Service may include absence from active employment with the Adopting Employer under conditions which are not treated by the Employer as a Termination of Employment, subject to Article IV concerning leaves of absence and any other conditions or

limitations specified in the Basic Plan Document, Adoption Agreement or Addendum. For those Employers who elect in the Adoption Agreement to include elected or appointed members of the Governing Authority or Municipal Legal Officers as Eligible Employees, Service also means any tenure of office held by an elected or appointed member of the Governing Authority or a Municipal Legal Officer, provided that such tenure of office does not include any calendar period during which any elected or appointed member of the Governing Authority or Municipal Legal Officer is also in the regular service of the Employer as an Eligible Employee in another capacity. No Participant may receive credit for more than one (1) year of Service in any twelve (12) month period.

Section 3.07. **"Total Credited Service"** shall mean the sum of the Participant's Current Credited Service, Credited Past Service, Prior Military Service, and Prior Governmental Service, as specified in this Article and covered per the Employer's Adoption Agreement, subject to any limitations imposed under the Basic Plan Document or the Employer's Adoption Agreement or Addendum. The term Total Credited Service includes any Service required to be included in Total Credited Service by USERRA, or any other applicable federal or state law. Full months of Total Credited Service shall be treated as fractions of one (1) year. Partial months shall not be included in the calculation. The Employer may specify in the Adoption Agreement a maximum number of years that may be included as Total Credited Service. If an Employer elects in its Adoption Agreement to require Employee Contributions, Total Credited Service shall not include any period of time for which the Employee is required but fails to make such Employee Contributions to the Plan. If a Participant has received a cash single sum payment of the present value of the Participant's Plan benefit pursuant to Section 7.05 of the Basic Plan Document upon or following termination with an Adopting Employer and

subsequently returns to Service with such Adopting Employer, the Participant's prior Credited Service with the Adopting Employer for which the cash single sum payment was paid shall be counted for purposes of meeting the Plan's requirements for participation, vesting, and retirement and death benefit eligibility but shall not be counted as Credited Service for purposes of benefit computation.

An Employee excluded from participation because of age shall receive credit for all Service as required by law.

ARTICLE IV.

ELIGIBILITY, QUALIFICATION AND PARTICIPATION

Section 4.01. Classes of Eligible Employees. The Employer shall designate in the Adoption Agreement the class(es) of Employees which are eligible to participate in the Plan. Provided, however, that if a person does not meet the definition of "Employee" contained in Article II, such person may not be included in any Eligible Employee class.

Section 4.02. Qualifications for Participation.

(a) **Minimum Service Requirement.** With respect to each class of Eligible Regular Employees, the Employer may specify in the Adoption Agreement a minimum number of work hours per week and/or a minimum number of work months per year which are required to be scheduled in order to establish and maintain the Employee's status as an Eligible Regular Employee. It shall be the responsibility of the Adopting Employer to determine whether these requirements are and continue to be satisfied. In determining whether said requirements are satisfied, the following rules shall apply:

(1) If an Employee is otherwise includable in an Eligible Regular Employee class but does not meet the minimum service requirements established by the Employer for said class pursuant to subsection (a) above, the Employee shall not be considered an

Eligible Employee, unless and until such requirements are satisfied. If an Eligible Regular Employee who has not yet become a Participant no longer meets said minimum service requirement but remains an Employee of the Employer, such Employee shall no longer be considered an Eligible Regular Employee, unless and until the Employee again satisfies the minimum requirement.

(2) No period of employment during which an Employee fails to satisfy the Employer's minimum service requirement and no leave of absence granted to such Employee shall be counted in determining whether any waiting period for participation established by the Employer pursuant to subsection (b) below has been satisfied. However, provided the Employee remains continuously employed by the Employer, such periods shall not be considered a break in Service under subsection (c)(1) below for purposes of satisfying said waiting period.

(b) Waiting Period. Effective January 1, 2015 with respect to Eligible Regular Employees in service with the Adopting Employer on or after said date, Eligible Regular Employees shall not have a waiting period before participating in the Plan. Likewise, effective January 1, 2015, elected or appointed members of the Governing Authority and Municipal Legal Officers, if eligible to participate in the Plan, shall not have a waiting period before participating in the Plan. Notwithstanding subsection 20.01(f) of the Basic Plan Document, in the event that an Adopting Employer has specified in an Addendum to the Adoption Agreement in effect immediately prior to January 1, 2015 that any class or classes of Eligible Employees shall be subject to a waiting period before participating in the Plan, such provision shall no longer be effective on or after January 1, 2015.

(c) Prior to January 1, 2015, unless otherwise specified by the Adopting Employer in an Addendum to the Adoption Agreement, Eligible Regular Employees were required to complete one (1) year of continuous, uninterrupted service with the Adopting Employer in order to commence participation in the Plan. In determining whether an applicable waiting period was satisfied, the following rules shall apply:

(1) Breaks in Service. If an Eligible Regular Employee has a break in service prior to satisfying the waiting period for participation and later becomes reemployed by the Adopting Employer, such Employee shall be required to again satisfy the waiting period in order to be eligible to participate in the Plan. Service rendered prior to said break in service shall not be taken into account in determining whether the waiting period has been satisfied.

(2) Employed on Effective Date; Waiting Period Satisfied. If an Eligible Regular Employee is employed by the Adopting Employer on the Effective Date of the Plan and has completed a period of continuous, uninterrupted service as an Eligible Employee immediately prior to the Effective Date equal to or exceeding the length of the required waiting period, then the Employee shall be considered to have satisfied the waiting period and shall be eligible to commence participation in the Plan on the first day of the month immediately following or coinciding with the Effective Date of the Plan.

(3) Employed on Effective Date; Waiting Period Not Satisfied. If an Eligible Regular Employee is employed by the Adopting Employer on the Effective Date of the Plan but has not completed a period of continuous, uninterrupted service as an Eligible Regular Employee immediately prior to the Effective Date equal to or exceeding the length of the required waiting period, then the Employee shall be eligible to commence

participation in the Plan on the first day of the month immediately following or coinciding with the date that the Employee completes the minimum period of continuous, uninterrupted service as an Eligible Regular Employee necessary to satisfy the required waiting period.

(4) Employed After the Effective Date. If an Eligible Regular Employee is initially employed by the Adopting Employer after the Effective Date of the Plan, said Employee shall be eligible to commence participation in the Plan on the first day of the month immediately following or coinciding with the date that the Employee completes the minimum period of continuous, uninterrupted service as an Eligible Regular Employee necessary to satisfy the required waiting period.

(5) Treatment of Leaves of Absence. For purposes of determining whether the waiting period for participation has been satisfied, service shall include any period of absence from employment which is required to be taken into account for such purpose under USERRA, the FMLA, or any other applicable federal or state law. Unless otherwise required by law or unless the terms of the leave otherwise specify, an authorized leave of absence granted to an Eligible Regular Employee by the Adopting Employer shall be counted as Credited Service for purposes of determining whether the waiting period for participation has been satisfied. However, unless otherwise required by law or unless the terms of the leave otherwise specify, if an Eligible Regular Employee on an authorized leave of absence fails to return to active employment or office upon expiration of the leave of absence, the Eligible Regular Employee shall be considered to have incurred a break in service for purposes of meeting the waiting period for participation as of the date preceding the approved leave period.

(6) Treatment of Service as an Ineligible Employee. If an Employee of the Adopting Employer who is not an Eligible Employee becomes an Eligible Regular Employee while remaining continuously employed by the Adopting Employer, said Eligible Employee shall become eligible to commence participation on the first day of the month immediately following or coinciding with the date the Employee meets the eligibility requirements for participation under this Article. For purposes of satisfying any waiting period imposed by the Adopting Employer, and unless otherwise specified in the Adoption Agreement, the Eligible Regular Employee's prior period of employment as an Ineligible Employee shall be credited in the same manner as service as an Eligible Regular Employee provided that during said prior period of service as an Ineligible Employee, the Employee satisfied any minimum service requirement established by the Employer pursuant to Section 4.02(a). Unless otherwise specified in the Adoption Agreement, if an Eligible Regular Employee becomes an Ineligible Employee prior to satisfying the waiting period for participation in the Plan, said Employee's service as an Ineligible Employee shall be credited in the same manner as service as an Eligible Regular Employee for purposes of satisfying said waiting period, provided that the Ineligible Employee satisfies the applicable minimum service requirements established for Eligible Employees pursuant to Section 4.02(a). However, in no event will an Ineligible Employee be permitted to become a Participant in the Plan unless and until said Employee has satisfied the waiting period and has again become an Eligible Employee. For purposes of satisfying the waiting period, leaves of absence granted to an Ineligible Employee shall be treated in the same manner as leaves of absence for Eligible Regular Employees under paragraph (5) above.

(7) Prior Participation in Another GMEBS Plan. An Eligible Regular Employee who is hired after the Effective Date of the Plan shall be eligible to become a Participant on the first day of the month immediately following or coinciding with the date on which the Employee is employed by the Adopting Employer, regardless of any waiting period requirement established by the Employer, provided that: (i) said Employee's immediate prior employment was with another Adopting Employer in the GMEBS; (ii) said Employee was a Participant in the previous Adopting Employer's GMEBS retirement plan; and (iii) said Employee satisfies any minimum service requirement established by the Adopting Employer pursuant to Section 4.02(a) for the Employee's class.

Section 4.03. Establishing Participation in the Plan.

(a) Mandatory vs. Optional Participation. Participation in the Plan shall be considered mandatory for all classes of Eligible Employees unless, with respect to a particular class, the Employer specifies in the Adoption Agreement that participation is optional for members of said class.

(b) Mandatory Participation. If participation is mandatory for a class of Eligible Employees, then, except as otherwise provided in subsection (e) below, all Eligible Employees in the class shall become Participants in the Plan as of the date they are employed, provided that they satisfy the Adopting Employer's eligibility requirements for participation. With respect to Eligible Employees initially employed or reemployed prior to January 1, 2015, if participation is mandatory for a class of Eligible Employees, then except as provided in subsection (e) below, all Eligible Employees in the class shall become Participants in the Plan on the first day of the month immediately following or coinciding with the date they satisfy the applicable waiting

period and any other eligibility requirements for participation; provided, however, that any Eligible Employee who was employed prior to January 1, 2015, was subject to a waiting period before participating in the Plan, and had not satisfied such waiting period prior to January 1, 2015 shall commence participation in the Plan effective January 1, 2015. Eligible Employees shall provide to the Pension Committee on an Applicable Form such participation enrollment information as shall be required by the Pension Committee, which shall include the Eligible Employee's acceptance of the terms and conditions of the Plan. Notwithstanding an Eligible Employee's failure to complete the Applicable Form, the Eligible Employee shall become a Participant as specified in the Adoption Agreement.

(c) Optional Participation. The Employer may specify in the Adoption Agreement that participation is optional for certain classes of Eligible Employees, including but not limited to Employees in the following categories: elected or appointed members of the Governing Authority, Municipal Legal Officers, City Manager, and Department Heads. If participation is optional for an Eligible Employee, then the Eligible Employee may elect to become a Participant at the Eligible Employee's option by filing with the Pension Committee, on an Applicable Form, such information as shall be required to enroll in the Plan, which shall include the Eligible Employee's acceptance of the terms and conditions of the Plan. The election to participate must be made within 120 days after the later of: the date the Eligible Employee commences employment with the Adopting Employer, the date the Eligible Employee is elected or appointed to office, or the date participation in the Plan is first permitted for members of a class to which the Eligible Employee belongs. The election to participate shall be irrevocable, and the failure to make an election within the 120-day time limit specified above shall be deemed an irrevocable election not to participate in the Plan. If Employee contributions are required under the

Adopting Employer's Plan, then Eligible Employees who apply for participation within the 120 day period may be required to make retroactive contributions in order to receive credit under the Plan for creditable Service prior the date they apply to participate in the Plan.

(d) Participation in the Plan shall not give any Eligible Employee the right to be retained in the employ of the Adopting Employer nor, upon dismissal, to have any right or interest in the Trust Fund other than as herein provided.

(e) Notwithstanding anything in this Section 4.03 to the contrary, if within 120 days following the date on which an Employee is first employed or first takes office with an Adopting Employer, the Employee enters into a written agreement or employment contract with the Adopting Employer pursuant to which the Employee agrees that the Employee will not participate in the Plan, the Employee shall be ineligible to participate in the Plan regardless of whether the Employee otherwise satisfies the eligibility requirements for participation in the Plan. The Employer shall notify the Administrator if and when an Employee has entered into such an agreement with the Employer and provide such information to the Administrator as necessary to confirm the existence of said agreement. A subsequent change in the terms of said agreement will not make the Employee eligible to participate in the Plan unless the Adopting Employer amends its Adoption Agreement to specifically require participation by said Employee.

Section 4.04. Change in Employment Status.

(a) Transfer to Ineligible Status. Unless otherwise specified by the Employer in the Adoption Agreement, if a Participant's employment status changes such that the Participant becomes an Ineligible Employee, said Employee shall cease to accrue benefits under the Plan for any purpose and the Employee's interest under the Plan, if any, shall be only such as existed immediately before the Employee became an Ineligible Employee, unless and until the

Employee again becomes a Participant. In no event will the Employee's service or earnings as an Ineligible Employee be taken into account for purposes of meeting the Plan's minimum service requirements for vesting, retirement eligibility, death benefit eligibility, or for purposes of computing the amount of any benefit payable under the Plan. However, said period of service as an Ineligible Employee shall not be considered a break in Service under Section 4.06, provided the Ineligible Employee remains continuously employed by the Adopting Employer. If the Ineligible Employee does not again become a Participant prior to Retirement or Termination of Employment, the Employee's Vested Benefit, if any, shall be paid as provided in Article IX.

(b) Transfer Back to Eligible Status. If an Ineligible Employee described in subsection (a) above remains continuously employed by the Adopting Employer and has another change in employment status such that the Employee again becomes a Participant, the Employee shall thereafter be entitled to accrue benefits in accordance with the terms of the Plan as in effect as of the date of the subsequent change in employment status. In no event, however, shall such a Participant receive a greater benefit under the Plan than that which the Participant would have received had the Participant not had a change in employment status.

Section 4.05. Participant Leaves of Absence.

(a) USERRA, FMLA Leave – Notwithstanding any provision of this Plan to the contrary, if any period of absence is required to be counted under USERRA, the FMLA or any other applicable federal or state law as Current Credited Service for the purpose of computing the amount of any benefit payable under the Plan, or for purposes of meeting the Plan's minimum service requirements for vesting, retirement or death benefit eligibility, then said period of absence shall be counted as such in accordance with and subject to the requirements of such law.

(b) Other Leaves of Absence. Unless otherwise required by law or unless the terms of the leave otherwise specify, an authorized leave of absence granted to a Participant by the Adopting Employer will be counted as Current Credited Service for the purpose of computing the amount of any benefit payable under the Plan, and for purposes of meeting the Plan's minimum service requirements for vesting and benefit eligibility. However, if the Participant does not return to active employment upon expiration of the authorized leave period, then subsection (c) shall apply.

(c) Failure to Return to Service. Unless otherwise required by law or unless the terms of the leave otherwise specify, if a Participant does not return to active employment with the Employer upon expiration of a leave of absence, the Participant's interest under the Plan, if any, including the Participant's Current Credited Service for the purpose of computing the amount of any benefit payable under the Plan, and for purposes of meeting the Plan's minimum service requirements for vesting and any minimum service requirements for retirement or death benefit eligibility, will be limited to that accrued as of the date preceding the approved leave period.

(d) Unused Leave. The Adopting Employer may elect in the Adoption Agreement to credit certain unused leave at termination or retirement for which the Participant is not paid as Credited Service, subject to the terms and limits specified in the Basic Plan Document, Adoption Agreement or Addendum.

Section 4.06. Non-Vested Participant Breaks in Service.

Except as otherwise provided in the Adoption Agreement, this Section shall apply only to Participants who are Eligible Regular Employees. If a non-vested Participant experiences a break in service, the Participant's Current Credited Service shall not include any Service rendered

prior to the break in service, unless the Participant returns to employment with the Adopting Employer and performs the lesser of: service equal to the break in service, or service equal to one (1) year. The following limitations shall apply in administering the break in service rule:

(a) Absence of Less Than One (1) Year. If a Participant terminates employment with the Adopting Employer and returns to employment with the Adopting Employer within one (1) year after said termination, the Participant shall not be deemed to have incurred a break in service. Except as otherwise required under this Section, however, the time the Participant was absent shall not be taken into account for any purpose under the Plan.

(b) Interim Employment with Another GMEBS Employer. If a Participant terminates employment with the Adopting Employer and returns to employment with the Adopting Employer after having spent the interim period in the continuous employment of another Employer in the GMEBS, the Participant shall not be deemed to have incurred a break in Service. The time the Participant was absent may be taken into account for purposes of determining whether the Participant has met the minimum service requirements for vesting and retirement eligibility under the Adopting Employer's Plan, as provided by and subject to the provisions of Section 9.05 concerning portability. However, in no event shall the time the Participant was absent from the Adopting Employer be taken into account for the purpose of computing the amount of any benefit payable under the Adopting Employer's Plan.

(c) Treatment of Leaves of Absence. No leave of absence or other period of absence from employment shall be considered a break in Service if it is not permitted to be treated as such under USERRA, the FMLA, or any other applicable federal or state law. Unless otherwise required by law or unless the terms of the leave otherwise specify, any other authorized leave of absence granted to a Participant shall not be deemed a break in Service, provided the Participant

was regularly employed by the Employer immediately prior to the Participant's leave of absence and the Participant is reemployed by the Employer upon expiration of the leave of absence. Unless otherwise required by law or unless the terms of the leave otherwise specify, if a Participant does not return to active employment upon expiration of the approved leave period, the Participant will be considered to have incurred a break in Service under this Section as of the date immediately preceding the approved leave period.

(d) Transfer to Ineligible Employee Status. Unless otherwise specified by the Employer in the Adoption Agreement, if a Participant's employment status changes such that the Participant becomes an Ineligible Employee pursuant to Section 4.04, the period of time spent as an Ineligible Employee shall not be considered a break in Service under this Section, provided the Participant remains employed by the Adopting Employer. Unless otherwise specified by the Adopting Employer, leaves of absence granted to an Ineligible Employee will not be considered a break in Service under this Section, provided the Ineligible Employee returns to active employment with the Employer upon expiration of the approved leave period and the requirements of subsection (c) are otherwise satisfied with respect to such leave of absence.

(e) Graduated Vesting. If the Adopting Employer has established a graduated vesting schedule in the Adoption Agreement, and a Participant who is partially vested Terminates Employment with the Adopting Employer and subsequently returns to employment with the Adopting Employer, the Participant shall not be deemed to have incurred a break in service. Except as otherwise required under this Section, however, the time the Participant was absent shall not be taken into account for any purpose under the Plan.

(f) Repeated Breaks in Service. If a non-vested Participant has a break in Service, returns to employment with the Adopting Employer, and experiences one or more additional

breaks in Service prior to satisfying the one (1) year Service requirement necessary to work off the initial break, then the Participant's Current Credited Service shall not include any Service rendered prior to the most recent break in Service, unless upon the Participant's return to employment with the Employer following the most recent break in Service the Participant performs Service for a period of at least one (1) year.

ARTICLE V.

RETIREMENT ELIGIBILITY

(a) The Retirement prerequisites of a Participant under this Plan are contingent upon the type of Retirement offered by the Employer in the Adoption Agreement and selected by the Participant: that is, Normal Retirement, Alternative Normal Retirement, Early Retirement, Late Retirement, or Disability Retirement, as applicable. The provision of an Alternative Normal Retirement benefit or the designation of an Alternative Normal Retirement Date in the Adoption Agreement shall not be construed to establish an Alternative Normal Retirement Age or Alternative Normal Retirement Date for purposes of the definition of Accrued Benefit under Section 2.01, for purposes of computing death benefits under Article VIII, or for purposes of applying the actuarial equivalent conversion provisions of Article XII. The minimum age and service requirements and other prerequisites associated with each type of Retirement for each class of Eligible Employees shall be as specified in the pertinent sections of the Adoption Agreement. Except as otherwise provided in the Basic Plan Document, Adoption Agreement or Addendum with respect to In-Service Distributions for those who remain in service after they qualify for Normal Retirement or Alternative Normal Retirement, receipt of Retirement benefits shall also be contingent upon Termination of Employment.

(b) Provided a Participant is otherwise eligible to receive a Retirement benefit under the Plan, Retirement is contingent upon the satisfactory completion of the Applicable Form provided for such purpose and the acceptance of the Applicable Form by the Pension Committee.

(c) Retirement applications shall be prepared and submitted at such time as to reach the office of GMEBS no earlier than ninety (90) days and no later than thirty (30) days prior to a Participant's effective Retirement Date. A Participant's effective Retirement date shall be the first day of the month coinciding with or following the date the Participant has satisfied all of the prerequisites for Retirement as specified in this Article V, and actually Retires.

ARTICLE VI.

RETIREMENT BENEFITS

Section 6.01. Normal Retirement Benefit.

(a) A Participant, upon Retirement on or after the Participant's Normal Retirement Date (or Alternative Normal Retirement Date, as applicable), shall receive a Monthly Retirement Benefit under which payments shall commence on the first day of the month in which the Participant's effective Retirement Date occurs and shall be payable on the first day of each month thereafter during the Participant's lifetime. Normal Retirement benefits (not including Alternative Normal Retirement benefits or the In-Service Distribution of Normal or Alternative Normal Retirement benefits) shall be paid retroactively to the first day of the month following the month in which the Participant's Termination occurs (or, if the Participant's Termination occurs on the first of the month, the first day of the month in which the Participant's Termination occurs) or if later, the first day of the month in which the Participant's Normal Retirement Date occurs. The amount of the Monthly Retirement Benefit shall be determined based upon the applicable benefit formula specified in the Adoption Agreement and in effect at the Participant's Termination. If the Participant elects a form of benefit payment other than the standard form, the

amount of the Monthly Retirement Benefit will be adjusted in accordance with and subject to the terms of the option elected (see Section 7.01).

(b) No interest shall be paid on the retroactive payment of Normal Retirement benefits.

Section 6.02. Early Retirement Benefit.

(a) A Participant, upon Retirement on or after the Participant's Early Retirement Date and before the Participant's Normal Retirement Date or Alternative Normal Retirement Date, may receive a Monthly Retirement Benefit under which payments shall commence on the first day of the month in which the Participant's effective Retirement Date occurs and shall be payable on the first day of each month thereafter during the lifetime of the Participant. The amount of such Monthly Retirement Benefit shall be computed in the same manner as for a Normal Retirement benefit, but reduced on an Actuarially Equivalent basis in accordance with the actuarial table contained in Section 12.01. An Adopting Employer may adopt in the Adoption Agreement an alternative early retirement actuarial reduction table for one or more classes of Eligible Employees, provided the adoption of such table satisfies the requirements of Code Section 401(a)(25).

(b) Provided the Employer has elected in the Adoption Agreement to provide Disability benefits, a Participant who is otherwise eligible for an Early Retirement benefit may apply for and receive an Early Retirement benefit (i) while a Disability Retirement benefit determination is pending, or (ii) while waiting for an approved Disability Retirement benefit to commence. Upon a determination that the Participant is entitled to receive a Disability Retirement benefit, the Participant's benefit will be changed to a Disability Retirement benefit (if greater), retroactive to the Disability Retirement Date, provided that the requirements of Section

6.04(b) relating to making application for retroactive payments of Disability Retirement benefits are met. If said requirements are not met but the Participant otherwise qualifies for a Disability Retirement benefit, the Participant's benefit will be changed to a Disability Retirement benefit as of the first day of the month coinciding with or following the date that the Participant submits documentation sufficient to confirm the Participant's eligibility for a Disability Retirement benefit, as described in Section 6.04(c). However, no change in the form of benefit payment or designation of the Post-Retirement Beneficiary may be made, and no Post-Retirement Beneficiary may be named if one had not been previously named.

(c) Early Retirement benefits shall be paid retroactively to a date (first day of the month) designated on the Participant's retirement application, provided that such date may be no earlier than the later of: 1) four (4) full calendar months prior to the date of the Pension Committee Secretary's execution of the Participant's retirement application; or 2) the Participant's Early Retirement Date. No interest shall be paid on the retroactive payment of Early Retirement benefits.

Section 6.03. Late Retirement Benefit.

(a) A Participant may Retire from the active Service of the Adopting Employer on the first day of any month after the Participant's Normal Retirement Date, in which case the Participant shall receive a Late Retirement benefit. For purposes of this provision and except as otherwise provided in an Employer's Adoption Agreement or Addendum, a Participant will be treated as having Retired from the active service of the Adopting Employer if the Participant submits a GMEBS retirement application no later than thirty-one (31) days after the Participant's Termination of Employment and said application is approved by GMEBS. The Late Retirement benefit shall be calculated in the same manner as the Normal Retirement benefit. However, the

Employer may elect in the Adoption Agreement or Addendum thereto to provide for an increased Late Retirement benefit, in which case the Late Retirement Benefit shall be calculated in the same manner as the Normal Retirement Benefit, but increased as provided in the Adoption Agreement or Addendum, as applicable.

Section 6.04. Disability Benefit.

(a) Where the Employer has elected in the Adoption Agreement to provide Disability benefits, a Participant who becomes Disabled and Terminates Employment due to Disability and is otherwise entitled to receive a Disability Retirement benefit, shall receive such benefit in accordance with and subject to the requirements of this Section.

(b) Requirements for Payment as of Disability Retirement Date - Disability Retirement benefit payments shall be payable during a Participant's Disability as of the first day of the month coinciding with or next following, and may be paid retroactively to, the Participant's Disability Retirement Date, provided the following requirements are satisfied:

(1) Application for Disability Award Must Be Filed Within 1 Year After Termination — No later than one (1) year after the Participant's Termination of Employment due to Disability, the Participant must file an application for a federal Social Security Administration (SSA) disability award or, if applicable under Section 2.23, an application for determination of Disability by the Pension Committee; and

(2) GMEBS Retirement Application Form and Disability Award Must Be Submitted Within 1 Year of Termination, or if Later, Within 6 Months After Date of Disability Award; Proof of Application for Disability Award Before Expiration of 1 Year Following Termination Due to Disability — The Participant must submit the following to the Pension Committee Secretary within one (1) year after the Participant's Termination

of Employment due to Disability or within six (6) months after the date of such award or determination, whichever is later:

- (i) the Participant's GMEBS Retirement Application Form;
- (ii) the SSA Disability Award (or, if applicable under Section 2.23, the Pension Committee determination of Disability) reflecting a disability onset date on or before the Participant's Termination date; and
- (iii) documentation the Administrator deems sufficient to establish that the Participant filed an application for a federal SSA disability award (or, if applicable under Section 2.23, an application for determination of Disability by the Pension Committee) before the expiration of one (1) year following Termination of employment due to Disability. Such documentation may include a copy of such application, a copy of the Disability award or determination received in response to such application, or an affidavit completed by the Participant (on the GMEBS retirement application or another Applicable Form provided for such purpose) in which the Participant affirms that such application has been filed.

(3) Special Rule in Case of Disability Award on Subsequent SSA Disability Application - In the event that a Participant's application for a SSA disability award is denied, the Participant must make any subsequent application for a SSA disability award within six (6) months following such denial becoming final, must allege in the subsequent SSA application a disability onset date that is on or before the Participant's Termination date, and where the Participant is subsequently granted a SSA disability award, the Participant must submit the following to the Pension Committee Secretary

within six (6) months after the date of such favorable award, or if later, one (1) year after the Participant's Termination of Employment:

(i) a GMEBS retirement application form;

(ii) the Participant's SSA disability award reflecting a disability onset date on or before the Participant's Termination date or reflecting a disability onset date that immediately follows the date of denial of the Participant's prior SSA disability application (due to application of Social Security Administration res judicata rules) but the Participant's actual Disability onset date was on or before the Participant's Termination date as provided under Section 2.23; and

(iii) documentation the Administrator deems sufficient to establish that within six (6) months after the SSA's denial of the Participant's initial application for a disability award, the Participant filed a subsequent application for a SSA disability award in accordance with this subsection 6.04(b)(3). Such documentation may include a copy of such application, a copy of the Disability award or determination received in response to such application, or an affidavit completed by the Participant (on the GMEBS retirement application or another Applicable Form provided for such purpose) in which the Participant affirms that such application has been filed.

(c) Prospective Payment Following Retirement Application — If the Participant who has Terminated Employment due to Disability is otherwise eligible to receive a Disability Retirement benefit and except as otherwise permitted under subsection 6.04(b) above with respect to payment of Disability Retirement benefits retroactive to the Participant's Disability Retirement Date, Disability Retirement benefits shall be payable as of the first day of the month

following or coinciding with the date of acceptance of the Participant's completed GMEBS retirement application form by the Pension Committee, provided such application includes: (1) a Social Security Administration (SSA) disability award reflecting a disability onset date on or before the Participant's Termination date; or (2) if applicable under Section 2.23, a Pension Committee determination of Disability reflecting a Disability onset date on or before the Participant's Termination date; or (3) where the Participant has received a SSA disability award in response to a subsequent SSA disability application as provided under Section 2.23, documentation which the Administrator deems sufficient to establish that the disability onset date reflected in the SSA disability award immediately follows the date of denial of the Participant's prior SSA disability application (due to application of Social Security Administration res judicata rules) and that the Participant's actual Disability onset date was on or before the Participant's Termination date. In no event shall Disability Retirement benefits be payable before the Participant's Disability Retirement Date.

(d) Amount of Disability Retirement Benefit - The amount of the monthly Disability Retirement benefit shall be determined as provided in the Adoption Agreement. The Adopting Employer may elect in the Adoption Agreement to specify another method for calculation of the benefit, and require an offset against the monthly Disability Retirement benefit for other types of payments received by the Participant. The Participant shall receive the monthly Disability Retirement benefit provided in this Section, or any other Monthly Retirement Benefit granted under the Plan for which the Participant is eligible if such benefit is greater than the aforesaid monthly Disability Retirement benefit. However, under no circumstances shall any Retired Participant be entitled at one time to more than one type of Retirement benefit granted under the Plan.

(e) No interest shall be paid on the retroactive payment of Disability benefits.

(f) Where an Employer has executed or executes a General Addendum to the Employer's Adoption Agreement which contains provisions on payment of Disability Retirement benefits that conflict with the procedures or time limitations established in this Section 6.04, said provisions of the General Addendum shall govern to the extent they conflict with this Section 6.04.

Section 6.05. Cost of Living Adjustment.

(a) An Employer may elect in the Adoption Agreement to provide for a variable annual cost-of-living adjustment in the amount of Monthly Retirement Benefits payable under the Plan to Participants or their Beneficiaries. In such event, the amount of benefits payable under the Plan shall be adjusted as provided in this Section, except as otherwise provided in the Employer's Adoption Agreement.

(b) The Current Average Cost-of-Living Index Figure as defined in Section 2.21 shall be ascertained as of the Adopting Employer's Adjustment Date in each year.

(c) Each Monthly Retirement Benefit then being received by Participants who terminate after the date specified in the Adoption Agreement and their Beneficiaries shall thereupon be adjusted as follows:

(1) Each Monthly Retirement Benefit shall be increased by the percentage that the Current Average Cost-of-Living Index Figure increased over each recipient's Cost-of-Living Base Figure, as defined in Section 2.17. If the Current Average Cost-of-Living Index Figure is less than the Cost-of-Living Base Figure, no reduction in the Monthly Retirement Benefit, shall be effected. Increased benefits are payable on the Adjustment Date.

(2) Notwithstanding the foregoing provisions, no increase in the amount of a Monthly Retirement Benefit due to changes in the Current Average Cost-of-Living Index Figure effective at any annual Adjustment Date shall be in excess of a certain percentage of the amount of the Monthly Retirement Benefit payable immediately prior to each Participant's or Beneficiary's applicable adjustment date. Said percentage limit shall be designated by the Employer in the Adoption Agreement.

(d) An Adopting Employer may implement one-time or ad-hoc cost-of-living adjustments by adopting an Addendum to the Adoption Agreement to effect said increase.

(e) In lieu of the variable cost-of-living adjustment referred to in subsections (a)-(c) above, the Employer may elect in the Adoption Agreement to provide for a fixed annual cost-of-living adjustment, subject to any limitations imposed by the Internal Revenue Code or regulations issued thereunder.

Section 6.06. In-Service Distribution; Suspension of Benefits Following Return to Service.

(a) **General Rules.**

(1) Unless otherwise provided in this Section and in the Adoption Agreement or any Addendum thereto, a Participant shall be required to Terminate Employment with an Adopting Employer prior to commencing Early, Normal or Alternative Normal Retirement benefits under such Employer's GMEBS Plan. Likewise, unless otherwise provided in this Section and in the Adoption Agreement or any Addendum thereto, if a Retired Participant returns to service as an Eligible Employee with an Adopting Employer from whose Trust Fund the Retired Participant is receiving a Monthly

Retirement Benefit, said Monthly Retirement Benefit shall be suspended as of the date of said return to service.

(2) Re-Computation of Benefit in Case of Suspension. In any case where the payment of a Participant's Retirement benefit shall have been suspended, the Retirement benefit payable on the Participant's re-retirement (whether before or after the Participant's Normal Retirement Date) shall be the benefit computed in accordance with this Article on the basis of the Participant's aggregate Total Credited Service and Final Average Earnings, if applicable, at the time of the Participant's subsequent re-retirement, but reduced by the Actuarial Equivalent of any Retirement benefits received by the Participant prior to said suspension, and by any actuarial factors used in calculating the benefit payable at the time of the Participant's previous Retirement. For purposes of this subsection, the term "Actuarial Equivalent" shall mean an amount equal to the value of Retirement benefits received, determined as of the date of the Participant's Re-retirement and computed on the basis of the actuarial assumptions contained in Section 12.06. In no event shall the resulting benefit be less than the benefit payable immediately prior to the Participant's return to service with the Adopting Employer. A Retired Participant who is reemployed as an Eligible Employee shall not be authorized to change the form of benefit payment on the Participant's subsequent re-retirement, or to change the Post-Retirement Beneficiary, or to name a Post-Retirement Beneficiary if one had not been previously named. For the purposes of this Section, any such Participant's Credited Service subsequent to reemployment by the Employer as an Eligible Employee shall commence as of the date of the Participant's reemployment as an Eligible Employee.

(3) Minimum Age Parameters for In-Service Distribution. In order to commence or continue receiving Normal or Alternative Normal Retirement benefits without a Bona Fide Separation from Service, if permitted under the Employer's Plan, a Participant shall be required to satisfy the following minimum age and other requirements:

(A) For a Participant who is not a "public safety employee" at the time the Participant applies for Normal or Alternative Normal Retirement benefits (and a Participant who is a public safety employee at the time the Participant applies for Normal or Alternative Normal Retirement benefits unless subparagraph 6.06(a)(3)(B) below applies), the Participant must be at least age sixty-two (62) (or such lower age specified under applicable federal law as a safe-harbor age for distributions during working retirement) to receive an In-Service Distribution.

(B) For a Participant who is a "public safety employee" in the service of the Employer at the time the Participant applies for Normal or Alternative Normal Retirement benefits, the Participant must be at least age sixty-two (62) (or such lower age specified under applicable federal law as a safe-harbor age for distributions during working retirement) to receive an In-Service Distribution; provided, however, that if the Adopting Employer's Plan provides for a Normal Retirement Age or Alternative Normal Retirement Age which applies only to public safety employees and which is at least age fifty (50) (or such lower age specified under applicable federal law as a safe-harbor age for distributions during working retirement), the Participant may receive an In-Service Distribution as long as the Participant is at least such age. For purposes of this subparagraph (B),

"public safety employees" are employees of the Adopting Employer who provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the Adopting Employer.

(C) Notwithstanding any provision to the contrary, effective for Employees hired during Plan Years beginning on or after the later of: January 1, 2017; or the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is 3 months after the final regulations are published in the Federal Register, the Plan will comply with the final Normal Retirement age regulations applicable to governmental plans established in Treas. Reg. 1.401(a) – 1, as amended.

(b) Exception to General Rule; In-Service Distribution for Eligible Employees; Continuation of Retirement Benefits Following Return to Service as an Eligible Employee After a Bona Fide Separation from Service.

(1) In-Service Distribution Absent Termination or Bona Fide Separation from Service Upon Qualifying for Normal Retirement. Notwithstanding the general rules described in subsection 6.06(a)(1), an Adopting Employer may elect in the Adoption Agreement or any Addendum thereto to permit In-Service Distribution to Participants (or certain classes of Participants) who have satisfied the eligibility requirements for Normal Retirement or Alternative Normal Retirement, as applicable, under the Adopting Employer's Plan while remaining Eligible Employees under the Plan, in accordance with and subject to the requirements of this paragraph. An Employer may elect in the Adoption Agreement or any Addendum thereto to permit Participants or certain classes of Participants who have (i) satisfied the qualifications for Normal Retirement or

Alternative Normal Retirement, as applicable, (ii) satisfied the minimum age parameters set forth in subparagraph 6.06(a)(3), and (iii) applied for such Retirement benefits on the Applicable Form to apply for and begin receiving their Retirement benefit as an In-Service Distribution while in service as an Eligible Employee even though they have not yet Terminated Employment with the Employer or to continue receiving Normal or Alternative Normal Retirement benefits following a return to Service as an Eligible Employee without first incurring a Bona Fide Separation from Service.

(2) Exception to General Rule; Continuing to Draw Early, Normal or Alternative Normal Retirement Benefits After Returning to Service as Eligible Employee Following a Bona Fide Separation from Service. Notwithstanding the requirement for suspension of benefits upon reemployment under subsection 6.06(a)(1) above, an Adopting Employer may elect in the Adoption Agreement or any addendum thereto to permit Retired Participants or certain classes of Retired Participants who return to service as Eligible Employees following a Bona Fide Separation from Service to continue receiving Early, Normal or Alternative Normal Retirement benefits following such return to service, regardless of the Participant's age, in accordance with and subject to the following requirements:

(A) Reemployment as Eligible Employee after Normal Retirement Date. An Adopting Employer may elect (notwithstanding required suspension under Section 6.06(a)(1)) in the Adoption Agreement or any Addendum thereto to permit Retired Participants or certain classes of Retired Participants to continue receiving Retirement benefits if they return to service with the Adopting Employer as an Eligible Employee on or after their Normal Retirement Date or

Alternative Normal Retirement Date, as applicable, and after a Bona Fide Separation from Service. If the Employer has made such an election in the Adoption Agreement or Addendum, then Retired Participants who are designated in the Adoption Agreement or Addendum as eligible to continue receiving Retirement benefits following their return to service as an Eligible Employee may continue to receive their Monthly Retirement Benefit if they return to service with the Adopting Employer as an Eligible Employee after a Bona Fide Separation from Service and on or after their Normal Retirement Date or Alternative Normal Retirement Date, as applicable.

(B) Reemployment as Eligible Employee Before Normal Retirement Date.

(i) Suspension of Early Retirement Benefits until Normal Retirement Date; Resumption of Benefits upon Attainment of Normal Retirement Date. An Adopting Employer may elect (notwithstanding required suspension under Section 6.06(a)(1)) in the Adoption Agreement or any Addendum thereto to provide that, with respect to Retired Participants or certain classes of Retired Participants, if such a Retired Participant returns to Service as an Eligible Employee before the Normal Retirement Date (or Alternative Normal Retirement Date, as applicable), and after a Bona Fide Separation from Service, and remains employed until the Normal Retirement Date (or Alternative Normal Retirement Date, as applicable), the Participant may apply for and receive a Monthly Retirement Benefit on or after the Normal Retirement

Date (or Alternative Normal Retirement Date, as applicable), notwithstanding continued service with the Employer, provided that the Participant satisfies the minimum age parameters for an In-Service Distribution pursuant to Section 6.06(a)(3). Said Monthly Retirement Benefit shall be computed in accordance with this Article, based upon the Participant's Total Credited Service and Final Average Earnings, if applicable, through the date the Participant recommences receipt of a Monthly Retirement Benefit pursuant to this subsection. However, except as otherwise provided in the Adoption Agreement or in an Addendum thereto, said Monthly Retirement Benefit shall be reduced by the Actuarial Equivalent of any Retirement benefits received by the Participant prior to said suspension, and by any actuarial factors used in calculating the benefit payable at the time of the previous Retirement. For purposes of this subsection, the term "Actuarial Equivalent" shall mean an amount equal to the value of Retirement benefit payments received, determined as of the date the Participant recommences receipt of a Monthly Retirement Benefit, and computed on the basis of the actuarial assumptions contained in Section 12.06. In no event shall the resulting Monthly Retirement Benefit be less than the Participant's benefit payable immediately prior to said suspension.

(ii) Exception to General Rule; Continuation of Early Retirement Benefits Upon Return to Service as Eligible Employee Following Bona Fide Separation from Service. Notwithstanding the

requirement for suspension of benefits upon reemployment under subsection 6.06(a)(1) above, an Adopting Employer may elect in the Adoption Agreement or any Addendum thereto to permit Retired Participants or certain classes of Retired Participants who are receiving an Early Retirement benefit to continue receiving said benefit if they return to Service with the Employer after a Bona Fide Separation from Service as an Eligible Employee at any time on or after their Early Retirement Date but before their Normal Retirement Date (or Alternative Normal Retirement Date, as applicable). If the Employer has made such an election, and if a Retired Participant belongs to a class for which such continuation of benefit payments is permitted, then upon the Retired Participant's return to service with the Employer as an Eligible Employee after the Early Retirement Date and after a Bona Fide Separation from Service (or at least a six-month separation from Service, as applicable), the Retired Participant may continue to receive a Monthly Retirement Benefit during the period of reemployment.

(3) A Participant who receives an In-Service Distribution of Retirement benefits while serving as an Eligible Employee or who receives Retirement Benefits following a return to service as an Eligible Employee shall not be authorized to change the form of benefit payment, or to change the Post-Retirement Beneficiary on the Participant's subsequent termination of employment, or to name a Post-Retirement Beneficiary if one had not been previously named.

(4) With respect to Participants described in Section 6.06(b)(1) and (2) above, except as otherwise provided in the Adoption Agreement or in an Addendum thereto, upon said Participants' subsequent termination of employment or vacation of office, as applicable, their Monthly Retirement Benefit shall be computed in accordance with this Article on the basis of their aggregate Total Credited Service and Final Average Earnings, if applicable, at the time of such termination of employment or vacation of office, but it shall be reduced by the Actuarial Equivalent of any Retirement benefits received prior to re-retirement, and by any actuarial factors used in calculating the benefit payable at the previous Retirement. For purposes of this subsection, the term "Actuarial Equivalent" shall mean an amount equal to the value of Retirement benefits received, determined as of the date of the Participant's re-retirement and computed on the basis of the actuarial assumptions contained in Section 12.06. In no event shall the resulting benefit be less than the benefit payable immediately prior to the Participant's re-retirement.

(c) Exception to General Rule; In-Service Distribution for Individuals Who Are Not Eligible Employees; Continuation of Retirement Benefits Following Return to Service in a Capacity Other Than as an Eligible Employee After a Bona Fide Separation from Service.

(1) In-Service Distribution Prior to Termination. Notwithstanding the general rule in Section 6.06(a)(1) and except as may be otherwise provided in the Adoption Agreement or an Addendum thereto, regardless of whether an Employer elects to permit active Participants to receive In-Service Distributions while serving as Eligible Employees under the Plan pursuant to paragraph 6.06(b)(1) above, an individual who is in service with the Adopting Employer, who previously accrued a benefit as an Eligible Employee under the Plan but who is not currently an Eligible Employee under the Plan,

may commence receipt of Retirement benefits while still in service with the Adopting Employer provided that such individual (i) has satisfied the Adopting Employer's qualifications for Early Retirement, Normal Retirement or Alternative Normal Retirement; (ii) has satisfied the minimum age and other applicable requirements established in subparagraph 6.06(a)(3) above; and (iii) applies for such Retirement benefit on the Applicable Form.

