

## INTERGOVERNMENTAL AGREEMENT

**THIS INTERGOVERNMENTAL AGREEMENT** (the “Agreement”) is made this day \_\_\_\_\_ of \_\_\_\_\_, 2011 (the “Effective Date”) by and between **GWINNETT COUNTY**, a body corporate and politic and a political subdivision of the State of Georgia (“Gwinnett County”), and the **CITY OF DUNWOODY, GEORGIA**, body corporate and politic and a municipal corporation organized under the laws of the State of Georgia, (“Dunwoody”), individually, a “Party” and collectively, the “Parties.”

### WITNESSETH:

**WHEREAS**, certain real property located at 5025 Winters Chapel Road is part of an existing shopping center development with 63,823 square feet of retail space and 302 parking spaces (the “Retail Improvements”); and

**WHEREAS**, the Retail Improvements are bisected by the Gwinnett County and DeKalb County/City of Dunwoody jurisdictional lines, more particularly identified as Gwinnett County Parcel 6280 018 and DeKalb County Tax Parcel 06 280 03 005, and which property is more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Property”); and

**WHEREAS**, a potential lessee proposes to rent and improve a portion of the existing Retail Improvements on the Property as a neighborhood grocery store within lessee’s demise (hereinafter referred to as the “Project”), the Project is more particularly depicted in the Proposed Grocery Store Site Plan prepared by Wolverton and Associates, Inc., dated \_\_\_\_\_ 2011, a copy of which is attached hereto as **Exhibit B** and incorporated herein by this reference (the “Site Plan”); and

**WHEREAS**, the Parties acknowledge that the majority of the buildings associated with Retail Improvements are located in Gwinnett County, and the majority of the parking associated with the Retail Improvements is located in Dunwoody; and

**WHEREAS**, the Property currently is zoned by Dunwoody and by and Gwinnett County to accommodate the proposed Project as reflected in the Site Plan; and

**WHEREAS**, pursuant to the provisions of Article IX, Section II, Paragraph III of the Constitution of the State of Georgia of 1983, as amended, and the general, special and local laws of the State of Georgia, the Parties, by and through their respective government authorities are authorized to enter into agreements with each other for the provision of certain public services outside their respective jurisdictional limits; and

**WHEREAS**, in order to ensure the orderly, economical and logical provision of public services to the future business, owners of the Property and the public in general, the Parties desire to enter into this Agreement to streamline the permitting and inspection process and resolve any potential regulatory conflicts and governmental responsibilities between Dunwoody and Gwinnett County concerning development of and services to the Project.

**NOW THEREFORE**, in consideration of the sum of Ten and 00/100 Dollars (\$10.00), the foregoing recitals and the representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto hereby agree as follows:

1. Development in Accordance with Site Plan. This Agreement pertains only to the Site Plan and shall become null and void should the Project not be developed in accordance with the

Site Plan. Minor modifications to the Site Plan made necessary by physical on-site conditions not known by any Party prior to the date of this Agreement will not void this Agreement provided any such minor modifications are acceptable to both Gwinnett County and Dunwoody. All Project improvements (including but not limited to building, parking, driveways, curb-cuts, detention, stormwater, water quality, signage and landscape) shall be constructed as shown on the Site Plan. The Parties have each reviewed and approved the Site Plan subject to compliance with applicable laws and the terms of this Agreement.

2. Inspection and Permitting. Subject to the terms and conditions of this Agreement, the Parties agree that Gwinnett County shall have exclusive jurisdiction over reviewing, inspecting and permitting the Project, and collect fees for all inspection and permitting services for the Project, whether located in the jurisdictional limits of Gwinnett County or Dunwoody, with the exception of sanitary sewer. Gwinnett County shall also have exclusive jurisdiction over the review and issuance of all Certificates of Occupancy, business licenses, alcoholic beverage licenses and code enforcement associated with the Project.

3. Fees. The Parties agree that Gwinnett County shall collect all fees associated with the Project and that neither Party nor any agent thereof, other than Gwinnett County or its designee, shall impose any service fees, entitlement fees, impact fees or other fees on the Project.

4. Term. The term of this Agreement shall begin on the Effective Date and shall extend thereafter for a period of fifty **(50)** years.

5. Signage. A jurisdiction delineation sign shall be posted at the county boundary line, along the curb along the east side of north bound travel on Winters Chapel Road, as set forth in the Site Plan. The sign shall read: “Entering the City of Dunwoody” on one side and “Entering Gwinnett County” on the other side.

6. Binding Agreement & Recordation. This Agreement and the covenants and conditions set forth herein are intended to run with the land and, subject to Section 12 hereof, shall be binding upon each of the Parties hereto and any subsequent owner of the Property. Upon approval and execution by the governing authorities of Gwinnett County and Dunwoody, this Agreement shall be recorded in the real property records of DeKalb County and Gwinnett County.

7. Representations and Warranties. By execution hereof, each Party hereto represents and warrants to the other Party that:

(a) All necessary actions and approvals have been taken or obtained, as the case may be, to authorize, approve and perform this Agreement, a copy of the meeting minutes authorizing approval of this Agreement are attached hereto as Exhibit C and incorporated herein by this reference; and

(b) Upon full execution hereof, this Agreement shall be binding on the Parties and enforceable against each Party in accordance with its terms; and

(c) There are no claims, litigation, proceedings or governmental investigations pending or, so far as is known to such Party, threatened, against or relating to such Party or the transactions contemplated by this Agreement, which does or would reasonably be expected to materially and adversely affect the ability of such Party to enter into this Agreement and to carry out its obligations as set forth herein.

8. Notices. For purposes of this Agreement, notices and all other communications provided for herein shall be in writing and shall be deemed to have been given when delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Gwinnett County: Gwinnett County Government  
75 Langley Drive  
Lawrenceville, Georgia 30046-6935  
Attention: County Administrator

If to Dunwoody: City of Dunwoody, Georgia  
41 Perimeter Center East, Suite 250  
Dunwoody, GA 30346  
Attention: City Clerk

or to such address as any Party hereto may have furnished to the other in writing in accordance herewith, except that notices of change of address shall be effective only upon receipt.

9. Governing Law. The validity and performance of this Agreement shall be governed by, and this Agreement shall be construed and enforced in accordance with, the laws of the State of Georgia.

10. Modification and Waiver. No provision of this Agreement may be modified or waived unless such waiver or modification is agreed to in writing signed by each Party. No agreements or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either Party which are not set forth expressly in this Agreement.

11. This Agreement may be executed (and delivered via facsimile or electronic mail) in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed, sealed and delivered by the Mayor of the City of Dunwoody and the Chairman of the Gwinnett County, Georgia Board of Commissioners, each thereunto duly authorized in accordance with the laws of the State of Georgia as of the day and year first above written.

Signed, sealed and delivered in the Presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public  
My commission expires:

[Notarial Seal]

**WINNETT COUNTY**, a political subdivision of the State of Georgia

By: \_\_\_\_\_(SEAL)  
Printed Name: Charlotte Nash  
Title: Chairman of the Board of Commissioners

Attest: \_\_\_\_\_(SEAL)  
Printed Name: Diane Kemp  
Title: County Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Printed Name: Van Stephens  
Title: County Attorney

Signed, sealed and delivered in the Presence of:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public  
My commission expires:

[Notarial Seal]

**CITY OF DUNWOODY, GEORGIA**

By: \_\_\_\_\_(SEAL)  
Printed Name: Ken Wright  
Title: Mayor

Attest: \_\_\_\_\_(SEAL)  
Printed Name: Sharon Lowery  
Title: City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Printed Name: Brian Anderson  
Title: City Attorney