

AGREEMENT REGARDING ENVIRONMENTAL ACTIVITY

THIS AGREEMENT REGARDING ENVIRONMENTAL ACTIVITY (this "Agreement") is made as of August __, 2011, by CITY OF DUNWOODY, GEORGIA, a municipal corporation of the State of Georgia ("City"), in favor of GEORGIA MUNICIPAL ASSOCIATION, a Georgia nonprofit corporation ("GMA").

ARTICLE I. - BACKGROUND AND AGREEMENT

1.1 Background. GMA has agreed to enter into with the City an Installment Sale Agreement (the "Installment Sale Agreement") of even date herewith, and GMA's interest therein is to be assigned to RBC Bank (USA) (the "Bank") to obtain financing. Bank's rights under the Installment Sale Agreement are secured by a Deed to Secure Debt (the "Security Deed") of even date herewith made or to be made by GMA in favor of Bank, conveying an interest in certain real property (the "Premises") located in the City of Dunwoody, Georgia and described in Exhibit "A" attached hereto. The Installment Sale Agreement, the Security Deed and all other documents evidencing, securing or otherwise relating to the Installment Sale Agreement are herein referred to collectively as the "Documents." Due to the concerns of GMA relating to Hazardous Substances, GMA is unwilling to enter into or fund the Installment Sale Agreement without the receipt by GMA of this Agreement, which is given by the City as an agreement, separate and distinct from the Documents, to induce GMA to enter into the Documents.

1.2 Statement of Agreement. For and in consideration of the sum of \$10.00 and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by City, City does hereby make the following certifications, representations and warranties to, and covenants and agreements with, GMA.

ARTICLE II. - DEFINITIONS

In addition to the other terms defined herein, the following terms shall have the meanings set forth in this Article II.

2.1 Affected Property. Any property other than the Premises which is affected by the Use of the Premises or by any Environmental Activity related to the Premises.

2.2 Environmental Activity. Any actual, proposed or threatened use, storage, holding, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous Substance from, to, upon, in, under or above the Premises or otherwise relating to the Premises or the Use of the Premises or relating to any Affected Property, or any other activity or occurrence that causes or would cause any such event to exist.

2.3 Environmental Requirements. All "Super Fund" or "Super Lien" laws relating to any Hazardous Substance or Environmental Activity, and all other present and future federal, state and local laws, statutes, authorizations, judgments, decrees, concessions, grants, franchises, agreements, ordinances, codes, rules, regulations, orders and other governmental restrictions and

requirements regulating, relating to or imposing liability or a standard of conduct concerning the environment or any Hazardous Substances or Environmental Activity including, without limitation, the following, as the same may be amended from time to time, and all regulations promulgated thereunder or in connection therewith:

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Super Fund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq. (“CERCLA”)

Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.

Clean Air Act, 42 U.S.C. 7401-7626.

Water Pollution Control Act (commonly referred to as the Clean Water Act), 33 U.S.C. 1251 et seq.

Federal Insecticide, Fungicide, and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 and by the Federal Pesticide Act of 1978, 7 U.S.C. 136 et seq.

Toxic Substances Control Act, 15 U.S.C. 2601 et seq.

Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.

Occupational Safety and Health Act, 42 U.S.C. 651 et seq.

National Environmental Policy Act, 42 U.S.C. 4321 et seq.

Hazardous Materials Transportation Act, 49 U.S.C. 1471 et seq.

Refuse Act, 33 U.S.C. 407 et seq.

Emergency Planning And Community Right-To-Know Act, 42 U.S.C. 1101 et seq.

Georgia Hazardous Site Response Act, O.C.G.A. § 12-8-90 et seq.

2.4 Hazardous Substance. Any substance which is a “hazardous substance” (as defined in CERCLA), or any other substance or material defined, designated, classified or considered as hazardous or toxic waste, hazardous or toxic material, or a hazardous, toxic, radioactive or dangerous substance under any Environmental Requirement.

2.5 Indemnitees. GMA and each of its predecessors, successors and assigns, and each past and present, direct and indirect, parent, subsidiary and affiliated entity of each of the foregoing, and each past and present employee, agent, attorney-in-fact, attorney-at-law, representative, officer, director, shareholder, partner, participant and joint venturer of each of the foregoing, and each heir, executor, administrator, successor and assign of each of the foregoing; references in this paragraph to “any” of such parties shall be deemed to mean “any one or more”

of such parties; and references in this sentence to “each of the foregoing” shall mean and refer cumulatively to each party referred to in this sentence up to the point of such reference.

2.6 Proximate Property. Property located in such proximity to the Premises that the Premises might be affected by Related Activity thereon.

2.7 Related Activity. Any Use, activity, condition, circumstance or state of facts existing or occurring other than with respect to the Premises or Affected Property which would, if existing or occurring with respect to the Premises or Affected Property, constitute an Environmental Activity.

2.8 Use. Use, ownership, development, construction, maintenance, management, operation or occupancy.

ARTICLE III. - CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES

3.1 Investigation. City certifies, represents and warrants to GMA that it has duly investigated the present and past uses of the Premises, and whether the Premises or any Proximate Property is or has been the site of storage of or contamination by any Hazardous Substances or the subject of any other Environmental Activity.