(2) Continued Receipt of Retirement Benefits Upon Return to Service in a Capacity Other Than as an Eligible Employee. Except as may be otherwise provided in the Adoption Agreement or an Addendum thereto, an Adopting Employer may engage any Retired Participant receiving benefits hereunder in a capacity other than as an Eligible Employee and such engagement shall not terminate or suspend such benefits. Effective with respect to Retired Participants who return to service in a capacity other than as an Eligible Employee, in order to continue receiving benefits after returning to service, the Retired Participant (i) must have had a Bona Fide Separation from Service prior to returning to service in a capacity other than as an Eligible Employee under the Plan; or (ii) must satisfy the minimum age parameters established in subparagraph 6.06(a)(3) above.

(3) An individual who receives Retirement benefits while in the service of the Adopting Employer pursuant to paragraphs 6.06(c)(1) and (2) above shall not be authorized to change the form of benefit payment, or to change the Post-Retirement Beneficiary on the Participant's subsequent Termination of Employment, or to name a Post-Retirement Beneficiary if one had not been previously named. An individual who commences or continues receiving benefits while in the service of the Adopting

Employer in a capacity other than as an Eligible Employee pursuant to paragraph 6.06(c)(1) or 6.06(c)(2) shall not accrue benefits or service credit for any purpose under the Plan during the individual's period of continued service with the Adopting Employer during which the individual is not an Eligible Employee.

(4) In the event that an individual described in paragraph 6.06(c)(1) or (2) subsequently becomes an Eligible Employee under the Plan, the provisions applicable to In-Service Distribution to Eligible Employees or to Retired Participants who return to Service with the Adopting Employer as an Eligible Employee, as applicable, under subsection 6.06(b) above and the Adopting Employer's Adoption Agreement or Addendum shall apply with respect to such individual. Except as otherwise provided in the Adoption Agreement or in an Addendum thereto, upon such a Participant's subsequent Termination of Employment or vacation of office, as applicable, the Participant's Monthly Retirement Benefit shall be computed in accordance with this Article on the basis of the Participant's aggregate Total Credited Service and Final Average Earnings, if applicable, at the time of such Termination of Employment or vacation of office. However, this Monthly Retirement Benefit shall be reduced by the Actuarial Equivalent of any Retirement benefits received prior to re-retirement, and by any actuarial factors used in calculating the benefit payable at the previous Retirement. For purposes of this subsection, the term "Actuarial Equivalent" shall mean an amount equal to the value of Retirement benefits received, determined as of the date of the Participant's re-retirement and computed on the basis of the actuarial assumptions contained in Section 12.06. In no event shall the resulting benefit be less than the benefit payable immediately prior to the Participant's re-retirement.

(d) Death in Service After Retirement. If a Retired Participant who returns to service with an Adopting Employer as an Eligible Employee or an active Participant commences Retirement benefits while remaining in service as an Eligible Employee and dies during the period of continuous employment or during the period of reemployment, as applicable, and before re-retirement, then the Participant's Post-Retirement Beneficiary, if any, shall be entitled to receive the monthly post-retirement survivor benefit payable, if any, taking into account any additional Credited Service accrued prior to the date of the Participant's death in-service. Such post-retirement survivor benefit shall be reduced by the Actuarial Equivalent of any Retirement benefits received by the Participant prior to said Participant's death. In no event shall the resulting post-retirement survivor benefit (after any actuarial reduction provided for in the preceding sentence) be less than the benefit that would have been payable to such Post-Retirement Beneficiary had the Participant not been employed as an Eligible Employee on or after the Participant's Retirement Date. This provision shall not be interpreted to permit payment to a Pre-Retirement Beneficiary in the event of a Retired Participant's death during reemployment.

(e) Suspension of Disability Benefits.

(1) Any Disability Retirement Benefit payable under the Plan to any Participant shall be suspended as of the first day of the month coinciding with or following the date the Participant's Disability ceases. A Participant's Disability shall be considered to have ceased upon the earliest of the following dates: (1) with respect to Participants whose entitlement to a Disability benefit is based upon receipt of disability insurance benefits under the Federal Social Security Act, the date as of which the Social Security Administration determines that the Participant is no longer disabled; or (2) with

respect to Participants whose entitlement to a Disability benefit is based upon a determination by the Pension Committee, the date as of which the Pension Committee determines that the Participant is no longer disabled as defined under Code Section 72(m), based upon an examination by a physician chosen by the Pension Committee. With respect to those Participants whose entitlement to a Disability benefit is based upon receipt of disability insurance benefits under the Federal Social Security Act, the Participant shall be required to notify the Pension Committee Secretary within sixty (60) days after the Participant receives notice that the Social Security Administration has determined that the Participant is no longer disabled. With respect to those Participants whose entitlement to a Disability benefit is based upon receipt of disability insurance benefits under the Federal Social Security Act, the Pension Committee shall have the right to require the Participant to prove at any time, as a condition for continued receipt of Disability benefits under the Plan, continued eligibility for receipt of disability insurance benefits under the Federal Social Security Act, as amended. With respect to Participants whose entitlement to a Disability benefit is based upon a determination of Disability by the Pension Committee, the Pension Committee shall have the right to require, as a condition for continued receipt of Disability benefits, that the Participant be examined at any time by a physician chosen by the Pension Committee. In the event that any Participant fails or refuses to submit to a physical examination or to obtain and provide other information requested by the Pension Committee to confirm continuation of a Disability, then the Participant's Disability benefits shall be suspended as of the first day of the month following expiration of the ninety (90) day period following the Pension Committee's request for such examination or information, unless the Pension Committee

determines in its discretion that the failure to comply within ninety (90) days was due to circumstances beyond the Participant's control, in which case the ninety (90) day time limit may be extended by the Pension Committee and suspension may be deferred as determined by the Pension Committee.

(2) Notwithstanding any provision of this subsection 6.06(e) to the contrary, and except as otherwise provided in an Employer's Adoption Agreement or Addendum thereto, in the event that a Participant, who shall have retired or been retired for Disability, returns to service as an Eligible Regular Employee or becomes an Eligible Regular Employee of said Employer, the Participant's Disability Retirement benefit shall be suspended as of the date of such return to or commencement of service as an Eligible Regular Employee.

(3) Nothing in paragraph 6.06(e)(2) shall be construed to require the suspension of a Participant's Disability Retirement benefit upon the Participant's return to service as an elected or appointed member of the Governing Authority after the commencement of such benefit unless and until the Participant is determined to no longer have a Disability, or unless suspension of a Participant's Disability Retirement benefits is otherwise required under subparagraph 6.06(e)(1).

(f) Suspension of Disability Benefit; Right to Other Benefits.

(1) In any case where the payment of a Participant's Disability Retirement benefit is suspended, regardless of whether the Participant returns to service with the Employer, the period of absence from employment due to such Disability shall not be counted as Credited Service. Any Participant who shall have Retired or been Retired for Disability and who has been or shall be subsequently declared ineligible for a Disability

Retirement benefit because of the cessation of said Disability, or as otherwise provided pursuant to subsection 6.06(e) above, shall have a right to any benefit afforded under any other provision of this Plan to which the Participant or the Participant's beneficiary might otherwise be entitled. In such case, any Disability Retirement payments made prior to the required suspension date shall be retained by the Retiree and disregarded in computing any other benefit payable under the Plan.

(2) Notwithstanding the foregoing, nothing herein shall be construed to allow a Retired Participant who shall have Retired or been Retired due to Disability, who returns to service with the Employer, and who subsequently re-retires to elect a different benefit payment form or name a new post-retirement beneficiary upon re-retirement.

(3) Unless otherwise provided in an Employer's Adoption Agreement or in an Addendum thereto, in the event that a Retired Participant who is receiving a Disability Retirement benefit returns to service as an elected or appointed member of the Governing Authority, and the Participant's Disability Retirement benefit is not suspended, any Disability Retirement payments made prior to the Participant's return to service or during such period(s) of service as an elected or appointed member of the Governing Authority following such return shall be retained by the Participant and disregarded in computing any other benefit payable under the Plan upon the Participant's subsequent vacation of office.

ARTICLE VII.

OPTIONAL FORMS OF RETIREMENT INCOME

Section 7.01. Standard Benefit Payment Form; Other Payment Options. With respect to retirement applications received by GMEBS on or after July 1, 2011, a Participant may elect, or may revoke a previous election and make a new election, at any time prior to the

Participant's effective Retirement Date, to have Retirement benefits payable under the standard benefit payment option or under one of the other benefit payment options set forth in Section 7.03. The standard benefit payment option is a monthly retirement benefit payable to the Participant during the Participant's lifetime only. At the death of the Participant all payments will cease and no further benefits will be payable to the estate of the Participant or other persons, except as otherwise provided in Subsection 8.12(b). The standard benefit payment form is referred to in the Basic Plan Document as Option A. The benefit shall be paid in accordance with and subject to the terms of the benefit payment option elected. Election of any option shall be made by the Participant in writing on the Applicable Form, and shall be subject to approval by GMEBS.

Section 7.02. Designation of Post-Retirement Beneficiary. With respect to retirement applications received by GMEBS on or after July 1, 2011, if the Participant elects Option B (Joint and Survivor Option with Pop-Up) or Option C (Period Certain and Life Option.) in Section 7.03, the Participant shall designate a Post-Retirement Beneficiary to receive a survivor benefit in accordance with and subject to the terms of such Option. Designation of a Post-Retirement Beneficiary may be revoked or changed by the Participant by submitting a new completed Retirement Application at any time prior to the Participant's effective Retirement date. Only the last such designation of a Post-Retirement Beneficiary shall have effect, and any new designation of a Post-Retirement Beneficiary shall invalidate, supersede, and revoke any prior designation.

Section 7.03. Description of Options. With respect to retirement applications received by GMEBS on or after July 1, 2011, the amount of any optional benefit set forth below shall be the Actuarial Equivalent of the amount of the standard benefit that would otherwise be

payable to the Participant under Section 7.01 (monthly retirement benefit payable to the Participant during the Participant's lifetime only, referred to as "OPTION A").

(a) OPTION B: Joint and Survivor Option with Pop-Up. A retirement benefit computed and paid in the same manner as Option A above, but with a decrease in the retirement benefit to account for the survivor benefit and the pop-up benefit provided under this Option B. If the Participant elects Option B, then the Participant will receive a decreased retirement benefit which shall be payable during the lifetime of the Participant. If the Participant's designated Post-Retirement Beneficiary should survive the Participant (except as provided in subsections (1) and (2) below with respect to the Post-Retirement Beneficiary's death before the Participant or the divorce of the Participant and Post-Retirement Beneficiary) the benefit shall continue to be paid to the Post-Retirement Beneficiary after the Participant's death during the lifetime of the Post-Retirement Beneficiary in the same amount (100%) or in such smaller amount (75%, 50%, or 25%), as the Participant has designated on the retirement application. This option shall be known as Option B. The Participant's retirement benefit under Option B shall be calculated in accordance with Section 12.02(a) or Section 12.02(b), whichever is applicable.

(1) Death of Post-Retirement Beneficiary Before Participant — In the event that the Participant's Post-Retirement Beneficiary dies before the Participant and after Retirement benefit payments have commenced, and provided the Participant furnishes GMEBS with proper proof of the Beneficiary's death within one (1) year after such death, the requirement for a reduction in the Participant's monthly retirement benefit on account of the Participant's election of Option B shall no longer apply (resulting in an increase, or "pop-up", in the Participant's monthly retirement benefit), effective as of the first day of the month following the Post-Retirement Beneficiary's death. Effective with respect to

monthly payments made on and after such date, the amount of the Participant's monthly retirement benefit shall be equal to the monthly amount that would have otherwise been payable to the Participant under Article VI, had the Participant elected Option A. However, if the Participant fails to furnish the Plan with proper proof of the Post-Retirement Beneficiary's death within the one (1) year period referred to above, then said change in monthly retirement benefit shall not become effective until the first day of the month following the date such proof is submitted to GMEBS. If the Post-Retirement Beneficiary does not survive the Participant, all payments shall cease at the death of the Participant and no further benefits will accrue to the Participant's estate or to other persons.

(2) Divorce of Participant and Post-Retirement Beneficiary—If the Participant designates the Participant's Spouse as Post-Retirement Beneficiary and provides GMEBS with proof that GMEBS in its sole discretion deems sufficient to establish that the Post-Retirement Beneficiary is the Participant's Spouse as of the Participant's effective retirement date, and if the Participant and the Post-Retirement Beneficiary become divorced after retirement benefit payments have commenced, then the Participant is permitted but not required to request a "pop-up" in the Participant's monthly retirement benefit, in accordance with and subject to the requirements of this subsection (2). A Participant who requests a pop-up pursuant to this subsection (2) will be bound by the provisions of this subsection and any other terms and conditions for receipt of said pop-up as set forth in an Applicable Form provided by GMEBS for such purpose. Such Participant shall furnish proof to GMEBS which GMEBS in its sole discretion deems sufficient to confirm the Participant's divorce from the Post-Retirement Beneficiary and

the Participant's eligibility for the pop-up benefit provided herein, which may include but may not be limited to a court-certified copy of a valid divorce decree. In the event that the conditions of this subsection (2) are satisfied, the requirement for a reduction in the Participant's monthly retirement benefit on account of the election of Option B will no longer apply; provided, however, that GMEBS may deny the Participant's application for the pop-up in the event that GMEBS, in its sole discretion, determines that such denial is prudent or necessary based on the terms of the applicable divorce decree. Any change in the monthly retirement benefit resulting from the pop-up, if approved by GMEBS, will be effective as of the first day of the month following GMEBS' receipt of said Applicable Form completed by the Participant, and after GMEBS' receipt of said proof evidencing divorce. Effective with respect to monthly payments made on and after such date, the amount of the Participant's monthly retirement benefit will be equal to the monthly amount that would have otherwise been payable to the Participant under Article VI had the Participant elected Option A. On and after said date, the Participant's Post-Retirement Beneficiary will not be eligible to receive any survivor benefits following the Participant's death, notwithstanding any prior designation made by the Participant or the later remarriage of the Participant and the Post-Retirement Beneficiary. All payments shall cease at the death of the Participant and no further benefits will accrue to the Participant's estate or to other persons. This provision shall not be construed to permit a Participant to change the form of benefit payment, to change the Post-Retirement Beneficiary after the Participant's effective Retirement date, or to name a new Post-Retirement Beneficiary following the Participant's divorce from the Post-Retirement Beneficiary. Nor shall this provision be construed to require or permit payment of all or

a portion of a Participant's retirement benefit to a former spouse pursuant to a domestic relations order.

(b) OPTION C: Period Certain and Life Option. A decreased benefit payable monthly to the Participant during the Participant's lifetime and, in the event of the Participant's death within a period of specified years, either five (5), ten (10), fifteen (15), or twenty (20) years after benefit commencement, the same monthly amount shall be payable for the balance of such period to the Post-Retirement Beneficiary designated by the Participant. If the Post-Retirement Beneficiary survives the Participant but dies before the end of such period, any unpaid monthly amounts that would have otherwise been payable to the Post-Retirement Beneficiary for the remainder of said period following the Post-Retirement Beneficiary's death shall be paid to the Post-Retirement Beneficiary's estate. If the Post-Retirement Beneficiary does not survive the Participant, all payments shall cease at the death of the Participant and no further benefits will accrue to the Participant's estate or to other persons except as provided in Article VIII. This option shall be known as Option C. The Retirement benefit under Option C shall be calculated in accordance with Section 12.03.

Section 7.04. Cancellation of Election. The election by a Participant of any option in this Article VII shall be null and void if either the Participant or the Participant's designated Post-Retirement Beneficiary dies before the Participant's effective Retirement date.

Section 7.05. Rule for Small Benefits.

(a) Effective January 1, 2002, the present value of a Plan benefit shall be distributed in a cash single sum payment to the Participant, Terminated Vested Participant, or Pre-Retirement Beneficiary, as applicable, if the present value of said Plan benefit payable to the

recipient does not exceed Five Thousand Dollars (\$5,000) on the date of distribution. The present value of said Plan benefit shall be determined in accordance with Article XII.

(b) Effective for distributions commencing on or after March 28, 2005, if a distribution to be made under subsection (a) is greater than One Thousand Dollars (\$1,000), is an eligible rollover distribution, and the recipient of the distribution does not elect to have the distribution paid directly to an eligible retirement plan specified by the recipient in a direct rollover or does not elect to receive the distribution directly, the Administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the Administrator.

(c) Notwithstanding the provisions of subsections (a) and (b), effective on and after July 1, 2007, no distribution will be made under this Section unless and until the recipient of the distribution makes an election to either have the distribution paid directly to an eligible retirement plan specified by the recipient in a direct rollover or to receive the distribution directly in cash.

Section 7.06. Distributions.

(a) Distributions payable as of any date shall be made on or as soon as administratively feasible after that date.

(b) In a contributory plan, interest shall be paid on any refund of employee contributions only as specified in the Adoption Agreement.

Section 7.07. Compliance with Internal Revenue Section 401(a)(9). All distributions shall be made in compliance with Article X.

Section 7.08. Compliance with Internal Revenue Section 415. All benefit options must comply with the limitations of Code Section 415, pursuant to Article XI and as applicable to governmental plans.

ARTICLE VIII.

DEATH BENEFITS

Section 8.01. Death in Service Prior to Retirement. In the event a Participant's employment or term of office is Terminated by reason of death prior to Retirement, there shall be paid to the Pre-Retirement Beneficiary the in-service death benefit elected by the Employer in the Adoption Agreement, provided the requirements of this Article are satisfied and except as otherwise provided under this Article.

Section 8.02. Actuarial Reserve In-Service Death Benefit. An Employer may elect in the Adoption Agreement to provide the Actuarial Reserve In-Service Death Benefit for one or more classes of Eligible Employees. In such case, the Employer shall designate in the Adoption Agreement the minimum service and other eligibility requirements a Participant must satisfy in order to be entitled to receive such benefit. Provided a Participant satisfies such requirements, then in the event the Participant's employment with the Adopting Employer is terminated by reason of the Participant's death prior to Retirement, and except as otherwise provided in Section 8.07(b), there shall be paid to the Participant's Pre-Retirement Beneficiary a lifetime monthly death benefit actuarially equivalent to the reserve required for the Participant's anticipated Normal Retirement benefit. In calculating the Normal Retirement benefit under the provisions of this Section, the following assumptions shall be used:

(a) The Participant's age at the time of death is equal to the Normal Retirement Age as specified by the Employer in the Adoption Agreement, or the Participant's attained age if said attained age is greater than the Normal Retirement Age; and

(b) The Participant's Total Credited Service shall include the amount of Total Credited Service accrued prior to the date of the Participant's death. The Employer may elect in the Adoption Agreement to include additional imputed Credited Service in the calculation, but in

no event shall the amount of Total Credited Service used in the calculation exceed the sum of actual service performed plus ten (10) calendar years. The death benefit under this Section shall be calculated using the factors contained in Section 12.04.

(c) With respect to those Adopting Employers who have elected in their Adoption Agreement to provide the Actuarial Reserve In-Service Death Benefit, an Eligible Regular Employee must have at least one (1) year of Credited Service with the Adopting Employer to be eligible for the Actuarial Reserve In-Service Death Benefit; provided, however, that this one (1) year minimum shall not apply with respect to an Eligible Regular Employee whose immediate prior employment was with another GMEBS Adopting Employer and who had at least one (1) year of Credited Service with such prior GMEBS Adopting Employer. The one (1) year minimum and the exceptions thereto described in this subsection 8.02(c) shall not supersede eligibility conditions specified in an Adopting Employer's Adoption Agreement or Addendum thereto which specify a requirement of more or less than one (1) year of Credited Service with the Adopting Employer and/or other minimum age or service requirements that are inconsistent with this Section 8.02 to be eligible for the Actuarial Reserve In-Service Death Benefit. Except as otherwise provided in an Adopting Employer's Adoption Agreement or Addendum thereto, elected or appointed members of the Governing Authority shall not be subject to a minimum Service requirement to be eligible for the Actuarial Reserve In-Service Death Benefit.

Section 8.03. Auto A In-Service Death Benefit. An Employer may elect in the Adoption Agreement to provide the Auto A in-service death benefit for one or more classes of Eligible Employees. In such case, the Employer shall designate in the Adoption Agreement the minimum Service and other eligibility requirements a Participant must satisfy in order to be entitled to such benefit. Provided a Participant satisfies such requirements, then in the event that

the Participant's employment with the Adopting Employer is terminated by reason of the Participant's death prior to Retirement, and except as otherwise provided in Section 8.06(b), there shall be paid to the Participant's Pre-Retirement Beneficiary a lifetime monthly death benefit, as follows:

(a) Monthly Death Benefit Payable to Spouse. If the Pre-Retirement Beneficiary to whom the in-service death benefit is payable under this Section is the Participant's Spouse, then the lifetime monthly death benefit payable to said Spouse shall commence on the first day of the month coinciding with or immediately following the date of the Participant's death. Alternatively, the Spouse may elect to defer benefit payment commencement until the first day of any month up to and including the date the Participant would have attained Normal Retirement Age as defined in the Employer's Adoption Agreement. A Spouse shall be considered to have deferred benefit payment commencement until the first day of the month following the date the Spouse makes application for payment of death benefits. If the Pre-Retirement Beneficiary to whom the in-service death benefit is payable under this Section is not the Spouse of the Participant, then the lifetime monthly death benefit payable to said Beneficiary shall commence on the first day of the month coinciding with or immediately following the date of the Participant's death.

(b) Computation of Monthly Death Benefits. Benefits under this Section shall be computed as of the date of the Participant's death, based upon the applicable benefit formula in effect on said date, as follows:

(1) Participant Death Before Early Retirement Age; Payment Before Early Retirement Age. If a Participant dies before attaining Early Retirement Age as defined in the Employer's Adoption Agreement, and if benefit payments commence to a Pre-

Retirement Beneficiary before the Participant would have attained Early Retirement Age, then the monthly death benefit payable to said beneficiary shall be the Actuarial Equivalent of the monthly Retirement benefit amount that would have otherwise been payable to the Participant, assuming the Participant: (i) terminated employment on the Participant's date of death; (ii) survived until Normal Retirement Age as defined in the Adoption Agreement; and (iii) elected to retire upon attaining Normal Retirement Age with the optional form of Retirement payment designated in Section 7.03 as Option B at one hundred percent (100%), and then died. Said benefit shall be calculated in accordance with the actuarial assumptions specified in Section 12.06.

(2) Participant Death Before Early Retirement Age; Deferred Payment by Spouse Until After Early Retirement Age. If the Participant dies before attaining Early Retirement Age as defined in the Employer's Adoption Agreement and a Spouse who is eligible to receive the in-service death benefit hereunder defers payment until a date which is on or after the date the Participant would have attained Early Retirement Age, then the monthly death benefit payable to the Spouse Beneficiary shall be the monthly Retirement benefit that would have otherwise been payable to the Participant, assuming that the Participant: (i) terminated employment on the date of death; (ii) survived until the date upon which the deferred benefit payments commence in accordance with the Spouse Beneficiary's selected benefit commencement date; and, (iii) elected to retire on the benefit commencement date with the optional form of Retirement payment designated in Section 7.03 as Option B at one hundred percent (100%), and then died.

(3) Participant Death After Early Retirement Age; Payment Upon Death. If the Participant dies after attaining Early Retirement Age as defined in the Employer's

Adoption Agreement, and if benefit payments commence to a Pre-Retirement Beneficiary on the first day of the month coinciding with or immediately following the date of the Participant's death, then the monthly death benefit payable to said Pre-Retirement Beneficiary shall be the monthly benefit that would have otherwise been payable to the Participant, assuming the Participant: (i) retired on the date of death, and (ii) elected the optional form of Retirement payment designated in Section 7.03 as Option B at one hundred percent (100%), and then died.

(4) Participant Death After Early Retirement Age; Deferred Payment by Spouse. If the Participant dies after attaining Early Retirement Age as defined in the Employer's Adoption Agreement, and if a Spouse who is eligible to receive the Auto A in-service death benefit hereunder defers payment in accordance with this Section, then the monthly benefit payable to the Spouse Beneficiary shall be the monthly Retirement benefit that would have otherwise been payable to the Participant, assuming that the Participant: (i) terminated employment on the Participant's date of death; (ii) survived until the date upon which the deferred benefit payments commence in accordance with the Spouse beneficiary's selected commencement date, and (ii) elected to retire on the benefit commencement date with the optional form of Retirement payment designated in Section 7.03 as Option B at one hundred percent (100%), and then died.

Section 8.04. Designation of Beneficiary. Unless otherwise provided in the Adoption Agreement or an Addendum thereto, a Participant may designate, on an Applicable Form provided for that purpose, one person as Primary Pre-Retirement Beneficiary. If the Participant's employment with the Employer is terminated by reason of the Participant's death prior to the Participant's Retirement and if as of the date of the Participant's death the Participant has

satisfied the minimum service and other eligibility requirements to be entitled to an in-service pre-retirement death benefit, said Primary Pre-Retirement Beneficiary shall receive the monthly pre-retirement death benefit elected by the Employer in the Adoption Agreement, provided the Primary Pre-Retirement Beneficiary survives the Participant by at least thirty-two (32) days in accordance with O.C.G.A. § 47-1-15 (a copy of which is included in the Appendix hereto). The Participant may additionally designate, on an Applicable Form provided for that purpose, one person as Secondary Pre-Retirement Beneficiary. The monthly death benefit otherwise payable to the Primary Pre-Retirement Beneficiary hereunder shall be payable to the Participant's designated Secondary Pre-Retirement Beneficiary in the event that: (1) the Participant's employment with the Employer is terminated by reason of the Participant's death prior to the Participant's Retirement; (2) the Primary Pre-Retirement Beneficiary does not survive the Participant by at least thirty-two (32) days; and (3) the Secondary Pre-Retirement Beneficiary survives the Participant by at least thirty-two (32) days.

Section 8.05. Change of Beneficiary. Designation of a Primary or Secondary Pre-Retirement Beneficiary may be changed by the Participant in writing on an Applicable Form provided for that purpose at any time prior to Retirement. Only the last such designation prior to Retirement shall have effect and any new designation of a Primary or Secondary Pre-Retirement Beneficiary invalidates, supersedes, and revokes any prior designation.

Section 8.06. Auto A In-Service Pre-Retirement Death Benefit; Default Beneficiary; Payment to Surviving Spouse or to Estate Where Benefit Not Payable to Designated Primary or Secondary Pre-Retirement Beneficiary.

(a) Except as otherwise provided in an Adopting Employer's Adoption Agreement or Addendum, in the absence of a designation by the Participant, or if there is no Primary or

Secondary Pre-Retirement Beneficiary to whom the Auto A in-service pre-retirement death benefit is payable under this Article, then the Auto A in-service pre-retirement death benefit shall be paid to the Participant's surviving Spouse in accordance with this subsection. In such case, the Participant's surviving Spouse shall be considered the Pre-Retirement Beneficiary under the Plan. For purposes of this subsection, the term "surviving" shall mean surviving the Participant by at least thirty-two (32) days.

(b) Except as otherwise provided in an Adopting Employer's Adoption Agreement or Addendum, if there is no Pre-Retirement Beneficiary (i.e., a designated Pre-Retirement Beneficiary or surviving Spouse) to whom the Auto A in-service death benefit is payable, then a lump sum payment equal to fifty percent (50%) of the Actuarial Equivalent of the Participant's Vested Accrued Benefit, if any, shall be paid to the Participant's estate in lieu of the lifetime monthly benefit which would otherwise be payable to the Pre-Retirement Beneficiary. Such lump sum Actuarial Equivalent shall be determined as if the Participant had Terminated Employment on the date immediately preceding the Participant's date of death and received a lump sum distribution of said benefit under Section 7.05, determined without reference to the maximum cash-out limits of said Section, and using the assumptions set forth in Section 12.06.

Section 8.07. Actuarial Reserve In-Service Pre-Retirement Death Benefit; Payment to Surviving Spouse or to Estate Where Benefit Not Payable to Designated Primary or Secondary Pre-Retirement Beneficiary.

(a) Except as otherwise provided in an Adopting Employer's Adoption Agreement or Addendum, with respect to the Actuarial Reserve in-service death benefit only, if there is no Primary or Secondary Pre-Retirement Beneficiary to whom the death benefit is payable, then the Actuarial Reserve in-service pre-retirement death benefit shall be paid to the Participant's

surviving Spouse in accordance with this Section, in which case the Participant's surviving Spouse shall be considered the Pre-Retirement Beneficiary under the Plan. For purposes of this Section, the term "surviving" shall mean surviving the Participant by at least thirty-two (32) days.

(b) If there is no Pre-Retirement Beneficiary (i.e., a designated Pre-Retirement Beneficiary or surviving Spouse) to whom the death benefit is payable, then the Actuarial Equivalent of the Participant's vested Accrued Retirement Benefit shall be paid to the Participant's estate in lieu of the lifetime monthly benefit which would otherwise be payable to a Pre-Retirement Beneficiary. Such Actuarial Equivalent shall be determined as if the Participant had terminated employment on the date immediately preceding the Participant's date of death and received a lump sum distribution of benefits under Section 7.05, determined without reference to the maximum cash-out limits of said Section, and using the assumptions set forth in Section 12.06.

Section 8.08. Terminated Vested Death Benefits. If the Employer elects in the Adoption Agreement to provide a death benefit for Terminated Vested Participants or for certain classes of Terminated Vested Participants, then in the event such a Terminated Vested Participant dies before the effective Retirement Date, there shall be paid to the Pre-Retirement Beneficiary the terminated vested death benefit specified in the Adoption Agreement, provided the requirements of this Article are satisfied and except as otherwise provided in this Article. Notwithstanding any provision to the contrary, effective October 1, 2016, an Adopting Employer that had not previously elected in its Adoption Agreement or Addendum thereto to provide a Terminated Vested death benefit to one or more classes of Participants shall be deemed to have elected by default to provide the Terminated Vested Auto A Death Benefit to such class or classes of Participants who terminate employment on or after such date.

Section 8.09. Terminated Vested Auto A Death Benefit. The Employer may elect in the Adoption Agreement to provide the Auto A Death Benefit for one or more classes of Terminated Vested Participants. In such case, the Employer shall designate in the Adoption Agreement the minimum Service and other eligibility requirements a Terminated Vested Participant must satisfy in order to be entitled to such benefit. Provided a Terminated Vested Participant satisfies such requirements, then in the event that the Terminated Vested Participant dies prior to said Participant's effective Retirement date, the Participant's Pre-Retirement Beneficiary may apply to receive a lifetime monthly death benefit subject to the provisions of this Section. If the Terminated Vested Participant's Pre-Retirement Beneficiary is the Terminated Vested Participant's Spouse, then the lifetime monthly death benefit payable to the Spouse Beneficiary under this Section shall commence on the first day of the month coinciding with or immediately following the date of the Terminated Vested Participant's death. Alternatively, the Spouse Beneficiary may elect to defer benefit payment commencement until the first day of any month up to and including the date the Participant would have attained Normal Retirement Age as determined under the Employer's Adoption Agreement. A Spouse designated as beneficiary shall be considered to have deferred benefit payment commencement until the first day of the month following the date the Spouse makes application for payment of death benefits. If the Pre-Retirement Beneficiary is not the Spouse of the Terminated Vested Participant, then the lifetime monthly death benefit payable to the beneficiary under this Section shall commence on the first day of the month coinciding with or immediately following the date of the Terminated Vested Participant's death. Benefits under this Section shall be computed as follows:

(a) Terminated Vested Participant Death Before Early Retirement Age; Payment Before Early Retirement Age. If a Terminated Vested Participant dies before attaining Early Retirement Age as defined in the Adoption Agreement, and if benefit payments commence to a beneficiary before the Terminated Vested Participant would have attained Early Retirement Age, then the monthly death benefit payable to the beneficiary shall be the Actuarial Equivalent of the monthly Retirement benefit amount that would have otherwise been payable to the Terminated Vested Participant, assuming: (i) the Terminated Vested Participant survived until Normal Retirement Age; and (ii) the Terminated Vested Participant elected the optional form of Retirement payment designated herein as Option B at one hundred percent (100%), and then died. Said benefit shall be calculated in accordance with the actuarial assumptions specified in Section 12.06.

(b) Terminated Vested Participant Death Before Early Retirement Age; Deferred Payment by Spouse Until After Early Retirement Age. If the Terminated Vested Participant dies before attaining Early Retirement Age as defined in the Adoption Agreement and a Spouse designated as beneficiary defers payment until a date which is on or after the date the Terminated Vested Participant would have attained Early Retirement Age, then the monthly death benefit payable to the Spouse shall be the monthly Retirement benefit that would have otherwise been payable to the Terminated Vested Participant, assuming that: (i) the Terminated Vested Participant survived until the date upon which the deferred benefit payments commence in accordance with the Spouse's selected benefit commencement date; and, (ii) the Terminated Vested Participant elected on such date to retire with the optional form of Retirement payment designated herein as Option B at one hundred percent (100%), and then died.

(c) Terminated Vested Participant Death After Early Retirement Age; Payment Upon Death. If the Terminated Vested Participant dies after attaining Early Retirement Age as defined in the Adoption Agreement, and if benefit payments commence to a beneficiary on the first day of the month coinciding with or immediately following the date of the Terminated Vested Participant's death, then the monthly death benefit payable to the beneficiary shall be the monthly benefit that would have otherwise been payable to the Terminated Vested Participant, assuming: (i) the Terminated Vested Participant retired on the date of death, and (ii) the Terminated Vested Participant elected the optional form of Retirement payment designated herein as Option B at one hundred percent (100%), and then died.

(d) Terminated Vested Participant Death After Early Retirement Age; Deferred Payment by Spouse. If the Terminated Vested Participant dies after attaining Early Retirement Age, and if a Spouse designated as beneficiary defers payment in accordance with this Section, then the monthly benefit payable to the Spouse shall be the monthly Retirement benefit that would have otherwise been payable to the Terminated Vested Participant, assuming that: (i) the Terminated Vested Participant survived until the date upon which the deferred benefit payments commence in accordance with the Spouse's selected commencement date, and (ii) the Terminated Vested Participant elected to retire on such date with the optional form of Retirement payment designated herein as Option B at one hundred percent (100%), and then died.

(e) Auto A Terminated Vested Death Benefit; Payment to Surviving Spouse or to Estate Where Benefit Not Payable to Designated Primary or Secondary Pre-Retirement Beneficiary. Effective with respect to deaths occurring on or after July 1, 2015, and except as otherwise provided in an Adopting Employer's Adoption Agreement or Addendum, in the absence of a designation by the Participant, or if there is no Primary or Secondary Pre-

Retirement Beneficiary to whom the terminated vested Auto A death benefit is payable under this Article, then said pre-retirement death benefit shall be paid to the Participant's surviving Spouse in accordance with this Section, in which case the surviving Spouse will be considered the Pre-Retirement Beneficiary under the Plan. For purposes of this Section 8.09(e), the term "surviving" shall mean surviving the Participant by at least thirty-two (32) days. If there is no Pre-Retirement Beneficiary (i.e., a designated Pre-Retirement Beneficiary or surviving Spouse) to whom the terminated vested Auto A death benefit is payable, then a lump sum payment equal to fifty percent (50%) of the Actuarial Equivalent of the Participant's vested Accrued Benefit, if any, shall be paid to the Participant's estate in lieu of the lifetime monthly benefit which would otherwise be payable to a Pre-Retirement Beneficiary. Such lump sum Actuarial Equivalent shall be determined as if the Participant had received a lump sum distribution of said benefit under Section 7.05, calculated as of the date on which the payment is made, without reference to the maximum cash-out limits of said Section, and using the assumptions set forth in Section 12.06.

(f) Calculation of Benefits. Benefits under this Section shall be calculated taking into account only the Participant's Total Credited Service and Final Average Earnings (where applicable) as of the date of the Participant's Termination of Employment with Adopting Employer, and the applicable benefit formula in effect on the date of said Termination.

Section 8.10. Accrued Retirement Benefit.

An Employer may elect in the Adoption Agreement to provide a death benefit consisting of the Accrued Benefit for one or more classes of Terminated Vested Participants. In such case, the Employer shall designate the minimum service and other eligibility requirements a Terminated Vested Participant must satisfy in order to be entitled to such benefit. Provided a Terminated

Vested Participant satisfies such requirements, then in the event that the Terminated Vested Participant dies prior to the effective Retirement date, the Pre-Retirement Beneficiary may apply to receive a lifetime monthly death benefit subject to the provisions of this subsection. Said benefit shall commence on the first day of the month coinciding with or immediately following the date of the Terminated Vested Participant's death. The monthly death benefit payable to the Participant's Pre-Retirement Beneficiary shall be the Actuarial Equivalent of the Terminated Vested Participant's Accrued Benefit, determined as of the date of the Participant's death, taking into account the Participant's Total Credited Service, Final Average Earnings, and the benefit formula in effect as of the date of the Participant's Termination. Except as otherwise provided in an Adopting Employer's Adoption Agreement or Addendum, if there is no Primary or Secondary Pre-Retirement Beneficiary to whom said pre-retirement death benefit is payable, said pre-retirement death benefit shall be paid to the Participant's surviving Spouse in accordance with this subsection, in which case the surviving Spouse will be considered the Pre-Retirement Beneficiary under the Plan. For purposes of this subsection, the term "surviving" shall mean surviving the Participant by at least thirty-two (32) days. If there is no Pre-Retirement Beneficiary to whom the benefit is payable, then a lump sum payment equal to fifty percent (50%) of the Actuarial Equivalent of the Participant's vested Accrued Benefit, if any, shall be paid to the Participant's estate in lieu of the lifetime monthly benefit which would otherwise be payable to a Pre-Retirement Beneficiary. Such lump sum Actuarial Equivalent shall be determined as if the Participant had received a lump sum distribution of said benefits under Section 7.05, calculated as of the date on which the payment is made, without reference to the maximum cash-out limits of said Section, and using the assumptions set forth in Section 12.06.

Section 8.11. Designation of Terminated Vested Pre-Retirement Beneficiary. The Primary and Secondary Pre-Retirement Beneficiary designated by the Participant to receive in-service death benefits under Section 8.04 shall automatically be considered the Participant's Primary and Secondary Pre-Retirement Beneficiary for purposes of payment of terminated vested pre-retirement death benefits, if any, under the Employer's Plan. If the Participant changes said beneficiary designation in accordance with Section 8.05, the Participant's designation under this Section shall be considered changed as well to reflect the new designation. In the absence of a designation by the Participant, or if there is no Primary or Secondary Pre-Retirement Beneficiary to whom a terminated vested pre-retirement death benefit is payable upon the Participant's death, then the terminated vested pre-retirement death benefit otherwise payable, if any, shall be paid to the Participant's surviving Spouse in accordance with and subject to the applicable provisions of this Article, in which case the surviving Spouse will be considered the Pre-Retirement Beneficiary under the Plan. For purposes of this Section, the term "surviving" shall mean surviving the Participant by at least thirty-two (32) days. If there is no Pre-Retirement Beneficiary to whom a death benefit is payable, the death benefit shall be payable to the Participant's estate in accordance with and subject to the applicable provisions of this Article.

Section 8.12. Participant Death After Retirement Benefit Commencement. With respect to retirement applications received by GMEBS on or after July 1, 2011, upon the death of a Retired Participant subsequent to Retirement, there shall be payable to the Participant's designated Post-Retirement Beneficiary, a benefit to be determined as follows:

(a) If the Participant has elected a form of payment that does not permit designation of a Post-Retirement Beneficiary (Option A), as provided in Article VII, or if the Participant has

elected a form of payment that does permit such designation (Option B or C) and the Participant's designated Post-Retirement Beneficiary does not survive the Participant, no further payment of any kind whatsoever shall be made at the death of the Participant, except as provided in subsection (b) below.

(b) Except as otherwise provided in an Addendum to the Adopting Employer's Adoption Agreement, in the event that a Retired Participant who has elected a form of payment that does not permit designation of a Post-Retirement Beneficiary (Option A), as provided in Article VII, dies after Retirement benefit payments have commenced but before the Retired Participant has received at least thirty-six (36) monthly Retirement benefit payments, a one-time lump sum death benefit shall become payable which shall be equal to the amount of the Participant's initial Retirement benefit (determined as of the date such monthly Retirement benefit commenced) multiplied by thirty-six (36); provided, however, that the total amount of such lump-sum death benefit shall be reduced by the aggregate amount of Retirement benefits paid to such Retired Participant. The one-time lump sum death benefit shall be payable to the Retired Participant's surviving Spouse. In such case, the Participant's surviving Spouse shall be considered the designated beneficiary under the Plan for purposes of this subsection (b). In the event that: (1) such Retired Participant does not have a Spouse at the time of the Retired Participant's death; or (2) such Retired Participant does have a Spouse at the time of the Retired Participant's death but such Spouse does not survive the Retired Participant by at least thirty-two (32) days; or (3) such Retired Participant does have a Spouse at the time of the Retired Participant's death but such Spouse does not within six (6) months following the Retired Participant's death provide the Administrator with documentation which the Administrator deems sufficient to verify that she said individual was the Retired Participant's Spouse at the time

of the Retired Participant's death, the lump-sum death benefit described in this subsection 8.12(b) shall be paid to the estate of the Retired Participant. The lump sum death benefit described in this subsection 8.12(b) shall not be considered part of the standard benefit payment form (Option A) for purposes of determining actuarial equivalence. The lump sum death benefit paid pursuant to this subsection 8.12(b) shall be included in determining the sum of all benefits paid to the Participant for purposes of determining the amount of any refund of Employee Contributions payable under Section 13.06. For purposes of this subsection, the term "surviving" shall mean surviving the Retired Participant by at least thirty-two (32) days.

(c) If the Participant has elected a form of payment that permits designation of a Post-Retirement Beneficiary (Option B or C) as provided in Article VII, and the Participant's designated Post-Retirement Beneficiary survives him, benefits shall be payable to the Post-Retirement Beneficiary as provided by the option elected, commencing the month following the Participant's last benefit payment month.

ARTICLE IX.

TERMINATION BEFORE RETIREMENT; VESTING

Section 9.01. Vesting Requirement for Deferred Retirement Benefit. An Employer may establish different vesting requirements for different classes of Eligible Employees in the Adoption Agreement. A Participant whose employment is terminated for any reason other than death or Retirement shall be entitled to a Vested right in the Accrued Benefit only if the Participant meets the Qualifications for a deferred Vested Retirement benefit specified in the Adoption Agreement. Payment of such Vested Retirement Benefit shall commence on the first day of the month in which the effective Retirement Date occurs and shall be payable on the first day of each month thereafter during the lifetime of the Participant, unless the Participant elects an optional form of benefit payment under Article VII. The amount of such Monthly Retirement

Benefit shall be computed in the manner prescribed for Normal or Early Retirement in Article VI, as applicable, but based upon the Participant's Final Average Earnings (if applicable) and Total Credited Service up to the Participant's date of Termination of Employment with the Adopting Employer. Unless otherwise provided in the Adoption Agreement or in an Addendum thereto, in the event that an Eligible Regular Employee terminates employment with an Adopting Employer and returns to service with such Adopting Employer as an elected or appointed member of the Governing Authority, the portion of the monthly benefit attributable to Credited Service as an Eligible Regular Employee shall be computed based upon Credited Service as an Eligible Regular Employee and the benefit formula in effect as of the latest termination of employment as an Eligible Regular Employee. Likewise, in the event that an elected or appointed member of the Governing Authority vacates such office and returns to service with the Adopting Employer as an Eligible Regular Employee, the portion of the monthly benefit attributable to Credited Service as an elected or appointed member of the Governing Authority shall be computed based upon Credited Service as an elected or appointed member of the Governing Authority and the benefit formula in effect as of such individual's latest vacation of such office. Notwithstanding any other provision of the Plan to the contrary, if a Participant has satisfied the requirements for Normal Retirement as of the Participant's date of Termination, the Participant shall be one hundred percent (100%) Vested in the Normal Retirement benefit.

Section 9.02. Termination of Tenure of Office Before Retirement. Unless otherwise specified by the Employer in the Adoption Agreement, a Participant who is an elected or appointed member of the Governing Authority or a Municipal Legal Officer, and who vacates office for any reason other than death or Retirement shall be entitled to a Vested right in the portion of said Participant's Accrued Benefit attributable to the Participant's Credited Service as

an elected or appointed member of the Governing Authority only if said Participant meets the qualifications for a deferred Vested benefit applicable to elected or appointed members of the Governing Authority and Municipal Legal Officers as specified in the Adoption Agreement. Unless otherwise specified in the Employer's Adoption Agreement or Addendum thereto, if a Participant has Credited Service both as an elected or appointed member of the Governing Authority or a Municipal Legal Officer and as an Eligible Regular Employee of the Adopting Employer, the Participant's combined Total Credited Service shall be taken into account in determining whether the Participant has satisfied the minimum service requirements for vesting under the Plan and the minimum service requirements for benefit eligibility under the Plan that are applicable to Eligible Regular Employees, Municipal Legal Officers, and/or elected or appointed members of the Governing Authority, as applicable.

Section 9.03. Immediate Vesting in Disability Retirement Benefit. If the Employer elects in the Adoption Agreement to provide Disability benefits, and unless otherwise specified in the Adoption Agreement, a Participant who is Disabled and otherwise meets the Plan's eligibility requirements for payment of a Disability Retirement Benefit shall be considered 100% Vested in such benefit.

Section 9.04. Involuntary Termination Without Cause. Notwithstanding any more restrictive vesting requirement imposed by the Employer in the Adoption Agreement, a Participant whose employment is terminated involuntarily and without cause shall be entitled to a one hundred percent (100%) Vested Benefit if said Participant has completed five (5) years of Total Credited Service. For the purpose of this condition, "cause" for dismissal shall mean negligence or inefficiency in performing the duties of the position held, unfitness to perform

assigned duties, insubordination, or misconduct reflecting discredit on the Adopting Employer or upon the Governing Authority.

Section 9.05. Portability between Adopting Employers.

(a) This Section applies to a Participant, other than an elected or appointed member of the Governing Authority or Municipal Legal Officer, whose employment is terminated either voluntarily or involuntarily after participation in the Plan, provided that with respect to a Participant who terminates employment on or after January 1, 2015, such Participant has at least one (1) year of Credited Service with the Employer. This one (1) year minimum shall not apply with respect to a Participant,

(1) whose immediate prior employment was with another GMEBS Employer, and under whose Plan in effect prior to January 1, 2015, the Participant was subject to a waiting period and the Participant had satisfied such waiting period prior to the Participant's Termination of Employment with such prior GMEBS Employer, or

(2) (A) who is not described in paragraph 9.05(a)(1) above, and whose Employer's Plan contained an Addendum provision which was in effect prior to January 1, 2015, which provided for a waiting period of less than one (1) year to commence participation in the Plan, and (B) who was employed with said Employer prior to January 1, 2015 and satisfied such time limitation prior to Termination. With respect to an Employee described in this paragraph 9.05(a)(2), this Section shall become applicable to such Employee once the Employee has satisfied such waiting period.

(b) Subject to any limitations or conditions contained in the Employer's Adoption Agreement, in determining whether a Participant has satisfied the minimum service requirements for Vesting and the minimum service requirements for Retirement and, for Participants who

terminate on or after September 26, 2014, pre-retirement death benefit eligibility, under the Adoption Agreement of any GMEBS Adopting Employer, the Participant's Total Credited Service with all other of the Participant's past and future Adopting Employers shall be taken into account. In no event, however, shall service with one GMEBS Employer be used to calculate the benefit amount due the Participant from another GMEBS Employer. Prior to January 1, 2015, except as otherwise provided in Section 4.02(c)(7) concerning immediate participation for Participants who transfer from one GMEBS Adopting Employer to another, service with one GMEBS Adopting Employer may not be used to establish participation in another Adopting Employer's plan.

Section 9.06. Forfeiture of Benefits for Certain Crimes.

(a) Survivor benefits or refunds otherwise payable to a person upon the death of a Participant, Terminated Vested Participant, Retired Participant, or beneficiary shall be forfeited if the person commits or conspires to commit murder or involuntary manslaughter against a Participant, Terminated Vested Participant, Retired Participant, or beneficiary, in accordance with and subject to the applicable provisions of O.C.G.A. § 47-1-24 (a copy of which is included in the Appendix hereto). The terms of said code section are incorporated herein by reference, including any future amendments thereto.

(b) If the Adopting Employer receives information that a beneficiary has been convicted of any crime referenced in this Section which could potentially result in reduction or forfeiture of benefits, the Adopting Employer shall notify the Administrator when it receives notice of such conviction.

Section 9.07. Forfeitures.

(a) If the Adopting Employer is unable to determine the whereabouts of and payment information for any Participant, beneficiary or surviving Spouse to whom a payment (e.g., a payment of Retirement, Disability or Death benefits) is due and provide such information to the Administrator within a period of six (6) months from the later of: 1) the date on which the Administrator became aware that such payment became due and payable, or 2) the date on which the Administrator became unable to continue processing payments to the Participant, beneficiary or surviving Spouse due to changes in such individual's bank account, address, or other necessary information, the Administrator shall direct that the payment and all remaining payments, if any, otherwise due to the Participant, beneficiary or surviving Spouse be cancelled on the records of the Plan and the amount thereof be treated as a forfeiture. Likewise, if the Adopting Employer is unable to determine the whereabouts of and payment information for any Participant, surviving Spouse or estate, as applicable, to whom a return of Employee Contributions due pursuant to Section 13.03 or Section 13.06 of this Basic Plan Document or pursuant to the Adopting Employer's Adoption Agreement or an Addendum thereto and provide such information to the Administrator within a period of six (6) months from such Participant's Termination of Employment (for non-vested Participants and for vested Participants whose Employee Contributions are required to be refunded following termination provided a refund to vested Participants does not result in forfeiture of Credited Service under the Plan), a vested Participant's request for a return of contributions, or, in a case of failure to exhaust, the date of a Participant's death, the Administrator shall direct that the return of Employee Contributions otherwise due to the Participant, surviving Spouse or estate, as applicable, be cancelled on the

records of the Plan and the amount thereof be treated as a forfeiture and placed in the Employer's GMEBS Trust Fund.

(b) In the event that a payment (e.g., a return of Employee Contributions, or a payment of Retirement, Disability or Death benefits) is due to the estate of a Participant or beneficiary but the Administrator is unable to process such payment due to the absence of said estate or lack of information needed to process payment to said estate, or, following the expiration of six (6) months after the date on which the payment is issued the payment remains outstanding, the Administrator shall so notify the Adopting Employer. The Adopting Employer shall attempt to locate documents establishing such estate, a correct address or bank account or other necessary information to process such payment. If the Adopting Employer is unable to ascertain such documentation or information within six (6) months after receiving notice from the Administrator of the outstanding payment, the Administrator shall direct that the payment be cancelled on the records of the Plan and the amount thereof be treated as a forfeiture.

(c) Notwithstanding the foregoing provisions of this Section, if a Participant, beneficiary or surviving Spouse whose whereabouts or payment information is unknown and whose benefits are forfeited pursuant to this Section subsequently claims such benefits on the Applicable Form, such forfeited benefit shall be reinstated and shall be paid retroactively, without interest, to the date of the first cancelled payment. Likewise, if the executor of an estate to which a payment was forfeited pursuant to paragraph (b) above subsequently claims such benefits on the Applicable Form, the forfeited benefit shall be reinstated and shall be paid, without interest, to the estate.

(d) Forfeitures arising from the inability to determine the whereabouts of or payment information for a Participant, beneficiary or surviving Spouse, or arising from Termination of

Employment, withdrawal or any other reason may not be applied to increase the benefits any individual would otherwise receive under the Plan. Forfeitures will remain Trust assets, and as such, may be used to reduce an Adopting Employer's contribution.

(e) Notwithstanding any provision to the contrary, in the event that a return of Employee Contributions otherwise due to a Participant, to a surviving Spouse, to the estate of a Participant or of a Pre-Retirement or Post-Retirement Beneficiary, or to another individual or estate, as applicable, is cancelled on the records of the Plan and the amount thereof is treated as a forfeiture pursuant to this Section 9.07, including subsection (c), interest on such Employee Contributions shall cease to accrue as of the date on which the Administrator directs that the return of Employee Contributions be cancelled.

(f) An Adopting Employer shall take the following actions to locate any Participant, beneficiary or surviving Spouse to whom benefits are owed, consistent with IRS Revenue Procedure 2021-30 (or subsequent updated guidance):

(1) Search Plan and related Plan, Adopting Employer, and publicly-available records or directories for alternative contact information.

(2) A mailing via U. S. Postal Service certified mail to the last known mailing address, and contact through appropriate means for any address or contact information (including email addresses and telephone numbers) available to the Adopting Employer.

(3) Use of at least one of the following search methods: (i) a commercial locator service, (ii) a credit reporting agency, or (iii) internet search tools for locating individuals.

ARTICLE X.

DISTRIBUTION AND ROLLOVER RULES

Section 10.01. Distribution Rules Imposed by Federal Law. Notwithstanding any provision of this Plan to the contrary, any distribution under the Plan shall be made in accordance with Code Section 401(a)(9) and the Treasury regulations promulgated thereunder, including the incidental benefit rules under Code Section 401(a)(9)(G), and shall comply with the following rules:

(a) With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2002, the Plan shall apply the minimum distribution requirements of Code Section 401(a)(9) in accordance with the Final Regulations under Code Section 401(a)(9) that were issued on April 17, 2002, and June 15, 2004, notwithstanding any provision of the Plan to the contrary. GMEBS is coordinating the compliance with the Final Regulations to comply with the good faith reasonable standard of Pension Protection Act of 2006 Section 823.

(b) A Participant's entire interest will be distributed, or begin to be distributed, to the Participant no later than the Participant's required beginning date. For purposes of this Section, "required beginning date" means April 1 of the calendar year following the later of (i) the calendar year in which the Participant reaches age seventy and one-half (70½), or (ii) the calendar year in which the Participant Retires.

(c) If the Participant dies before distributions begin, the Participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(1) If the Participant's surviving spouse is the Participant's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or

by December 31 of the calendar year in which the Participant would have attained age seventy and one-half (70½), if later.

(2) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, over the life of the designated beneficiary or over a period certain not exceeding:

(A) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Participant's death; or

(B) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

(3) If there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.

(4) If the Participant's surviving spouse is the Participant's sole designated beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection (c), other than (c)(1), will apply as if the surviving spouse were the Participant.

If annuity payments irrevocably commence to the Participant before the Participant's required beginning date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under this subsection (c)), the date distributions are considered to begin is the date distributions actually commence.

(d) The amount that must be distributed on or before the Participant's required beginning date (or, if the Participant dies before distributions begin, the date distributions are required to begin under subsection (c)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the Participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Participant's required beginning date.

(e) Any additional benefits accruing to the Participant in a calendar year after the first distribution year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(f) If the Participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Participant and a non-spouse beneficiary, annuity payments to be made on or after the Participant's required beginning date to the designated beneficiary after the Participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Participant using the applicable table set forth in the Treasury Regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the Participant and a non-spouse beneficiary and a period certain

annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(g) Unless the Participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Participant's lifetime may not exceed the applicable distribution period for the Participant under applicable simple life table set forth in the Treasury Regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the Participant reaches age seventy (70), the applicable distribution period for the Participant is the distribution period for age seventy (70) under the applicable single life table as set forth in the Treasury Regulations plus the excess of seventy (70) over the age of the Participant as of the Participant's birthday in the year that contains the annuity starting date. If the Participant's spouse is the Participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Participant's applicable distribution period, as determined under this Section, or the joint life and last survivor expectancy of the Participant and the Participant's spouse as determined under the applicable joint life table set forth in the Treasury Regulations, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

(h) A Participant or beneficiary eligible for benefits from an Adopting Employer's Plan must complete and return the Applicable Form provided for such purpose in order to commence distribution of benefits. Any excise tax under Code Section 4974 that results from a failure to timely apply for distribution of benefits under the Plan shall be the responsibility of the Participant or beneficiary, as applicable.

Section 10.02. Rollover of Distributions. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Distributee's election under this Section, a Distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover. The following definitions shall apply to this Section:

(a) An "Eligible Rollover Distribution" is any distribution of all or any portion of the balance to the credit of the Distributee, except that an Eligible Rollover Distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the Distributee's designated beneficiary, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) the portion of any distribution that is not includible in gross income; or (iv) any other distributions which the Internal Revenue Service does not consider eligible for rollover treatment, such as certain corrective distributions necessary to comply with the provisions of Code Section 402(g) or 415. Effective January 1, 2002, an Eligible Rollover Distribution also includes a distribution to a surviving spouse. Effective January 1, 2002, a portion of a distribution will not fail to be an Eligible Rollover Distribution merely because the portion consists of after-tax Employee Contributions that are not includible in gross income. However, such portion may be transferred only to a (1) traditional individual retirement account or annuity described in IRC 408(a) or (b) (a "traditional IRA") or a Roth individual retirement account or annuity described in IRC 408(A) (a "Roth IRA"), or (2) to a qualified defined contribution defined benefit or annuity plan described in IRC 401(a) or 403(a) or to an annuity contract described in IRC 403(b), if such plan or contract provides for

separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(b) An "Eligible Retirement Plan" is any one of the following that accepts the Distributee's Eligible Rollover Distribution: (i) a traditional IRA; (ii) a Roth IRA; (iii) an annuity plan described in Code Section 403(a); or (iv) a qualified defined benefit or defined contribution plan described in Code Section 401(a). Effective for distributions made after December 31, 2001, an Eligible Retirement Plan will also include an eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A) that agrees to separately account for amounts transferred into that plan; or an annuity plan described in Code Section 403(b); effective for distributions made after December 31, 2007, an Eligible Retirement Plan will also include a Roth IRA described in Code Section 408A; and effective for distributions made after December 18, 2015, an Eligible Retirement Plan will also include a SIMPLE IRA as described in Code Section 408(p), provided that the rollover contribution is made after the two-year period beginning on the date the Distributee first participated in any qualified salary reduction arrangement maintained by the Distributee's employer under Code Section 408(p)(2), as described in Code Section 72(t)(6). The portion of an Eligible Rollover Distribution that is not includible in gross income may be transferred only to an individual retirement account or individual retirement annuity described in Code Sections 408(a) or 408(b), a qualified defined contribution plan described in Code Section 401(a), a qualified plan described in Code Section 403(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Code Section 401(a) or an annuity contract described in Code Section 403(b), that agrees to separately account for amounts so transferred, including separately

accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(c) A "Distributee" includes an employee or former employee. A Distributee also includes the employee's or former employee's surviving spouse. A Distributee also includes a nonspouse beneficiary who is a designated beneficiary as defined by Code Section 401(a)(9)(E). However, a nonspouse beneficiary may only make a direct rollover of the distribution to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(d) A "Direct Rollover" is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

(e) Notwithstanding subsection (a), if an Eligible Rollover Distribution is expected to total less than Two Hundred Dollars (\$200) during a year, such payment may not be directly rolled over.

Section 10.03. Acceptance of Eligible Rollover Distributions. To the extent permitted by the applicable provisions of the Code and regulations issued thereunder, for the purpose of purchasing Credited Service or repaying withdrawn Employee Contributions (including any Contributions made to purchase prior service credit, as applicable) as permitted under the Plan and the Employer's Adoption Agreement (i) a Participant may contribute to the Plan as a rollover contribution a qualified rollover amount from a qualified plan under Code Section 401(a), an annuity plan under Code Section 403(a), an individual retirement account or annuity under Code Sections 408(a) or (b), a governmental deferred compensation plan under Code Section 457(b), or a tax-sheltered annuity under Code Section 403(b), that is includible in

taxable income; or (ii) a Participant may make a direct rollover to the Plan of a qualified rollover amount from a qualified plan under Code Section 401(a) consisting of after-tax employee contributions that is not includible in taxable income provided that such amount will be separately accounted for under the Plan; provided, further, that the Administrator, in its discretion, determines that the contribution satisfies all applicable requirements of the Code. Such rollovers will be allowed to the extent permitted by law, subject to any conditions, proofs, or acceptance the Administrator deems appropriate.

Section 10.04. Acceptance of Trustee-to-Trustee Transfers. A Participant may make a direct trustee-to-trustee transfer from another Code Section 401(a) qualified retirement plan, a governmental deferred compensation plan under Code Section 457(b), or a tax-sheltered annuity under Code Section 403(b) for the purchase of permissive service credit, as defined in Code Section 415(n)(3)(A) and as permitted under the Plan and the Employer's Adoption Agreement, or for a repayment to which Code Section 415 does not apply by reason of Code Section 415(k)(3), as permitted under the Plan and the Employer's Adoption Agreement. Such transfers will be allowed to the extent permitted by law, subject to any conditions, proofs, or acceptance the Administrator deems appropriate.

ARTICLE XI.

LIMITATIONS ON BENEFITS

Section 11.01. Effective Date. The Plan shall be administered so as to comply with this Article for limitation years beginning on or after July 1, 2007, except as otherwise provided herein.

Section 11.02. Limitation on Annual Benefit.

(a) In no event shall the aggregate annual benefit for a calendar year (the "limitation year") provided under this Plan and all other defined benefit plans (without regard to whether the

plan has terminated) of the Employer for any Participant exceed an amount equal to One Hundred Sixty Thousand Dollars (\$160,000) as adjusted pursuant to Code Section 415(d)(1)(A).

(b) Adjustment for Benefits Commencing Before Age 62.

(1) If the retirement income benefit under the Plan begins before age sixty-two (62) and occurs in a limitation year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement, the One Hundred Sixty Thousand Dollar (\$160,000) limitation for the Participant's retirement income benefit commencement date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's retirement income benefit commencement date that is the actuarial equivalent of the One Hundred Sixty Thousand Dollar (\$160,000) limitation (adjusted under subsection (h) for years of participation less than ten (10), if required) with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for the retirement income benefit commencement date (expressing the Participant's age based on completed calendar months as of the retirement income benefit commencement date).

(2) If the retirement income benefit under the Plan begins before age sixty-two (62) and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age sixty-two (62) and the age of benefit commencement, the One Hundred Sixty Thousand Dollar (\$160,000) limitation for the Participant's retirement income benefit commencement date is the lesser of the limitation determined under paragraph (1) and the One Hundred Sixty Thousand Dollar (\$160,000) limitation (adjusted under subsection (h) for years of

participation less than ten (10), if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan at the Participant's retirement income benefit commencement date to the annual amount of the immediately commencing straight life annuity under the Plan at age sixty-two (62), both determined without applying the limitations of this Article.

(3) If the retirement income benefit under the Plan begins before age sixty-two (62) and occurs in a limitation year that begins on or after January 1, 2002, but prior to July 1, 2007, the determination as to whether the One Hundred Sixty Thousand Dollars (\$160,000) limitation has been satisfied shall be made by reducing the One Hundred Sixty Thousand Dollars (\$160,000) limitation so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a One Hundred Sixty Thousand Dollars (\$160,000) annual benefit beginning at age sixty-two (62). The age reduced dollar limit shall be the lesser of the equivalent amount computed using the actuarial table in Section 12.01 of the Plan for actuarial equivalence for early retirement benefits, and the amount computed using five percent (5%) interest and the applicable mortality table (to the extent that the mortality decrement is used prior to age sixty-two (62)).

(c) Adjustment for Benefits Commencing After Age 65.

(1) If the retirement income benefit under the Plan begins after age sixty-five (65) and occurs in a limitation year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age sixty-five (65) and the age of benefit commencement, the One Hundred Sixty Thousand Dollar (\$160,000) limitation at the Participant's retirement income benefit commencement date

is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's retirement income benefit commencement date that is the actuarial equivalent of the One Hundred Sixty Thousand Dollar (\$160,000) limitation (adjusted under subsection (h) for years of participation less than ten (10), if required), with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for that retirement income benefit commencement date as specified in Section 11.02(e)(2)(B) of the Plan (expressing the Participant's age based on completed calendar months as of the retirement income benefit commencement date).

(2) If the retirement income benefit under the Plan begins after age sixty-five (65) and occurs in a limitation year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age sixty-five (65) and the age of benefit commencement, the One Hundred Sixty Thousand Dollar (\$160,000) limitation at the Participant's retirement income benefit commencement date is the lesser of the limitation determined under paragraph (1) and the One Hundred Sixty Thousand Dollar (\$160,000) limitation (adjusted under subsection (h) for years of participation less than ten (10), if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Participant's retirement income benefit commencement date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age sixty-five (65), both determined without applying the limitations of this Article. For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Participant's retirement income benefit commencement date is the annual amount of such annuity payable to the Participant, computed disregarding the Participant's accruals after age

sixty-five (65) but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age sixty-five (65) is the annual amount of such annuity that would be payable under the Plan to a hypothetical Participant who is age sixty-five (65) and has the same accrued benefit as the Participant.

(3) If the retirement income benefit under the Plan begins after age sixty-five (65) and occurs in a limitation year that begins on or after January 1, 2002, but prior to July 1, 2007, the One Hundred Sixty Thousand Dollar (\$160,000) limitation for the Participant's retirement income benefit commencement date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Participant's retirement income benefit commencement date that is the actuarial equivalent of the One Hundred Sixty Thousand Dollar (\$160,000) limitation (adjusted under subsection (h) for years of participation less than ten (10), if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (i) the actuarial increase factors specified in Section 12.05 of the Plan; or (ii) a five percent (5%) interest rate assumption and the applicable mortality table as specified in Section 11.02(e)(2)(B) of the Plan.

(d) Notwithstanding the other requirements of this section, in adjusting the dollar limitation for the Participant's retirement income benefit commencement date under subsection (b) or (c), as applicable, no adjustment shall be made to the One Hundred Sixty Thousand Dollar (\$160,000) limitation to reflect the probability of a Participant's death between the retirement income benefit commencement date and age sixty-two (62), or between age sixty-five (65) and the retirement income benefit commencement date, as applicable, if benefits are not forfeited

upon the death of the Participant prior to the retirement income benefit commencement. To the extent benefits are forfeited upon death before the retirement income benefit commencement date, such an adjustment shall be made. Furthermore, notwithstanding the requirements of this section, the adjustments provided for in subsections (b) and (c) shall not apply (i) in the event the Participant's benefit is based on at least fifteen (15) years of service as a full-time employee of any police or fire department or on fifteen (15) years of military service, or (ii) in the case of pre-retirement disability benefits or pre-retirement death benefits.

(e) Adjustment for Form Not Subject to Code Section 417(e)(3). For distributions made in any form other than a straight life annuity or a qualified joint and survivor annuity to which Code Section 417(e)(3) does not apply [generally, a monthly benefit], such benefit shall be adjusted to a straight life annuity, beginning at the same age, which is the actuarial equivalent of such benefit.

(1) For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity for purposes of applying the limitations under Code Section 415(b) to benefits is equal to the greater of (or the reduced limitation applicable at the retirement income benefit commencement date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) the equivalent annual benefit computed using the interest rate and mortality table, or tabular factor, specified in Article XII of the Plan for actuarial equivalence for the particular form of benefit payable, and

(B) the equivalent annual benefit computed using a five percent (5%) interest rate assumption and the applicable mortality table described in Internal

Revenue Service guidance (the mortality table specified in Revenue Ruling 98-1 prior to 2003 or Revenue Ruling 2001-62 on or after January 1, 2003).

(2) For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of (or the reduced limitation applicable at the retirement income benefit commencement date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) the annual amount of the straight life annuity (if any) payable to the Participant under the Plan commencing at the same retirement income benefit commencement date as the Participant's form of benefit; and

(B) the annual amount of the straight life annuity commencing at the same retirement income benefit commencement date that has the same actuarial present value as the Participant's form of benefit, computed using a five percent (5%) interest rate assumption and the applicable mortality table described in Internal Revenue Service guidance (the mortality table specified in Revenue Ruling 2001-62 on or after January 1, 2003) and, for years after December 31, 2008, the applicable mortality tables described in Code Section 417(e)(3)(B) (Internal Revenue Service Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Code Section 417(e)(3)(B)).

(f) Adjustment for Form Subject to Code Section 417(e)(3). As required by final Treasury Regulations, for distributions made in any form to which Code Section 417(e)(3) applies [generally, a lump sum benefit], such benefit shall be adjusted to a straight life annuity, beginning at the same age, which is the actuarially equivalent straight life annuity benefit which is the greatest of (or the reduced limitation applicable at the retirement income benefit

commencement date which is the "least of" when adjusted in accordance with the following assumptions):

(1) The annual amount of the straight life annuity commencing at the retirement income benefit commencement date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in Article XII of the Plan for actuarial experience;

(2) The annual amount of the straight life annuity commencing at the retirement income benefit commencement date that has the same actuarial present value as the particular form of benefit payable, computed using a five and five-tenths percent (5.5%) interest assumption (or the applicable statutory interest assumption) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 98-1 prior to 2003 and Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62) and (ii) for years after December 31, 2008, the applicable mortality tables described in Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Code Section 417(e)(3)(B)); or

(3) the annual amount of the straight life annuity commencing at the retirement income benefit commencement date that has the same actuarial present value as the particular form of benefit payable computed using the applicable interest rate for the distribution under Internal Revenue Service guidance (the 30-year Treasury rate prior to January 1, 2008, using the rate in effect for the month prior to retirement; on and after January 1, 2008, using the rate in effect for the first day of the plan year with a one-year

stabilization period; and on and after January 1, 2015, using the rate in effect for the September prior to the plan year of distribution with a one-year stabilization period) and (i) for years prior to January 1, 2009, the applicable mortality tables for the distribution under Treasury Regulation Section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 98-1 prior to 2003 and Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), and (ii) for years after December 31, 2008, the applicable mortality tables described in Code Section 417(e)(3)(B) (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing Code Section 417(e)(3)(B)), divided by one and five-one-hundredths (1.05). However, effective for benefits commencing during limitation years beginning after December 31, 2008, this paragraph (3) does not apply to a Plan maintained by an eligible employer as defined under Code Section 408(p)(2)(C)(i) (generally, an Employer that had no more than one hundred (100) employees who received at least Five Thousand Dollars (\$5,000) of compensation from the Employer during the preceding year).

(g) Limitations on benefits under this Article shall not apply where the total annual benefits payable to a Participant under this Plan and all other qualified defined benefit plans (whether or not terminated) of the Employer do not exceed Ten Thousand Dollars (\$10,000) in the aggregate. This minimum limitation is not applicable for a Participant whose Employer maintains or has maintained a defined contribution plan in which such Participant participated.

(h) The Ten Thousand Dollars (\$10,000) minimum limitation, if provided, must be reduced where a Participant has less than ten (10) years of service with the Employer at the time the Participant begins to receive retirement benefits under the Plan, and the maximum dollar

limitation must be reduced where a Participant has less than ten (10) years of participation when retirement benefits under the Plan commence. These adjustments are made by multiplying the applicable limitations by the appropriate fraction:

(A) For the Ten Thousand Dollars (\$10,000) minimum limitation – Years of service with the employer as of and including, the current limitation year divided by ten (10); or

(B) For the maximum dollar limitation – Years of participation with the employer as of and including, the current limitation year divided by ten (10).

(i) For purposes of applying the limits under Code Section 415(b) (Limit), the following will apply:

(1) prior to any limitation year beginning on or after July 1, 2007, adjustments under Section 6.05, will be taken into consideration when determining a Participant's applicable Limit;

(2) for any limitation year beginning on or after July 1, 2007:

(A) a Participant's applicable Limit will be applied to the Participant's annual benefit in the Participant's first limitation year without regard to any automatic cost of living adjustments under Section 6.05;

(B) to the extent the Participant's benefit equals or exceeds the Limit, the Participant will no longer be eligible for cost of living adjustments under Section 6.05 until such time as the benefit plus the accumulated adjustments under Section 6.05 are less than the Limit;

(C) thereafter, in any subsequent limitation year, a Participant's annual benefit, including any automatic cost of living increases under Section 6.05, shall

be tested under the then applicable benefit Limit including any adjustment to the Code Section 415(b)(1)(A) dollar limit under Code Section 415(d), and the regulations thereunder; but

(D) in no event shall a Participant's benefit payable under the Plan in any limitation year be greater than the Limit applicable at the annuity starting date, as increased in subsequent years pursuant to Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity, then the preceding provisions are applied by reducing the Code Section 415(b) limit applicable at the annuity starting date to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation Section 1.415(b)-1(c)(2)(ii)) that takes into account the death benefits under the form of benefit.

Section 11.03. Limitation on Annual Additions.

(a) Effective beginning on and after January 1, 2002, to the extent required under Code Section 415(c), in no event shall the "annual addition" for a Participant for any calendar year (the "limitation year"), exceed the lesser of:

(1) Forty Thousand Dollars (\$40,000)), as adjusted for increases in the cost of living under Code Section 415(d); or

(2) One hundred percent (100%) of the "compensation" of such Participant received from an Adopting Employer during the limitation year.

(b) For purposes of this Section, "compensation" means all of a Participant's wages as defined in Code Section 3401(a) for the purposes of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on

the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)); provided, however, for limitation years beginning after December 31, 1997, compensation shall also include the amount of any elective deferrals, as defined in Code Section 402(g)(3), and any amount contributed or deferred by the Adopting Employer at the election of the Employee and which is not includable in the gross income of the Employee by reason of Code Section 125 or 457, but shall exclude Employee contributions picked up under Code Section 414(h)(2). For limitations years beginning after December 31, 2000, compensation shall also include any amount deferred by the Adopting Employer at the election of the Employee which is not includable in the gross income of the Employee by reason of Code Section 132(f)(4). For limitation years beginning on or after July 1, 2007, the following types of payments, if paid by the later of (i) two and one-half (2½) months following a Participant's Termination of Employment, or (ii) the last day of the limitation year that includes the Participant's Termination of Employment, will be included as compensation for purposes of this Section: payments that, absent a Termination of Employment, would have been paid to the Participant while the Participant continued in employment and that are regular compensation for services rendered, and payments of accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued. Any payments not described in the preceding sentence are not considered compensation if paid after severance from employment, even if they are paid within two and one-half (2½) months following severance from employment, except for payments to the individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code Section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the

Employer rather than entering qualified military service. An Employee who is in qualified military service (within the meaning of Code Section 414(u)(1)) shall be treated as receiving compensation from the Employer during such period of qualified military service equal to (i) the compensation the Employee would have received during such period if the Employee were not in qualified military service, determined based on the rate of pay the Employee would have received from the Employer but for the absence during the period of qualified military service, or (ii) if the compensation the Employee would have received during such period was not reasonably certain, the Employee's average compensation from the Employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service). For limitation years beginning on or after July 1, 2007, a Participant's compensation for purposes of this Section shall not exceed the annual limit under Code Section 401(a)(17).

(c) For purposes of this Section, "annual addition" means the sum of the following amounts credited to a Participant's accounts for the limitation year under this Plan and any other plan maintained by an Employer: (i) employer contributions; (ii) employee contributions; (iii) forfeitures; and (iv) allocations under a simplified employee pension plan. Amounts allocated after March 31, 1984, to an individual medical account, as defined in Code Section 415(l)(2), which is part of a pension or annuity plan maintained by an Employer are treated as annual additions to a defined contribution plan. Also, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Code Section 419A(d)(3), under a welfare benefit fund, as defined in

Code Section 419(e), maintained by an Employer are treated as annual additions to a defined contribution plan.

(d) If the annual addition for a Participant under the Plan would be greater than the annual addition for such Participant as limited by subsection (a), then the excess shall be corrected as permitted under the IRS Employee Plans Compliance Resolution System (currently set forth in Revenue Procedure 2008-50).

Section 11.04. Code Section 415(e) Limits. For limitation years beginning on and after January 1, 2000, any benefit limitations applied pursuant to Code Section 415(e) shall no longer apply for employees or former employees who are Participants with an accrued benefit under the Plan on or after January 1, 2000.

Section 11.05. Limitations on Service Credit Purchases.

(a) Notwithstanding any other provision of law to the contrary, if an Adopting Employer adopts an Addendum to the Adoption Agreement that provides for service credit purchases, the Administrator may modify a request by a Participant to make an Employee Contribution if the amount of the Contribution would exceed the limits provided in Code Section 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the Administrator may establish a periodic payment plan for the Participant to avoid a contribution in excess of the limits under Code Sections 415(c) or 415(n).

(2) If payment pursuant to paragraph (1) will not avoid a contribution in excess of the limits imposed by Code Section 415(c), the Administrator may either reduce the Employee Contribution to an amount within the limits of that section or refuse the Participant's Contribution.

(b) Effective for any permissive service credit contributions made in limitation years beginning after December 31, 1997, if a Participant makes one (1) or more contributions to purchase permissive service credit under an Adopting Employer's Plan, then the requirements of this Section will be treated as met only if:

(1) the requirements of Code Section 415(b) are met, determined by treating the accrued benefit derived from all such Contributions as an annual benefit for purposes of Code Section 415(b), or

(2) the requirements of Code Section 415(c) are met, determined by treating all such Contributions as annual additions for purposes of Code Section 415(c).

(3) For purposes of applying paragraph (1), the Plan will not fail to meet the reduced limit under Code Section 415(b)(2)(C) solely by reason of this paragraph (3), and for purposes of applying paragraph (2), the Plan will not fail to meet the percentage limitation under Code Section 415(c)(1)(B) solely by reason of this subsection (b).

(4) For purposes of this subsection (b) the term "permissive service credit" means service credit—

(A) recognized by the Plan for purposes of calculating a Participant's benefit under the Plan,

(B) which such Participant has not received under the Plan, and

(C) which such Participant may receive only by making a voluntary additional contribution, in an amount determined under the Plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no

performance of service, and, notwithstanding subparagraph (B), may include service credited in order to provide an increased benefit for service credit which a Participant is receiving under the Plan.

(5) The Plan will fail to meet the requirements of this subsection (b) if—

(A) more than five (5) years of nonqualified service credit are taken into account for purposes of this paragraph (5), or

(B) any nonqualified service credit is taken into account under this subsection (b) before the Participant has at least five (5) years of participation under the Plan.

(6) For purposes of paragraph (5), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to—

(A) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Code Section 415(k)(3)),

(B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in subparagraph (A)) of an education organization described in Code Section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary

education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(C) service as an employee of an association of employees who are described in subparagraph (A), or

(D) military service (other than qualified military service under Code Section 414(u)) recognized by such governmental plan.

In the case of service described in subparagraph (A), (B), or (C), such service will be nonqualified service if recognition of such service would cause a Participant to receive a retirement benefit for the same service under more than one Plan.

(7) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Code Section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)—

(A) the limitations of paragraph (6) will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(B) the distribution rules applicable under federal law to the Plan will apply to such amounts and any benefits attributable to such amounts.

(8) For an eligible Participant, the limitation of Code Section 415(c)(1) shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the Plan as in effect on August 5, 1997. For purposes of this paragraph (8), an eligible Participant is an individual who first became a Participant in the Plan before January 1, 1998.

Section 11.06. Interpretation of this Article.

(a) The annual additions and annual benefit of a Participant shall be adjusted pursuant to this Article so as to produce the maximum annual benefit and maximum annual additions permissible for such Participant.

(b) For purposes of this Section and subject to Code Section 415(f), all defined benefit plans of an Adopting Employer, whether or not terminated, are to be treated as a single defined benefit plan, and all defined contribution plans of an Adopting Employer are to be treated as a single defined contribution plan. However, Adopting Employers shall be considered as separate Employers in accordance with State law. The ability of an Adopting Employer to amend the Adoption Agreement to the extent necessary to satisfy Code Section 415 is provided by and subject to Section 18.01.

ARTICLE XII.

ACTUARIAL EQUIVALENT CONVERSION TABLES

Section 12.01. Early Retirement Reduction Table. Unless otherwise elected in the Adoption Agreement or an Addendum thereto, the following early retirement reduction table is to be used:

<u>Number of Years Before Normal Retirement*</u>	<u>Percentage of Normal Retirement Benefit</u>
0	1.000
1	.933
2	.867
3	.800
4	.733
5	.667
6	.633
7	.600
8	.567
9	.533
10	.500
11	.467

12	.433
13	.400
14	.367
15	.333

*Interpolate for whole months.

Section 12.02. Option B Tables.

(a) Participant Same Age Or Older –

(1) The following table is to be used for Participants who begin drawing Retirement benefits on or after April 1, 2021, with respect to a Participant who is the same age as or older than the Participant's Beneficiary:

Participant Age - Beneficiary Age	Contingent Annuity Factor			
	<u>100%</u>	<u>75%</u>	<u>50%</u>	<u>25%</u>
0	0.848	0.881	0.918	0.957
1	0.841	0.876	0.913	0.955
2	0.834	0.870	0.909	0.952
3	0.827	0.864	0.905	0.950
4	0.820	0.859	0.901	0.948
5	0.814	0.853	0.897	0.946
6	0.807	0.848	0.893	0.944
7	0.801	0.843	0.890	0.942
8	0.795	0.838	0.886	0.940
9	0.790	0.833	0.882	0.938
10	0.784	0.829	0.879	0.936
11	0.779	0.824	0.876	0.934
12	0.774	0.820	0.872	0.932
13	0.769	0.816	0.869	0.930
14	0.764	0.812	0.866	0.928
15	0.760	0.808	0.864	0.927
16	0.756	0.805	0.861	0.925
17	0.752	0.801	0.858	0.924
18	0.748	0.798	0.856	0.922
19	0.744	0.795	0.854	0.921
20	0.741	0.792	0.851	0.920
21 or more	*	*	*	*

*Factor for twenty (20) year age difference minus extrapolation factor below times number of years in excess of twenty (20) that Participant's age exceeds the Participant's Beneficiary's age.

Contingent Annuity Percentage	Extrapolation Factor
100%	.004
75%	.003
50%	.002
25%	.001

(2) The following table is to be used for Participants who begin drawing Retirement benefits on or after January 1, 2013 and prior to April 1, 2021, with respect to a Participant who is the same age or older than the Participant's Beneficiary:

Participant Age – Beneficiary Age	Contingent Annuity Factor			
	<u>100%</u>	<u>75%</u>	<u>50%</u>	<u>25%</u>
0	.833	.870	.909	.952
1	.826	.864	.905	.950
2	.819	.857	.900	.947
3	.811	.851	.896	.945
4	.804	.845	.891	.943
5	.797	.839	.887	.940
6	.790	.833	.882	.938
7	.783	.828	.878	.935
8	.776	.822	.874	.933
9	.769	.816	.870	.930
10	.763	.811	.866	.928
11	.757	.806	.861	.926
12	.751	.800	.858	.923
13	.745	.795	.854	.921
14	.739	.791	.850	.919
15	.733	.786	.846	.917
16	.728	.781	.843	.915
17	.723	.777	.839	.913
18	.718	.772	.836	.911
19	.713	.768	.833	.909
20	.708	.764	.830	.907
21 or more	*	*	*	*

*Factor for twenty (20) year age difference minus extrapolation factor below times number of years in excess of twenty (20) that Participant's age exceeds the Participant's Beneficiary's age.

Contingent

Annuity
Percentage

Extrapolation
Factor

100%	.005
75%	.004
50%	.003
25%	.002

(b) Participant Younger –

(1) The following table is to be used for Participants who begin drawing Retirement benefits on or after April 1, 2021, with respect to a Participant who is younger than the Participant's Beneficiary:

<u>Beneficiary Age - Participant Age</u>	<u>Contingent Annuity Factor</u>			
	<u>100%</u>	<u>75%</u>	<u>50%</u>	<u>25%</u>
1	0.855	0.887	0.922	0.959
2	0.863	0.893	0.926	0.962
3	0.870	0.899	0.930	0.964
4	0.877	0.905	0.935	0.966
5	0.885	0.911	0.939	0.968
6	0.892	0.917	0.943	0.971
7	0.899	0.922	0.947	0.973
8	0.906	0.928	0.951	0.975
9	0.913	0.933	0.955	0.977
10	0.920	0.939	0.958	0.979
11	0.926	0.944	0.962	0.980
12	0.932	0.948	0.965	0.982
13	0.938	0.953	0.968	0.984
14	0.944	0.957	0.971	0.985
15	0.949	0.961	0.974	0.987
16	0.954	0.965	0.977	0.988
17	0.959	0.969	0.979	0.989
18	0.963	0.972	0.981	0.990
19	0.967	0.975	0.983	0.992
20	0.971	0.978	0.985	0.992
21 or more	0.974	0.980	0.987	0.993

(2) The following table is to be used for Participants who begin drawing Retirement benefits on or after January 1, 2013 and prior to April 1, 2021, with respect to a Participant who is younger than the Participant's Beneficiary:

Beneficiary Age – Participant Age	Contingent Annuity Factor			
	<u>100%</u>	<u>75%</u>	<u>50%</u>	<u>25%</u>
1	.841	.876	.914	.955
2	.848	.882	.918	.957
3	.856	.888	.922	.960
4	.863	.894	.926	.962
5	.870	.899	.931	.964
6	.877	.905	.935	.966
7	.885	.911	.939	.968
8	.892	.916	.943	.970
9	.898	.922	.947	.973
10	.905	.927	.950	.974
11	.912	.932	.954	.976
12	.918	.937	.957	.978
13	.924	.942	.960	.980
14	.930	.946	.964	.981
15	.935	.951	.967	.983
16	.941	.955	.969	.984
17	.945	.959	.972	.986
18	.950	.962	.974	.987
19	.955	.966	.977	.988
20	.959	.969	.979	.989
21 or more	.960	.970	.980	.990

Section 12.03. Option C Table.

(a) The following table is to be used for Participants who begin drawing Retirement benefits on or after April 1, 2021:

Period	Factor
5 Years	.985
10 Years	.947
15 Years	.898
20 Years	.846

(b) The following table is to be used for Participants who begin drawing Retirement benefits on or after January 1, 2013 and prior to April 1, 2021:

<u>Period</u>	<u>Factor</u>
5 Years	.973
10 Years	.911
15 Years	.842
20 Years	.780

Section 12.04. Life Annuity Factors to be Used in Computing Actuarial Reserve

Death Benefit.