3.2 Related Liability. City certifies, represents and warrants to GMA that City has given no release or waiver of liability that would waive or impair any claim based on any Environmental Activity to a previous owner of the Premises or to any party who may be potentially responsible for the Premises; and that City has made no promises of indemnification regarding any Environmental Activity to any party other than GMA; and that City has no liability, absolute or contingent, to any party other than GMA, in connection with any Environmental Activity.

3.3 Compliance. City certifies, represents and warrants to GMA that: (a) to its best knowledge, City and the Premises are in compliance in all material respects with all applicable Environmental Requirements; and (b) no investigations, inquiries, orders, hearings, actions or other proceedings by or before any governmental agency are pending or, to the best knowledge of the City, threatened in connection with any Environmental Activity or alleged Environmental Activity; and (c) City has no knowledge, after due investigation, of the presence of any Hazardous Substances upon the Premises; and (d) City has no knowledge, after due investigation, of any facts or circumstances existing upon, in, under or above the Premises or relating to the Premises which may violate any applicable Environmental Requirement; and (e) the Use of the Premises for its intended purpose will not result in any Environmental Activity in violation of any applicable Environmental Requirements; and (f) to the best knowledge of City, after due inquiry, there is no Related Activity upon, in, under or above any Proximate Property; and (g) City has not engaged in any Environmental Activity and, to the best knowledge of the City, after due investigation, no Environmental Activity has otherwise occurred, and no notice, order, directive, complaint or other communication, written or oral, has been made or issued by any governmental agency or other person or entity alleging the occurrence of any Environmental Activity in violation of any Environmental Requirements; and (h) City has obtained and will at all times continue to obtain and maintain all licenses, permits or other

governmental or regulatory approvals or consents, if any, necessary to comply with all Environmental Requirements relating to the Premises and any Affected Property, and City is and shall continue at all times to be in compliance with said licenses, permits, approvals or consents.

ARTICLE IV. - COVENANTS, AGREEMENTS, AND INDEMNITY

4.1 Performance. City shall at all times, at its sole expense, comply in all material respects with all applicable Environmental Requirements relating to the Premises or the ownership of the Premises or relating to any Affected Property, and City shall not engage in or otherwise permit the occurrence of any Environmental Activity in violation of any applicable Environmental Requirement.

4.2 Notice. City shall immediately notify GMA if City becomes aware of (a) the presence of any Hazardous Substances or other environmental problem or liability with respect to the Premises, any Affected Property or any Proximate Property; or (b) any lien, action or notice resulting from violation or alleged violation of, or action pursuant to, any Environmental Regulation as the same pertains to the Premises, or any other property now or previously owned by City, or any Affected Property, or any Proximate Property; or (c) the institution of any investigation, inquiry or proceeding concerning City or the Premises or any Affected Property pursuant to any Environmental Requirement; or (d) the discovery of any occurrence, condition or state of facts which would render any representation contained in this Agreement incorrect in any respect if made at the time of such discovery.

4.3 Indemnity. To the extent permitted by law, City shall indemnify, defend and save and hold harmless, to the extent permitted by applicable law, each Indemnitee from and against any and all claims, demands, defenses, set-offs, counterclaims, damages, disbursements, losses, judgments, liens, liabilities, penalties, objections, injuries, fines, litigation, lawsuits and other proceedings and costs and expenses (including attorneys' fees and disbursements and the reasonable charges of the Indemnitee's internal legal counsel, including fees in appellate and bankruptcy proceedings) which accrue against or are incurred by GMA and arise directly or indirectly from or out of or in any way connected with (a) the failure of any certification, representation or warranty contained in this Agreement to be true and correct in all respects; or (b) the presence of any Hazardous Substance upon the Premises or any Affected Property; or (c) the occurrence of any Environmental Activity or any failure of City or any other person or entity to comply with all applicable Environmental Requirements relating to the Premises or the Use of the Premises or relating to any Affected Property; or (d) any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency in connection with any actual or alleged Environmental Activity; or (e) the occurrence of any Related Activity or the violation of any Environmental Requirement in connection with any other property owned by City, which occurrence or violation gives or may give rise to any rights whatsoever in any party whatsoever with respect to the Premises; or (f) any failure of City to perform any covenant set forth in this Agreement; or (g) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which directly or indirectly relates to, arises from or is based on any of the matters described in clauses (a) through (f) of this section or any allegation of such matters. The foregoing indemnity is in no way conditioned upon fault on the part of City or upon any other event, occurrence, matter or circumstance, except as specifically set forth above in this section.

ARTICLE V. - GENERAL CONDITIONS

5.1 Separate Obligations. The obligations of City under this Agreement are unconditional and shall not be limited by any limitation upon liability which may be provided for in or otherwise affects the Installment Sale Agreement or the other Documents. The certifications, representations, warranties, covenants and agreements of the City set forth in this Agreement (including, without limitation, the indemnity provided for in Section 4.3 above): (a) are separate and distinct obligations from City's obligations under the Installment Sale Agreement and other Documents; and (b) notwithstanding anything to the contrary contained in the Installment Sale Agreement or other Documents, are not secured by the Security Deed or other security documents securing the Installment Sale Agreement; and (c) shall not be discharged or satisfied by repayment of the Installment Sale Agreement or by foreclosure of the Security Deed or other security documents, and shall continue in effect after any transfer of the Premises, including, without limitation, transfers pursuant to foreclosure proceedings (or in lieu of foreclosure) and subsequent transfers.