(a) The following table is to be used for to calculate actuarial reserve death benefits, if any, payable on behalf of a Participant who dies on or after April 1, 2021:

Age	Factor	Age	Factor
21	12.7738	43	12.2346
22	12.7581	44	12.1725
23	12.7424	45	12.1045
24	12.7268	46	12.0302
25	12.7112	47	11.9493
26	12.6959	48	11.8616
27	12.6805	49	11.7667
28	12.6653	50	11.6643
29	12.6500	51	11.5536
30	12.6344	52	11.4383
31	12.6184	53	11.3184
32	12.6017	54	11.1942
33	12.5838	55	11.0658
34	12.5644	56	10.9331
35	12.5427	57	10.7963
36	12.5187	58	10.6551
37	12.4917	59	10.5088
38	12.4613	60	10.3561
39	12.4263	61	10.1959
40	12.3865	62	10.0267
41	12.3414	63	9.8470
42	12.2908	64	9.6560
		65	9.4536

(b) The following table is to be used for to calculate actuarial reserve death benefits, if any, payable on behalf of a Participant who dies on or after January 1, 2013 and prior to April 1, 2021:

<u>Age</u>	<u>Factor</u>	<u>Age</u>	<u>Factor</u>
21	12.5773	43	11.4236
22	12.5567	44	11.3274
23	12.5337	45	11.2264
24	12.5082	46	11.1207
25	12.4804	47	11.0102
26	12.4501	48	10.8952
27	12.4170	49	10.7755
28	12.3809	50	10.6509
29	12.3416	51	10.5213
30	12.2994	52	10.3869
31	12.2541	53	10.2479
32	12.2056	54	10.1041
33	12.1535	55	9.9552
34	12.0976	56	9.8010
35	12.0383	57	9.6415
36	11.9754	58	9.4769
37	11.9088	59	9.3076
38	11.8384	60	9.1331
39	11.7640	61	8.9537
40	11.6855	62	8.7698
41	11.6026	63	8.5818
42	11.5154	64	8.3903
		65	8.1958

Section 12.05. Late Retirement Actuarial Increase Factors.

(a) The following table is to be used with respect to Participants who begin drawing Retirement benefits on or after April 1, 2021:

<u>Current Age*</u>	<u>Factor</u>
65	1.0000
66	1.1133
67	1.2425
68	1.3904
69	1.5603
70	1.7566

71	1.9843
72	2.2498
73	2.5613
74	2.9285
75	3.3646

*Assumes Normal Retirement at Age 65

(b) The following table is to be used with respect to Participants who begin drawing Retirement benefits on or after January 1, 2013 and prior to April 1, 2021:

<u>Current Age*</u>	<u>Factor</u>
65	1.0000
66	1.1317
67	1.2850
68	1.4645
69	1.6755
70	1.9246
71	2.2204
72	2.5734
73	2.9967
74	3.5073
75	4.1274

*Assumes Normal Retirement at Age 65

Figure factor using years and months. Divide difference between next highest age factor and age factor lower, by twelve (12), then multiply by number of months. Add this onto age for years factor to arrive at correct factor. (Round off to 4 decimals). Note: If normal retirement age differs from sixty-five (65), factors must be supplied by Actuary.

Section 12.06. Offset Calculations; Other Annuity Forms. Actuarial equivalence factors and conversion factors for other annuity forms shall be computed by an enrolled Actuary on an actuarially equivalent basis. Actual Participant and Beneficiary ages are used for purposes of Section 6.06. Conversion factors for other annuity forms assume the Participant is retiring at age sixty-five (65).

Effective on or after April 1, 2021, the actuarial equivalence factors for Participants for purposes of Section 6.06 and the conversion factors for purposes of other annuity forms are computed using 75% of the Pri-2012 head-count weighted Healthy Retiree Mortality Table for

males with rates multiplied by 1.25 and projected generationally from 2012 using 60% of the male improvement rates under the 2019 OASDI Trustees Report for the intermediate alternative with maturity values calculated as of 2023, plus 25% of the Pri-2012 head-count weighted Healthy Retiree Mortality Table for females with rates multiplied by 1.25 and projected generationally from 2012 using 60% of the female improvement rates under the 2019 OASDI Trustees Report for the intermediate alternative with maturity values calculated as of 2023 and with interest of seven and three-eighths percent (7.375%). Likewise, effective on or after April 1, 2021, the actuarial equivalence factors for Beneficiaries for purposes of Section 6.06 and the conversion factors for purposes of other annuity forms are computed using 25% of the Pri-2012 head-count weighted Healthy Retiree Mortality Table for males with rates multiplied by 1.25 and projected generationally from 2012 using 60% of the male improvement rates under the 2019 OASDI Trustees Report for the intermediate alternative with maturity values calculated as of 2023, plus 75% of the Pri-2012 head-count weighted Healthy Retiree Mortality Table for females with rates multiplied by 1.25 and projected generationally from 2012 using 60% of the female improvement rates under the 2019 OASDI Trustees Report for the intermediate alternative with maturity values calculated as of 2023 and with interest of seven and three-eighths percent (7.375%).

Effective January 1, 2018 through March 31, 2021, the actuarial equivalence factors for purposes of Section 6.06 shall be computed using the male RP 2000 Mortality Table set forward two (2) years for Participants and the female RP 2000 Mortality Table set forward one (1) year for Beneficiaries and with interest of seven and one-half percent (7.5%).

Effective January 1, 2018 through March 31, 2021, the conversion factors for other annuity forms are based on the UP 1984 Mortality Table without age setback and with interest of eight percent (8.0%).

Section 12.07. Lump Sum Payments. Effective January 1, 2001, a single sum distribution of benefits payable under Section 7.05, or upon plan termination, or if required for compliance with Code Section 401(a)(9), shall be computed on the basis of the actual age of the Participant and/or Beneficiary at the time of distribution and under the following actuarial assumptions:

(a) **Interest:** The applicable interest rate established by the Internal Revenue Service under Code Section 417(e)(3) and accompanying regulations, without regard to updates under the Pension Protection Act of 2006, as in effect for the month of September preceding the calendar year during which the distribution is paid.

(b) **Mortality:** The applicable mortality table established by the Internal Revenue Service pursuant to IRC Section 417(e)(3) and accompanying regulations, without regard to updates under the Pension Protection Act of 2006.

(c) **Age at Which Payments Begin:** The greater of the Normal Retirement Date or the age at the time of distribution to the Participant and/or Beneficiary.

ARTICLE XIII.

CONTRIBUTIONS

Section 13.01. Adopting Employer Contributions. The Adopting Employer shall make the necessary Contributions to fund the Plan. The amount of these Contributions shall be based upon the actuarial assumptions adopted by the Board of Trustees, the benefits provided in the Plan, and the number of Participants and their respective ages, Earnings, and lengths of Creditable Service and such other factors as the Board of Trustees shall deem appropriate to

assure proper funding of the Plan. Contributions by the Adopting Employer shall be applied as necessary to assure the payment of Accrued Benefits to Participants and Beneficiaries. Employer Contributions received by GMEBS by the last day of any month shall accrue Interest from the first day of the following month.

Section 13.02. Employee Contributions. Participants or certain classes of Participants may be required to make Contributions to the Plan as specified in the Adoption Agreement. Unless otherwise specified by the Adopting Employer, Employee Contributions shall accrue interest at the same rate and in the same manner as Employer Contributions. When elected by the Adopting Employer to be picked up, the Adopting Employer shall pick up and pay contributions in accordance with Code Section 414(h)(2) as follows:

(1) The contributions, although designated as Employee contributions, shall be paid by that Adopting Employer in lieu of contributions by the Employee as elected by the Adopting Employer in the Adoption Agreement, which shall be effective on a prospective basis and constitute written formal action to implement the pick-up, and

(2) The Employee must not be given the option, on or after the effective date of the pick-up, to have a cash or deferred election right (within the meaning of Treasury Regulation Section 1.401(k)-1(a)(3)) with respect to designated Employee contributions, which includes not having the option of receiving the amounts directly instead of having them paid to the Plan.

Section 13.03. Withdrawal of Employee Contributions.

(a) Unless otherwise specified in the Adoption Agreement, if a non-vested Participant's employment is terminated for any reason other than death, the Participant shall request a withdrawal of the Participant's Employee Contributions plus interest, if any.

(b) Unless otherwise specified in the Adoption Agreement, if a vested Participant's employment is terminated for any reason other than death or Retirement, the Participant may request a withdrawal of the Participant's Employee Contributions (including any Contributions made to purchase prior service credit) plus interest, unless the Participant chooses to claim the Participant's vested benefit, in which case the Participant's Employee Contributions shall not be withdrawn.

(c) Upon the Participant's termination, the Pension Committee shall provide notice to the Participant of the opportunity to withdraw Employee Contributions (including any Contributions made to purchase prior service credit, if permitted under the Adoption Agreement or any Addendum thereto), and the Participant shall have sixty (60) days after receipt of such notice to submit a request for withdrawal on an Applicable Form provided for that purpose. Failure to make such a request within this sixty (60) day period shall result in the forfeiture of a vested Participant's right to request withdrawal upon termination and shall result in forfeiture of a non-vested Participant's right to the accrual of further interest. Unless otherwise specified in the Adoption Agreement or any Addendum thereto, upon withdrawal of Employee Contributions (including any Contributions made to purchase prior service credit, if permitted under the Adoption Agreement or any Addendum thereto) pursuant to this Section, the Participant shall forfeit for the Participant, the Participant's heirs and assigns all the Participant's rights, title, and interest in the Plan, except as provided in subsection (d) below. Employee Contributions shall be returned to the Participant within ninety (90) days of the receipt of the Participant's request. A Participant may not withdraw Employee Contributions (including any Contributions made to purchase prior service credit, if permitted under the Adoption Agreement or any Addendum thereto) as long as the Participant remains in the employment of the Adopting Employer and the

Participant may not borrow against Employee Contributions (including any Contributions made to purchase prior service credit, if permitted under the Adoption Agreement or any Addendum thereto) at any time. A partial withdrawal of Employee Contributions is not permitted. Unless otherwise provided in the Adoption Agreement or any Addendum thereto, if a Participant who has made both mandatory Employee Contributions and Contributions to purchase prior service credit withdraws any of such Contributions, all mandatory Employee Contributions and Contributions to purchase prior service credit shall be withdrawn.

(d) Except as otherwise provided in the Employer's Adoption Agreement or any Addendum thereto, if a Participant withdraws Employee Contributions (including any Contributions made to purchase prior service credit, if permitted under the Adoption Agreement or any Addendum thereto) in accordance with this Section, and if such Participant later resumes employment with the Adopting Employer in an Eligible Employee class, then any service credit or benefit amount forfeited by virtue of the withdrawal may be reinstated upon the Participant's reemployment with the Adopting Employer, provided: (1) the Participant repays within six (6) months following the reemployment date and prior to Termination of Employment with the Adopting Employer all amounts previously withdrawn plus interest at the assumed actuarial rate of return for the GMEBS Retirement Fund established by the Board as of date of repayment, compounded annually from the date of return of contributions through the date of repayment; and (2) provided the Participant satisfied the break in service rules, as applicable. Repayment of Employee Contributions (including any Contributions made to purchase prior service credit) under this subsection shall be made in a single lump sum, by a rollover or transfer of pre-tax funds described in Sections 10.03 and 10.04 of this Plan, a lump sum payment of after-tax funds,

after-tax payroll deductions, or any other method established by the Board, subject to any limitations included in the Adoption Agreement or any Addendum thereto.

(e) For purposes of this Section, the amount of "interest" shall be determined as of the date that the withdrawal under this Section is made, and the amount of interest shall comply with any applicable provisions of Section 4(i)(10)(B)(i) of the Age Discrimination in Employment Act ("ADEA").

Section 13.04. Cessation of Contributions Without Penalty. The Employer may provide in the Adoption Agreement that Participants who have met certain retirement benefit eligibility requirements shall no longer be required to make contributions to the Plan. Effective on or after October 1, 2016, Participants who are receiving an In-Service Distribution or who are otherwise receiving Retirement benefits while employed with the Adopting Employer shall not be required to make contributions to the Plan.

Section 13.05. Continued Contributions During Leave of Absence. Subject to the applicable limits of Code Section 415, if the terms of an authorized leave of absence permit the Participant to continue accumulating Credited Service during said leave of absence, the Participant shall be required to continue making Employee Contributions in the same amount and at the same rate as immediately prior to the commencement of the leave of absence.

Section 13.06. Return of Contributions Upon Failure to Exhaust.

(a) **Death of a Retired Participant.** If a Retired Participant elects the Option A form of benefit payment, and if upon the death of the Participant the sum of all benefits paid to the Participant does not equal or exceed the amount of the Participant's Employee Contributions plus interest posted thereon, then a lump sum payment in the amount of the difference, less any amounts paid to the Retired Participant's surviving Spouse or to the Retired Participant's estate

pursuant to Section 8.12, shall be paid to the Retired Participant's designated beneficiary as defined in this subsection (a), or if there is no such designated beneficiary, to the Retired Participant's estate. In the event that 1) a Retired Participant elects retirement benefit payment Option B or C, 2) the Post-Retirement Beneficiary predeceases the Participant, and 3) upon the death of the Retired Participant, the sum of all benefits paid does not equal or exceed the amount of the Participant's Employee Contributions plus interest posted thereon, then a lump sum payment in the amount of the difference shall be paid to the Retired Participant's designated beneficiary as defined in this subsection (a), or if there is no such designated beneficiary, to the Participant's estate. In the event that 1) a Retired Participant elects retirement benefit payment Option B or C, 2) the Post-Retirement Beneficiary survives the Retired Participant and dies after such Beneficiary has begun receiving survivor benefit payments, and 3) the sum of all benefits paid does not equal or exceed the amount of the Participant's Employee contributions plus interest posted thereon, said lump sum payment shall be paid to the Post-Retirement Beneficiary's designated beneficiary as defined in this subsection (a) or, if there is no such designated beneficiary, to the Post-Retirement Beneficiary's estate. For purposes of this subsection, the term "designated beneficiary" shall mean the surviving Spouse of the Retired Participant or Post-Retirement Beneficiary, as applicable, and the term "surviving" shall mean surviving the Retired Participant or Post-Retirement Beneficiary, as applicable, by at least thirty-two (32) days.

(b) In-Service Death of Participant Before Satisfying Pre-Retirement Death Benefit Eligibility Requirements; Death of Terminated Vested Participant Where No Terminated Vested Death Benefit Is Payable. If a Participant dies in the Service of an Adopting Employer before satisfying the eligibility requirements for an in-service death benefit, the Participant's Employee

Contributions plus interest posted thereon, if any, shall be paid to the Participant's designated beneficiary as defined in this subsection (b), or if there is no such designated beneficiary, to the Participant's estate. If a Terminated Vested Participant dies before Retirement and the Plan does not provide for Terminated Vested death benefits to be payable upon the death of such Participant, the Participant's Employee Contributions plus interest posted thereon, if any, shall be paid to the Participant's designated beneficiary as defined in this subsection (b), or if there is no such designated beneficiary, to the Participant's estate. For purposes of this subsection, the term "designated beneficiary" shall mean the surviving Spouse of the Participant and the term "surviving" shall mean surviving the Participant by at least thirty-two (32) days.

(c) Death of a Participant or Terminated Vested Participant After Satisfying Pre-Retirement Death Benefit Eligibility Requirements. The following provision shall apply in the event that a Participant or Terminated Vested Participant who has satisfied the eligibility requirements for a pre-retirement death benefit dies before Retirement, and payments are made to a Pre-Retirement Beneficiary under the Plan. In the event the sum of all pre-retirement benefits paid to a Pre-Retirement Beneficiary(ies) by virtue of the death of a Participant or Terminated Participant, as applicable, does not equal or exceed the amount of the Participant's or Terminated Participant's Employee Contributions plus interest posted thereon, a lump sum payment in the amount of the difference shall be paid to the Pre-Retirement Beneficiary's designated beneficiary as defined in this subsection (c), or if there is no such designated beneficiary, to the estate of the Pre-Retirement Beneficiary (or the designated beneficiary or estate of the last Pre-Retirement Beneficiary receiving payment, as applicable with respect to Plans that permit payment to multiple Pre-Retirement Beneficiaries). For purposes of this subsection, the term "designated beneficiary" shall mean the surviving Spouse of the Pre-

Retirement Beneficiary and the term "surviving" shall mean surviving the Pre-Retirement Beneficiary by at least thirty-two (32) days.

(d) For purposes of this Section, the amount of "interest posted" shall be determined as of the date that the lump sum payment payable under this Section is distributed, and the amount of interest posted shall comply with any applicable provisions of Section 4(i)(10)(B)(i) of the Age Discrimination in Employment Act ("ADEA").

ARTICLE XIV.

PENSION COMMITTEE

Section 14.01. Creation and Composition. There shall be a Pension Committee for each Adopting Employer. Unless otherwise specified in the Adoption Agreement, the Pension Committee shall be composed of the following:

For Municipal Corporations:

- (a) City Clerk and City Manager.
- (b) Two (2) Employee representatives appointed by the Governing Authority.
- (c) Three (3) appointed members of the Governing Authority.

For Other Adopting Employers:

- (a) Executive Director.
- (b) Two (2) Employee representatives appointed by the Governing Authority.
- (c) Four (4) appointed members of the Governing Authority.

Section 14.02. Responsibilities. The Pension Committee shall have the following responsibilities:

(a) In its dealings with GMEBS or its duly appointed representatives, the Pension Committee shall:

(1) Assure that accurate and complete information is furnished to GMEBS with respect to eligibility for participation, Total Credited Service, Earnings, and Final Average Earnings of Eligible Employees, including elected or appointed members of the Governing Authority and Municipal Legal Officers if they are designated as Eligible Employees in the Adoption Agreement.

(2) Assure the collection and remittance to GMEBS of all required Contributions (including Employee Contributions, if applicable).

(3) Collect, and furnish to GMEBS, in accordance with its rules and regulations, all reports, forms, and other records required or necessary to administer the Plan, including but not limited to completed applications for participation (if applicable), employee elections to participate (if participation is optional for a particular class), employee census reports reflecting information necessary to complete the annual plan valuation, completed pre-retirement beneficiary designation forms, completed leave of absence reports, and completed retirement applications (including disability retirement applications, if the Adopting Employer has elected in its Adoption Agreement to provide disability retirement benefits).

(4) Provide reasonable prior notice to GMEBS of any amendments that the Adopting Employer intends to make to the Adoption Agreement.

(5) Notify GMEBS of the termination of Participating Employees, and, if they are permitted in the Adoption Agreement to participate in the Plan, the vacation of office by elected or appointed members of the Governing Authority and Municipal Legal Officers. Said notification should indicate whether the Employee has been involuntarily

terminated without cause (see Section 9.04 concerning 5-year vesting for Employees involuntarily terminated without cause).

(6) Notify GMEBS when the Adopting Employer learns that an Eligible Employee, Participant, Terminated Vested Participant, Retired Participant or Beneficiary has been convicted of a public employment-related crime or other crime which could result in a reduction or forfeiture of benefits (see Section 9.06).

(7) If the Adopting Employer has elected in the Adoption Agreement to provide disability retirement benefits, notify GMEBS of determinations made by the Pension Committee with respect to disability (see Section 2.23(b)) or continuation of disability (see Section 6.06(e)).

(8) Notify GMEBS when the Adopting Employer learns of the death of an Eligible Employee, Participant, Terminated Vested Participant, Retired Participant, or Beneficiary.

(b) In dealing with those persons participating or eligible to participate in the Plan, the Pension Committee shall:

(1) Be responsible for the enrollment of Eligible Employees, including elected or appointed members of the Governing Authority and Municipal Legal Officers if they are included as Eligible Employees in the Adoption Agreement.

(2) Handle distribution of all reports, forms, or other plan-related materials to Participants, including but not limited to plan summary booklets and annual participant statements.

(3) Handle disputes between the Adopting Employer and Participants in all matters regarding the Plan and notify GMEBS of same.

(4) Handle and distribute as necessary any notices of eligibility, benefits, available options, and any other notices required by this Plan, Contract, or rules and regulations of GMEBS.

(5) Address Employee inquiries concerning eligibility for participation in the Plan, enrollment, eligibility for retirement, disability, and/or death benefits, benefit payment options, and other terms, conditions, and features of the Plan.

(c) The Pension Committee is not authorized to interpret the Basic Plan Document, or matters of State and federal law as they relate to interpretation of the Basic Plan Document. These matters are reserved for the sole discretion of the Board.

Section 14.03. Secretary. The Adopting Employer shall designate in the Adoption Agreement a Pension Committee Secretary who shall have full authority to represent the Pension Committee in all communications with GMEBS and the Adopting Employer's Employees, including elected or appointed members of the Governing Authority and Municipal Legal Officers.

Section 14.04. Legal Assistance. The City Attorney or other attorney appointed by the Governing Authority shall furnish legal advice to the Pension Committee with respect to the Plan and the Committee's assigned responsibilities hereunder.

Section 14.05. Plan Representative. The Adopting Employer shall designate in the Adoption Agreement an individual to serve as Plan Representative. The Plan Representative shall have full authority to represent the Governing Authority in all communications with GMEBS and the Adopting Employer's Employees. The Pension Committee Secretary may serve as the Plan Representative.

ARTICLE XV.

BOARD OF TRUSTEES

Section 15.01. Definitions. As used in this Article, "Act" refers to the Act of the General Assembly creating the Board of Trustees of the Georgia Municipal Employees Benefit System (O.C.G.A. § 47-5-1 et seq., a copy of which is included in the Appendix hereto), as amended.

Section 15.02. Powers. The powers of the Board of Trustees as fixed by the Act are hereby incorporated as part of the Plan. The Adopting Employer agrees that, in the administration of the Plan, it will comply with all rules and regulations adopted by the Board of Trustees under its authority as granted by the Act.

Section 15.03. Composition and Election. The composition of the Board of Trustees and the election of its members shall be as provided by the Act and as may be provided in the bylaws of the Board of Trustees.

Section 15.04. Officers. The election of officers by the Board of Trustees shall be conducted as may be prescribed by the Act and as may be provided in the bylaws of the Board of Trustees.

Section 15.05. Notice of Elections. The Board of Trustees shall provide through its bylaws for the giving of notice of elections, notice of any vacancy on the Board, the method or manner in which votes may be cast, and any other matter necessary or incident to the election of members of the Board. The Board may also provide for a proxy vote, and may determine how, when, and in what manner voting by proxy may be had in accordance with the Act and as may be provided in the bylaws of the Board of Trustees.

Section 15.06. Voting. Each Adopting Employer shall be entitled to vote in any election or other matter placed before the membership as provided in the bylaws of the Board of Trustees.

Section 15.07. Voting Representative for the Adopting Employer. Unless otherwise indicated in writing by an Adopting Employer's chief executive or chief administrative officer, for the purpose of casting the Adopting Employer's vote in any election of members of the Board of Trustees and in any other matters which the membership has the authority and responsibility for resolving, each trustee shall be considered the official representative for the Employer for which the trustee serves as an elected or appointed member of the Governing Authority or Employee. For each other Adopting Employer, unless otherwise indicated in writing by an Adopting Employer's chief executive or chief administrative officer, the chief executive or chief administrative officer shall be the Adopting Employer's official representative for the purpose of casting its vote in any election of members of the Board of Trustees and in any other matters which the membership has the authority and responsibility for resolving.

Section 15.08. Qualified Public Accountant. The Administrator may engage on behalf of all Participants an independent qualified public accountant to conduct such an examination of any financial statements of the Plan, and of other books and records of the Plan, as the qualified public accountant may deem necessary to enable said accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report of the Plan are presented fairly in conformity with generally accepted accounting principles as applicable to a governmental plan, applied on a basis consistent with that of the preceding Plan Year and who shall perform such other services for the Plan as the Administrator may require.

Section 15.09. Fiduciary Insurance. The Board of Trustees may purchase fiduciary liability insurance for any of its fiduciaries, or for itself, to cover liability or losses occurring by reason of the act or omission of a fiduciary.

ARTICLE XVI.

GMEBS TRUST AGREEMENT

Section 16.01. General Provisions. The GMEBS Trust Agreement is the separate document for the establishment and administration of the Trust Fund. All contributions under the Plan shall be transferred to the Trust Fund to be held, managed, invested, and distributed as part of the Trust Fund by the Board in accordance with the provisions of the Plan and separate GMEBS Trust Agreement. At no time prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries shall any part of the corpus or income be used for, or diverted to, purposes other than the exclusive benefit of the Participants and their beneficiaries, including the payment of reasonable fees, taxes (if applicable) and expenses of the Plan and Trust, subject to the provisions in Article XVIII of this Basic Plan Document relating to the distribution of excess assets in the event of a plan termination. In resolving any conflict between provisions of the Plan and provisions of the Trust, the provisions of the Plan shall control.

Section 16.02. Group Trust Participation.

(a) If the investment is otherwise a permitted investment under Chapters 5 and 20 of Title 47 of the O.C.G.A., the Board may, unless otherwise restricted by law, transfer all or any portion of the assets of the Trust to a collective or common group trust, as permitted under Revenue Ruling 81-100, as modified by Revenue Rulings 2004-67 and 2011-1 (or subsequent guidance), that is operated or maintained exclusively for the commingling and collective investment of monies, and in such case the group trust agreement shall be deemed adopted as

part of the GMEBS Defined Benefit Retirement Plan Trust Agreement without further action by the Board.

(b) The separate account maintained by the group trust for an Adopting Employer's Plan pursuant to subsection (a) above shall not be used for, or diverted to, any purpose other than for the exclusive benefit of the Participants and beneficiaries of the Adopting Employer's Plan, including the payment of reasonable fees, taxes (if applicable) and expenses of the Plan and Trust, subject to the provisions in Article XVIII of this Basic Plan Document relating to the distribution of excess assets in the event of a plan termination.

(c) For purposes of valuation, the value of the separate account maintained by the group trust for an Adopting Employer's Plan shall be the fair market value of the portion of the group trust held for the Adopting Employer's Plan, determined in accordance with generally recognized valuation procedures.

ARTICLE XVII.

CLAIMS AND LITIGATION

Section 17.01. Disputes. In the event of disagreement between a Participant and the Adopting Employer with respect to any rights, claims, or responsibilities under the Plan which cannot be resolved by the Pension Committee as provided under Article XV, the Participant may make an appeal regarding such rights, claims, or responsibilities to the Governing Authority. In the event that any such rights, claims, or responsibilities result in a suit or other legal action by a Participant or Beneficiary, such action shall be defended in the same manner as other suits against the Adopting Employer. Any legal action on behalf of the Adopting Employer with regard to the Plan shall be first authorized by the Governing Authority and shall be conducted in the manner prescribed by the Governing Authority. GMEBS shall have no responsibility to defend or pursue legal action arising under the Plan.

Section 17.02. Disputes involving Federal or State Law Compliance. In the event there is a dispute involving federal or state law compliance, between a Participant or Beneficiary and the Governing Authority or the Trustees, or between an Adopting Employer and the Trustees, GMEBS is a necessary party to any such dispute, or suit, settlement, or release arising therefrom.

Section 17.03. Failure to Act. GMEBS shall not be responsible for the failure of the Adopting Employers to perform any of their obligations under the Plan, including the duty to remit payments to GMEBS, to provide necessary records concerning Participants and their Earnings to GMEBS, or to perform any other functions required of the Adopting Employers by applicable law, the Basic Plan Document, the Adoption Agreement (including any Addendum to the Adoption Agreement, if applicable), the separate GMEBS Trust Agreement, or by the rules and regulations of GMEBS. To the extent permitted under state and federal law, each Adopting Employer shall indemnify and hold GMEBS harmless for any failure to pay, delay in payment or other errors in processing benefits pursuant to this Plan due to the Adopting Employer's failure to perform its obligations under the Plan or provide accurate data to GMEBS for the purpose of administering the Plan.

ARTICLE XVIII.

AMENDMENT AND TERMINATION

Section 18.01. Amendment of the Plan by an Adopting Employer. The Governing Authority shall have the right at any time, and from time to time, to amend, in whole or in part, any or all of its elections in the Adoption Agreement; provided, however, that no such amendment shall:

- (a) Reduce the previously Accrued Benefit of any Participant or Beneficiary; or,
- (b) Authorize or permit any part of the Trust Fund held by the Board to be diverted to purposes other than for the exclusive benefit of Participants and their Beneficiaries; or,

(c) Operate to deprive any Participant or Beneficiary of any rights or benefits irrevocably Vested in said Participant or Beneficiary under the Plan prior to such amendment, except that the Governing Authority may make any and all changes or modifications to the Adoption Agreement necessary to qualify the Plan or to keep the Plan qualified under the Internal Revenue Code and the regulations thereunder, or any amendment thereto.

Notwithstanding the foregoing, the Adopting Employer may amend the Adoption Agreement to the extent necessary to satisfy Code Section 415.

~~(d)~~ No amendment to an Adoption Agreement shall become effective until approved by the Administrator. In order to be approved by the Administrator, any amendment must comply with all applicable state and federal laws and the Basic Plan Document. If the Administrator does not approve an amendment, the Administrator shall continue to administer the Plan as if such amendment had not been made.

In no event may an Adopting Employer amend the Basic Plan Document or the GMEBS Trust Agreement separate document.

Section 18.02. Amendment of Plan by GMEBS.

(a) It is the intent of the Board that the Basic Plan Document, Adoption Agreement form and Addendum form (collectively referred to for purposes of this Section 18.02 as "Plan") shall be and remain qualified for tax purposes under the Code. The Administrator shall timely submit the Plan for approval under the Code as necessary, and all expenses incident thereto shall be borne by the GMEBS Investment Fund.

(b) GMEBS will maintain a record of the Participating Employers, and GMEBS will make reasonable and diligent efforts to ensure that Adopting Employers have actually received and are aware of all Plan amendments and that such Adopting Employers adopt new documents

when necessary. The provisions of this subsection shall supersede other provisions of the Plan to the extent those other provisions are inconsistent.

(c) The Board or the Provider, as directed by the Board, hereby reserves the right to amend the Plan without the consent of the Adopting Employers or of Participants (or any Beneficiaries thereof) to make desired changes in the design of the Plan. A true copy of the resolution of the Board approving such amendment shall be delivered to the Administrator and the Adopting Employers. The Plan shall be amended in the manner and effective as of the date set forth in such resolution, and the Adopting Employers, Employees, Participants, Beneficiaries, the Administrator, and all others having any interest under the Plan shall be bound thereby.

(d) The Provider shall have the authority to advise and prepare amendments to the Plan, for approval by the Board, on behalf of all Adopting Employers for changes in the Code, the regulations thereunder, revenue rulings, other statements published by Internal Revenue Service, including model, sample, or other required good faith amendments (but only if their adoption will not cause such Plan to be individually designed), and for corrections of prior approved plans. These amendments shall be applied to all Adopting Employers. In any event, any amendment prepared by the Provider and approved by the Board will be provided by the Administrator to Adopting Employers.

(e) Notwithstanding the foregoing paragraphs (c) and (d), effective on or after January 1, 2016, for any Adopting Employer as of either:

(1) the date the Internal Revenue Service requires the Adopting Employer to file Form 5300 as an individually designed plan as a result of an amendment by the Adopting Employer to incorporate a type of Plan not allowable in a pre-approved plan, or

(2) as of the date the Plan is otherwise considered an individually designed plan due to the nature and extent of the amendments, such Adopting Employer shall execute a resolution to adopt any amendments that are approved by the Board after the date under subparagraph (1) or (2) above, as applicable, within the earlier of (i) ninety (90) days after such Board approval, or (ii) if applicable, the remedial amendment period under Code Section 401(b) as applicable to governmental plans. If the Adopting Employer is required to obtain a determination letter for any reason in order to maintain reliance on the opinion letter, the Provider's authority to amend the Plan on behalf of the Adopting Employer is conditioned on the Plan receiving a favorable determination letter.

Section 18.03. Termination by Adopting Employer.

(a) The Adopting Employer expects the Plan to be continued indefinitely but, of necessity, reserves the right to terminate its Plan and Contributions thereunder at any time by action of the Governing Authority, subject to the Administrator's approval. Such termination shall be accomplished by the adoption of an ordinance or resolution (as applicable) by the Governing Authority terminating the Plan. Such ordinance or resolution (as applicable) shall conform to the rules and regulations of the Board governing Plan termination to the extent they are consistent with this provision.

(b) Upon full or partial termination or a complete discontinuance of Employer contributions, all affected Eligible Employees shall be deemed to be Participants, and the Accrued Benefits of such Participants shall be Vested to the extent funded required by federal law. The Pension Committee shall notify Participants, Terminated Vested Participants, Retired Participants, and Beneficiaries of the full termination of the Plan, and shall provide a copy of such notice and the names and addresses of the persons notified to the Administrator.

(c) Upon termination, the Adopting Employer shall provide to the Administrator current Participant information necessary to calculate Accrued Benefits. Upon receipt of such information, the Administrator shall prepare a list of all the Adopting Employer's Participants, Retired Participants, Terminated Vested Participants, and Beneficiaries, showing for each the present value of each individual's Accrued Benefit, as determined by the GMEBS Actuary as of the date of termination.

(d) The Administrator, in accordance with the Board's current rules and regulations, and with generally accepted accounting practices, shall determine the value of the Adopting Employer's Trust Fund as of the termination date. All mandatory Employee Contributions, if any, plus interest, and all Contributions made to purchase service credit, if any, plus any applicable interest, shall be paid from the Trust Fund to the Participants, to the extent of available Trust Fund assets. The Administrator shall then deduct from the Trust Fund a termination fee established by GMEBS for services provided in terminating the Plan. The Administrator, pursuant to the Board's rules and regulations, shall then allocate the remaining assets for distribution of the present value of Accrued Benefits in lump sums to the classes listed below. The benefits of each class shall be satisfied before proceeding to the next class. If at any time the remaining Plan assets would be insufficient to provide the present value of Accrued Benefits for the class in question, the remaining assets shall be applied on a pro rata basis within that class, and all subsequent classes shall receive no benefit. The pro rata allocation referred to above will be determined based upon the comparative value of each class member's Accrued Benefit (present value expressed in a lump sum) when measured against the lump sum present value of Accrued Benefits for the class as a whole.

CLASS A – Retired Participants or Beneficiaries who are receiving payments as of the termination date.

CLASS B – Participants delaying Retirement beyond the Normal Retirement Date.

CLASS C – Participants eligible for Early Retirement.

CLASS D – Other Participants, terminated or active, who have met the requirements for vesting as of the termination date.

CLASS E – All other Participants on a pro rata basis. Payment of benefits to Retired Participants, Beneficiaries, and Participants by the Administrator as a result of a Plan termination shall be limited solely to the assets available in the Trust Fund.

(e) Any reversion of excess assets is only permitted if the excess assets resulted from an erroneous actuarial computation, following the use of acceptable actuarial procedures using reasonable assumptions as to interest and mortality pursuant to Treasury Regulation § 1.401-2(b)(1). In its termination ordinance, the Governing Authority shall instruct the Administrator as to the distribution of excess assets, if any, remaining after the satisfaction of Accrued Benefits for the classes enumerated herein. In the absence of such instructions, any excess assets shall be distributed to the Adopting Employer.

(f) Upon distribution of the assets as specified above, the Adoption Agreement, Basic Plan Document, and the separate GMEBS Trust Agreement shall be regarded as terminated as to that Adopting Employer and no Participant or Beneficiary shall have any further rights or claim herein.

Section 18.04. Amendment of the Plan to Transfer Assets; Termination of Contract.

(a) The Adopting Employer may amend the Adoption Agreement by ordinance or resolution (as applicable) so as to provide for the transfer of assets to a successor trustee and to terminate the existing Contract between the Adopting Employer and the Board. Any such ordinance or resolution shall comply with Section 18.01 and with the requirements of the rules and regulations of the Board regarding amendment and transfer of Plan assets, to the extent they are consistent with this Section.

(b) In addition to other requirements, such ordinance or resolution shall:

(1) Designate a new trustee or trustees to replace the Board;

(2) Establish a month-end termination date, which shall be used for purposes of valuing the Adopting Employer's Trust Fund assets and which shall be fixed by the Administrator, taking into account the time reasonably required to liquidate GMEBS Retirement Trust Fund assets (if necessary) for purposes of the termination and transfer, the impact of the termination on the financial integrity of the Retirement System, and the time reasonably required for GMEBS and the terminating Employer to complete necessary administrative tasks associated with the termination. The termination date will be no earlier than forty-five (45) days after the Adopting Employer provides written notice to the Administrator of its intent to terminate;

(3) Provide that after the established termination date, GMEBS shall have no further responsibility or obligation to administer the terminating Employer's retirement plan, except as otherwise agreed and provided for by GMEBS and the terminating Employer in the ordinance or resolution;

(4) Provide that the value of assets of the Adopting Employer's Trust Fund as of the established termination date shall be determined based upon the value of the Adopting Employer's Trust Fund as reflected in the unaudited financial statements for the GMEBS Retirement Trust Fund as of the established termination date, subject to verification and reconciliation against the most recent GMEBS Retirement Trust Fund audit coinciding with or following the termination date.

(5) Provide for the transfer of assets held in the Adopting Employer's Trust Fund to the successor trustee as follows:

(A) that no transfer shall take place until a successor Code Section 401(a) retirement plan and trust document have been adopted by the Adopting Employer and furnished to GMEBS, together with a current IRS determination letter or an opinion letter from an attorney confirming that the successor retirement plan is tax qualified under Code Section 401(a);

(B) that as soon as reasonably practicable after the established termination date, the Administrator will make an initial transfer to the successor trustee of an amount to be determined by the Administrator in its sole discretion, but in no event more than eighty-five percent (85%) of the value of the Adopting Employer's Trust Fund, as reflected in the then most recently completed unaudited monthly financial statement for the GMEBS Retirement Trust Fund; and that prior to the completion of the initial transfer, the Administrator shall deduct from the Adopting Employer's Trust Fund a termination fee established by GMEBS for services provided in effecting the termination of the Adopting

Employer's participation in GMEBS and the transfer of assets to the successor trustee;

(C) that as soon as reasonably practicable after completion of the GMEBS Retirement Fund unaudited financial statement for the month including the established termination date, the Administrator will make a second transfer to the successor trustee in an amount equal to the remainder of the Adopting Employer's Trust Fund assets, if any; and that in any event distribution of assets to the successor trustee shall be completed within the time limits specified in the separate GMEBS Trust Agreement;

(D) that after the established termination date, any funds remaining in the Adopting Employer's Trust Fund shall not share in the gains or losses of the GMEBS Retirement Trust Fund, notwithstanding any provision of the GMEBS Basic Plan Document or separate GMEBS Trust Agreement to the contrary; and that any investment gains or losses that would otherwise be credited to or debited from the Adopting Employer's Trust Fund after the established termination date shall not be taken into account. Rather, after the established termination date through completion of the transfer of assets, any amount remaining in the Adopting Employer's Trust Fund shall earn interest at the same rate as the GMEBS active cash management account which shall be credited monthly until the transfer of assets is completed; and,

(E) that if the audit of the GMEBS Retirement Trust Fund for the year including the established termination date reflects that the value of the Adopting Employer's Trust Fund on the termination date was understated or overstated in

the unaudited financial statement relied upon, then GMEBS or the Adopting Employer shall remit to the other the amount of any overpayment or underpayment, unless said amount is less than One Thousand Dollars (\$1,000). Such remittance shall be made in a lump sum with interest. Said interest shall be calculated at the same rate as the GMEBS active cash management account and credited monthly as of the last day of each month following the established termination date up until the date of the remittance.

(6) Provide that the assets of the Plan will continue to be held by the successor trustee for the exclusive benefit of Participants and Beneficiaries.

(7) State that the existing retirement rights of Employees, Participants, and Beneficiaries shall not be impaired.

(8) Provide that upon completion of the transfer of assets, the GMEBS Board of Trustees shall have no further fiduciary responsibility for investment of the Adopting Employer's Trust Fund assets or payment of liabilities, and the Adopting Employer's Contract and participation under the separate GMEBS Trust Agreement and Trust Fund shall be considered terminated.

(9) Provide that, to the extent permitted by federal, state or local law, the Adopting Employer agrees to indemnify the Board of Trustees and the Administrator from and against any loss, liability or claim arising out of the Employer's maintenance of the Plan from and after the date of the final transfer of assets.

(10) Provide that the surviving plan must provide each Participant on whose behalf Plan assets are transferred a benefit equal to or greater than the benefit the Participant had accrued, if any, immediately before transfer of assets.

Section 18.05. Involuntary Termination.

(a) The Board may involuntarily terminate the Plan as to an Adopting Employer in the event of any of the following occurrences:

(1) Failure of the Employer to comply with the terms of the Basic Plan Document, Adoption Agreement (or Addendum), or separate GMEBS Trust Agreement including, but not limited to, failure to pay required Contributions in a timely manner;

(2) Failure of the Adopting Employer to provide to GMEBS or respond to requests from GMEBS for information necessary for GMEBS to administer the Plan;

(3) Failure of the Adopting Employer to adequately fund the Plan in accordance with the GMEBS funding policy, or to adopt or abide by a funding action plan approved by the Board;

(4) Receipt of written notice from an Adopting Employer's Governing Authority of its intent to discontinue further Contributions;

(5) Insistence by the Employer on enforcing an amendment to the Adoption Agreement which the Board has disapproved; or

(6) Failure of the Adopting Employer to maintain qualification status under Code Sections 401(a) and 414(d).

(b) The rights, benefits, and entitlements under the Plan of any Participant, including those of the Participant's Beneficiary, any other provision of the Plan notwithstanding, before or after Retirement, death, or other termination of employment shall, upon the failure of the Adopting Employer to pay and to continue to pay its required Contributions, be limited as specified in this Article.

(c) In the event of an involuntary termination, the GMEBS Board may in its sole discretion adopt a resolution providing for: (i) designation of the members of the Employer's Governing Authority as successor trustees for the Plan; (ii) designation of a person or entity other than the Employer's Governing Authority as successor trustee for the Plan; or (iii) outright termination of the Plan and distribution of assets to Participants and Beneficiaries. The specific terms and conditions associated with involuntary termination shall be as provided in the Board resolution. Neither the Administrator nor the GMEBS Board shall be subject to lawsuit or liability arising from the exercise of its discretion as provided herein.

(d) The Administrator shall notify the Governing Authority, Participants, and Beneficiaries in writing of an involuntary termination and the reasons therefor. Said notice shall also fix a termination date. Upon the request of the Administrator, the Employer shall within a reasonable period provide the Administrator with the last known addresses of Participants and Beneficiaries for this purpose. Neither the Administrator nor the GMEBS Board shall be subject to lawsuit or liability for non-compliance with this paragraph arising from the failure of the Employer to provide such information to the Administrator.

(e) The Administrator shall determine the value of the Adopting Employer's Trust Fund as of the termination date in accordance with the procedures described in Section 18.05(b)(4) of this Article. The Board shall deduct from the Trust Fund a termination fee established by GMEBS for services provided in effecting termination of the Adopting Employer's participation in GMEBS.

(f) Successor Trustee.

(1) Governing Authority as Successor Trustee. If upon involuntary termination, the GMEBS Board by resolution designates the members of the Employer's

Governing Authority as successor trustees, the Adopting Employer shall be obligated to furnish GMEBS with a successor retirement plan and related documents as provided in Section 18.04(b)(5)(A). Distribution of assets to the Governing Authority or to a designee specified by the Governing Authority in writing, as successor trustee, shall then occur in accordance with the transfer procedures described in Section 18.04(b)(5). Payment of benefits to Retired Participants and Beneficiaries shall become the responsibility of the Governing Authority, as successor trustees, as of the termination date, except as otherwise provided in the Board's termination resolution.

(2) Other Entity as Successor Trustee. If upon involuntary termination, the GMEBS Board by resolution designates a successor trustee other than the members of the Employer's Governing Authority, distribution of assets to the successor trustee shall occur in accordance with the transfer procedures described in Section 18.04(b)(5) upon the Board's receipt of retirement plan and related documents as described in Section 18.04(b)(5)(A), and any other information reasonably requested by the Board. Payment of benefits to the Retired Participants and Beneficiaries shall become the responsibility of the successor trustee as of the termination date, except as otherwise provided in the Board's termination resolution.

(3) Termination without Successor Trustee. If upon involuntary termination, the GMEBS Board by resolution terminates the Employer's Plan outright, the assets of the Employer's Trust Fund will not be transferred to a successor trustee, but will be distributed to Participants and Beneficiaries in accordance with and subject to the termination provisions of Section 18.03(b)-(f), except as otherwise provided in this subsection. The Employer shall provide current Participant information necessary to

calculate Accrued Benefits as required under Section 18.03(c), within a reasonable period after the Administrator's request for such information. Any excess assets remaining after satisfaction of Accrued Benefits and payment of the termination fee shall be distributed to the Employer.

(g) Freezing of Benefit Accruals. In the event of an Employer's failure to pay required Contributions, the GMEBS Board may by resolution freeze benefit accruals under the Employer's Plan, as an alternative to involuntary termination. If the Board adopts such a resolution, the Employer's Plan must continue to be maintained as a qualified plan and the Employer will be responsible for funding benefits as determined under the frozen Plan's provisions. The Board's resolution to freeze benefit accruals shall specify the extent to which Service and Earnings after the freeze date will or will not be counted for purposes of computing the amount of benefits payable under the Plan, and for purposes of meeting the minimum service requirements for vesting and benefit eligibility under the Plan. The resolution shall also specify the conditions for recommencing benefit accruals under the Plan. The resolution may also provide that, in the event of an Employer's continued failure to pay required Contributions, the Employer's Plan will be terminated outright as of a date certain or upon the Board's adoption of a resolution providing for outright termination, consistent with the provisions of subsection (f)(3).

(h) The Board in its discretion may require an Employer to obtain appropriate IRS approval of the qualified status of the terminating Plan or a successor plan.

(i) In the event that an Adopting Employer fails to comply with the terms of the Basic Plan Document, Adoption Agreement (or Addendum), or the separate GMEBS Trust Agreement including, but not limited to, failure to pay required Contributions in a timely manner,

the Board may in its sole discretion pursue any other legal or equitable means that it deems appropriate, including the filing of a writ of mandamus, to facilitate such compliance.

Section 18.06. Termination of the Basic Plan Document by the Board. The Board reserves the right to completely terminate the Basic Plan Document and the separate GMEBS Trust Agreement. In such an event, the provisions of Section 18.03 shall be applied to each Adopting Employer.

ARTICLE XIX.

NON-ALIENATION OF BENEFITS

(a) None of the benefits, payments, proceeds, or distributions payable under the Plan shall be subject to the claim of any creditor of any Participant or to the claim of any creditor of any Beneficiary hereunder, or to any legal process of levy or attachment by any creditor of any such Participant or Beneficiary; and no such benefits shall be in any manner liable for or subject to the debts, liabilities, engagements, or torts of any Participant or Beneficiary; and neither shall any such Participant or Beneficiary have any right to alienate, commute, anticipate, transfer, encumber, pledge, or assign any of the benefits, payments, proceeds, or distributions under this Plan.

(b) Nothing in subsection (a) shall be construed to preclude the Administrator, subject to any terms and conditions set by the Administrator, from making a deduction and direct payment to the Adopting Employer or GMEBS on behalf of a Retired Participant for the limited purpose of paying for a contribution or premium for a post retirement benefit offered by the Adopting Employer or GMEBS, if the Retired Participant elects to have such deduction and direct payment made. An election by the Retired Participant for such deduction and direct payment may be revoked at any time.

(c) Nothing in subsection (a) shall be construed to preclude the Administrator, subject to any terms and conditions set by the Administrator, from making a deduction and direct payment on behalf of a Retired Participant as provided under Section 845(a)(4)(D) of the Pension Protection Act of 2006 in its current form or as amended, and as interpreted by the Internal Revenue Service, for the limited purpose of paying premiums for coverage for an eligible retired public safety officer, the Participant's spouse, and dependents, by an accident or health insurance plan or qualified long-term care insurance contract as defined in Section 7702B(b) of Title 26 of the United States Code, if the Retired Participant elects to have such deduction and direct payment made. An election by a Retired Participant for such deduction and direct payment may be revoked at any time.

ARTICLE XX.

MISCELLANEOUS

Section 20.01. Construction.

(a) Words used in this Plan in the singular or plural shall be construed as being in the plural or singular where appropriate.

(b) The Plan shall be construed, enforced, and administered and the validity thereof determined in accordance with the Code, and, when not inconsistent with the Code, the laws of the State of Georgia and the bylaws of the Board.

(c) In resolving any conflict between provisions of the Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the interpretation that (i) causes the Plan to constitute a qualified governmental retirement plan under the provisions of Code Sections 401 and 414(d) and the Trust as exempt from tax under Code Sections 501 and 115, and (ii) causes the Plan to comply with all applicable requirements of the Code and federal law shall prevail over any different interpretation.

(d) In resolving any conflict between the Plan and any policy or contract issued under the Plan, the provisions of the Plan shall prevail.

(e) The headings and subheadings in the Plan are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Plan.

(f) The terms of this Basic Plan Document shall control except as otherwise provided in an Adopting Employer's Adoption Agreement (including any Addendum to the Adoption Agreement, if applicable), as accepted by or on behalf of the GMEBS Board, in which case the terms of the Adopting Employer's Adoption Agreement (including any Addendum to the Adoption Agreement) shall control.

(g) Neither the establishment nor maintenance of the Plan nor any amendment thereof, nor any act or omission under the Plan or resulting from the operation of the Plan shall be construed:

(1) as conferring upon any Participant, beneficiary, or any other person a right or claim against the GMEBS Investment Fund, the Trust Fund, the Trustees, the Adopting Employer, or the Administrator, except to the extent that such right or claim shall be specifically expressed and provided in the Plan;

(2) as a contract or Agreement between the Adopting Employer and any Participant or other person;

(3) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Adopting Employer or any Participant or other person to continue or terminate the employment relationship at any time; or

(4) as giving any Participant the right to be retained in the service of the Adopting Employer or to interfere with the right of the Adopting Employer to discharge any Participant or other person at any time.

Section 20.02. Non-Diversion.

(a) The assets of the Plan shall never inure to the benefit of an Adopting Employer and shall be held for the exclusive purposes of providing benefits to Participants in the Plan and their beneficiaries and defraying reasonable fees, taxes (if applicable) and expenses of the Plan and Trust, except in the case of a contribution which is made by an Adopting Employer under a mistake of fact as determined solely by the Administrator. Such contribution shall be returned to the Adopting Employer, upon demand, and shall be reduced for any loss incurred but unadjusted for any gains earned during the time the mistaken contribution was part of the Trust Fund.

(b) Trust assets shall be managed in compliance with Code Section 503(b).

Section 20.03. Legally Incompetent; Power of Attorney. Any Participant, Retired Participant, Terminated Vested Participant, or Beneficiary receiving or claiming benefits under the Plan shall be conclusively presumed to be mentally competent and of age until the Administrator receives a written notice, in a form and manner acceptable to it, that such person is incompetent or a minor, and that a guardian or other person legally vested with the care of such person's estate has been appointed. In the event a guardian of the estate of any person receiving or claiming benefits under the Plan shall be appointed by a court of competent jurisdiction, payments shall be made to such guardian and the guardian may take any and all actions with respect to the person's interest under the Plan in accordance with the terms of the appointment, provided that proper proof of appointment is furnished in a form and manner suitable to the Administrator. Any payment so made shall be a complete discharge of liability therefor under

the Plan. No person may act as an attorney-in-fact for an Employee, Participant, Terminated Vested Participant, Retired Participant or Beneficiary with respect to a matter involving the Plan unless a valid power of attorney document appointing such person and authorizing such action is submitted in a form and manner acceptable to the Administrator. The Administrator shall be entitled to rely upon a power of attorney document which it reasonably determines to be valid, without liability for actions taken by the Administrator at the request of the designated attorney-in-fact, unless and until the Administrator receives notice that the power of attorney is no longer effective.

Section 20.04. Benefits Supported Only by Trust Fund. Any person having any claim under the Plan shall look solely to the assets of the Trust Fund for satisfaction. In no event shall the Adopting Employer, or any of its employees or agents, be liable in their individual capacities to any person whomsoever, under the provisions of the Plan or of the separate GMEBS Trust Agreement.

Section 20.05. Non-Discrimination. The Adopting Employer, through the Pension Committee, shall administer the Plan in a uniform and consistent manner with respect to all Participants.

Section 20.06. Limitation of Liability; Legal Actions.

(a) It is expressly understood and agreed by each Employee who becomes a Participant hereunder that, except for willful neglect or fraud, neither the Adopting Employer, the Plan Representative, nor the Board of Trustees shall be in any way subject to any suit or litigation, or to any legal liability, for any cause or reason or thing whatsoever, in connection with the Plan or its operation, and each such Participant hereby releases the Adopting Employer,

all its employees and agents, the Plan Representative, and the Board of Trustees from any and all liability or obligation.

(b) The Adopting Employer and the Plan Representative shall be the only necessary parties to any action or proceeding involving any rights under the Plan or the proper administration thereof, and no Participant, Beneficiary, or other persons having or claiming to have an interest in the Plan shall be entitled to any notice of process. Any final judgment which is not appealed or appealable that may be entered in any such action or proceeding shall be binding and conclusive on the parties hereto and all persons having or claiming to have an interest in the Plan.

Each fiduciary under the Plan shall be responsible only for the specific duties assigned under the Plan and shall not be directly or indirectly responsible for the duties assigned to another fiduciary. Any person or a group of persons may serve in more than one (1) fiduciary capacity with respect to the Plan.

Section 20.07. Claims. Any payment to a Participant or Beneficiary, or to their legal representatives, in accordance with the provisions of the Plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the Plan Representative or the Adopting Employer, either of which may require such Participant, Beneficiary, or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the Plan Representative or the Adopting Employer.

Section 20.08. Errors in Benefits.

(a) Effective upon issuance of an Internal Revenue Service favorable opinion letter which covers this provision, notwithstanding any provision in this Section 20.08 to the contrary, any action upon an underpayment or overpayment shall be brought within six (6) years after the

same becomes due and payable. Likewise, GMEBS shall not be required to correct any underpayment or overpayment more than six (6) years after said underpayment or overpayment occurred.

(b) Underpayments. Any underpayments from the Trust Fund to a Retired Participant or to a Beneficiary caused by administrative errors shall be corrected with interest compounded annually from the date of the miscalculated payment. The rate applied shall be the actuarially assumed rate utilized by the plan actuary for estimating future plan investment earnings or such other rate established by the Board that is permissible under federal and state law and applicable guidance as of the date of the correction. Underpayments shall be made up from the Adopting Employer's Trust Fund. Effective with respect to underpayments corrected on or after January 1, 2017, in the event a Retired Participant, Pre-Retirement Beneficiary or Post-Retirement Beneficiary to whom a corrective payment is due dies before such payment is made, said corrective payment shall be paid to such Retired Participant's, Pre-Retirement Beneficiary's or Post-Retirement Beneficiary's designated beneficiary, as defined in this subsection (b) or, if there is no such designated beneficiary, to the deceased Retired Participant's, Pre-Retirement Beneficiary's or Post-Retirement Beneficiary's estate. For purposes of this subsection, the term "designated beneficiary" shall mean the surviving Spouse of such Retired Participant, Pre-Retirement Beneficiary, or Post-Retirement Beneficiary, as applicable, and the term "surviving" shall mean surviving the Retired Participant, Pre-Retirement Beneficiary, or Post-Retirement Beneficiary, as applicable, by at least thirty-two (32) days.

(c) Overpayments. In the event of an overpayment from the Trust Fund to a Retired Participant or to a Beneficiary caused by administrative error, the following provisions shall apply:

(1) Corrective Amendment Option. In the event of an overpayment that is due to misapplication of the terms of the Plan, the Adopting Employer may be provided the opportunity to amend its Adoption Agreement (a "Corrective Amendment") in order to provide for such overpayment to be permissible under the terms of the plan, but only if the Corrective Amendment is consistent with the circumstances resulting in the overpayment and with the Basic Plan Document, as determined by the Administrator. The Corrective Amendment may be effective either retroactively only, or both retroactively and prospectively.

(2) Determination of Reasonableness of Collection from Retired Participants or Beneficiaries. In the event that the Adopting Employer does not adopt a Corrective Amendment, or that the circumstances resulting in the overpayment or the Basic Plan Document would not permit such an amendment, the Administrator and the Adopting Employer will consult in making a determination of whether collection of the overpayment (in full or in part) from a Retired Participant or Beneficiary is reasonable under the particular facts and circumstances involved. In their determination, the Administrator and the Adopting Employer shall consider (1) the hardship of collection on the Retired Participant or Beneficiary; (2) any legal impediments to collection; and (3) the potential risk of litigation if collection is pursued, in consultation with the affected Adopting Employer's counsel.

(3) Failure to Reach Agreement on Reasonableness of Collection. If the Administrator and the Adopting Employer cannot reach agreement within six (6) months as to whether collection of an overpayment from a Retired Participant or Beneficiary is

reasonable, the Board shall make this determination, considering the factors outlined above in paragraph (2).

(4) Collection Process. If a determination under this subsection is made that collection from the Retired Participant or Beneficiary is reasonable, the overpayment shall be corrected with interest compounded annually from the date of the miscalculated payment. The rate applied shall be the actuarially assumed rate utilized by the plan actuary for estimating future plan investment earnings or, effective on and after January 1, 2014, such other rate established by the Board that is permissible under federal and state law and applicable guidance as of the date of the correction. In collecting amounts of the overpayment (in full or in part), the Administrator shall have the discretion to use any of the following options: (i) single sum payments; (ii) installment payments; (iii) actuarial reduction of future Retirement payments; or (iv) deductions from Retirement payments. Retirement payment deductions shall not exceed fifty percent (50%) of the amount of payment from which the deduction is made.

(5) Corrective Payment by Adopting Employer. If full collection of an overpayment is not achieved, either because of a determination that full collection from the Retired Participant or Beneficiary is not reasonable, or because efforts at collection do not result in a full collection of the overpayment, the Adopting Employer shall be responsible for making a separate, supplemental contribution to the Trust Fund in the amount of any uncollected overpayment, including interest as calculated under paragraph (4) ("corrective contribution"). Any corrective contribution by a Participating Employer must be made at the same time that the next regular employer contribution is due under the Plan. In the event employer contributions are paid in installments, the corrective

contribution may be paid over that same installment period, but not to exceed a twelve (12) month period. The corrective contribution may not be included as a portion of the general liability of the Plan for which regular funding contributions are made.

(6) Alternative Correction Approach. If the overpayment involves circumstances that are not addressed in the preceding provisions of this subsection, or if in the determination of the GMEBS board, the overpayment cannot be practicably or appropriately corrected using the methods addressed in this subsection, the Administrator may develop a correction approach that is appropriate under the circumstances, permissible under state and federal law and applicable guidance, and equitable to the parties involved.

(d) Overpayments Due to Delay in Notification of Death of Participant or Beneficiary.

(1) In the event that GMEBS makes a payment to a Retired Participant or to a beneficiary following the death of such Participant or beneficiary, GMEBS will make reasonable efforts (not including litigation or collections processes) to recover said overpayment for a period of 60 days after receiving notice from the Adopting Employer of the Participant's or beneficiary's death. If after 60 days from the date on which GMEBS receives notice of the Participant's or beneficiary's death, GMEBS is unable to recover the overpayment, the Adopting Employer shall be responsible for making a separate, supplemental contribution to the Trust Fund in the amount of any such uncollected overpayment, including interest as calculated under paragraph (c)(4) above ("corrective contribution"). Any corrective contribution by an Adopting Employer must be made at the same time that the next regular Employer Contribution is due under the Plan. In the event Employer Contributions are paid in installments, the corrective

contribution may be paid over that same installment period, but not to exceed a twelve (12) month period. The corrective contribution may not be included as a portion of the general liability of the Plan for which regular funding contributions are made.

(2) If the overpayment involves circumstances that are not addressed in the preceding provisions of this subsection, or if in the determination of the GMEBS Board, the overpayment cannot be practicably or appropriately corrected using the methods addressed in this subsection, the Administrator may develop a correction approach that is appropriate under the circumstances, permissible under state and federal law and applicable guidance, and equitable to the parties involved.

Section 20.09. Notice. Any notice given under the Plan shall be sufficient if given to: (1) the Board if addressed to the Administrator at its office; (2) the Adopting Employer if addressed to the address of the Governing Authority indicated in the Adoption Agreement; or (3) a Participant or Beneficiary, when addressed to the Participant at the Participant's address as it appears in the records of the Administrator or the Adopting Employer.

Section 20.10. Right of Recovery. If the Administrator makes any payment that according to the terms of the Plan and the benefits provided hereunder should not have been made, the Administrator may recover that incorrect payment, whether or not it was made due to the error of the Administrator, from the person to whom it was made, or from any other appropriate party. If any such incorrect payment is made directly to a Participant, the provisions of Section 20.08 apply.

Section 20.11. Evidence of Action. All ordinances, resolutions, forms, orders, requests, documents and instructions provided to the Administrator by an Adopting Employer or by any duly authorized representative (e.g., Plan Representative or Pension Committee Secretary), shall

be in writing and the Administrator shall be fully protected in acting in accordance with such ordinances, resolutions, forms, orders, requests, documents and instructions.

Section 20.12. Reliance. The Administrator or Board shall not incur any liability in acting upon any notice, request, signed letter, telegram, form, or other paper or document believed by the Administrator or Board to be genuine or to be executed or sent by an authorized person.

Section 20.13. Information to Administrator. As a condition precedent to GMEBS's administration of the Plan, the Adopting Employer shall provide current information to the Administrator including but not limited to the name, date of birth, date of employment, Enrollment Date, annual Earnings, leaves of absences, Vesting eligibility, Credited Service and Termination date for each Eligible Employee who is or who is expected to become a Participant under the Plan, together with any other information which the Administrator deems necessary. The information provided by the Adopting Employer to the Administrator shall be conclusive as to all persons.

Section 20.14. Participant Data to Administrator. Each Participant and each Beneficiary of a deceased Participant, as applicable, must provide the Administrator any evidence, data or other information as requested by the Administrator for the purpose of administering the Plan. The provisions of this Plan are effective for the benefit of each Participant upon the condition precedent that each Participant furnishes promptly full, true and complete evidence, data and information when requested by the Administrator. The Administrator shall advise each Participant of the effect of the failure to comply with its request.

Section 20.15. Treatment of Vacated Court Orders. Notwithstanding any provision to the contrary, a period of employment that was compelled by court order which was

subsequently vacated, reversed, or otherwise set aside shall not count as Credited Service under the Plan, except for a period, or partial period, during which the Participant satisfied the eligibility requirements for participation under the Plan. Likewise, Earnings paid to a Participant during any such period shall not be used to compute the Participant's Final Average Earnings, except for a period, or partial period, during which the Participant satisfied the eligibility requirements for participation under the Plan. In the event such a Participant Retires before the order compelling the Participant's reinstatement is vacated, reversed, or otherwise set aside, the Participant's Credited Service and Final Average Earnings shall be revised following such reversal, vacation or otherwise setting aside of the Participant's reinstatement, and the Participant's Retirement benefits shall be recalculated and adjusted accordingly, effective the first day of the month following such action. Any overpayments to the Participant resulting from including Credited Service and Earnings from any such period or partial period of employment during which the Participant did not satisfy the eligibility requirements for participation under the Plan shall be corrected in accordance with Section 20.08 of the Basic Plan Document.

Section 20.16. Entire Plan. The Plan document and the documents incorporated by reference herein shall constitute the only legally governing documents for the Plan. No statement by the Trustees, Adopting Employer, or Administrator shall be used in any claim unless in writing, signed by the party against whom the claim is being made.

The terms of the foregoing Basic Defined Benefit Plan Document are hereby adopted and agreed to pursuant to a resolution of the Board of Trustees of the Georgia Municipal Employees Benefit System.

APPENDIX
REFERENCED SECTIONS OF O.C.G.A.

Copies of sections of the Official Code of Georgia Annotated ("O.C.G.A.") referenced herein, as in effect on the date of adoption of this amended and restated Basic Plan Document, are attached hereto and made a part hereof. The Georgia legislature may amend the provisions of the attached O.C.G.A. sections from time to time. Any such amendments by the Georgia legislature are afforded no reliance by the currently issued IRS opinion letter.



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
Employee Plans

August 31, 2023

Ice Miller

Attn: Lisa Erb Harrison

One American Square, Suite 2900

Indianapolis, In. 46282-0200

Re: Application for opinion letter

Dear Ms. Harrison:

The enclosed letter is being sent to you under the provisions of a power of attorney currently on file with the Internal Revenue Service.

If you have any questions, please contact Janell Hayes, badge number 1000203103, by phone at (513) 975-6319.

Sincerely,

Aimee Beimesche

Aimee Beimesche

Manager Pre-approved Plans Program

Enclosure:
Letter to taxpayer



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
1111 Constitution Ave., NW
Washington, DC 20224

GEORGIA MUNICIPAL ASSOCIATION INC
201 PRYOR STREET SW
ATLANTA, GA 30303

Date:
08/31/2023
Employer ID number:
58-0907810
Case number:
202200321
File folder number:
FFN: 317E0630001-001
Letter Serial number:
Q705465a
Plan number:
01-001
Plan description:
Non-Standardized Pre-Approved Defined
Benefit Plan
Date of submission:
06/30/2022
Person to contact:
Name: Janell Hayes
ID number: 1000203103
Telephone: 513-975-6319
Hours: 10:00 a.m. to 5:00 p.m.
EST. Mon-Fri

Dear Applicant:

In our opinion, the form of the plan shown above is acceptable for employers to use for their employees' benefit under Internal Revenue Code (IRC) Section 401.

We considered the changes in qualification requirements in the 2020 Cumulative List of Notice 2020-14, 2020-13 Internal Revenue Bulletin (I.R.B.) 555. Our opinion relates only to the acceptability of the form of the plan under the IRC. We didn't consider the effect of other federal or local statutes.

You must provide the following to each employer who adopts this plan:

- . A copy of this letter
- . A copy of the approved plan
- . Copies of any subsequent amendments including their dates of adoption
- . Direct contact information including address and telephone number of the plan provider

Our opinion of the plan's form acceptability is a determination of the plan's qualification as adopted by a particular employer only under the circumstances, and to the extent, described in Revenue Procedure (Rev. Proc.) 2017-41, 2017-29 I.R.B. 92. The employer who adopts this plan can generally rely on this letter to the extent described in Rev. Proc. 2017-41. Thus, Employee Plans Determinations, except as provided in Section 12 of Rev. Proc. 2023-4, 2023-01 I.R.B. 162 (as updated annually), will not issue a determination letter to an employer who adopts this plan. Review Rev. Proc. 2023-4 to determine if an adopting employer is eligible to submit a determination letter application and, if so, how. The employer must also follow the terms of the plan in operation.

Except as provided below, our opinion doesn't apply to the requirements of IRC Sections 401(a)(4), 401(a)(26), 401(l), 410(b), and 414(s). Our opinion doesn't apply to IRC Sections 415 and 416 if an employer maintains or ever maintained another qualified plan for one or more employees covered by this plan.

Our opinion doesn't apply to:

- . Treasury Regulations (Treas. Reg.) Section 1.401(a)-1(b)(2) requirements where the normal retirement age under the employer's plan is below 62.
- . Proposed Treas. Reg. 1.401(a)-1(b)(2) requirements where the employer's plan is a governmental plan and its normal retirement age doesn't satisfy one of the safe harbors under the proposed regulations.

Our opinion doesn't constitute a determination:

- . That the plan is an IRC Section 414(d) governmental plan. Nor is this a ruling as to the tax treatment of contributions that are picked up by the governmental employing unit per IRC Section 414(h)(2).
- . That the plan is an IRC Section 414(e) church plan.

A non-electing church plan may not rely on our opinion for rules governing pre-Employee Retirement Income Security Act (ERISA) participation and coverage.

Our opinion applies to the requirements of IRC Sections 410(b) and 401(a)(26) (other than the 401(a)(26) requirements that apply to a prior benefit structure) if 100% of all non-excludable employees benefit under the plan.

Employers who choose a safe harbor benefit formula and a safe harbor compensation definition may also rely on this opinion letter for the non-discriminatory amounts requirement under IRC Section 401(a)(4).

If this plan provides for voluntary employee contributions subject to IRC Section 401(m), the employer may rely on the opinion letter for the form of the nondiscrimination test of IRC Section 401(m)(2) if the employer uses a safe harbor compensation definition.

Except as provided in Section 5.18(2) of Rev. Proc. 2017-41, an employer who adopts a cash balance plan cannot rely on an opinion letter for the requirements of IRC Section 411(b)(1) where the cash balance formula uses a structure of principal credits that increase with age, service, or other measure during a participant's employment.

This opinion letter doesn't cover any provisions in trust or custodial account documents:

- . Trusts or custodial account documents can't contain a provision that the provisions of the trust override the provisions of the plan.
- . This plan's provisions override any conflicting provision in the trust or custodial account documents used with the plan.
- . An adopting employer may not rely on this letter to the extent a trust or custodial account's provisions in a separate part of the plan override or conflict with the plan document provisions.
- . This letter does not constitute a ruling or determination as to the exempt status of related trusts or custodial accounts under IRC Section 501(a).

An employer who adopts this plan may not rely on this letter when the employer:

- . Uses the plan to amend or restate a plan which wasn't previously qualified.
- . Adopts it before the opinion letter is issued.
- . Doesn't correctly complete the adoption agreement or other elective provisions in the plan.
- . Made amendments that cause the plan not to be considered identical to the pre-approved plan, as described in Section 8.03 of Rev. Proc. 2017-41.

Our opinion doesn't:

- . Apply to what is contained in any applicable documents referenced outside the plan or adoption agreement, such as a collective bargaining agreement.
- . Consider issues under ERISA Title I, which are administered by the Department of Labor.

You must include your address and telephone number on the pre-approved plan or the plan's adoption agreement, if applicable, so that adopting employers can contact you directly.

If you, the pre-approved plan provider, have questions about your case, you can:

- . Call the telephone number at the top of the first page of this letter. This number is only for the provider's use. Individual participants or adopting employers with questions about the plan should contact you.
- . Write to us - provide your telephone number and the best time to call if we need more information.

Whether you call or write, reference the letter serial number and file folder number at the top of the first page of this letter.

Let us know if you change or discontinue sponsorship of this plan.

Keep a copy of this letter for your records.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Dragoo".

Daniel Dragoo
Director, EP Rulings & Agreements

cc: ICE MILLER LLP
ATTENTION: LISA ERB HARRISON
ONE AMERICAN SQUARE, SUITE 2900
INDIANAPOLIS, IN 46282

**SUMMARY OF KEY AMENDMENTS
TO THE RESTATED
GEORGIA MUNICIPAL EMPLOYEES BENEFIT SYSTEM
DEFINED BENEFIT RETIREMENT PLAN**

I. GENERAL OVERVIEW

On August 31, 2023, the IRS issued a favorable opinion letter for the Amended and Restated Third Six-Year Cycle Georgia Municipal Employees Benefit System Defined Benefit Retirement Plan ("DB Plan" or "Plan"). The Plan, as approved, incorporates required federal law updates, as well as administrative updates adopted by the Board of Trustees of GMEBS over the last several years. The IRS requires that each Adopting Employer sign an updated DB Plan Adoption Agreement (and Addendum, if applicable).

II. SUMMARY OF KEY CHANGES TO THE BASIC PLAN DOCUMENT

Participating employers have already been apprised of the content of all amendments adopted by the Board before August 31, 2023. However, during its review, the IRS required GMEBS to include additional amendments in the restated Plan documents. The following information summarizes those amendments, as well as Amendment 1 to the Basic Plan Document, which was approved by the Board of Trustees on September 22, 2023.

- ❖ **Change from “Master Plan Document” to “Basic Plan Document”** – The IRS changed its terminology for pre-approved plan documents from “Master Plan document” to Basic Plan Document.”
- ❖ **Removal of Outdated Language** – GMEBS amended the Plan for administrative purposes to move provisions that were no longer in effect or no longer applicable.
- ❖ **Minimum Age Limits for In-Service Distribution** – As a general rule, employees or elected officials may not draw retirement benefits while employed. The Basic Plan document states that if a plan allows in-service distribution, a participant must be at least age 62, or satisfy certain “safe harbor” age and service combinations established in IRS regulations, to receive retirement benefits while employed. If a plan allows in-service distribution and has an alternative normal retirement provision with a minimum age of at least 50 specifically for public safety employees (or that satisfies certain IRS “safe harbor” age and service qualifications that apply to public safety employees), public safety employees who are eligible for the alternative normal retirement may receive an in-service distribution even if they are younger than age 62. Though Congress amended federal law in 2019 to allow plans to set normal retirement ages at a minimum age of 59 ½, the IRS’s opinion letter for the DB Plan specified it would not apply to plans that allowed in-service distribution at ages younger than 62 (or 50 for public safety employees) or that did not satisfy one of the IRS’s safe harbors for in-service distribution. **As in prior restatements, GMEBS plans that currently have in-service distribution provisions that don’t meet these requirements will have the opportunity to file for separate IRS approval of these provisions.** “In-service distribution” means a distribution of normal or alternative normal retirement benefits without a bona fide separation from service. A “bona fide

SUMMARY OF KEY AMENDMENTS

separation from service” is a separation from service of at least six months with no expectation of returning to service.

- ❖ **Removal of Public Employment Related Crime Provisions** – At the request of the IRS, GMEBS removed language concerning the reduction or forfeiture of a participant’s benefits following a final conviction of a public employment related crime from the Basic Plan Document. State laws requiring a reduction in or forfeiture of retirement benefits if a participant is convicted of a public employment related crime still apply but are no longer mentioned in the Plan documents.
- ❖ **Clarification of Process for Locating an Individual Owed Benefits** – As required by the IRS, the restated Basic Plan Document details the steps an employer offering benefits under the DB Plan must take to locate an individual to whom benefits are owed under the Plan. These steps include searching Plan-related and publicly available records or directories for alternative contact information; sending certified mail to the individual’s last known mailing address and reaching out through appropriate means for address or contact information (such as email addresses and phone numbers) available to the employer; and using either a commercial locator service, a credit reporting agency or internet search tools to find the individual.
- ❖ **Federal Tax Law Updates** – The Basic Plan Document contains several federal tax law updates, including allowing rollovers to SIMPLE IRAs in certain situations, updating mortality table language relating to annual benefit limits, and allowing employers to amend the plan as necessary to satisfy Section 415 of the Internal Revenue Code, even if doing so impacts benefits.
- ❖ **Voting Representative; Trustees** – GMEBS updated language in the Basic Plan Document designating employers’ voting representative for GMEBS purposes to be consistent with the GMEBS Bylaws. The language provides that, unless otherwise directed by an employer’s chief executive, a GMEBS trustee will be considered his or her employer’s designated voting representative. For all other employers, the chief executive or administrative officer will be the employer’s voting representative.
- ❖ **Use of Trust Fund Assets** – The Basic Plan Document stipulates that trust fund assets can be used to pay reasonable fees, taxes and expenses of the Plan and Trust.
- ❖ **Reversion of Assets in Event of Plan Termination** – Per the request of the IRS, GMEBS amended the Basic Plan Document to state that, in the event an employer’s plan is terminated, excess trust fund assets remaining after paying all vested accrued benefits to all participants can only revert to the employer if the excess was due to an actuarial error.
- ❖ **Added Language to Adoption Agreement Regarding Compliance with Federal Law when an Employer Has More than One Defined Benefit Retirement Plan** – Per the request of the IRS, the Adoption Agreement contains a new Section 15(G) concerning Section 415(b) of the Internal Revenue Code, when an employer has more than one defined benefit retirement plan. This provision will be blank in most GMEBS employers’ Adoption Agreements.

SUMMARY OF KEY AMENDMENTS

- ❖ **Adjusted Minimum Ages for Commencement of Required Minimum Contributions** – The SECURE Act of 2019 and 2022’s SECURE 2.0 raised the age at which participants have to start drawing retirement benefits. These changes were not included in the restated Basic Plan Document reviewed by the IRS. However, on September 23, 2023, the Board of Trustees of GMEBS adopted Amendment 1 to the Restated Plan to implement these updates. Currently, a terminated vested participant must retire no later than the April 1 following the date the participant turns 73. Starting in 2033, a terminated vested participant must retire no later than the April 1 following the date the participant turns 75.



FLOWERY BRANCH CITY COUNCIL



EXECUTIVE SUMMARY

SUBJECT: Consideration of Real Estate Agreement with Sarkar Development Group, Inc. for the Purchase of Real Property

COUNCIL MEETING DATE: April 18, 2024

HISTORY:

The City of Flowery Branch has been trying to acquire four pieces of property at the intersection of McEver Road and Gaines Ferry Road for a roundabout.

FACTS AND ISSUES:

The entire parcel consists of 16.093 acres. The temporary construction easement which will revert to the property owner after construction is 13,554 square feet (or 0.311 acres) with the permanent easement totaling 1,774 square feet or (0.041 acres). There are also three permanent drainage easements totaling 1,740 square feet or (0.040 acres).

The cost of the real property as described in the paragraph above is \$20,918. The funding for the roundabout project is SPLOST funding.

OPTIONS:

- 1) Authorize the Real Estate Agreement and purchase the property for \$20,018.
- 2) Do not authorize the Real Estate Agreement or purchase the property.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

\$20,918 SPLOST

RECOMMENDATION:

Approve a Real Estate Agreement with Sarkar Development Group, Inc. for the purchase of real property.

SAMPLE MOTION:

I move to authorize the agreement with Sarkar Development Group, Inc., and the purchase of real property for \$20,918.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [ES - Property Purchase Sarkar roundabout.pdf](#)
- [Purchase and Sale Agreement - Sarkar Property.pdf](#)



**FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY**

SUBJECT: Consideration of Real Estate Agreement with Sarkar Development Group, Inc. for the Purchase of Real Property

DATE: April 8, 2024

BUDGET INFORMATION:
ANNUAL-
CAPITAL- \$20,918

☒ **RECOMMENDATION**
☐ **POLICY DISCUSSION**
☐ **STATUS REPORT**
☐ **OTHER**

COUNCIL ACTION REQUESTED ON: April 4, 2024

PURPOSE: The purpose of this item is to request council approval a Real Estate Agreement with Sarkar Development Group, Inc. for the purchase of real property.

HISTORY: The City of Flowery Branch has been trying to acquire four pieces of property at the intersection of McEver Road and Gaines Ferry Road for a roundabout.

FACTS AND ISSUES: The entire parcel consists of 16.093 acres. The temporary construction easement which will revert to the property owner after construction is 13,554 square feet (or 0.311 acres) with the permanent easement totaling 1,774 square feet or (0.041 acres). There are also three permanent drainage easements totaling 1,740 square feet or (0.040 acres).

The cost of the real property as described in the paragraph above is \$20,918. The funding for the roundabout project is SPLOST funding.

OPTIONS: 1) Authorize the Real Estate Agreement and purchase the property for \$20,018.
2) Do not authorize the Real Estate Agreement or purchase the property.

RECOMMENDED SAMPLE MOTION: I move to authorize the agreement with Sarkar Development Group, Inc., and the purchase of real property for \$20,918.

DEPARTMENT: Administration

Prepared by: Tonya Parrish

REAL ESTATE AGREEMENT

THIS AGREEMENT, made this ____ day of March, 2024, by and among, SARKAR DEVELOPMENT GROUP, INC, a Georgia corporation (herein referred to as the "Seller"), the CITY OF FLOWERY BRANCH, GEORGIA, a Georgia municipal corporation (herein referred to as the "Purchaser") and PEREIRA, KIRBY, KINSINGER & NGUYEN LLP, a Georgia limited liability partnership ("Escrow Agent").

R E C I T A L S

A. Seller is the owner of that certain tract of real property commonly known as Hall County Tax Parcel 08140000218 that sits adjacent to the western corner of the intersection of Gaines Ferry Road and McEver Road in Flowery Branch, Georgia 30042, more particularly described in Exhibit A attached hereto, and all improvements located thereon and all easements and appurtenances thereunto belonging, including any right, title and interest of the Seller in and to adjacent streets, alleys or rights-of-way.

B. Seller desires to sell a portion of the real property identified in Exhibit A to Purchaser in fee simple and Purchaser desires to purchase a portion of the real property identified in Exhibit A from Seller in fee simple, more particularly described on Exhibit "B" attached hereto. In addition, the Seller desires to convey a temporary construction easement across the real property identified in Exhibit A and Purchaser desires to purchase from Seller a temporary construction easement across the real property identified in Exhibit A in an area more particularly described in Exhibit C attached hereto. Said easement shall expire upon the completion of the improvements to be conducted by Purchaser at the intersection of Gaines Ferry Road and McEver Road. Seller desires to sell portions of the real property identified in Exhibit A to Purchaser as permanent drainage easements and Purchaser desires to purchase portion of the real property identified in Exhibit A from Seller as permanent drainage easements, more particularly described on Exhibit "D" attached hereto. The areas of real property identified as Exhibits B, C, and D shall hereinafter be referred to as the "Property."

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, the parties hereto agree as follows:

1. PURCHASE PRICE. The Purchase Price ("Purchase Price") shall be TWENTY THOUSAND NINE HUNDRED EIGHTEEN AND NO/100THS DOLLARS (\$20,918.00), and the Purchaser agrees to purchase the Property for said sum, subject to the terms and conditions herein. At the Closing, the Purchaser shall pay to the Seller the Purchase Price by wire transfer to an account or accounts designated by Seller or by other payment medium providing for immediately collectable funds designated by Seller.

2. EARNEST MONEY.

A. Earnest Money. The Purchaser, upon execution of this Agreement by the Seller, shall deliver to the Escrow Agent the Purchaser's check in the amount of ONE THOUSAND AND NO/100THS DOLLARS (\$1,000.00) (the "Earnest Money"). The Earnest Money shall be non-refundable to Purchaser except for the inability or failure of Seller to close the transaction contemplated herein, breach by Seller of its obligations hereunder, or as is otherwise expressly provided for herein.

B. Application. At the Closing, Escrow Agent shall pay the Earnest Money to Seller and the Earnest Money shall be applied and credited in reduction of the Purchase Price. If Purchaser shall exercise any right or option under this Agreement to rescind, cancel or terminate this Agreement, then Escrow Agent, after the passage of any required notice periods, shall immediately refund the Earnest Money to Purchaser, less the sum of TEN AND NO/100 DOLLARS (\$10.00) which shall be paid to Seller in consideration for this Agreement, whereupon this Agreement shall terminate and the parties to this Agreement shall have no further rights, duties or obligations under this Agreement, except as otherwise specifically provided in this Agreement.

C. Deposit of Earnest Money. Escrow Agent shall deposit the Earnest Money in a non-interest bearing escrow account at a financial institution whose deposits are insured by the F.D.I.C. chosen by Escrow Agent.

3. SURVEY. The Purchaser may, at its sole cost and expense, cause prior to the end of the Inspection Period, a Georgia registered land surveyor (herein referred to as the "Surveyor") to make a boundary survey (herein referred to as the "Survey") of the Property for the purpose of determining the exact number of acres within the boundary of the Property (to the nearest one thousandth (1/1000th) of an acre), the boundary lines of the Property, the location of all rights-of-way, buffers, easements and encroachments, if any, affecting the Property and any portion of the Property located within an area of special flood hazard as designated by the United States Department of Housing and Urban Development, the Federal Emergency Management Agency or any similar federal, state or local agency. Purchaser will deliver three (3) prints of the Survey to Seller not later than the Expiration Date as such term is defined in Paragraph 5(B) herein. The Survey shall be reasonably acceptable to Seller. Seller agrees to convey the Property pursuant to the Survey legal description by Quitclaim Deed if requested by Purchaser.

4. CONVEYANCE OF TITLE. The Seller shall convey good and marketable fee simple title to the Property to the Purchaser pursuant to recordable limited warranty deed. The Property shall be conveyed free and clear of all liens, encumbrances and other exceptions to title, except for: (i) those existing title matters shown on Exhibit "E" attached hereto and incorporated herein by this reference ("Existing Title Exceptions"); and (ii) the lien for ad valorem taxes not yet due and payable ((i) through (iv) hereinafter referred to as the "Permitted Title Exceptions"). Not later than ten (10) days from the Effective Date of this Agreement, as such term is defined herein, the Purchaser shall deliver to the Seller a statement of any objections to the Seller's title and the Seller shall have the right (but not the obligation) within a reasonable time thereafter in which to cure any such

objections. Seller shall give Purchaser notice of its intent to cure or not cure any title objections within ten (10) days after receipt by Seller of Purchaser's title objection notice; but if Seller does not give this notice within such ten (10) day period, then Seller shall be deemed to elect not to cure any title objections. In the event that the Seller fails to cure any such objections, Purchaser may (i) terminate this Agreement and recover the Earnest Money previously paid by Purchaser, (ii) remove any such objections (but only as to monetary liens created, assumed or suffered by Seller against the Property) and pay the same at Closing from the Purchase Price in accordance with the amount of money due and payable for such monetary lien, or (iii) waive such objections and close the transaction contemplated by this Agreement in accordance with all of the terms and provisions hereof. At any time prior to the Closing Date, the Purchaser shall have the right to check down the title from and after the effective date of the preliminary title examination contemplated in this Paragraph 4 and deliver to the Seller a written statement of any objection which appears in the real property records of Hall County, Georgia and affects title to the Property occurring subsequent to the preliminary title examination. The Seller shall have until the Closing Date to cure, at its expense, any such objection. In the event the Seller fails or refuses to cure such objection prior to the Closing Date, the Purchaser shall have the same rights with respect to such failure or refusal set forth in this Paragraph 4 as to preliminary title objections.

5. RIGHT OF INSPECTION.

A. General. The Seller agrees that, the Purchaser and its agents shall have the right and privilege of going upon the Property to inspect, examine and survey the Property, to plan for the development and use thereof. This right and privilege shall include the right to locate utilities, review any zoning conditions or requirements, review any protective or restrictive covenants, make soil tests, borings, percolation tests and such other inspections, examinations and tests the Purchaser deems necessary to prepare for the development of the Property; provided, however that no grading shall be done and no trees or bushes shall be cut, and Purchaser nor its agents shall interfere with the business operations of any tenants during any such inspections. To the extent allowed by law, Purchaser indemnifies and holds Seller harmless from and against loss or damage Seller may incur and any and all liens that may arise as a result of Purchaser's activities or the activities of Purchaser's agents, representatives or designees on the Property and against any and all claims for death or injury to persons or property arising out of or connected with Purchaser's (or its agents, representatives or designees) going upon the Property pursuant to the provisions of this Paragraph 5 or otherwise, and against all costs, expenses and liabilities occurring in or in connection with any such claim or proceeding brought thereon, including, without limitation, court costs and reasonable and actual attorney's fees. This indemnity, to the extent allowed by law, shall survive the Closing or any termination of this Agreement. Purchaser shall, at Purchaser's expense, restore the Property to substantially the same condition existing at the Effective Date upon completion of inspection activities, but only to the extent any changes were caused by Purchaser, its representatives or designees.

Seller will provide Purchaser within five (5) business day after the Effective Date a copy of any of the following to the extent in Seller's actual possession or control (collectively, "Seller's Documentation"): environmental reports prepared with respect to the Property; Seller's owner's

title insurance policy for the Property; the most recent survey prepared with respect to the Property and applicable tax bills. Any failure of Seller to provide any or all of the Seller's Documentation within such five (5) day period shall not be deemed to be a default on the part of Seller hereunder; however, the Inspection Period, but not the Closing Date, shall be extended an equal number of days of any such delay. Purchaser acknowledges and agrees that any materials provided pursuant to this Paragraph by Seller to Purchaser are made without any representations or warranties as to the accuracy or contents thereof, and Purchaser acknowledges and agrees that it shall not be entitled to rely upon any such materials. In the event the Closing fails to occur for any reason, Purchaser agrees to return promptly to Seller all information given to Purchaser pursuant to this Paragraph including any and all originals or copies made of such information in the possession of Purchaser's consultants and agents. Despite the provision of the materials provided in this Paragraph, Purchaser acknowledges that it shall be solely responsible for ordering its own title insurance commitment and title insurance policy, providing a current survey, obtaining an environmental audit or report relative to the Property, and any other inspections and reports desired by Purchaser, all at Purchaser's sole expense.