5.2 Costs and Expenses. City shall pay to each Indemnitee all costs and expenses (including attorneys' fees and disbursements and the reasonable charges of the Indemnitee's internal legal counsel, including fees in appellate and bankruptcy proceedings) incurred by any Indemnitee in connection with this Agreement or the enforcement of the terms of this Agreement.

5.3 No Waiver; Remedies Cumulative. No delay or omission by any Indemnitee to exercise any right or remedy accruing upon any default hereunder shall exhaust or impair any such right or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right and remedy given by this Agreement to any Indemnitee may be exercised from time to time and as often as may be deemed expedient by any Indemnitee. No consent or waiver, express or implied, by any Indemnitee to or of any default shall be deemed or construed to be a consent or waiver to or of any other default. No delay, indulgence, departure, act or omission by any Indemnitee shall release, discharge, modify, change or otherwise affect the liability or other obligation of City or any surety or guarantor, or preclude any Indemnitee from exercising any right, privilege or remedy granted herein. No right or remedy conferred upon or reserved to any Indemnitee hereunder is intended to be exclusive of any other right or remedy, but each and every such right and remedy shall be cumulative and concurrent and shall be in addition to every other right and remedy given hereunder or under any other agreement between City and any Indemnitee or now or hereafter existing at law, in equity or by statute.

5.4 Communications. Any and all notices, elections, approvals, consents, demands, requests and responses thereto ("Communications") permitted or required to be given under this Agreement shall be in writing signing by or on behalf of the party giving the same, and shall be deemed to have been properly given and shall be effective upon being personally delivered, or upon being deposited in the United States mail, postage prepaid, certified with return receipt requested, to the other party at the address of such other party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any Communication must be given shall commence on the date of receipt thereof; and provided further that no notice of

change of address shall be effective until the date of receipt thereof. Personal delivery to a party or to any officer, partner, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of a which no notice has been received shall also constitute receipt. Any Communication, if given to GMA, shall be addressed as follows:

Georgia Municipal Association, Inc.
201 Pryor Street, S.W.
Atlanta, Georgia 30303

and, if given to City, shall be addressed as follows:

City of Dunwoody, Georgia
41 Perimeter Center East, Suite 250
Dunwoody, GA 30346
Attn: City Manager

5.5 Miscellaneous. This Agreement shall inure to the benefit of and be binding upon City and GMA and the other Indemnitees and their respective heirs, executors, legal representatives, successors and assigns. All personal pronouns used in this Agreement whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of articles and sections in this Agreement are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provisions hereof. If any provisions hereof or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Agreement is assignable by GMA, and any assignment by GMA shall operate to vest in the assignee all rights and powers conferred upon and granted to GMA hereby. Time is of the essence with respect to each and every covenant, agreement and obligation of City hereunder. The provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against whom enforcement of such change, waiver, discharge or termination is sought. This Agreement constitutes the entire agreement between City and GMA relating to Hazardous Substances affecting the Premises or any Affected Property and the indemnity set forth hereinabove. This Agreement shall be construed so that it may be enforced by either Bank or GMA, acting independently for their own account, or by Bank and GMA jointly, at their option.

5.6 Transfers and Survival. The parties hereto contemplate that liability may arise hereunder after repayment of the Installment Sale Agreement, and that liability may arise hereunder prior to repayment of the Installment Sale Agreement and remain unpaid after repayment of the Installment Sale Agreement, and it is specifically agreed that this Agreement (including the indemnity provided hereby) shall survive the repayment of the Installment Sale Agreement, the foreclosure of the Security Deed, the transfer of the Premises, and all other events relating to the Installment Sale Agreement or the Premises. City hereby acknowledges and agrees that the benefits of this Agreement (including said indemnity) shall continue in favor of Indemnitees notwithstanding any transfer or assignment hereof by the Indemnitees or any of them, and shall also run to transferees and assignees hereof as additional Indemnitees. Any

transferee or assignee of this Agreement is hereby put on notice that this Agreement continues in effect in favor of all transferring or assigning Indemnitees, and that the rights acquired by such transferee or assignee shall be rights in common with all other Indemnitees, and any instrument of transfer or assignment hereof shall be deemed to reserve such rights whether or not specifically set forth therein.

5.7 Applicable Law. This Agreement shall be interpreted, construed and enforced according to the laws of the State of Georgia.

[Execution on Following Page]

IN WITNESS WHEREOF, City has executed this Agreement under seal, as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

CITY OF DUNWOODY

By: _____
Mayor

Unofficial Witness

Attest: _____
City Clerk

Notary Public

Commission Expiration Date:

[SEAL]

[NOTARIAL SEAL]

EXHIBIT A

PROPERTY DESCRIPTION

AT8274129.4