B. Right to Terminate. In the event the Purchaser determines, in its sole and absolute discretion, that the Property is not acceptable for its intended use, the Purchaser shall have the exclusive right and option to terminate this Agreement on or before thirty (30) calendar days after the date of final execution of this Agreement (said 30th day being herein referred to as the "Expiration Date"), in which event the Earnest Money (less the sum of \$10.00 which shall be paid to Seller by Escrow Agent and retained by Seller as consideration for entering into this Agreement) shall be delivered by the Escrow Agent to the Purchaser. The term "Inspection Period", as used in this Agreement, means the period from the date of final execution of this Agreement through the thirtieth (30th) calendar day hereafter. If Purchaser elects to terminate this Agreement during the Inspection Period, upon written request of Seller, Purchaser agrees to provide Seller with copies of all surveys, reports, tests, studies or any other documents or writings of any kind dealing with the Property which come into Purchaser's possession of control during the pendency of this Agreement.

6. CLOSING.

A. General. The consummation of the transaction contemplated under this Agreement (herein referred to as the "Closing") shall be on or before May 15, 2024 (hereinafter referred to as the "Closing Date"). The Closing shall be held at the offices of the Purchaser's counsel, Pereira, Kirby, Kinsinger & Nguyen, LLC, 690 Longleaf Drive, Lawrenceville, Georgia 30046, at a time and date which is mutually agreeable to Seller and Purchaser; provided however, at the election of either party, such party's portion of the Closing may be conducted by delivery of such party's closing documents to the closing attorney, on the Closing Date, by a courier or overnight delivery service. At the Closing, the Seller shall execute and deliver to the Purchaser a limited warranty deed conveying good and marketable fee simple title to the Property free and clear of all liens and encumbrances except the Permitted Title Exceptions.

B. Taxes. Real property ad valorem taxes assessed against the Property for the year in which the Closing occurs shall be prorated as of the Closing Date. In the event tax bills for the year

in which the Closing occurs have not been issued at the time of the Closing, the proration shall be made on the basis of the taxes actually paid for the immediately preceding year. In the event the amount of such taxes is not finally determined at the date of Closing, an appropriate adjustment shall be made between Seller and Purchaser by payment of the difference, if any, when the actual amount of such taxes becomes known. If the Property is included within a larger parcel for taxing purposes, Seller agrees to cause the taxes to be paid on the real property of which the Property forms a part on or before the date such tax bills become delinquent. At the time that the tax bills are received for the year in which the Closing occurs (whether before or after the Closing), the Purchaser and the Seller shall make any adjustments made necessary by reason thereof.

C. Documents. The Seller and the Purchaser agree that such documents as may be legally necessary or appropriate to carry out the terms of this Agreement shall be executed and delivered by each party to the other at the Closing, including, but not limited to, an affidavit from the Seller that has as its subject matter averments that, to the actual knowledge of the person signing the affidavit for Seller, (i) there are no rights or claims of parties in possession not shown by the public records, (ii) there are no liens or encumbrances other than those as to which specific provision is made at Closing, (iii) there are no liens, or rights to a lien, for services incurred by Seller (including, but not limited to, real estate brokerage services incurred by Seller), labor or material furnished at the request of Seller and not shown by the public records, (iv) the Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, and the Regulations thereunder, and (v) the Seller is not a "non-resident" within the meaning of O.C.G.A. § 48-7-128 (or if Seller is a "non-resident" within the meaning of such code section, that Seller will do all things necessary to comply at Closing with the provisions of O.C.G.A. Section 48-7-128). The owner's affidavit to be executed by Seller at Closing shall expressly state that nothing contained therein shall in any way be deemed to modify or enlarge the other representations contained in this Agreement or the limited warranty of title which is to be contained in the deed of conveyance from Seller to Purchaser.

E. Expenses of Closing. The Seller shall pay its share of prorations required herein and the recording costs associated with any title clearance items that Seller elects to undertake under Section 4 herein. The Purchaser shall pay the cost of the State of Georgia transfer tax due on the conveyance of the Property, the survey costs for which Purchaser is responsible under Paragraph 3, title examination costs, title certification costs, title insurance premiums, any fees charged by the Escrow Agent, and any other costs incurred by the Purchaser. Each party shall bear the expense of its own legal counsel.

7. SELLER'S REPRESENTATIONS.

A. The Seller makes the following representations, to the actual knowledge of the person signing this Agreement on behalf of Seller:

(i) Seller owns fee simple title to the Property, subject to those title exceptions identified in Exhibit E;

(ii) the execution and delivery of this Agreement and the consummation of the transactions contemplated herein shall not constitute a default by Seller of any other agreement to which Seller is a party;

(iii) Seller has not engaged any broker or agent with respect to the purchase and sale contemplated under this Agreement and there are no leasing management agreements or other agreements arising through Seller with any third parties concerning leasing of the Property;

(iv) There are no leases or agreements whose term (or any extension thereof) would extend beyond the Closing Date or give the right of possession of the Property or any portion thereof beyond the Closing Date;

(v) Seller has not received any written notice from any governmental authority of any taking of the Property or any portion thereof by eminent domain and, to its knowledge, no condemnation or any taking of the Property is contemplated or threatened by any such governmental authority; and

(vi) Other than as disclosed in Section 20 herein, there are no pending or threatened actions, suits, proceedings or bankruptcies against Seller of the Property which might affect the Property, Seller's title thereto, or the ability of Seller to perform its obligations hereunder.

B. Seller will not take, or cause to be taken, any action, which would cause or threaten to cause, any of the representations stated herein to become incorrect or untrue.

8. PURCHASER'S REPRESENTATIONS.

A. Purchaser represents to Seller as follows:

(i) this Agreement has been properly executed on behalf of Purchaser by its duly authorized officer and any and all actions which are or may be necessary to fully authorize or approve Purchaser to enter into and perform this Agreement have been properly obtained;

(ii) the execution and delivery of this Agreement and the consummation of the transactions contemplated herein shall not constitute a default by Purchaser of any other agreement to which Purchaser is a party; and

(iii) Purchaser has not engaged any broker with respect to the purchase and sale of the Property contemplated under this Agreement.

B. Purchaser will not take, or cause to be taken, any action which would cause or threaten to cause, any of the representations stated herein to become incorrect or untrue; and Purchaser shall affirmatively comply with Subparagraph (iii) above.

9. CONDITIONS PRECEDENT.

A. The Purchaser's obligation to purchase the Property hereunder is expressly made subject to the satisfaction (or waiver by the Purchaser) of each of the following conditions, on or before the Closing Date (or any earlier date expressly set forth below), in addition to all other conditions set forth in this Agreement:

(i) that the Property will be in the same condition, reasonable wear and tear only excepted, at Closing as it is on the Effective Date of this Agreement;

(ii) that all representations of Seller contained in Paragraph 7 of this Agreement be true and correct in all material respects as of the Closing Date; and

If any of the above conditions set forth in this Paragraph 9(A) have not been duly satisfied by the Closing Date or earlier date specified as to each condition, the Purchaser may rescind this Agreement by written notice to the Seller on or before the Closing Date or the earlier date expressly set forth above, in which event the Earnest Money (less \$10.00 which shall be remitted by Escrow Agent to Seller as the Seller's sole consideration for entering into this Agreement) shall be promptly refunded to the Purchaser by the Escrow Agent. Thereafter, the parties hereto shall have no further rights, duties or obligations hereunder, except as is otherwise specifically provided in this Agreement. In the event that the party having the right to rescind this Agreement does not so elect to rescind this Agreement on or before the Closing Date or earlier date specified above, then such condition shall be deemed waived and this Agreement shall continue in full force and effect.

10. NO BROKERS. Neither Seller nor Purchaser has contracted for the payment of any real estate commission, brokerage, finders or other fees with respect to the transaction contemplated hereby and to the extent allowed by law, each party hereto hereby agrees to defend, indemnify and hold harmless the other party from and against any claim by third parties for brokerage, commission, finders or other fees relative to this Agreement or the sale of the Property, and any court costs, attorneys' fees or other costs or expenses arising therefrom, alleged to be due by, through or under the indemnifying party.

11. DAMAGE AND CONDEMNATION.

A. Risk of Loss. The Seller shall bear all risk of loss with respect to the Property until the Closing.

B. Condemnation. In the event of any condemnation with respect to any material portion of the Property, the Purchaser may elect to (i) terminate this Agreement and receive a refund of the Earnest Money or (ii) consummate the purchase of the Property in accordance with the terms and provisions hereof and without any diminution in the purchase price on account of such condemnation in which event the Seller shall, at the Closing, pay to the Purchaser all condemnation awards and other payments previously received in connection with such condemnation and assign to the Purchaser all of Seller's rights to receive any award payable on account of such condemnation.

The parties acknowledge and agree that the pending litigation referenced in Section 20 herein shall not be subject to the terms and conditions of this Section 11(B) nor shall this provision be used by Purchaser to terminate this Agreement.

12. NOTICES.

Any notice, communication, request, reply or advice (collectively, "Notice") provided for or permitted by this Agreement to be made or accepted by either party must be in writing. Notice shall be given or served by depositing the same in the United States mail, postage paid, registered or certified, with return receipt requested or by hand delivering the same to such party, or an agent of such party, or by delivery by overnight courier such as Federal Express, or by delivery by email transmission. Each Notice shall be effective upon being so delivered in the case of hand delivery, upon being so deposited or upon transmission if sent by email, but the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the Notice by the addressee thereof which, in the case of delivery by mail, shall be as evidenced by the return receipt, in the case of delivery by a nationally recognized overnight courier service, shall be evidenced by confirmation of delivery from the overnight courier service, and in the case of delivery by email, on the date the Notice was confirmed sent by the sending apparatus. Rejection or other refusal by the addressee to accept or the inability of any party attempting hand delivery or, in the case of attempted delivery by mail or overnight courier service, failure by any party to deliver because of a changed address of which no Notice was given shall be deemed to be the receipt of the Notice sent. For the purposes of Notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

SELLER:

Sarkar Development Group, Inc.
6680 Woodlake Drive
Flowery Branch, GA 30542
Phone: _____
Email: _____

PURCHASER:

City of Flowery Branch
5410 Pine Street
Flowery Branch, Georgia 30542
City Manager Tonya Parrish
Phone: 770-967-6371
Email: tonya@flowerybranchga.org

Copy to: Ted C. Baggett, Esq.
PEREIRA, KIRBY, KINSINER & NGUYEN, LLC
690 Longleaf Drive
Lawrenceville, Georgia 30046
Phone: 770-963-1997
Email: tcb@pkknlaw.com

ESCROW AGENT:

Ted C. Baggett, Esq.
PEREIRA, KIRBY, KINSINER & NGUYEN, LLC
690 Longleaf Drive
Lawrenceville, Georgia 30046
Phone: 770-963-1997
Email: tcb@pkknlaw.com

Any party may by notice to the other in the manner provided above, designate a different address for receiving Notice under this Agreement. A post office box shall not be the only notice address for either Seller or Purchaser. Any Notice which is delivered to the notice address on a non-business day shall be deemed given the next business day if left at the notice address; or, if not left at the notice address, the next business day when re-delivered to the notice address. A non-business day is a Saturday, Sunday or any legal holiday when national banks are closed for business to the general public.

13. DEFAULT.

A. Remedies of Purchaser.

(i) In the event the Closing does not occur in accordance with the terms of this Agreement because of the inability of the Seller to convey good and marketable fee simple title to the Property because of title defects or objections, the Purchaser's sole right and exclusive remedy shall be either to (a) terminate this Agreement in which event the Earnest Money previously paid by Purchaser shall be immediately refunded to the Purchaser or (b) waive such inability and proceed to close the transaction without regard thereto. Despite the provisions of this Paragraph 13(A)(i), Purchaser may cure any monetary liens created, assumed or suffered by Seller against the Property and pay the same at Closing from the purchase price in accordance with the provisions of Paragraph 4 of this Agreement.

(ii) If Seller fails or refuses to perform its obligations hereunder, then Purchaser shall have the right to (i) terminate this Agreement by Notice to Seller, in which event the Earnest Money shall be refunded to Purchaser, and neither Seller nor Purchaser shall have any further rights or obligations hereunder, except for those obligations which survive termination, or (ii) seek specific performance of Seller's obligations to convey the Property to the Purchaser in accordance with the terms of this Agreement; provided, however, that Purchaser shall only be

entitled to such remedy if such suit for specific performance is filed within thirty (30) days after the scheduled date of Closing and further provided that the remedy of specific performance shall only be available to Purchaser upon Purchaser's full satisfaction of each of Purchaser's obligations under this Agreement, including without limitation, delivering sufficient proof to the Seller that Purchaser is ready, willing and able to close this transaction as of the date scheduled for Closing. If Purchaser has not filed suit for specific performance within said 30-day period, then Purchaser shall be deemed to have elected to terminate this Agreement pursuant to (i) above. The option selected (or deemed selected) by Purchaser shall be Purchaser's sole and exclusive remedy, and in no event shall Purchaser be entitled to sue Seller for damages. In no event, including the provisions above, or after Closing, shall Seller be liable to Purchaser for any consequential, indirect, punitive, treble, exemplary, or speculative damages. Purchaser acknowledges that Purchaser's agreements in this Section 13(A) are a material inducement for Seller to enter into this Agreement and without which Seller would not have entered into this Agreement. Nothing in this Section 13(A) shall limit Purchaser's indemnification obligations under this Agreement or Purchaser's restoration obligation in Section 5(A) of this Agreement. The provisions of this Section 13 shall survive Closing or termination of this Agreement.

B. Remedies of Seller. If the Closing does not occur in accordance with the terms of this Agreement due to the default of the Purchaser, or in the event of a breach by the Purchaser of its obligations hereunder, the Seller shall be entitled, as its sole right and exclusive remedy, to receive the Earnest Money previously paid by Purchaser as full, final and complete liquidated damages in accordance with and under the authority contained in O.C.G.A. § 13-6-7. The parties understand and agree that (i) actual damages would be difficult or impossible to ascertain in the event of such default or breach and (ii) the sum specified as liquidated damages is a reasonable estimation of the probable loss which would be sustained by the Seller by reason of such default or breach and is not a penalty or forfeiture. Seller hereby waives any right to damages (except as described in this Paragraph 13(B) and except as to the indemnity contained in Paragraph 16) or specific performance against the Purchaser.

14. ESCROW INSTRUCTIONS.

A. Disbursement of Funds. At such time as Escrow Agent receives written Notice from Seller or Purchaser, or both, stating the identity of the party to whom the Earnest Money is to be disbursed, Escrow Agent shall disburse such Earnest Money pursuant to such notice; provided, however, that if such notice is given by either Seller or Purchaser but not both, Escrow Agent shall notify the other party in writing of such notice and shall withhold disbursement of the Earnest Money for a period of fifteen (15) calendar days after giving such notice and if Escrow Agent receives written Notice from either Seller or Purchaser within such fifteen (15) day period, which notice countermands or disputes the earlier notice of disbursement, then Escrow Agent shall withhold such disbursement until both Seller and Purchaser can agree upon a disbursement of the Earnest Money. Notwithstanding the foregoing, if Purchaser notifies Escrow Agent on or before the expiration of the Inspection Period of its election to terminate this Agreement pursuant to Paragraph 5(B), then no confirming notice from Seller shall be required by Escrow Agent, and Escrow Agent shall promptly disburse the Earnest Money as provided in

Paragraph 5(B), without requesting or waiting for confirming notice from Seller. Seller and Purchaser agree to send to the other a duplicate copy of any written notice sent to Escrow Agent requesting disbursement or countermanding or disputing a request for disbursement.

B. Limited Liability. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for any negligence, willful misconduct or breach of trust by Escrow Agent under this Agreement, and, accordingly, Escrow Agent shall not incur any such liability with respect to the following: (a) any action taken or omitted in good faith upon advice of its legal counsel given with respect to any questions relating to the duties and responsibilities of Escrow Agent under this Agreement; or (b) any action taken or omitted in reliance on any instrument, including any written notice or instruction provided for in this Agreement, not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a person or persons having authority to sign or present such instrument, and to conform with the provisions of this Agreement.

C. Disputes. Notwithstanding anything in this Agreement to the contrary, upon a dispute between Seller and Purchaser sufficient in the sole discretion of Escrow Agent to justify its doing so, or if Escrow Agent has not disbursed the Earnest Money on or before the thirtieth day (30th) day following the Closing Date specified in Paragraph 6(A) (as the same may be extended as provided herein or by agreement of Purchaser and Seller), then Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction the Earnest Money, together with such pleadings as it may deem appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement (other than with respect to any liabilities for negligence, willful misconduct or breach of trust by Escrow Agent).

D. Indemnity. To the extent allowed by law, Seller and Purchaser indemnify Escrow Agent against, and hold Escrow Agent harmless from, any and all claims, actions, demands, losses, damages, expenses (including, without limitation, court costs, attorneys' fees and accountant's fees) and liabilities that may be imposed upon performance of its duties under this Paragraph 14, including, without limitation, any litigation arising from this Agreement or involving the subject matter of this Agreement, but excluding any such claims, actions, demands, losses, damages, expenses and liabilities resulting from or arising out of any negligence, willful misconduct or breach of trust by Escrow Agent under this Agreement. If there is any litigation arising from this Agreement or involving the subject matter hereof, and if Seller and Purchaser are opposing parties in such litigation, then the party prevailing in such litigation shall be reimbursed promptly upon demand by the other such party in an amount equal to that amount which the prevailing party shall have paid Escrow Agent with respect to such litigation and its subject matter pursuant to the indemnification agreement contained in this Paragraph 14(D). The provisions of this Paragraph 14(D) shall survive the Closing or any termination, cancellation or rescission of this Agreement.

15. PROPERTY SOLD "AS IS/WHERE IS".

EXCEPT FOR SELLER'S REPRESENTATIONS SET FORTH IN SECTION 7 OF THIS AGREEMENT, THE PROPERTY IS BEING SOLD AND CONVEYED TO PURCHASER "AS IS/WHERE IS" AND "WITH ALL FAULTS". EXCEPT FOR SELLER'S REPRESENTATIONS SET FORTH IN SECTION 7 OF THIS AGREEMENT, SELLER HAS NOT MADE, DOES NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES REGARDING OR RELATING TO: THE CONDITION OF THE PROPERTY, THE IMPROVEMENTS LOCATED THEREON, OR THE PERSONALTY; THEIR SUITABILITY FOR ANY PARTICULAR PURPOSE; THE SUSCEPTIBILITY TO FLOODING OF THE PROPERTY; THE VALUE OR MARKETABILITY OF THE PROPERTY; THE LAYOUT OR LEASABLE SQUARE FOOTAGE OF THE PROPERTY; THE PROJECTED INCOME OR EXPENSES OF THE PROPERTY; THE ZONING CLASSIFICATION, OR USE AND OCCUPANCY RESTRICTIONS, APPLICABLE TO THE PROPERTY; THE CURRENT MANNER OF OPERATION OF THE PROPERTY; THE COMPLIANCE OF THE PROPERTY WITH ENVIRONMENTAL LAWS, AND LAWS AND REGULATIONS RELATING TO HAZARDOUS SUBSTANCES, TOXIC WASTES AND UNDERGROUND STORAGE TANKS; AND ALL MATTERS AFFECTING OR RELATING TO THE PROPERTY. PURCHASER ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, HAVE BEEN MADE BY SELLER, OR BY ANY OTHER PERSON REPRESENTING OR PURPORTING TO REPRESENT SELLER.

BY PROCEEDING WITH THE ACQUISITION OF THE PROPERTY FOLLOWING THE INSPECTION PERIOD, PURCHASER AGREES THAT IT WILL BE CONFIRMING THAT IT HAS INVESTIGATED TO ITS SATISFACTION ALL MATTERS CONCERNING THE PROPERTY THAT ARE RELEVANT TO PURCHASER AND THAT PURCHASER IS ACQUIRING THE PROPERTY IN AN "AS IS/WHERE IS" AND "WITH ALL FAULTS" CONDITION. IN AGREEING TO PURCHASE THE PROPERTY "AS IS/WHERE IS" AND "WITH ALL FAULTS" AND WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, PURCHASER ACKNOWLEDGES AND REPRESENTS THAT IT HAS FACTORED THE "AS IS/WHERE IS" AND "WITH ALL FAULTS" CONDITION OF THE PROPERTY INTO THE PURCHASE PRICE PURCHASER HAS HEREBY AGREED TO PAY FOR THE PROPERTY. FROM AND AFTER THE CLOSING, PURCHASER AGREES TO WAIVE, AND DOES HEREBY WAIVE, ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION AND OTHER LIABILITIES OF OR AGAINST SELLER WITH RESPECT TO THE CONDITION OF THE PROPERTY IN VIOLATION OF FEDERAL, STATE OR OTHER APPLICABLE LAW. THE TERMS AND COVENANTS OF THIS SECTION 15 SHALL SURVIVE THE CLOSING AND SHALL NOT BE MERGED INTO THE DEED CONVEYING THE PROPERTY TO PURCHASER.

16. LIENS AND ENCUMBRANCES.

Purchaser shall have no authority, expressed or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon or in any manner, to bind the interest of Seller in the Property or to charge the proceeds payable hereunder for any claim in favor of any person dealing with Purchaser, including those who may furnish materials or perform labor for any construction or repairs, and any such liens shall be attached to, if at all, only the Purchaser's interest, if any, granted the Purchaser by this instrument. Purchaser covenants and agrees that it will pay or cause to be paid all sums legally due and payable by or on account of any labor performed or materials furnished in connection with any work performed on the Property on which any lien is or can be validly or legally asserted against its interest, if any, in the Property with improvements thereon and that it will save and hold Seller harmless of any and all loss, costs or expense, based upon or arising out of asserted claims or liens against the Purchaser's estate, if any, or against the right, title or interest of the Seller in the Property under the terms of this Agreement, except for indemnities which by the express written terms of this Agreement are to survive the termination or cancellation of this Agreement. This Paragraph shall survive any termination or cancellation of this Agreement.

17. LIKE-KIND EXCHANGES.

Each party acknowledges and agrees that the other may engage in an exchange of like-kind property, using a qualified intermediary, pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, in connection with its disposition of the Property. Each party agrees to cooperate with any such like-kind exchange; provided (i) such party shall not be required to execute any instrument that increases such party's obligations or decrease its rights under this Agreement, (ii) such party shall not be required to incur any liability, cost or expense, and (iii) such party shall not be required to take title to any other property. Such party agrees to consent to the other party's assignment of this Agreement to a qualified intermediary in order to facilitate such like-kind exchange so long as such assignment does not adversely affect such party's rights hereunder, and such party agrees that it will have no recourse whatsoever against any qualified intermediary to whom this Agreement is assigned; provided the other party's assignment of this Agreement to a qualified intermediary shall not result in the other party being released from its obligations and liabilities hereunder.

18. MISCELLANEOUS.

A. Termination. In the event this Agreement is terminated pursuant to the terms hereof or otherwise, the terminating party shall give notice thereof to the other party and this Agreement shall be null and void and of no force or effect and the parties shall have no rights, obligations or liabilities hereunder, except those which expressly survive the termination of this Agreement.

B. Waiver. The failure of any party to exercise any right given hereunder or to insist

upon strict compliance with any term, condition or covenant specified herein shall not constitute a waiver of such party's right to exercise such right or to demand strict compliance with any such term, condition or covenant under this Agreement.

C. Entire Agreement. This Agreement contains the sole and entire agreement of the Seller and the Purchaser with respect to the transaction contemplated hereunder and no representation, inducement, promise or agreement, parole or written, between the Purchaser and the Seller and not incorporated herein shall be of any force or effect. Any amendment to this Agreement shall be in writing and executed by the Purchaser and the Seller.

D. Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and the respective successors, successors in title and permitted assigns, provided, however, that Purchaser shall not be entitled to assign its rights hereunder without the express written consent of Seller. Seller shall be entitled to assign its rights hereunder, in whole or in part, to an entity or entities that control, are controlled by, or are under the same control as Seller, without Purchaser's prior written consent; "Control", as used in this Paragraph 18(D) shall mean beneficial ownership equal to or greater than 50% of the entity.

E. Time is of the Essence. Time is of the essence with respect to this Agreement.

F. Survival of Provisions. Except as expressly provided herein, the terms, conditions, obligations, provisions of this Agreement shall merge into the documentation from this transaction and shall not survive the Closing of this transaction and the execution and delivery of the deed pursuant hereto.

G. Applicable Law. This Agreement and all amendments hereto shall be governed by and construed under the laws of the State of Georgia.

H. Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, such provision, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall be deemed severable, and the remainder hereof shall not be affected thereby, and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

I. Date of this Agreement. In the event that any date or deadline set forth in this Agreement occurs on a Saturday, Sunday or legal holiday, such date or deadline shall automatically be extended to the next date which is not a Saturday, Sunday or legal holiday. The date of "final execution" and the "Effective Date" of this Agreement shall be the date of the last signature of Purchaser and Seller to this Agreement.

J. Possession. Full and complete possession of the Property shall be delivered to Purchaser at Closing.

K. Counterparts and Execution and Delivery by Electronic Transmission. This Agreement may be executed in separate counterparts, each of which shall be deemed an original and all of which, collectively, shall comprise one and the same instrument. Furthermore, this Agreement may be executed and delivered by electronic transmission. The parties intend that electronic (e.g. pdf. format) signatures constitute originals signatures and that an electronic copy or counterparts of this Agreement containing signatures (original or electronic) of a party is binding upon that party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, under seal, as of the day and year indicated opposite their names below.

SELLER:

_____ Date	_____ (SEAL) SARKAR DEVELOPMENT GROUP, INC. (Robi Sarkar, CEO)
---------------	---

PURCHASER:

CITY OF FLOWERY BRANCH, GEORGIA

_____ Date	By: _____ Name: _____ Title: _____
---------------	--

CONSENTED TO FOR THE PURPOSE
OF SERVING AS ESCROW AGENT:

PEREIRA, KIRBY, KINSINGER & NGUYEN, LLP.

By: _____ Title: _____ Date: _____
--

EXHIBIT "A"

**LEGAL DESCRIPTION OF PROPERTY FROM WHICH PORTIONS ARE BEING
OBTAINED IN FEE SIMPLE, FOR A TEMPORARY CONSTRUCTION EASEMENT,
AND FOR PERMANENT DRAINAGE EASEMENTS**

All that tract or parcel of land lying and being in Land Lot 149, 8th District, Hall County, Georgia, and being more particularly described as follows:

BEGINNING at a point at the intersection of the north right of way of McEver Road (80' right of way) with the southwesterly right of way of Gaines Ferry Road (80' right of way); thence 287.13 feet along a curve, said curve having a chord of South 53°19'55" West 286.62 feet and a radius of 1386.75;; thence South 59°13'39" West, a distance of 631.60 feet to a point; thence North 44°37'59" West, a distance of 200.99 feet to a point; thence North 45°29'17" West, a distance of 795.26 feet to a point; thence North 47°01'03" East, a distance of 148.77 feet to a point; thence North 30°05'29" West, a distance of 107.26 feet to a point; thence South 85°14'59" East, a distance of 446.02 feet to a point; thence 698.14 feet along a curve, said curve having a chord of South 73°38'29" East 693.37 feet and a radius of 1722.95 feet to a point; thence South 61°58'13" East, a distance of 358.04 feet to a point, being the **POINT OF BEGINNING**.

Said tract contains 16.093 acres.

EXHIBIT “B”
LEGAL DESCRIPTION OF PORTION OF PROPERTY BEING TRANSFERRED IN
FEE SIMPLE

1,774 SQUARE FEET (0.041 AC)

All that parcel lying and being in Land Lot 139, 8th Land District, Flowery Branch, Hall County, Georgia containing 1,774 square feet (0.041 acre) and being the property to be acquired for a proposed roadway round-a-bout which will be located within such area, and depicted on the attached drawing prepared by Matthew N Austin, Georgia RLS 3393, on December 7, 2023, and being more particularly described as follows:

From the POINT OF REFERENCE, which is a 1” solid rod marker having Georgia State Plane, West Zone, NAD83 coordinates North 1516434.6535' and East 2360063.2227', and being the common corner of the parcel shown on Deed Book 8293, Page 128 and along the Northern right-of-way of McEver Road, travel N59°54'33”E a distance of 633.78' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N57°55'08”E and a chord length of 62.26', thence run along the arc of said curve and said right-of-way a distance of 62.27' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N55°58'33”E and a chord length of 31.79', said point being the POINT OF BEGINNING of the parcel herein described, thence run along the arc of said curve and said right-of-way a distance of 31.79' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N51°21'49”E and a chord length of 191.32', thence run along the arc of said curve and said right-of-way a distance of 191.47' to a point, thence N60°56'56”W a distance of 47.47' to a point lying on a non-tangent curve to the left, having a radius of 41.00', a chord bearing of S06°33'51”W and a chord length of 58.40', thence run along the arc of said curve a distance of 64.99' to a point, thence S51°58'32”W a distance of 86.98' to a point, thence S50°30'36”W a distance of 76.58' to the POINT OF BEGINNING.

EXHIBIT “C”
LEGAL DESCRIPTION OF PORTION OF PROPERTY BEING CONVEYED AS A
TEMPORARY CONSTRUCTION EASEMENT

13,554 SQUARE FEET (0.311 AC)

All that parcel lying and being in Land Lot 139, 8th Land District, Flowery Branch, Hall County, Georgia containing 13,554 square feet (0.311 acre) and being a TEMPORARY CONSTRUCTION EASEMENT for the construction of the above-described roadway round-about as shown on the attached drawing prepared by Matthew N Austin, Georgia RLS 3393, on December 7, 2023, and being more particularly described as follows:

From the POINT OF REFERENCE, which is a 1” solid rod marker having Georgia State Plane, West Zone, NAD83 coordinates North 1516434.6535' and East 2360063.2227', and being the common corner of the parcel shown on Deed Book 8293, Page 128 and along the Northern right-of-way of McEver Road, travel N59°54'33”E a distance of 633.78' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N58°46'34”E and a chord length of 20.77', thence run along the arc of said curve a distance of 20.77' to a point, said point being the POINT OF BEGINNING, thence N26°16'16”E a distance of 104.53' to a point, thence N54°23'26”E a distance of 36.97' to a point, thence N83°57'21”E a distance of 48.77' to a point, thence N51°56'12”W a distance of 32.35' to a point lying on a tangent curve to the right, having a radius of 21.15', a chord bearing of N11°02'55”E and a chord length of 27.51', thence run along the arc of said curve a distance of 29.96' to a point, thence N60°56'56”W a distance of 89.10' to a point lying on a tangent curve to the left, having a radius of 2,855.33', a chord bearing of N61°50'13”W and a chord length of 88.04', thence run along the arc of said curve a distance of 88.04' to a point, thence N62°40'40”W a distance of 127.84' to a point, thence N62°21'29”W a distance of 16.01' to a point, thence N27°16'57”E a distance of 20.00', thence S62°21'46”E a distance of 16.12' to a point, thence S62°40'40”E a distance of 127.72' to a point lying on a tangent curve to the right, having a radius of 2,875.38', a chord bearing of S61°50'13”E and a chord length of 88.66', thence run along the arc of said curve a distance of 88.66' to a point, thence S60°56'56”E a distance of 93.69' to a point lying on a non-tangent curve to the left, having a radius of 41.00', a chord bearing of S06°33'51”W and a chord length of 58.40', thence run along the arc of said curve a distance of 64.99' to a point, thence S51°58'32”W a distance of 86.98' to a point, thence S50°30'36”W a distance of 76.58' to the POINT OF BEGINNING.

EXHIBIT "D"
**LEGAL DESCRIPTION OF PORTIONS OF PROPERTY BEING CONVEYED AS A
PERMANENT DRAINAGE EASEMENTS**

DRAINAGE EASEMENT 1 – 904 SQUARE FEET (0.021 AC)

All that parcel lying and being in Land Lot 139, 8th Land District, Flowery Branch, Hall County, Georgia containing 904 square feet (0.021 acre) and being a DRAINAGE EASEMENT, said easement being 20' in width as shown on the attached drawing prepared by Matthew N Austin, Georgia RLS 3393, on December 7, 2023, and being more particularly described as follows: From the POINT OF REFERENCE, which is a 1" solid rod marker having Georgia State Plane, West Zone, NAD83 coordinates North 1516434.6535' and East 2360063.2227', and being the common corner of the parcel shown on Deed Book 8293, Page 128 and along the Northern right-of-way of McEver Road, travel N59°54'33"E a distance of 633.78' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N57°55'08"E and a chord length of 62.26', thence run along the arc of said curve and said right-of-way a distance of 62.27' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N55°58'33"E and a chord length of 31.79', thence N39°29'24"E a distance of 56.70' to a point, said point being the POINT OF BEGINNING, thence N19°52'38"W a distance of 48.80' to a point, thence N70°07'22"E a distance of 20.00' to a point, thence S19°52'38"E a distance of 41.71' to a point, thence S51°58'32"W a distance of 1.35', thence S50°30'36"W a distance of 19.87' to the POINT OF BEGINNING.

DRAINAGE EASEMENT 2 – 413 SQUARE FEET (0.009 AC)

All that parcel lying and being in Land Lot 139, 8th Land District, Flowery Branch, Hall County, Georgia containing 413 square feet (0.009 acre) and being a DRAINAGE EASEMENT, said easement being 20' in width and offset from one side of the above-described right-of-way as shown on the attached drawing prepared by Matthew N Austin, Georgia RLS 3393, on December 7, 2023, and being more particularly described as follows: From the POINT OF REFERENCE, which is a 1" solid rod marker having Georgia State Plane, West Zone, NAD83 coordinates North 1516434.6535' and East 2360063.2227', and being the common corner of the parcel shown on Deed Book 8293, Page 128 and along the Northern right-of-way of McEver Road, travel N59°54'33"E a distance of 633.78' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N57°55'08"E and a chord length of 62.26', thence run along the arc of said curve and said right-of-way a distance of 62.27' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N55°58'33"E and a chord length of 31.79', thence run along the arc of said curve and said right-of-way a distance of 31.79' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N51°21'49"E and a chord length of 191.32', thence run along the arc of said curve and said right-of-way a distance of 191.47' to a point, thence N60°56'56"W a distance of 47.47' to a point, thence N60°56'56"W a distance of 62.07' to a point, said point being the POINT OF BEGINNING, thence N60°56'56"W a distance of 20.67' to a point, thence S14°24'33"W a distance of 20.67' to a point, thence S60°56'56"E a distance of 20.67' to a point, thence N614°24'33"E a distance of 20.67' to the POINT OF BEGINNING.

DRAINAGE EASEMENT 3 – 423 SQUARE FEET (0.010 AC)

All that parcel lying and being in Land Lot 139, 8th Land District, Flowery Branch, Hall County, Georgia containing 423 square feet (0.010 acre) and being a DRAINAGE EASEMENT, said easement being 20' in width and offset from one side of the above-described right-of-way as shown on the attached drawing prepared by Matthew N Austin, Georgia RLS 3393, on December 7, 2023, and being more particularly described as follows:

From the POINT OF REFERENCE, which is a 1" solid rod marker having Georgia State Plane, West Zone, NAD83 coordinates North 1516434.6535' and East 2360063.2227', and being the common corner of the parcel shown on Deed Book 8293, Page 128 and along the Northern right-of-way of McEver Road, travel N59°54'33"E a distance of 633.78' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N57°55'08"E and a chord length of 62.26', thence run along the arc of said curve and said right-of-way a distance of 62.27' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N55°58'33"E and a chord length of 31.79', thence run along the arc of said curve and said right-of-way a distance of 31.79' to a point lying on a tangent curve to the right, having a radius of 1,386.75', a chord bearing of N51°21'49"E and a chord length of 191.32', thence run along the arc of said curve and said right-of-way a distance of 191.47' to a point, thence N60°56'56"W a distance of 47.47' to a point, thence N29°03'04"W a distance of 63.69' to a point lying on a tangent curve to the left, having a radius of 2,875.38', a chord bearing of N28°09'47"W and a chord length of 88.66', thence run along the arc of said curve a distance of 88.67' to a point, thence N62°40'40"W a distance of 80.15' to a point, said point being the POINT OF BEGINNING, thence N62°40'40"W a distance of 21.33' to a point, thence S06°59'14"W a distance of 20.97' to a point, thence S61°47'10"E a distance of 21.46' to a point, thence N06°59'14"E a distance of 21.33' to the POINT OF BEGINNING.

EXHIBIT “E”
EXISTING TITLE EXCEPTIONS

- a. All taxes and special assessments, including water, sanitary and other utility bill, for the year 2024 and subsequent years, which are not yet due and payable, together with any and all taxes and special assessments which may become due and payable for the current or previous years, due to, but not limited to, reassessments, re-billings, or errors by tax officials or their agents. Easement to Georgia Power Company recorded in Deed Book 23, Page 518, aforesaid records.
- b. Easement to Georgia Railway and Power Company recorded in Deed Book 23, Page 607, aforesaid records.
- c. Right of way to Georgia Railway and Power Company recorded in Deed Book 45, Page 400, aforesaid records.
- d. General Utility Easement in favor of Georgia Power Company recorded in Deed Book 72, Page 495, aforesaid records.
- e. Easement to Southern Bell Telephone and Telegraph Company recorded in Deed Book 92, Page 210, aforesaid records.
- f. Right of Way Easement to Suwanee Electric Membership Corporation recorded in Deed Book 192, Page 376, aforesaid records.
- g. Right of Way Easement to Suwanee Electric Membership Corporation recorded in Deed Book 193, Page 128, aforesaid records.
- h. Easement to Suwanee Electric Membership Corporation recorded in Deed Book 885, Page 5, aforesaid records.
- i. Right of Way Easement to Suwanee Electric Membership Corporation recorded in Deed Book 3479, Page 396, aforesaid records.



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consideration of Resolution 24-001 Declaring the City of Flowery Branch's Intention to Issue Approximately \$25,000,000 of Revenue Bonds, Series 2024, Through the Gainesville and Hall County Development Authority.

COUNCIL MEETING DATE: April 18, 2024

HISTORY:

Previously, the city heard a presentation from Stifel about the potential of revenue bonds as a funding source for the water reclamation facility (WRF) Expansion project. At that time, the city had received bids for the project and the low bid was \$52M. The city was seeking the funds as a value engineering effort was occurring to try to reduce costs of the low bid. The value engineering effort was not successful, the city then chose to issue an RFP for a construction manager at risk (CMAR), and the process started again utilizing some of the old plans, but with new components with the design of the plant and the processes to be used to treat wastewater.

At the last council meeting (April 4, 2024), Trey Monroe with Stifel presented options for a bond issue now.

FACTS AND ISSUES:

Recently, during a presentation from the engineer and CMAR, it was shown that the new estimate for construction of the WRF was approximately \$45M. Efforts are ongoing to reduce costs from that number, but the time has come to look at other potential funding sources. The city already had a loan secured from GEFA (Georgia Environmental Finance Authority) for \$23.3M of which approximately \$20M is still available. Funding will need to be secured for the additional \$20-25M prior to issuing a Notice to Proceed (NTP) on the new plant which is currently scheduled for June 2024. GEFA has also changed their rules on extending loans to local governments. The current maximum amount of a loan is \$12M. Funding options would have been explored anyway to determine what was best for the city and its ratepayers, but this now requires another funding option besides GEFA.

After much review, staff has determined that issuing revenue bonds for the other \$25,000,000 is in the city's best interest.

OPTIONS:

- 1) Authorize the resolution declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority
 - 2) Do not authorize the resolution declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority.
-

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

Yes

AMOUNT AND SOURCE OF FUNDS:

Funding requirements vary from year to year with interest and principal debt payments.

RECOMMENDATION:

Authorize a resolution declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority. This resolution, if approved, will also authorize the engagement of an underwriter and a bond counsel for the issuance of the bonds.

SAMPLE MOTION:

I move to approve Resolution No. 24-001 declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority.

COLLABORATING DEPARTMENT:

DEPARTMENT: Administration

Prepared by: Shelia Cooper

ATTACHMENTS

- [ES - Resolution 24-001 City's intent to sell bonds.pdf](#)
- [AUTHORIZING RESOLUTION - changes accepted.pdf](#)



**FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY**

SUBJECT: Consideration of Resolution No. 24-001 Declaring the City of Flowery Branch's Intention to Issue Approximately \$25,000,000 of Revenue Bonds, Series 2024, Through the Gainesville and Hall County Development Authority.

DATE: April 18, 2024

BUDGET INFORMATION:

ANNUAL- Debt service varies

CAPITAL-

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

☐ **STATUS REPORT**

☐ **OTHER**

COUNCIL ACTION REQUESTED ON: April 18, 2024

PURPOSE: The purpose of this item is to request council approval of a resolution declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority. This resolution, if approved, will also authorize the engagement of an underwriter and a bond counsel for the issuance of the bonds.

HISTORY: Previously, the city heard a presentation from Stifel about the potential of revenue bonds as a funding source for the water reclamation facility (WRF) Expansion project. At that time, the city had received bids for the project and the low bid was \$52M. The city was seeking the funds as a value engineering effort was occurring to try to reduce costs of the low bid. The value engineering effort was not successful, the city then chose to issue an RFP for a construction manager at risk (CMAR), and the process started again utilizing some of the old plans, but with new components with the design of the plant and the processes to be used to treat wastewater.

At the last council meeting (April 4, 2024), Trey Monroe with Stifel presented options for a bond issue now.

FACTS AND ISSUES: Recently, during a presentation from the engineer and CMAR, it was shown that the new estimate for construction of the WRF was approximately \$45M. Efforts are ongoing to reduce costs from that number, but the time has come to look at other potential funding sources. The city already had a loan secured from GEFA (Georgia Environmental Finance Authority) for \$23.3M of which approximately \$20M is still available. Funding will need to be secured for the additional \$20-25M prior to issuing a Notice to Proceed (NTP) on the new plant which is currently scheduled for June 2024. GEFA has also changed their rules on extending loans to local governments. The current maximum amount of a loan is \$12M. Funding options would have been explored anyway to determine what was best for the city and its ratepayers, but this now requires another funding option besides GEFA.

After much review, staff has determined that issuing revenue bonds for the other \$25,000,000 is in the city's best interest.

OPTIONS: 1) Authorize the resolution declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority
2) Do not authorize the resolution declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority.

RECOMMENDED SAMPLE MOTION: I move to approve Resolution No. 24-001 declaring the City of Flowery Branch's intention to issue approximately \$25,000,000 of revenue bonds, Series 2024, through the Gainesville and Hall County Development Authority.

DEPARTMENT: Administration

Prepared by: Tonya Parrish

A RESOLUTION DECLARING THE CITY OF FLOWERY BRANCH'S INTENTION TO ISSUE APPROXIMATELY \$25,000,000 OF REVENUE BONDS, SERIES 2024, THROUGH THE GAINESVILLE AND HALL COUNTY DEVELOPMENT AUTHORITY; AUTHORIZING THE ENGAGEMENT OF AN UNDERWRITER AND A BOND COUNSEL FOR THE ISSUANCE OF THE SERIES 2024 BONDS; AND FOR OTHER RELATED PURPOSES.

WHEREAS, the City Council of the City of Flowery Branch, Georgia (the "City") has determined that there is a need to make certain improvements to the water and sewer system of the City as generally described on **Exhibit "A"** attached hereto (the "Project"); and

WHEREAS, the City Council has determined that revenue bonds (the "Bonds") should be issued through the Gainesville and Hall County Development Authority (the "Authority") denoted as Series 2024, in an amount of approximately \$25,000,000 for the purpose of financing the acquisition, construction and equipping of the Project, paying capitalized interest on the Bonds (if any), and to pay the costs of issuance of the Bonds; and

WHEREAS, the City wishes to engage Stifel, Nicolaus & Company, Incorporated ("Stifel") as underwriter and Stewart, Melvin & Frost, LLP as bond counsel for such Bonds; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Flowery Branch, Georgia, and it is hereby resolved by authority of the same, as follows:

Section 1. The City Council hereby declares its intention to issue approximately \$25,000,000 aggregate principal amount of revenue bonds (the "Bonds") through the Authority to finance a portion of the Project. The Bonds shall have such terms as approved by the City Council by adoption of an authorizing resolution.

Section 2. The attorneys for the City are hereby authorized and instructed to commence preparation of the necessary documents for the issuance of the Bonds, and to take such other actions necessary for the issuance of the Bonds.

Section 3. The issuance of the Bonds shall not exceed any debt limitation prescribed by the Constitution of the State of Georgia.

Section 4. The Bonds shall be payable from the revenues of the water and sewer system of the City, from the proceeds received by the City from sales and use taxes, from the general funds of the City, and from any other lawfully available funds.

Section 5. The City Council hereby approves the engagement of Stifel as underwriter for the City in the issuance and sale of the Bonds under the terms of a mutually agreeable bond purchase agreement.

Section 6. The City Council hereby approves the engagement of Stewart, Melvin & Frost, LLP as bond counsel for the City in the issuance and sale of the Bonds under the terms of the engagement letter to be submitted by Stewart, Melvin & Frost, LLP to the City.

Section 7. The City requests that the Authority issue the Bonds on behalf of the City to provide funds to pay or to be applied toward the cost of the acquisition, construction and equipping of the Project. The Bonds shall constitute only the limited obligation of the Authority to pay principal and interest thereon from payments to be received under an agreement with the City and any other revenue sources arranged for by the City and specifically pledged for that purpose. The Bonds shall not be backed by other credit of the Authority or by any credit of the State of Georgia, or its political subdivisions. The terms of the Bonds (maturity schedule, interest rates, denominations, redemption provisions, security, etc.) shall be satisfactory to the City and the Authority and will be set forth generally in an intergovernmental contract or similar instrument to be entered into between the Authority and the City . The City will pay for all expenses of the Project (including bond issuance costs) which are authorized by the City, such payment to be from proceeds of the Bonds or other funds of the City.

Section 8. All resolutions and parts of resolutions in conflict with this Resolution, if any, shall be and the same are hereby repealed.

PASSED, ADOPTED, SIGNED, APPROVED, AND EFFECTIVE this 18th day of April, 2024.

**CITY OF FLOWERY BRANCH,
GEORGIA**

By: _____
Mayor

Attest: _____
City Clerk

(SEAL)

EXHIBIT “A”
The Project

The construction, renovation, expansion, and equipping of the existing wastewater treatment facility located within the City of Flowery Branch, Georgia, including (i) the expansion of treatment capacity to 1,500,000 gallons per day, (ii) the construction of new biological treatment processing, clarification, and filtration systems capable of treating water to near drinking standards prior to discharge, (iii) the replacement of existing systems wherever necessary to meet the growing demand caused by the growth of the City of Flowery Branch, and other capital improvements to the water and sewer system the City deems necessary.

4868-9205-5222, v. 1



FLOWERY BRANCH CITY COUNCIL

EXECUTIVE SUMMARY



SUBJECT: Consideration of First Amendment to the Lease Agreement for 5509 Main Street for Giustino's Deli

COUNCIL MEETING DATE: April 18, 2024

HISTORY:

Giustino's Deli began its lease agreement with the City of Flowery Branch on October 5, 2023 in the Main Street A Master Condominium Shopping Center. The commercial portion is city-owned and the residential is privately owned and leased. This is the former site of the City of Flowery Branch City Hall, Police Station, and various other retail spaces. The entirety of the site was demolished in 2019. In September 2021 the final certificate of occupancy was issued. The apartments are fully occupied, and Giustino's Deli completes the final leased retail spaces.

FACTS AND ISSUES:

Giustino's Deli is eager to continue the build-out process. Giustino's Deli is asking for an extension of the Fixed Rent Commencement date for an additional 6 months. This will allow them to focus solely on the build-out and getting the business open

OPTIONS:

- 1) Authorize the amendment to the existing lease as presented.
- 2) Do not authorize the amendment of the lease as presented and suggest other terms.
- 3) Do not authorize the amendment of the lease.

IF FUNDING IS INVOLVED, ARE FUNDS APPROVED IN THE CURRENT BUDGET:

No

AMOUNT AND SOURCE OF FUNDS:

RECOMMENDATION:

SAMPLE MOTION:

COLLABORATING DEPARTMENT:

DEPARTMENT: Department of Fun

Prepared by: Shelia Cooper

ATTACHMENTS

- [Giustino's Deli, 5509 Main Street Lease Agreement.pdf](#)
- [Executive Summary Giustino's Deli amendment.pdf](#)
- [FIRST AMENDMENT TO GIUSTINOS LEASE AGREEMENT.pdf](#)

**FB MAIN STREET
A MASTER CONDOMINIUM
SHOPPING CENTER
LEASE AGREEMENT
5509 Main Street
Flowery Branch, Georgia
LANDLORD: City of Flowery Branch
TENANT: GIUSTINO'S**

**ARTICLE I. BASIC LEASE PROVISIONS
AND ENUMERATION OF EXHIBITS**

SECTION 1.1. BASIC LEASE PROVISIONS

A.	DATE (for reference purposes):	<u>October 5, 2023</u>
B.	LANDLORD:	City of Flowery Branch, a Georgia municipal corporation
C.	LANDLORD'S ADDRESS:	5410 Pine Street Flowery Branch, Georgia 30542
D.	TENANT:	Giustino's Deli
E.	TENANT'S TRADE NAME:	Giustino's Deli
F.	TENANT'S NOTICE ADDRESS:	Teresa Ali and Angela Santiago 5752 Shore Isle Court Flowery Branch, Georgia 30542
G.	PHONE NUMBER AND EMAIL:	Teresa Ali: 770-826-8684; tali7616@gmail.com Angela Santiago: 312-961-9542; angelamarie1919@yahoo.com
H.	POSSESSION DATE:	Upon delivery of a fully executed Lease and completion of Landlord's Work, if any.
I.	LEASE COMMENCEMENT DATE:	Upon delivery of a fully executed Lease and completion of Landlord's Work, if any.
J.	LEASE TERM:	Five (5) Years following the Rent Commencement Date.
K.	FIXED MINIMUM RENT COMMENCEMENT DATE:	Earlier of (i) Tenant opening for business or (ii) four (4) months following the Lease Commencement Date.
L.	FIXED MINIMUM RENT:	See Exhibit G for rent schedule.

M.	ESTIMATED ADDITIONAL MONTHLY RENT (for all relevant property expenses including but not limited to taxes, insurance, property management overhead and fee, maintenance, exterior building repairs and maintenance, and parking lot and landscaping maintenance):	\$370.10 Notwithstanding anything contained in this Lease to the contrary, the Additional Monthly Rent shall be adjusted to actual expenses annually.
N.	ADVANCE RENT:	\$3,364.58
	ADVANCE ADDITIONAL RENT:	\$370.10
	SECURITY DEPOSIT:	\$3,364.58 plus \$370.10
	TOTAL AMOUNT DUE WITH LEASE:	\$3,364.58 + \$370.10 + \$3,734.68
O.	GUARANTORS:	Teresa Ali, Angela Santiago and owners having more than 20% interest in Tenant
P.	USE:	For the use of a restaurant and for no other purpose.
Q.	HOURS OF OPERATION:	Tenant agrees to remain open during standard operating hours for a restaurant (11 a.m. to 9 p.m.) on a daily basis (Monday through Sunday) during the lease term and any extensions.
R.	APPROXIMATE SIZE OF LEASED PREMISES:	1,615 Square Feet
S.	OPTION TO RENEW:	Subject to the conditions herein set forth. Tenant is hereby granted the option to renew the Term of this Lease (the "Renewal Option") for three (3) periods of five (5) years (the "Renewal Term"), to commence at the expiration of the initial Term of this Lease. Tenant shall exercise the Renewal Option by delivering written notice of such election to Landlord at least six (6) months but no more than twelve (12) months prior to the expiration of the initial Term of this Lease or Renewal Term. The renewal of this Lease shall be upon the same terms and conditions as this Lease, except: (a) the annual Minimum Guaranteed Rental during the Renewal Term shall be as shown on Exhibit G; (b) Tenant shall have no option to renew this Lease beyond the expiration of the Renewal Term; and (c) Tenant shall not have the right to assign the Renewal Option to any sublessee of the Leased Premises or assignee of the Lease, nor may any such sublessee or assignee exercise or enjoy

		the benefit of such Renewal Option. Notwithstanding the foregoing, Tenant shall not have the right to exercise the Renewal Option, unless: (i) this Lease shall be in full force and effect on the date of the exercise of the Renewal Option and the date of the expiration of the original Term; and (ii) on the date of the exercise of the Renewal Option and the date of the expiration of the original Term there exists no default on the part of the Tenant under this Lease.
--	--	---

SECTION 1.2. SIGNIFICANCE OF BASIC LEASE PROVISIONS

Each reference in this Lease to any of the Basic Lease Provisions contained in Section 1.1 of this article shall be deemed and construed to incorporate all of the terms provided under each such basic lease provision.

SECTION 1.3. ENUMERATION OF EXHIBITS

The exhibits enumerated in this section and attached to this Lease are incorporated in this Lease by this reference and are to be construed as a part of this Lease.

Exhibit A.	Site Plan
Exhibit B.	Tenant's Work
Exhibit C.	Legal Description
Exhibit D.	Rules and Regulations
Exhibit E.	Sign Criteria
Exhibit F.	Lease Guarantee
Exhibit G.	Rent Schedule

ARTICLE II. LEASED PREMISES AND TERM

SECTION 2.1. SHOPPING CENTER

Landlord is the owner of a parcel of real estate, legally described on Exhibit C, located in 5519 Main Street, Flowery Branch, Georgia commonly known as the FB Main Street – a Master Condominium (the “Shopping Center”). It is agreed that the depiction of the Shopping Center on Exhibit A does not constitute a representation, covenant or warranty of any kind by Landlord. Landlord reserves the right to sell any portion or portions of the Shopping Center, such portion(s) thereafter shall not be included in the Shopping Center. Landlord reserves the right to change the number and location of buildings, building dimensions, the number of floors in any of the buildings, store dimensions, the identity and type of other stores and tenancies, and Landlord further reserves the right to locate kiosks and to make available common areas pursuant to the terms hereof, provided only that the Leased Premises as hereinafter defined shall be substantially

as depicted on Exhibit A. Landlord further reserves the right to alter the Shopping Center, at Landlord's sole election, however, no such alteration shall materially impair the visibility or accessibility of Tenants Leased Premises.

SECTION 2.2. LEASED PREMISES

Landlord hereby leases and demises to Tenant, and Tenant hereby accepts from Landlord, subject to and with the benefit of the terms and provisions of this Lease, the store premises sometimes herein referred to as the "Leased Premises" as more particularly described as follows:

5509 Main Street consisting of approximately 1,615 sq. ft. as shown on Exhibit "A".

Said Leased Premises shall extend from the exterior faces of all exterior walls and the center line of those walls separating the Leased Premises from adjacent leased premises in the Shopping Center.

SECTION 2.3. LEASE TERM

The Lease Term shall, commence on the Lease Commencement Date [Section 1.1.I.] and shall end on the last day of the last Lease Year (hereinafter "Termination Date"), unless sooner terminated.

SECTION 2.4. LEASE YEAR

The term "Lease Year" means a period of twelve (12) consecutive calendar months. The first full Lease Year shall begin on the Lease Commencement Date if the Lease Commencement Date shall occur on the first day of a calendar month; if not, then the first Lease Year shall commence upon the first day of the month next following the Lease Commencement Date. Each succeeding Lease Year shall commence upon the anniversary date of the first Lease Year.

SECTION 2.5. STATEMENT AS TO LEASE TERM

In the event the Lease Commencement Date and Termination Date of the Lease Term have not been determined, as of the date of execution hereof, Landlord and Tenant shall execute and deliver a written statement specifying therein the Lease Commencement Date and Termination Date of the Lease Term when determined.

SECTION 2.6. OBLIGATIONS OF TENANT BEFORE LEASE TERM BEGINS

Prior to the Possession Date, Tenant shall deliver to Landlord the required Certificate of Insurance (stated in Section 7.2). Prior to the Lease Commencement Date, and after first obtaining the prior written consent of Landlord, Tenant shall be permitted to install its leasehold improvements, fixtures and other equipment required by Tenant to conduct its business. Tenant shall observe and perform all of its obligations under this Lease, from the Possession Date [Section 1.1.H.] until the Lease Commencement Date [Section 1.1.I.], in the same manner as though the Lease Term began on the Possession Date, including but not limited to payment of Additional Rent as stated in Section 1.1.M. but excluding Fixed Minimum Rent. Landlord shall have no liability whatsoever

for loss or damage to Tenant's leasehold improvements, fixtures, equipment or other property of Tenant or Tenant's contractors.

ARTICLE III. RENT AND OTHER TENANT CONTRIBUTIONS

SECTION 3.1. FIXED MINIMUM AND ADDITIONAL RENT

Tenant agrees to pay rent to Landlord, or to such other person or entity as Landlord may direct, without demand, at such place as Landlord may by notice in writing to Tenant, from time to time, direct, a fixed amount of rent (the "Fixed Minimum Rent"), and an amount of additional rent based upon certain expenses relating to the Leased Premises and the Shopping Center (the "Additional Rent") at the following rates and times and as set forth on Exhibit G:

(a) Fixed Minimum Rent shall be payable in advance in equal successive monthly installments on the first day of each calendar month included in this Lease Term. For any portion of a calendar month included at the beginning of said term, one-thirtieth (1/30) of such a monthly payment for each day of such portion shall be payable on the first day of such portion; and

(b) Additional Rent shall be payable as provided in Sections 3.2, 5.3 and 8.1.

SECTION 3.2. TAXES

Tenant shall pay to Landlord, as Additional Rent hereunder, Tenant's prorata share of any and all special assessments, transportation or environmental protection taxes or levy or similar tax or levy, and Tenant's prorata share of real estate taxes attributable to the Shopping Center paid annually by Landlord during the Lease Term, prorated for any partial Lease Year beginning on the Possession Date. Tenant's prorata share shall be based on the ratio of the total Floor Area of the Leased Premises to the total Floor Area on all floors of building space within the Shopping Center as of the assessment date for the particular special assessment, tax or levy, or real estate tax in question. Tenant shall also pay its prorata share of all expenses, including reasonable attorneys' fees, expenses, administrative hearing and court costs incurred in contesting or negotiating the amount, assessment or rate of any such real estate tax, special assessment, tax or levy. Should the state, or any political subdivision thereof or any governmental authority having jurisdiction thereover, impose a tax and/or assessment upon or against the rentals and/or other charges payable hereunder by Tenant to Landlord, either by way of substitution for the taxes and assessments levied or assessed against such land and such buildings, or in addition thereto, or impose an income or franchise tax in substitution for the general tax levied against such land and buildings, such taxes and/or assessments shall be deemed to constitute a tax and/or assessment against such land and such buildings for the purpose of this section. The annual charges for such assessments or taxes shall be paid in monthly installments on the first day of each calendar month in advance in an amount estimated by Landlord. Landlord shall furnish Tenant, upon Tenant's request, a statement of the assessments or taxes paid or incurred by Landlord for each calendar year of the Lease Term and thereupon there shall be an adjustment between Landlord and Tenant with payment to Landlord or credit to Tenant for future tax payments, as the case may be, to the end that Landlord

shall receive the precise amount of Tenant's prorata share of such assessments and taxes for such period and no more. In the event any portion or portions of the Shopping Center are separately assessed, for purposes of the proration above, Tenant's proportionate share shall be the ratio of the total Floor Area of the Leased Premises to the total Floor Area of all floors of building space within the particular parcel assessed which includes the Leased Premises.

SECTION 3.3. SECURITY DEPOSIT

Tenant, contemporaneously with the execution of this Lease, has deposited with Landlord to secure the faithful performance by Tenant of all the covenants, conditions and agreements in this Lease set forth, and contained on the part of Tenant to be fulfilled, kept, observed and performed, such sum as set forth in Section 1.1 as a Security Deposit. Said deposit shall be held by Landlord, without liability for interest, as security for the faithful performance by Tenant of all the terms, covenants and conditions of this Lease, and Landlord may commingle the same with its other funds. Such interest, if any, may be retained as property of the Landlord, and will not be paid to the Tenant. Such Security Deposit or any portion thereof not previously applied may be applied to the curing of any default that may then exist under this Lease, without prejudice to any other remedy or remedies which Landlord may have on account thereof, and upon such application, Tenant shall pay Landlord on demand the amount so applied which shall be added to the Security Deposit so that the same may be restored to its original amount. In the event the Leased Premises are conveyed by Landlord, the deposit or any portion thereof not previously applied may be turned over to Landlord's grantee or successor, and in such event Tenant hereby releases Landlord from any and all liability with respect to the deposit and/or application or return and Tenant agrees to look to such grantee for such application or return. In the event Tenant shall faithfully fulfill, keep, perform and observe all the covenants, conditions and agreements in this Lease set forth and contained on the part of Tenant to be fulfilled, the sum deposited or the part or portion thereof not previously applied shall be returned to Tenant, without interest, no later than thirty (30) days after the expiration of the Term of this Lease or any renewal or extension thereof, provided Tenant has vacated the Leased Premises and surrendered possession thereof to Landlord at the expiration of said Term or any renewal thereof as provided herein.

ARTICLE IV. UTILITY SERVICES

SECTION 4.1. WATER, SEWER, ELECTRICITY AND GAS

Landlord has caused the necessary mains, conduits and other facilities to be provided to supply water, sewer, gas and electricity to the Shopping Center. Landlord shall provide gas service and facilities to Tenant, however, the same being the sole responsibility of Tenant. Tenant agrees to have all utility services transferred into Tenant's name on the Possession Date. If Tenant has not had any or all of the utilities transferred on the Possession Date, then Tenant agrees to pay Landlord, on demand, the actual cost paid by Landlord for such utilities, together with an administrative charge of One Hundred Fifty and no/100 Dollars (\$150.00) for each such payment. Tenant shall pay for all electricity used in the Leased Premises and all water and sewer charges, and gas charges, if applicable, at its own cost and expense. In the event Landlord, who shall have the option to do so, shall elect to supply any one or more or all of said services, Tenant shall purchase the use of said services as are tendered by Landlord and shall pay the rates, including any

established minimum charges, established by Landlord for such services, but the rate shall be no more than those charged by the public utility furnishing such services in the area. The charges for such services as are so furnished shall be deemed Additional Rent due and payable on the first day of the calendar month following rendition of a bill therefor. Landlord may discontinue furnishing such services if payment for same is not received by Landlord upon not less than five (5) days written notice, and no such discontinuation shall be deemed an eviction or render Landlord liable to Tenant for damages or relieve Tenant from performance of its obligations hereunder. In the event Landlord shall elect to furnish one or more of such services, from time to time, Landlord shall not be liable to Tenant in damages or otherwise if any one or more of said services is interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of Landlord. In any event, Landlord may cease to furnish any one or more of such services without any responsibility to Tenant, except to connect the service facilities with such other sources of supply as may be available for the services so discontinued. Tenant will not install any equipment which will exceed or overload the capacity of any utility facilities servicing the Leased Premises and if any equipment installed by Tenant shall require additional utility facilities, the same shall be installed and maintained at Tenant's expense in accordance with plans and specifications to be approved in writing by Landlord. In the event the Leased Premises are not separately metered for water and Tenant's use requires an excessive volume of water, at Landlord's discretion, a sub-meter will be installed at the Leased Premises at Tenant's expense.

SECTION 4.2. HEATING, VENTILATING AND COOLING

Tenant shall be solely responsible and shall pay for all charges rendered in connection with all heating, ventilating and cooling of the Leased Premises and shall promptly pay all bills for materials furnished or labor performed for Tenant or at Tenant's instance and request in connection with any repairs, replacements, alterations, improvements and installation of all fixtures and equipment in connection therewith on the Leased Premises, and shall keep said Leased Premises free from all claims for liens for work, labor or materials in connection therewith.

SECTION 4.3. OTHER SERVICES

In addition to the above and foregoing, Tenant shall be solely responsible for all garbage and sewage disposal and waste removal, janitorial and other services of any type or nature furnished to the Leased Premises, and shall pay promptly all bills for materials or labor performed in connection therewith. Tenant further covenants and agrees to keep the Leased Premises and the walks adjacent thereto at all times in a neat, clean and sanitary condition and free from snow, ice, waste or debris, and neither to commit or permit any waste or nuisance thereon.

ARTICLE V. COMMON AREAS AND FACILITIES

SECTION 5.1. COMMON AREAS AND FACILITIES

Landlord shall make available, from time to time, such areas and facilities of common benefit to the tenants and occupants of the Shopping Center as Landlord shall deem appropriate (the

“Common Areas”). Landlord shall operate, manage, equip, light, insure, repair and maintain the Common Areas and facilities for their intended purposes in such manner as Landlord shall, in its sole discretion, determine, and may, from time to time, change the size, location and nature of any Common Areas and facilities and may make installations therein and move and remove such installation. Landlord shall have the right to close the Common Areas, or any part thereof, on such business days as Landlord deems necessary for the improvement, maintenance or repair of the Common Areas and on such nonbusiness days or during such nonbusiness hours as Landlord shall, in its sole discretion, determine.

SECTION 5.2. USE OF COMMON AREAS

Tenant and its permitted concessionaires, officers, employees, agents, customers and invitees shall have the nonexclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant such rights, to use the Common Areas as designated from time to time by Landlord, subject to such reasonable regulations as Landlord may from time to time impose, including the designation of specific areas in which vehicles owned by Tenant, its permitted concessionaires, officers, employees and agents must be parked. Tenant agrees to abide by such regulations and to use its best efforts to cause its permitted concessionaires, officers, employees, agents, customers and invitees to conform thereto. Landlord may at any time close temporarily any part of the Common Areas to make repairs or changes, to prevent the acquisition of public rights in such area or to discourage noncustomer parking, and may do such other acts in and to the Common Areas as in its reasonable judgment may be desirable to improve the convenience thereof. Tenant shall upon request furnish to Landlord the license numbers and description of the vehicles operated by Tenant and its permitted concessionaires, officers and employees. Tenant shall not at any time interfere with the rights of Landlord and other tenants, its and their permitted concessionaires, officers, employees, agents, customers and invitees, to use any part of the parking areas and other part of the Common Areas.

SECTION 5.3. CHARGE FOR COMMON AREAS AND FACILITIES

Tenant shall pay to the Landlord, as Additional Rent, in the manner provided in Section 5.5 Tenant's prorata share, as defined in Section 5.4, of Common Areas maintenance cost as hereinafter defined including the cost of Capital Improvements designed to protect the health and safety of the tenants in the Leased Premises and the Shopping Center.

Common Areas maintenance cost shall be deemed to include all costs and expenses of every kind and nature paid or incurred by Landlord during the Lease Term (including appropriate reserves) in operating, managing, equipping, policing and protecting (if and to the extent provided by Landlord), insuring, servicing (including heating, ventilating and cooling any enclosed mall, in the event Landlord elects to enclose any Common Areas), lighting, repairing, replacing and maintaining the Common Areas and facilities in the Shopping Center. Such costs and expenses shall include, but not be limited to, such maintaining and repairing as shall be required in Landlord's judgment to preserve the utility of the Common Areas in condition and status the same as it was at the time of the completion of the original construction and installation thereof; all

exterior painting; all costs and expenses of security and fire protection; all costs of restriping, patching, repairing and maintaining parking areas, garages, entries, gutters and downspouts, the construction of new entries as required and work on roads, as needed, adjacent to the Shopping Center; pedestrian traffic direction and control; roof repairs; all costs and expenses of cleaning and removing of rubbish, dirt, debris, snow and ice; all costs and expenses of planting, maintaining, replanting and replacing flowers and landscaping; management fees; water and sewerage charges; premiums for liability and property damage, fire, extended coverage, malicious mischief, vandalism, workers' compensation and employer's liability, and any other casualty or risk insurance procured by Landlord in connection with Common Areas, wages, unemployment taxes, social security taxes, special assessments and personal property taxes attributable to the Common Areas; fees for audits, required licenses and permits; all costs and expenses incurred by Landlord in testing of sprinkler systems located in the Shopping Center, all charges for utility services for the Common Areas including all costs and expenses of maintaining lighting fixtures and providing electricity to the Common Areas and to Common Areas pole signage (including the cost of light bulbs and electric current); all costs, expenses, surcharges or other impositions or assessments incurred by Landlord in connection with environmental protection legislation or regulation assessed against or imposed on the Shopping Center or any part thereof with regard thereto; reasonable depreciation of equipment, machinery and facilities, rents paid for the leasing of equipment and finance charges paid under any installment purchase of equipment, machinery and facilities used in the operation of the Common Areas and administrative costs at the rate of Fifteen Percent (15%) of the total costs of operating and maintaining the Common Areas (except the appropriate reserves); and such other costs as Landlord may reasonably determine are required for the proper maintenance of the Common Areas, except that all Capital Improvement expenses shall be excluded therefrom.

SECTION 5.4. TENANT'S PRORATA SHARE

Tenant's prorata share of the Common Areas maintenance cost shall be determined by multiplying the total cost incurred or paid by Landlord by a fraction whose numerator is the gross leasable area of the Leased Premises as set forth in Section 2.2 and the denominator of which is the total square feet of gross leasable area within the Shopping Center. The "Gross Leasable Area" shall mean with respect to the Leased Premises and with respect to all other leasable areas, the number of square feet of floor area on all levels, including any mezzanines, basements, or balconies, but excluding "Common Areas" measured from the exterior face of exterior walls and/or the exterior face of service corridor walls, the exterior of building line from all frontage, and the center line of party walls. No deduction shall be made for columns, stairs, elevators, or any interior construction or equipment. Provided, however, for any Common Areas maintenance cost separately metered, billed to or paid directly by any Tenant, the floor area of such tenant space attributable to such Common Areas cost shall be deleted from the above proration for such separate cost. The Floor Area hereinabove provided shall not include the floor area of roof structures used for mechanical equipment.

SECTION 5.5. PAYMENT OF COMMON AREAS MAINTENANCE COST

The annual charges for Common Areas maintenance cost shall be paid in monthly installments on the first day of each calendar month in advance in an amount estimated by Landlord. Landlord shall furnish Tenant, upon Tenant's request, a statement in reasonable detail of the actual Common Areas maintenance cost paid or incurred by Landlord at the end of each calendar year and thereupon there shall be an adjustment between Landlord and Tenant with payment to Landlord or credit to Tenant against any current or future amounts due from Tenant to Landlord pursuant to this Lease, as the case may be, to the end that Landlord shall receive the precise amount of Tenant's prorata share of said costs for such period and no more.

ARTICLE VI. LANDLORD'S ADDITIONAL COVENANTS

SECTION 6.1. REPAIRS BY LANDLORD

Landlord covenants at its expense to keep the foundations and roof of the Leased Premises, and the structural soundness of the exterior walls thereof, in good order, repair and condition, unless any necessary work is required because of damage caused by any act, omission or negligence of Tenant, any permitted concessionaire or their respective employees, agents, invitees, licensees or contractors. Landlord shall not be required to commence any such repair until a reasonable time after written notice from Tenant that the same is necessary. The provisions of this section shall not apply in the case of damage or destruction by fire or other casualty or taking under the power of eminent domain, in which events the obligations of Landlord shall be controlled by Article VIII. Except as provided in this Section 6.1, Landlord shall not be obligated to make repairs, replacements or improvements of any kind upon the Leased Premises, or any equipment, facilities or fixtures contained therein, which shall be the responsibility of Tenant as hereinafter provided.

SECTION 6.2. QUIET ENJOYMENT

Landlord covenants and agrees that so long as Tenant has committed no default under this Lease, Tenant's peaceful and quiet possession of the Leased Premises during the Lease Term shall not be disturbed by Landlord or by anyone claiming by, through or under Landlord.

SECTION 6.3. LIMITATION ON RIGHT OF RECOVERY AGAINST LANDLORD

Tenant acknowledges and agrees that the liability of Landlord under this Lease shall be limited to Landlord's interest in the Shopping Center and any judgments rendered against Landlord shall be satisfied solely out of its interest in the Shopping Center. No personal judgment shall lie against Landlord upon extinguishment of its rights in the Shopping Center and any judgment so rendered shall not give rise to any right of execution or levy against Landlord's assets. The provisions hereof shall inure to Landlord's successors and assigns including any mortgagee of Landlord. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under the Lease, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or

remedy which may be awarded Tenant by law or under the Lease.

If Tenant claims or asserts that Landlord has violated or failed to perform a covenant of Landlord not to unreasonably withhold or delay Landlord's consent or approval, Tenant's sole remedy shall be an action for specific performance, declaratory judgment or injunction and in no event shall Tenant be entitled to any money damages for a breach of such covenant and in no event shall Tenant claim or assert any claim for any money damages in any action or by way of set off, defense or counterclaim, and Tenant hereby specifically waives the right to any money damages or other remedies.

ARTICLE VII. TENANT'S ADDITIONAL COVENANTS

SECTION 7.1. TENANT'S COVENANTS

Tenant covenants, at its expense, at all times during the Lease Term and at such further time as Tenant occupies the Leased Premises or any part thereof:

A. To perform promptly all of the obligations of Tenant set forth in this Lease; and pay when due the Fixed Minimum Rent, Additional Rent, and all charges, rates and other sums which by the terms of this Lease are to be paid by Tenant, without any right of recoupment, set-off, deduction or counterclaim whatsoever.

B. To open for business within thirty (30) days after the Lease Commencement Date; to use the Leased Premises only for the use provided in Section 1.1 and in compliance with the Rules and Regulations set forth in Exhibit D; not to use the Leased Premises for any exclusive use granted by Landlord to any other tenant in the Shopping Center; to keep its business located upon the Leased Premises open at all times throughout the term of this Lease during minimum Standard Operating Hours as set for in Section 1.1.Q; that it will not cease operations at said Leased Premises for a period of more than three (3) consecutive days or five (5) days in any Lease Year, without the express written consent of Landlord, which consent may be granted or withheld at Landlord's sole discretion, unless prevented from doing business therein by reason of applicable ordinances or other acts of governmental authority or acts of God.

C. Except for repairs required in Section 6.1 to be performed by Landlord, to keep the Leased Premises, including, but not limited to all partitions, doors, fixtures, equipment, apparatus and appurtenances thereof (including lighting, plumbing fixtures, sewer lines and the HVAC systems), clean, neat and safe, and in good order, repair and condition (including all necessary painting and decorating), and to keep all glass, including that in windows, doors, fixtures and skylights, clean and in good condition, and to replace glass which may be damaged or broken with glass of the same quality, damage by fire or other casualty covered by Landlord's insurance excepted. Tenant shall store all trash and garbage within the Leased Premises and arrange for the regular pickup of such trash and garbage at the Tenant's expense. Tenant shall not burn any trash or garbage at any time in or about the building and Tenant shall attend to the daily disposal thereof in the manner designated by Landlord. If Landlord shall provide any services or facilities for such pickup, the

Tenant shall be obligated to use the same and shall pay a proportionate share of the actual cost thereof within ten (10) days after being billed therefor. (See Exhibit B "Landlord and Tenant's Work" for additional requirements.)

D. To make all repairs, alterations, additions or replacements to the Leased Premises required by any law or ordinance or any order or regulation of any public authority, or fire underwriters or underwriters' fire prevention engineers; to keep the Leased Premises equipped with all safety appliances so required because of such use; to procure any licenses and permits required for any such use; and to comply with the orders and regulations of all governmental authorities.

E. To the extent permissible by state law and except for Landlord's negligence or willful misconduct, Tenant waives and releases Landlord and Landlord's agents and employees from all claims for damage to person or property sustained by Tenant and/or any person claiming through Tenant resulting from any accident or occurrence in or upon the Leased Premises or the building of which it shall be a part, or any other part of the Shopping Center, including, but not limited to, claims for damage resulting from: (i) any equipment or appurtenances becoming out of repair; (ii) Landlord's failure to keep said building or the Leased Premises in repair; (iii) injury done or occasioned by wind, water or other natural elements; (iv) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water and steam pipes, stairs, porches, railings or walks; (v) broken glass; (vi) the backing up of any sewer pipe or downspout; (vii) the bursting, leaking or running of any tank, tub, sink, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or Leased Premises; (viii) the escape of steam or hot water; (ix) water, snow or ice being upon or coming through the roof, skylight, trap door, stairs, walks or any other place upon or near such building or the Leased Premises or otherwise; (x) the falling of any fixture, plaster or stucco; and (xi) any act, omission or negligence of co-tenants or of other persons or occupants of said buildings or of adjoining or contiguous buildings or of owners of adjacent or contiguous property.

F. To permit Landlord and its agents, upon reasonable notice, except in the event of an emergency, to enter the Leased Premises at reasonable times for the purpose of inspecting same, making repairs, additions or alterations thereto or to the building in which the same are located and of showing the Leased Premises to prospective purchasers, lenders and tenants.

G. To remove, at the termination of this Lease or earlier vacation of the Leased Premises, such of Tenant's goods and effects as are not permanently affixed to the Leased Premises; to remove such of the alterations and additions made by Tenant as Landlord may request; to repair any damage caused by such removal; and peaceably to yield up the Leased Premises and all alterations and additions thereto (except such as Landlord has requested Tenant to remove) and all fixtures, furnishings, floor coverings and equipment which are permanently affixed to the Leased Premises which shall thereupon become the property of Landlord, in clean and good order, repair and condition, damage by fire or other unavoidable casualty and ordinary wear and tear excepted. Any personal property of Tenant not removed within five (5) days following such termination or earlier vacation of the Leased Premises shall, at Landlord's option, become the property of Landlord.

H. If any mortgagee or trustee named in any first mortgage or trust deed hereafter placed upon the Shopping Center or any portion thereof shall elect to subject and subordinate the rights and

interests of the Tenant under this Lease (in whole or in part) to the lien of its mortgage or trust deed, the rights and interests of Tenant under this Lease shall be so subject and subordinate automatically without further action needing to occur, provided that the mortgagee or trustee shall agree in writing to recognize this Lease of Tenant in the event of foreclosure if Tenant is not in default. Any mortgagee or trustee may in the alternative elect to give some or all of the rights and interest of Tenant under this Lease priority over the lien of its mortgage or trust deed. This election of such mortgagee or trustee shall be binding upon Tenant whether this Lease is dated prior to or subsequent to the date of said mortgage or trust deed. Tenant shall execute and deliver whatever instruments may be required for such purposes, and in the event Tenant fails so to do within ten (10) days after demand in writing, Tenant does hereby make, constitute and irrevocably appoint Landlord as its attorney-in-fact and in its name, place and stead so to do.

I. To promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition whenever requested by Landlord.

J. To give Landlord prompt written notice of any accident, casualty, damage or other similar occurrence in or to the Leased Premises or in or to the Common Areas of which Tenant has knowledge.

K. To pay on demand the prevailing party's expenses, including reasonable attorney's fees and court costs incurred either directly or indirectly in enforcing any obligation of either party under this Lease in curing any default by the other party as provided herein and in defending or otherwise participating in any legal proceedings initiated by or on behalf of either party against the other.

L. Not to make any nonstructural alterations, additions or improvements to the Leased Premises in excess of Five Thousand and no/100 Dollars (\$5,000.00), nor to make any structural changes whatsoever without first obtaining Landlord's written consent.

M. Not to suffer or allow any mechanic's lien to be filed against the Leased Premises or the Shopping Center or any interest therein by reason of any work, labor, services or materials performed at or furnished to the Leased Premises. If any such mechanic's lien shall at any time be filed, Tenant shall forthwith cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise, but Tenant shall have the right to contest any and all such liens, provided security satisfactory to Landlord is deposited with Landlord. If Tenant shall fail to contest the same with due diligence (having secured Landlord as herein provided) or shall fail to cause such lien to be discharged within thirty (30) days after being notified of the filing thereof and in any case before judgment of sale thereunder, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by Landlord, and the amount so paid by Landlord and/or all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in procuring the discharge of such lien, shall be deemed to be Additional Rent and together with interest thereon as provided in Section 9.2 shall be due and payable by Tenant to Landlord on the first day of the next following month. Nothing in this Lease shall be construed as a consent on the part of the Landlord to subject Landlord's estate in the Leased Premises to any lien or liability under the mechanic's lien law of the state.

N. Not to affix or maintain upon the glass panes and supports of the show windows, doors and the exterior of the Leased Premises any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items except such as shall have first received the written approval of Landlord as to size, type, color, location, copy, nature and display qualities. Anything to the contrary in this Lease notwithstanding, the Tenant shall not affix any sign to the roof of the Leased Premises.

SECTION 7.2. TENANT'S INSURANCE

Tenant covenants, at its expense, at all times during the Lease Term and at such further time as Tenant occupies the Leased Premises or any part thereof, to indemnify, save and hold Landlord and Landlord's agents harmless from and against all liability, injury, loss, cost, damage and/or expense (including reasonable attorneys' fees) in respect of any injury to, or death of, any person, and/or damage to, or loss or destruction of, any property while on the Leased Premises or any other part of the Shopping Center occasioned by any act or omission of Tenant, or anyone claiming by, through or under Tenant including without limitation, Tenant's agents, contractors, employees, licensees, and suppliers. Tenant further covenants to maintain, in responsible companies approved by Landlord, public liability insurance insuring Tenant and Landlord and Landlord's agents, as their interests may appear, as Additional Insured, against all claims, demands or actions for injury to or death of any one person in an amount of not less than One Million Dollars (\$1,000,000) and for injury or death of more than one person in any one occurrence in an amount of not less than One Million Dollars (\$1,000,000) and for damage to property in an amount of not less than Five Hundred Thousand Dollars (\$500,000) made by or on behalf of any persons, firm or corporation, arising from, related to, or connected with the conduct and operations of Tenant's business in the Leased Premises, and in addition, and in like amounts covering Tenant's contractual liability under the aforesaid indemnity and hold harmless clause; to carry like coverage against loss or damage by boiler or compressor or internal explosion of boilers or compressors, if there is a boiler or compressor in the Leased Premises; to maintain plate glass insurance covering all exterior plate glass in the Leased Premises and fire insurance with usual extended coverage endorsements covering all of Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings and equipment in the Leased Premises. Tenant shall be responsible for and shall insure against damage to the buildings occasioned by theft of Tenant's property. All of said insurance shall be in form and in responsible companies satisfactory to Landlord and shall provide that it will not be subject to cancellation, termination or change except after at least thirty (30) days prior written notice to Landlord. *A duly executed Certificate of Insurance clearly stating the insurance requirements provided for herein, naming Landlord and Landlord's agent as Additional Insured (which shall evidence the insurer's waiver of subrogation) together with satisfactory evidence of the payment of the premium thereon, shall be deposited with Landlord on or before the date of delivery of the Leased Premises to Tenant and upon renewals of such policies, not less than thirty (30) days prior to the expiration of the term of such coverage;* and that if Tenant fails to comply with such requirements, Landlord may obtain such insurance and keep the same in effect, and Tenant shall pay Landlord the premium cost thereof upon demand.

SECTION 7.3. ASSIGNMENT OF LEASE

Tenant shall not mortgage, pledge or assign this Lease or sublet the whole or any part of the Leased

Premises, or permit any other person to occupy same or any part thereof, without prior written consent of Landlord, which consent shall not be unreasonably withheld so long as the assignee or sublessee has equal or better credit and business experience. Any assignment or sub-letting, even with Landlord's consent, shall not relieve Tenant from liability for payment of Fixed Minimum Rent, Additional Rent and all charges, rates and other sums; or from the obligations of Tenant set forth in this Lease.

In the event any assignment or subletting, even with the consent of Landlord, results in rental income or other lease charges in an amount greater than that provided for in this Lease, then such excess shall belong to Landlord and shall be payable to Landlord as Additional Rent herein reserved. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the agreements of this Lease, or to be a consent to any assignment for the benefit of creditors or by operation of law and shall not be effective to transfer any rights to any assignee without prior written consent of Landlord.

In the event Tenant wishes to assign this Lease and Landlord consents to such assignment, Landlord may charge a reasonable fee, not to exceed Seven Hundred Fifty and no/100 Dollars (\$750.00), to help offset any costs Landlord may have in preparing such assignment, or in examining the information, financial statements, operating history, references, etc., necessary to effectuate same. If Tenant desires to assign the Lease or sublease all or part of the Leased Premises, Tenant shall submit to Landlord, at least sixty (60) days prior to the effective date of the proposed assignment or sublease, a written notice of its intent, which notice shall; (a) state the name of the proposed assignee or sublessee; (b) state the nature and character of the business of the proposed assignee or sublessee; (c) state the term, use, rental rate and other particulars of the proposed assignment or sublease, including, without limitation, evidence satisfactory to Landlord that the proposed assignee or sublessee is financially responsible and will immediately occupy and thereafter use the Leased Premises for the use stated in Section 1.1 and in accordance with Section 7.1.B; and (d) be accompanied by a copy of the proposed assignment or sublease documents. Upon receipt of said notice including items (a)—(d) above, Landlord shall have the right, at Landlord's sole discretion, within thirty (30) days after receipt of such notice, to approve or disapprove the proposed assignment or sublease, or to terminate this Lease effective as of the proposed effective date of the assignment or sublease (provided, however, that Tenant may nullify Landlord's termination right by withdrawing the proposed assignment or sublease). No assignee of the Lease or sublessee of the Leased Premises or any portion thereof may further assign or sublet the Leased Premises or any portion thereof. In the event Landlord consents to any assignment or subletting, any Renewal Options provided for in this Lease shall become null and void.

ARTICLE VIII. FIRE AND EXTENDED COVERAGE INSURANCE; DAMAGE OR EMINENT DOMAIN

SECTION 8.1. FIRE AND EXTENDED COVERAGE INSURANCE

From and after the Lease Commencement Date of the Lease and throughout the remainder of the Term of this Lease, Landlord shall procure and pay for windstorm, fire and extended coverage insurance, insuring the Shopping Center building in which the Leased Premises are located for

such amount as Landlord's lender shall require, in a responsible insurance company authorized to do business in the State in which the Shopping Center exists. Such insurance policy may insure against loss or damage from fire, windstorm, tornado, hail, disaster, earthquake, vandalism, riot, malicious mischief (and including boiler insurance and war risk insurance if then available), insurance against floods if required by the Federal Flood Disaster Protection Act of 1973 and Regulations issued thereunder, and such other insurance as commonly, or in the judgment of Landlord prudently, maintained by those whose business, improvement to and use of the Leased Premises is similar to that of the Tenant. Such insurance may contain the so-called "Replacement Cost" or "Restoration Endorsement," a provision to the effect that the waiver of subrogation rights by the insured does not void the coverage, and such special endorsements as reasonably requested by Landlord. Tenant shall pay to Landlord, as Additional Rent hereunder, on the first day of each calendar month Tenant's prorata share of the premiums for said fire and extended coverage insurance, Tenant's prorata share to be the same as its prorata share of Common Areas expense.

SECTION 8.2. FIRE, EXPLOSION OR OTHER CASUALTY

In the event the Leased Premises are damaged by fire, explosion or any other casualty to an extent which is less than Fifty Percent (50%) of the cost of replacement of the Leased Premises, the damage shall promptly be repaired by Landlord at Landlord's expense, provided that Landlord shall not be obligated to expend for such repair an amount in excess of the insurance proceeds recovered or recoverable as a result of such damage, and that in no event shall Landlord be required to repair or replace Tenant's stock in trade, fixtures, furniture, furnishings, floor coverings and equipment. In the event of any such damage and (i) Landlord is not required to repair as hereinabove provided, or (ii) the Leased Premises shall be damaged to the extent of Fifty Percent (50%) or more of the cost of replacement, or (iii) the building of which the Leased Premises are a part is damaged to the extent of Twenty Five Percent (25%) or more of replacement, or (iv) the buildings (taken in the aggregate) in the Shopping Center shall be damaged to the extent of more than Twenty Five Percent (25%) of the aggregate cost of replacement, Landlord may elect either to repair or rebuild the Leased Premises or the building or buildings, or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the occurrence of the event causing the damage. If the casualty, repairing or rebuilding shall render the Leased Premises untenable, in whole or in part, and the damage shall not have been due to the act or omission of Tenant, a proportionate abatement of the Fixed Minimum Rent shall be allowed from the date when the damage occurred until the date Landlord completes its work, plus the earlier of (i) sixty (60) days or (ii) the date Tenant reopens for business, however, Tenant shall pay all Additional Rent charges beginning on the date Landlord completes its works, said proportion to be computed on the basis of the relation which the gross square foot area of the space rendered untenable bears to the floor space of the Leased Premises. In the event the Leased Premises shall be damaged or destroyed and the same are not repaired or rebuilt by Landlord within three hundred sixty-five (365) days after the date of the damage or destruction, unless said repair is held up by Tenant, or in the event that Thirty Percent (30%) or more of the Gross Leasable Area of the Shopping Center shall be damaged or destroyed and the same is not repaired or rebuilt within four hundred fifty-five (455) days after the date of damage or destruction, or in the event of any material damage or destruction to the Leased Premises during the last year of the Lease Term, then, in such event, Tenant shall have the right to terminate this Lease upon written notice to Landlord.

SECTION 8.3. EMINENT DOMAIN

If the whole of the Leased Premises shall be taken by any public authority by the exercise, or under the threat of the exercise, of the power of eminent domain, the Lease Term shall cease as of the day the right to possession shall be taken by such public authority, and Tenant shall pay rent up to that date with an appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date the right of possession is taken. If less than all of the Floor Area of the Leased Premises shall be so taken, the Lease Term shall cease only on the parts so taken as of the day the right to possession shall be taken by such public authority, and Tenant shall pay rent up to that date with appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date the right to possession is taken and thereafter the Fixed Minimum Rent shall be equitably adjusted. Landlord shall, at its expense, make all necessary repairs or alterations to the basic building and exterior work so as to constitute the remaining premises a complete architectural unit, provided that Landlord shall not be obligated to undertake any such repairs and alterations if the cost thereof exceeds the award received by Landlord. If the Floor Area of the Leased Premises so taken leaves space no longer suitable for the use set forth in Section 1.1, then the Lease Term shall cease and Tenant shall pay rent up to the date the right to possession is taken, with an appropriate refund by Landlord of such rent as may have been paid in advance for any period subsequent to the date of the taking of the right to possession. If more than Twenty Five Percent (25%) of the Floor Area of the building in which the Leased Premises are located, or more than Twenty Five Percent (25%) of the aggregate Floor Area of all buildings in the Shopping Center, shall be taken by the exercise, or under the threat of the exercise, of the power of eminent domain, Landlord may, by notice in writing to Tenant delivered on or before the day of surrendering the right to possession to the public authority, terminate this Lease and rent shall be paid or refunded as of the date of termination. In the event fifty percent (50%) of the Shopping Center is lost due to such taking and such taking significantly impairs Tenant's ability to do business in the Leased Premises, Tenant shall have the right to terminate this Lease by sending a written notice ("Termination Notice") to Landlord setting forth the grounds for such termination and setting a date for such termination ("Termination Date") at least ninety (90) days prior to such Termination Date. All compensation awarded for any taking under the power of eminent domain, whether for the whole or a part of the Leased Premises, shall be the property of Landlord, whether such damages shall be awarded as compensation for diminution in the value of the leasehold or to the fee of the Leased Premises or otherwise, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such compensation.

ARTICLE IX. DEFAULTS BY TENANT AND REMEDIES

SECTION 9.1. DEFAULTS BY TENANT

Without further notice, Landlord may terminate this Lease:

- (i) five (5) days after notice of default, if any default by Tenant continues after notice of default, in case of nonpayment of rent or the nonpayment of any other charges or payments to be made hereunder by Tenant, for more than five (5) days (except no notice need be given for a monetary

default occurring after the second such monetary default in any Lease Year); or

(ii) thirty (30) days after notice of default, if Tenant does not cure any nonmonetary default within a reasonable time, but in any event no later than thirty (30) days after notice of default; or

(iii) immediately if Tenant makes any assignment for the benefit of creditors, commits any act of bankruptcy or files or is subject to a petition under any bankruptcy or insolvency law, and if such a petition filed against Tenant is not dismissed within ninety (90) days; or

(iv) immediately if a receiver or similar officer becomes entitled to this leasehold; or

(v) immediately if Tenant's interest in this Lease is taken upon execution or other process of law in any action against Tenant; or

(vi) immediately if the Leased Premises are levied upon by any revenue officer or similar officer; or

(vii) immediately if Tenant does, or permits to be done, any act which creates a mechanic's lien or claim therefor against the land or building of which the Leased Premises are a part and Tenant does not comply with the provisions of Section 7.1.M; or

(viii) immediately if Tenant shall abandon, vacate or cease to continually operate its business within said Leased Premises during the term of this Lease for a period of more than three (3) consecutive days or five (5) days in any Lease Year; or

(ix) immediately if Tenant fails to open for business within thirty (30) days after the Lease Commencement Date.

Upon termination of this Lease, Landlord may re-enter the Leased Premises with or without process of law, using such force as may be necessary, and remove all persons, fixtures and chattels therefrom, and Landlord shall not be liable for any damages resulting therefrom. Upon such repossession of the Leased Premises, Landlord shall not be liable for any damages resulting therefrom. Upon such repossession of the Leased Premises, Landlord shall be entitled to recover as liquidated damages and not as a penalty, immediately and upon demand, a lump sum of money equal to (a) the value of the Fixed Minimum Rent and other sums provided herein to be paid by Tenant to Landlord for the remainder of the Lease Term where recoverable under applicable state law (the "Total Rent Amount") or (b) the Total Rent Amount, less the fair rental value of the Leased Premises for said period. Upon the happening of any one or more of the above-mentioned events, Landlord may repossess the Leased Premises by forcible entry or detainer suit, or otherwise, without demand or notice of any kind to Tenant (except as hereinabove expressly provided for) and without terminating this Lease, in which event Landlord may, but shall be under no obligation so to do, relet all or any part of the Leased Premises for such rent and upon such terms as shall be satisfactory to Landlord (including the right to relet the Leased Premises for a term greater or lesser than that remaining under the Lease Term, and the right to relet the Leased Premises as a part of a larger area, and the right to change the character or use made of the Leased Premises). For the purpose of such reletting, Landlord may decorate and make any repairs,

changes, alterations or additions in or to the Leased Premises that may be necessary or convenient. If Landlord does not relet the Leased Premises, Tenant shall pay to Landlord on demand as liquidated damages and not as a penalty a sum equal to the amount of the Fixed Minimum Rent, and other sums provided herein to be paid by Tenant for the remainder of the Lease Term. If the Leased Premises are relet and a sufficient sum shall not be realized from such reletting, after paying all of the expenses of such decorations, repairs, changes, alterations, additions, the expenses of such reletting and the collection of the rent accruing therefrom, to satisfy the rent herein provided to be paid for the remainder of the Lease Term, Tenant shall pay to Landlord, on demand, any deficiency and Tenant agrees that Landlord may file suit from time to time to recover any sums falling due under the terms of this section. Any recovery under this section shall be without relief from valuation and appraisal laws.

SECTION 9.2. INTEREST ON LATE PAYMENT; LATE CHARGE

Any payment due Landlord by Tenant pursuant to the terms and conditions of this lease including but not limited to all Fixed Minimum Rent, and Additional Rent which shall not be paid when due shall bear interest at the maximum rate payable by Tenant under state law, or in the absence of a maximum rate, at the rate of Eighteen Percent (18%) per annum from the date when the same is payable under the terms of this Lease until the same shall be paid. In the event any monetary payment is made more than seven (7) days after its due date, Landlord shall be entitled to a late payment fee of ONE HUNDRED and no/100 DOLLARS (\$100.00) in addition to such interest charge as hereinabove set forth.

SECTION 9.3. HOLDOVER BY TENANT

In the event Tenant remains in possession of the Leased Premises after the expiration of the tenancy created hereunder, and without the execution of a new lease, Tenant shall be deemed to be occupying the Leased Premises as a tenant from month-to-month at One Hundred Fifty Percent (150%) of the Fixed Minimum Rent subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

SECTION 9.4. LANDLORD'S RIGHT TO CURE DEFAULTS

Landlord may, but shall not be obligated to, cure at any time, without notice, any default by Tenant under this Lease at Tenant's expense. Such cost to be immediately reimbursed upon written notice from Landlord that such expense has been paid.

SECTION 9.5. EFFECT OF WAIVERS OF DEFAULT

No consent or waiver, expressed or implied, by Landlord to or of any breach of any covenant, condition or duty of Tenant shall be construed as a consent of waiver to or of any other breach of the same or other covenant, condition or duty.

SECTION 9.6. REMEDIES CUMULATIVE

No remedy herein or otherwise conferred upon or reserved to Landlord shall be considered to exclude or suspend any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to Landlord may be exercised, from time to time, and so often as occasion may arise or as may be deemed expedient.

SECTION 9.7. TERMINATION OF TENANT'S ADDITIONAL RIGHTS

In consideration for the faithful observance of the terms of this Lease, and any extension hereof, Tenant has negotiated for (and Landlord has granted herein) certain option rights at Section 1.1.S. (referred to in this Section as "Tenant's Additional Rights"). For so long as no event of default occurs and remains uncured beyond the cure period, if any, set out in Section 9.1 of this Lease, Tenant's Additional Rights shall remain in full force and effect. However, should an event of default occur at any time during the term hereof or any extension(s) (and remain uncured beyond the applicable cure period, if any) Tenant's Additional Rights shall terminate, and the same shall be deemed null and void thereafter. Said termination shall occur as provided herein without further notice from Landlord, and Tenant's subsequent cure after the expiration of the appropriate cure period shall not reinstate or otherwise preserve Tenant's terminated rights.

ARTICLE X. MISCELLANEOUS PROVISIONS

SECTION 10.1. MUTUAL WAIVER OF SUBROGATION RIGHTS

Whenever (i) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Lease in connection with the Leased Premises, and (ii) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense, then the party so insured hereby releases the other party from any liability it may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance and waives any right of subrogation which might otherwise exist in or accrue to any person or account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost thereupon keeping such release and waiver in full force and effect).

SECTION 10.2. NOTICES FROM ONE PARTY TO THE OTHER

All notices provided for in the Lease shall be in writing and shall be deemed to be given (a) upon the earlier of (i) actual receipt; (ii) refusal thereof; or (iii) three (3) days after having been sent, if notice was sent by prepaid registered or certified mail, return receipt requested; or (b) one (1) day after having been sent, if notice was sent by a nationally recognized overnight courier service which requires the recipient to sign a receipt; addressed, if to Tenant, at the address of Tenant set forth in Section 1.1.F, or such other address as Tenant shall have last designated by notice in

writing to Landlord (which written notice to Landlord must clearly be labeled "Change of Tenant's Address for Notice Purposes"), and if to Landlord, to the place then established for the payment of rent, or such other address as Landlord shall have last designated by notice in writing to Tenant. The customary receipt shall be conclusive evidence of such service.

SECTION 10.3. BROKERAGE

Tenant warrants that it has had no dealings with any broker in connection with this Lease other than the City of Flowery Branch, and covenants to pay, hold harmless and indemnify Landlord from and against any and all costs (including reasonable attorneys' fees), expense or liability for any compensation, commissions and charges claimed by any other broker or other agent with respect to this Lease or the negotiation thereof.

SECTION 10.4. RELATIONSHIP TO THE PARTIES

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto or any other relationship, other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

SECTION 10.5. ESTOPPEL CERTIFICATES

At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to execute, acknowledge and deliver to Landlord no later than ten (10) days after such request, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates through which the Fixed Minimum Rent, Additional Rent, and other charges have been paid, and making such other reasonable certifications as Landlord, Landlord's mortgagee or Landlord's potential mortgagee may require.

SECTION 10.6. APPLICABLE LAW AND CONSTRUCTION

The laws of the State in which the Shopping Center exists shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision. The headings of the several articles and sections contained herein are for convenience only and do not define, limit or construe the contents of such articles or sections.

SECTION 10.7. FORCE MAJEURE

Whenever a period of time is provided in this Lease for either party to do or perform any act or

thing, said party shall not be liable or responsible for any delay due to strikes, lockouts, casualties, acts of God, war, governmental regulation or control or other causes beyond the reasonable control of said party, and in any such event said time period shall be extended for the amount of time said party is so delayed, provided that this section shall not apply to Tenant's covenants to pay Rent and other charges hereunder.

SECTION 10.8. EXECUTION OF LEASE BY LANDLORD

The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Leased Premises and this document becomes effective and binding only upon the execution and delivery hereof by Landlord and by Tenant. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or other agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

SECTION 10.9. BINDING EFFECT OF LEASE

The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns. Landlord, at any time and from time to time, may make an assignment of its interest in this Lease, and in the event of such assignment and the assumption by the assignee of the covenants and agreements to be performed by Landlord herein, Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

SECTION 10.10. SURVIVAL

All representations, warranties, covenants, conditions and agreements contained herein which either expressly survive the expiration or termination of this Lease or, by their nature, are to be performed or observed, in whole or in part, after the termination or expiration of this Lease, shall survive the termination or expiration of this Lease.

SECTION 10.11. NO MODIFICATION

This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. No course of prior dealings between the parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of this Lease. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of this Lease. No representations, understandings or agreements have been made or relied upon in the

making of this Lease other than those specifically set forth herein. This Lease can be modified only by a writing signed by the party against whom the modification is enforceable.

SECTION 10.12. SEVERABILITY

If any portion of any term or provision of this Lease, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

SECTION 10.13. SIGN CRITERIA

Within fifteen (15) days after full Lease execution, Tenant shall submit to Landlord two (2) sets of drawings for all proposed signage. The drawings shall clearly show location of sign on storefront elevation, graphics, colors and materials. No signs of any type or description shall be erected, placed or painted in or about the Leased Premises except those signs submitted to Landlord in writing and approved by Landlord in writing, and which signs are in conformity with all applicable laws, regulations, codes and ordinances and in conformity with Landlord's sign criteria as stated in Exhibit E (including without limitation restrictions on duration of posting of sale signs or other signs by Tenant) established for the Shopping Center. Landlord reserves the right to remove, at Tenant's expense, all signs other than signs approved in writing by Landlord under this Section 10.13, without notice to Tenant and without liability to Tenant for any damages sustained by Tenant as a result thereof, and Tenant shall repair any damage caused by such removal. Tenant shall have thirty (30) days from the Possession Date in which to install approved signage on the building facade or Tenant shall be deemed in default.

SECTION 10.14. SALES AND RENTAL TAX

Tenant covenants and agrees to pay to Landlord any and all sales and/or rental taxes imposed by the State in which the Shopping Center exists or any other governmental agency with respect to all Fixed Minimum Rent, Additional Rent, and all other payments of monies, including but not limited to, Common Areas maintenance charges and Real Estate Taxes paid by Tenant to Landlord pursuant to the terms of this Lease.

SECTION 10.15. FAILURE OF TENANT TO OPEN

If Tenant fails to open for business within thirty (30) days after the Lease Commencement Date, then Landlord may terminate this Lease, at Landlord's option, and all monies paid to Landlord shall remain the property of Landlord.

SECTION 10.16. HAZARDOUS MATERIALS

Tenant shall not (either with or without negligence) cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances, or materials. Tenant shall not allow the storage or use of such substances or materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such substances or materials, nor allow to be brought into the Leased Premises any such materials or substances. Without limitation, hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.A. §§ 9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C.A. §§ 6901 et seq., and any applicable state or local laws and the regulations adopted under these acts. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials, then the reasonable costs thereof shall be reimbursed by Tenant to Landlord upon demand as additional charges if such requirement applies to acts and/or omissions of the Tenant. In addition, Tenant shall execute affidavits, representations and the like from time to time at Landlord's request concerning Tenant's best knowledge and belief regarding the presence of hazardous substances or materials on the Leased Premises. In all events, Tenant shall indemnify and hold Landlord harmless in the manner elsewhere provided in this Lease from any release of hazardous materials on the Leased Premises occurring while Tenant is in possession, or elsewhere if caused by Tenant or persons acting under Tenant. The within covenants shall survive the expiration or earlier termination of the Lease term.

Landlord, to the best of Landlord's knowledge and belief, states that there are no hazardous materials within the Leased Premises as of the date of this Lease.

Landlord acknowledges that materials potentially presenting a biohazard risk may be present on the site during the course of Tenant's business activities and that such biohazardous material will be collected and stored in containers using the universal biohazardous symbol in the Leased Premises prior to proper disposal. Tenant will at all times store such material in the required manner and shall assure that the material is disposed of as required by all governmental agencies. The parties acknowledge that Landlord shall not be responsible for the disposal or storage of any such materials and that in the event Landlord, its agents or employees shall enter the Leased Premises such party shall use best efforts and caution to deal in a reasonable manner with any such materials if required to do so.

SECTION 10.17. RIGHT TO RELOCATE

In the event Landlord shall add additional buildings to the Shopping Center or expand any of the buildings currently contained therein or renovate or reconfigure any part of the Shopping Center in the vicinity of the Leased Premises, Landlord shall have the right, subject to Tenant's right of termination as set forth below to relocate Tenant's operation to other premises (the "New Premises") in another part of the Shopping Center or building in accordance with the following:

Landlord shall notify Tenant, at least one hundred fifty (150) days prior to the proposed relocation

date, of Landlord's intention to relocate Tenant's operation to the New Premises; the proposed relocation date and the size, configuration and location of the New Premises shall be set forth in Landlord's notice; and the New Premises shall be substantially the same in size and configuration as the Leased Premises described in the Lease.

In the event Landlord relocates Tenant and has completed the Tenant Improvements at Landlord's expense, Tenant shall enter into a new lease agreement with Landlord for a period of five (5) years under the same terms and conditions of this Lease.

In the event the New Premises described in Landlord's relocation notice are unacceptable to Tenant, Tenant shall have the right, exercisable by written notice to Landlord, given thirty (30) days following receipt of Landlord's relocation notice, to reject the relocation request. Upon Landlord's receipt of Tenant's rejection Landlord shall, in its sole discretion, have the right to terminate this Lease, such termination to be effective as of the proposed relocation date as set forth in Landlord's notice or to retract the relocation request and this Lease shall continue in full force and effect. Failure by Tenant to timely exercise such right shall be deemed a waiver with respect thereto and confirmation that the New Premises are acceptable to Tenant. Tenant shall have the right to accept the New Premises only for the unexpired term of this Lease.

Landlord has made no representation as to any additional improvements or stores or any existing stores in the Shopping Center and this provision does not create any rights of option, first refusal or otherwise with respect to any present or future space in the Shopping Center.

SECTION 10.18. AMERICANS WITH DISABILITIES ACT

Landlord agrees that at the time of delivery to Tenant all common areas, such as sidewalks and parking lots to the best of Landlord's knowledge will comply with the Americans with Disabilities Act of 1990 and the regulations promulgated thereunder. At Tenant's expense, Tenant agrees to design, furnish, and construct the Leased Premises to comply with the Americans with Disabilities Act of 1990.

Within ten (10) days after receipt, Landlord and Tenant shall advise the other party in writing, and provide the other with copies of (as applicable), any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Property or of the Leased Premises; any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Property or of the Leased Premises; or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Property or the Leased Premises.

SECTION 10.19. RECORDATION

Neither this Lease nor a short form or memorandum thereof shall be recorded in the public records.

SECTION 10.20. LANDLORD'S RESTRICTIONS

Except as permitted by existing leases, Landlord, to the best of Landlord's ability, agrees that no part of the Shopping Center shall be occupied by an adult book or adult video store or other businesses which sell or display pornographic material, however, any sale of adult magazines or rental of adult videos in less than ten percent (10%) of the sales floor area of any tenant shall not be considered a violation of this agreement.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease the day and year first above written.

Date: October 5, 2023

Date: October 5, 2023

LANDLORD: City of Flowery Branch, GA

TENANT: Giustino's Deli

Edward R. Asbridge

Angela Santiago

By: Edward R. Asbridge, Mayor

By: Teresa Ali/Angela Santiago

ATTEST:

Shelia R. Cooper

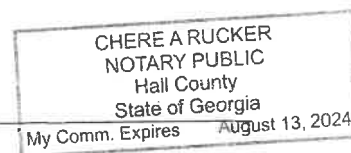
By: Shelia Cooper, City Clerk

Sworn to and subscribed before me
this 5TH day of OCTOBER, 2023.

[Signature]

NOTARY PUBLIC

My Commission Expires:



[NOTARY SEAL]

**EXHIBIT A
SITE PLAN**

This Exhibit is solely for the purpose of showing the approximate location of the Leased Premises within the Shopping Center and for no other reason whatsoever. Landlord reserves the right to relocate, change, expand or delete parking spaces or parking areas, curb cuts, entrances, service areas, total building area, frontage, etc., including expansion or demolition of existing or new buildings.

5509 Main Street

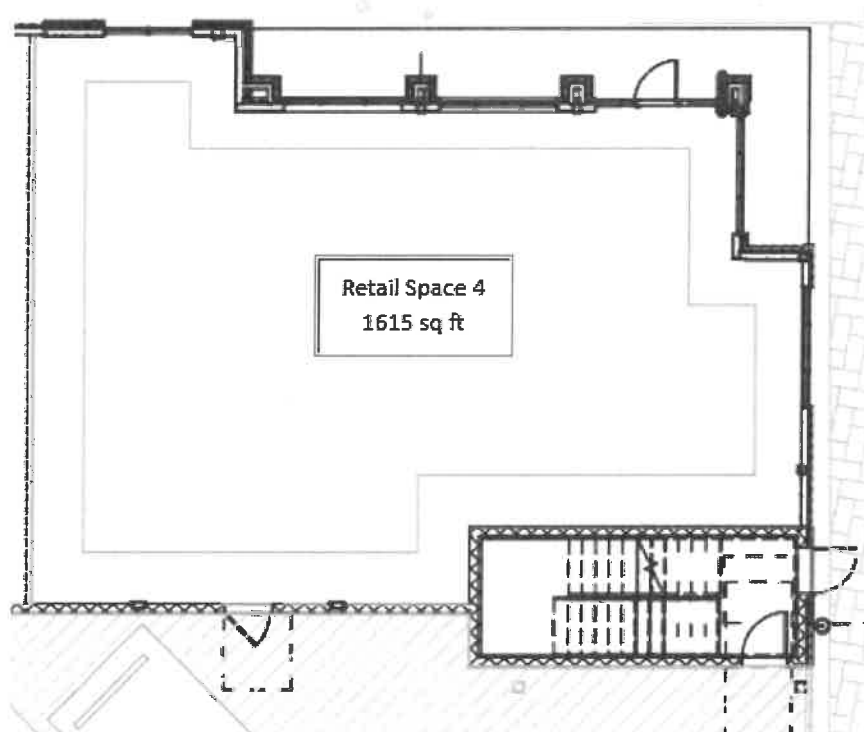


EXHIBIT B

LANDLORD AND TENANT'S WORK

Landlord's Work

1. Notwithstanding anything to the contrary contained herein, Tenant acknowledges and agrees to accept delivery of possession of the Leased Premises in the present "AS IS" condition, without any representation or warranty as to said condition, it being understood that Landlord has no obligation to perform any work or repairs in connection with the preparation of the Leased Premises for Tenant's occupancy, except as set forth below:

a. Landlord shall deliver the major components of the internal grease trap, sanitary sewer stub, ventilation chase for hood exhaust and an undistributed HVAC system in good working order.

2. Provided Tenant is not in default hereunder and shall have completed Tenant's Work in compliance with the plans and specifications approved by Landlord and in compliance with all governmental codes, ordinances and the terms hereof, Landlord shall pay to Tenant a sum up to Eighty Thousand, Seven Hundred Fifty and No/100 Dollars (\$80,750.00) as a construction allowance (the "Tenant Improvement Allowance"), in no event to exceed the actual costs of improvements constituting Tenant's Work which are installed in the Leased Premises. The Tenant Improvement Allowance shall be paid by Landlord in four installments at the following times: (a) completion of 25% of the Tenant Work; (b) completion of 50% of the Tenant Work; (c) completion of 75% Tenant Work; and (d) the date Tenant opens the Leased Premises to the public. The payment of all installments shall be subject to Landlord's inspection confirming the percentage of Tenant Work has been completed in compliance with all applicable laws, codes, rules, and regulations. Additionally, the payment of the final installment is conditioned upon the Tenant delivers to Landlord the following documentation: (i) a certificate of occupancy for the Leased Premises, (ii) waivers of lien in form and substance satisfactory to Landlord, (iii) paid invoices for Tenant's Work for which the Tenant Improvement Allowance will be or has been applied, (iv) proof of installation of a Landlord approved exterior sign on the Leased Premises which identifies Tenant's business. Any portion of the Tenant Improvement Allowance not utilized by Tenant in connection with initial improvement of the Leased Premises in accordance with the provisions of this Work Schedule shall be retained by Landlord for Landlord's benefit. No portion of the Tenant Improvement Allowance shall be applied toward Tenant's moving expenses, furniture, trade fixtures, equipment or any other personal property of Tenant. In the event of default under this Lease by Tenant, which default shall not have been fully cured by Tenant within any applicable cure period allowed under this Lease, any and all portions of the Tenant Improvement Allowance which shall have theretofore been disbursed to Tenant shall constitute additional rent and shall be immediately due and payable as such to Landlord.

3. During the construction of the Tenant Improvements, Landlord shall make disbursements of the Tenant Improvement Allowance for the benefit of Tenant in installments as set forth in Paragraph 2 above and shall authorize the release of monies for the benefit of the Tenant as follows:

During the construction of the Tenant Improvements (or such other date as the Landlord may designate), Tenant shall deliver to Landlord: (a) a request for reimbursement of amounts paid to the contractor, approved by Tenant in a form to be provided by landlord, showing the schedule, by trade, of percentage of completion of the Tenant Improvements in the Premises, detailing the portion of the work completed and the portion not completed, (b) all invoices for labor rendered and materials for the Premises, (c) executed mechanic's lien releases as applicable, from all of Tenant's agents performing work in the Premises, and (d) all other information reasonably required by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the work furnished and/or the materials supplied as set forth in the Tenant's reimbursement request. Within thirty (30) days thereafter, Landlord shall deliver a check to Tenant made payable to Tenant in payment of the lesser of (i) the amounts so requested by Tenant as, or (ii) the balance of any remaining available portion of the Tenant Improvement Allowance balance provided that Landlord does not dispute any request for payment based on non-compliance of any work with the plans and specifications or due to any substandard work. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplies as set forth in Tenant's payment request. Upon completion of the construction of the Tenant Improvements, Tenant shall deliver to Landlord properly executed mechanic's liens for work furnished and/or the materials supplied.

Tenant's Work

1. Tenant agrees to submit to Landlord plans and specifications covering the Tenant Improvements in such detail as Landlord or Managing Agent may require within fifteen (15) days of execution of this Lease and Tenant agrees not to commence work on any of the Tenant Improvements until Landlord has approved such plans and specifications in writing. On or before the Possession Date, Tenant shall deposit with Landlord a certificate of insurance clearly stating the insurance requirements specified in Section 7.2, Tenant shall commence Tenant's Work and proceed diligently and continuously to completion, including installation of fixtures and equipment in the Leased Premises. At all times during Tenant's construction, Landlord and its representatives shall have the right to enter upon the Leased Premises for the purpose of inspecting construction and progress of the Tenant Improvements. Tenant, at its sole cost, shall complete all interior improvements needed to operate its business.

2. Heating and Air Conditioning Maintenance Provisions:

Tenant, at its sole cost, shall maintain the air conditioning (includes heating) units(s) for the Leased Premises in good condition and repair throughout the term of this Lease.

As a part of its air conditioning maintenance obligation, Tenant shall enter into an annual contract with an air conditioning repair firm, fully licensed to repair air conditioning units in the State in which the Shopping Center exists, which firm shall:

a. Regularly service the air conditioning unit(s) on the Leased Premises on a monthly basis, changing belts, filters and other parts as required; and supply Landlord with copies of the maintenance reports should Landlord request them to do so.

b. Perform energy and extraordinary repairs on the air conditioning unit(s).

c. Keep a detailed record of all services performed on the Leased Premises and prepare an annual service report to be furnished to the Tenant at the end of each calendar year.

Tenant shall furnish to Landlord at the end of each calendar year, a copy of said annual service report. Not later than thirty (30) days prior to the Lease Commencement Date of the term of this Lease and annually thereafter, Tenant shall furnish to Landlord a copy of the air conditioning maintenance contract described above, and proof that the annual premium for the maintenance contract has been paid. Nothing stated herein above shall limit Tenant's obligation to maintain the air conditioning unit(s) in good condition and repair throughout the Term of this Lease.

EXHIBIT C
LEGAL DESCRIPTION

All that tract or parcel of land lying and being in GMD 1270, City of Flowery Branch, Hall County, Georgia and being more particularly described as follows:

The Retail Master Unit of the FB Main Street Master Condominium, as established by the Declaration of Condominium for FB Main Street, A Master Condominium, of record in Deed Book 8924, Page 507-595, Hall County, Georgia records, together with the undivided percentage of interest in the Common Elements appurtenance to said Unit as set forth in Exhibit B of the Declaration of Condominium for FB Main Street, A Master Condominium. Reference is hereby made to the plat of FB Main Street, A Master Condominium of record in Plat Book 880, Page 440 in Plat Book 880, Pages 441-445 Hall County, Georgia records, for a more complete identification and description of the Retail Master Unit.

EXHIBIT D
RULES AND REGULATIONS

Tenant covenants and agrees that Tenant, at its own cost and expense:

- (a) Will keep all exterior and interior store front surfaces clean and will maintain the rest of the Leased Premises and all corridors and loading areas immediately adjoining the Leased Premises in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests;
- (b) Will not permit accumulations of any refuse, but will remove the same and keep such refuse in odor-proof, rat-proof containers within the interior of the Leased Premises shielded from the view of the general public until removed and will not burn any refuse whatsoever but will cause all such refuse to be removed by such person or companies, including Landlord, as may be designated in writing by Landlord and will pay all charges therefor, which shall in all events be competitive within the same geographical area for similar services performed by a reputable person or company; provided, however that Landlord may decline to designate any such person or company in which event all such refuse shall be removed by such person or company as Tenant, subject to Landlord's prior written approval, shall select;
- (c) Will promptly replace, any plate glass or window glass of the Leased Premises which may become cracked or broken, with glass of a like kind and quality;
- (d) Will not, without Landlord's prior written consent, place or maintain any merchandise or other articles in any vestibule or entry of the Leased Premises or within two (2) feet of any entrance from the Leased Premises, on the foot walk adjacent thereto or elsewhere on the exterior thereof;
- (e) Will not use or permit the use of any apparatus, or sound reproduction or transmission, or any musical instrument in such manner that the sound so produced, transmitted or reproduced shall be audible beyond the confines of the Leased Premises, and will not use any other advertising medium, including without limitation flashing lights, or search lights which may be heard or seen outside of the Leased Premises;
- (f) Will keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the Leased Premises;
- (g) Will not cause or permit objectionable odors to emanate or be dispelled from the Leased Premises;
- (h) Will not solicit business, distribute handbills or other advertising matter or hold demonstrations in the parking areas or other Common Areas;
- (i) Will not permit the parking of delivery vehicles so as to interfere with the use of any driveway, walk, parking area, or other Common Areas in the Shopping Center;
- (j) Will comply with all laws, rules, regulations, guidelines, orders and ordinances of applicable

federal, state and local governmental authorities, commissions, boards and agencies with respect to this Lease, the use of Leased Premises or any work to be performed in the Leased Premises by Tenant and Tenant shall secure all permits, leases and approvals required for Tenant's use of the Leased Premises. In addition, Tenant shall also comply with all recommendations of the Association of Fire Underwriters, Factory Mutual Insurance Companies, the Insurance Services Organization, or other similar body establishing standards for fire insurance ratings with respect to the use occupancy of the Leased Premises by Tenant, and will participate in periodic fire brigade instructions and drills at the request of Landlord and will supply, maintain, repair and replace for the Leased Premises any fire extinguisher or other fire prevention equipment and safety equipment (including insulation of approved hoods and ducts if cooking activity is conducted in the Leased Premises) required by the aforementioned rules, regulations and associations or other body in order to obtain insurance at the lowest available premium rate throughout the Term of the Lease;

(k) Will keep all outside areas immediately adjoining the Leased Premises including, but not limited to, sidewalks and loading docks free from ice and snow and Tenant hereby agrees that Tenant is solely liable for any accidents occurring on said outside areas due or alleged to be due to any accumulation of ice and snow;

(l) Will not use the plumbing facilities for any other purpose than that for which they are constructed and will not permit any foreign substance of any kind to be thrown therein and the expense of repairing any breakage, stoppage, seepage or damage, whether occurring on or off the Leased Premises, resulting from a violation of this provision by Tenant or Tenant's employees, agents or invitees shall be borne by Tenant. All grease traps and other plumbing traps shall be kept clean and operable by Tenant at Tenant's own cost and expense;

(m) Will not permit any shopping carts in the Common Areas even if taken there by customers;

(n) Will not place or cause or permit to be placed within the Leased Premises, pay telephones, vending machines (except those for the exclusive use of this Tenant's employees) or amusement devices of any kind without the prior written consent of Landlord;

(o) Will comply with all obligations of the FB Main Street – A Master Condominium Declaration of Covenants and By-Laws.

EXHIBIT E
SIGN CRITERIA

Signs shall be furnished and installed by Tenant according to the following:

1. Landlord may erect and maintain such suitable signs or signage as Landlord, in its sole discretion, may deem appropriate to advertise the Premises.
2. Tenant may erect and maintain, at its sole cost and expense, not more than one (1) sign upon the exterior of the Premises, identifying Tenant's business by name. No such sign erected by Tenant shall contain a listing of merchandise or service or any slogan related to Tenant's business.
3. Tenant shall submit sign layout to Landlord for approval prior to its fabrication and installation.
4. All signs and sign locations must be approved by Landlord prior to installation, and Landlord reserves the right, in its sole discretion, to reject any sign proposed by Tenant that does not meet Landlord's requirements.
5. All signs must comply with applicable government regulations and requirements, and Tenant shall keep all signs property maintained and in good working order.
6. Care should be taken to prevent damage to the façade during sign installation.
7. Signage shall be installed in a manner so as not to create leaks through penetrations of the façade.
8. All permits and licenses for sign installation shall be the responsibility of Tenant or sign contractor.

EXHIBIT F

GUARANTY OF LEASE

LANDLORD:	CITY OF FLOWERY BRANCH, GEORGIA
TENANT:	GIUSTINO'S DELI
LEASE DATE:	October 5, 2023

GUARANTY

FOR VALUE RECEIVED, and in consideration of, and as an inducement for the execution and delivery of the Lease dated above, for demising store premises in the FB Main Street – A Master Condominium Shopping Center (hereinafter called the “Lease”), by and between CITY OF FLOWERY BRANCH, GEORGIA, (hereinafter called “Landlord”), and GIUSTINO’S DELI, (hereinafter called “Tenant”), the undersigned, THERESA ALI AND ANGELA SANTIAGO, individuals, (hereinafter called “Guarantor”), hereby guarantees to Landlord, its successors and assigns, the full and prompt payment of rent, including, but not limited to, the Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant’s share of special assessments, and further hereby guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements herein provided to be performed and observed by Tenant, its successors and assigns; and Guarantor hereby covenants and agrees to and with Landlord, its successors and assigns, that if default shall at any time be made by Tenant, its successors and assigns, in the payment of any such Fixed Minimum Rent, Additional Rent and any and all other sums and charges payable by Tenant, its successors and assigns, under said Lease, including specifically, but not by way of limitation, real estate taxes, insurance premiums, Common Areas and facilities charges, utility charges, heating, ventilating and cooling charges, air conditioning service charges, charge for heating, and Tenant’s share of special assessments, or if Tenant should default in the performance and observance of any of the terms, covenants, provisions or conditions contained in said Lease, Guarantor will forthwith pay such Fixed Minimum Rent, Additional Rent and other such sums and charges to Landlord, its successors and assigns, and any arrearages thereof, and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and provisions, and will forthwith pay to Landlord all damages that may arise in consequence of any default by Tenant, its successors and assigns, under said Lease, including, without limitation, all reasonable attorneys’ fees, disbursements incurred by Landlord or caused by any such default and/or by the enforcement of this Guaranty.

This Guaranty is an absolute and unconditional guarantee of payment and of performance. It shall be enforceable against Guarantor without the necessity of any suit or proceedings on Landlord’s part of any kind or nature whatsoever against Tenant, its successors and assigns, and without the necessity of any notice of nonpayment, nonperformance or nonobservance or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the validity of this Guaranty and the obligations of Guarantor hereunder shall in nowise be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Landlord against

Tenant, or against Tenant's successors and assigns, of any of the rights or remedies reserved to Landlord pursuant to the provisions of said Lease.

This Guaranty shall be a continuing guaranty and the liability of Guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or extension of the Lease or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Lease, or by reason of any extension of time that may be granted by Landlord to Tenant, its successors or assigns, or a changed or different use of the Leased Premises consented to in writing by Landlord, or by reason of any dealings or transactions or matter or thing occurring between Landlord and Tenant, its successors or assigns, whether or not notice thereof is given to Guarantor. Guarantor shall promptly furnish Landlord, from time to time, financial statements reflecting Tenant's current financial condition whenever requested by Landlord.

Landlord's consent to any assignment or assignments, and successive assignments by Tenant, of the Lease made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

The assignment by Landlord of the Lease and/or the avails and proceeds thereof made either with or without notice to Guarantor shall in no manner whatsoever release Guarantor from any liability as Guarantor.

All of Landlord's rights and remedies under the said Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right and remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others. If there is more than one Guarantor hereunder, each Guarantor is jointly and severally liable hereunder, and they are collectively herein referred to as the Guarantor.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty the date above set forth

GUARANTOR(S):

TERESA ALI, INDIVIDUALLY



By: Teresa Ali, an Individual
Address: 5752 Shore Isle Court
Flowery Branch, GA 30542
Social Security Number: *[Insert]*

ANGELA SANTIAGO, INDIVIDUALLY



By: Angela Santiago, an Individual
Address: 5752 Shore Isle Court
Flowery Branch, GA 30542
Social Security Number: *[Insert]*

Notary Signature continued on next page

Sworn to and subscribed before me
this is 5th day of OCTOBER, 2023.



NOTARY PUBLIC

My Commission Expires:

[SEAL]

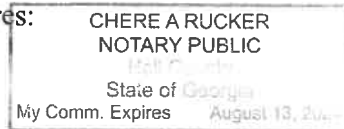


EXHIBIT G
RENT SCHEDULE

**FLOWERY BRANCH CITY COUNCIL
EXECUTIVE SUMMARY**

**SUBJECT: FIRST AMENDMENT TO LEASE AGREEMENT FOR 5509 MAIN STREET
FOR GIUSTINO'S DELI**

DATE: APRIL 18, 2024

**(X) RECOMMENDATION
() POLICY DISCUSSION
() STATUS REPORT
() OTHER**

**BUDGET INFORMATION:
ANNUAL-
CAPITAL-**

COUNCIL ACTION REQUESTED ON: APRIL 18, 2024

PURPOSE: The purpose of this agenda item is to request council to amend the original lease agreement with Giustino's Deli at 5509 Main Street in Flowery Branch, within the Shopping Center on Main Street.

HISTORY: Giustino's Deli began its lease agreement with the City of Flowery Branch on June 16, 2023 in the Main Street A Master Condominium Shopping Center. The commercial portion is city-owned and the residential is privately owned and leased. This is the former site of the City of Flowery Branch City Hall, Police Station, and various other retail spaces. The entirety of the site was demolished in 2019. In September 2021 the final certificate of occupancy was issued. The apartments are fully occupied, and Giustino's Deli completes the final leased retail spaces.

FACTS AND ISSUES: Giustino's Deli is eager to continue the build-out process. Giustino's Deli is asking for an extension of the Fixed Rent Commencement date for an additional 6 months. This will allow them to focus solely on the build-out and getting the business open.

OPTIONS: 1) Authorize the amendment to the existing lease as presented.
2) Do not authorize the amendment of the lease as presented and suggest other terms.
3) Do not authorize the amendment of the lease.

RECOMMENDED SAMPLE MOTION: I move to approve the first amendment to the lease agreement for 5509 Main Street for Giustino's Deli

DEPARTMENT: Administration

Prepared by: Renee Carden

FIRST AMENDMENT TO FB MAIN STREET
A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT

THIS FIRST AMENDMENT TO FB MAIN STREET A MASTER CONDOMINIUM SHOPPING CENTER LEASE AGREEMENT (this “Amendment”), is made and entered into effective the ____ day of April, 2024, by and between the CITY OF FLOWERY BRANCH (hereinafter referred to as “Landlord”) and GIUSTINO’S, LLC a limited liability company, (hereinafter referred to as “Tenant”).

WHEREAS, Landlord and Tenant entered into that certain lease agreement dated October 5, 2023 (the “Original Lease”), for that certain property commonly known as 5509 Main Street, Flowery Branch, Georgia (the “Demised Premises”); and

WHEREAS, Landlord and Tenant desire to amend the Original Lease, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, AND IN CONSIDERATION of the sum of One and No/100 Dollars (\$1.00), each to the other paid, the receipt and adequacy and sufficiency of which is hereby acknowledged, and the mutual covenants flowing between the parties hereto, the Original Lease is hereby amended as follows:

1. Recitals. Each of the foregoing recitals and representations in this Amendment form a material part of this Amendment and are incorporated herein by this reference, and such recitals and representations and the Original Lease are hereby ratified.
2. Basic Lease Provisions. Section 1.1. K. FIXED MINIMUM RENT COMMENCEMENT DATE is deleted in its entirety and replaced with the following: “Earlier of (i) Tenant opening for business or (ii) twelve (12) months following the Lease Commencement Date.”

EXCEPT AS HEREIN PROVIDED, all other terms and conditions of the Original Lease shall remain the same and the parties hereto do hereby ratify the Original Lease.

IN WITNESS WHEREOF, Landlord and Tenant have carefully read and reviewed this Amendment and each term and provision contained herein, and by the execution of this Amendment shows their informed and voluntary consent thereto. The parties hereby agree that, at the time this Amendment is executed, the terms of this Amendment are commercially reasonable and effectuate the intent and purpose of Landlord and Tenant with respect to the Demised Premises.

This ____ day of April, 2024.

Signatures Next Page

LANDLORD: CITY OF FLOWERY BRANCH,
GEORGIA

By: _____
Edward R. Asbridge, Mayor

ATTEST:

Shelia Cooper, City Clerk

TENANT: GIUSTINO'S, LLC

By: _____
Teresa Ali

By: _____
Angela Santiago

Sworn to and subscribed before me
this _____ day of April, 2024.

NOTARY PUBLIC
My commission expires: _____