

# “TAX INCREMENT FINANCING, COMMUNITY IMPROVEMENT DISTRICTS AND BUSINESS IMPROVEMENT DISTRICTS”

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**“TAX INCREMENT FINANCING,  
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**I. TAX INCREMENT FINANCING**

Introduction

Tax increment financing (“TIF”) also called tax allocation district bond financing, is generally used to provide public infrastructure projects and is sometimes used to acquire land in a blighted area, to demolish existing blighted structures, and to modify and upgrade the local public infrastructure so as to make the resulting building sites attractive to private developers, to whom such building sites would be sold. TIF financing can also be used for the renovation, rehabilitation, reconstruction, remodeling, repair, demolition, alteration, or expansion of any existing building or other facility for use in any business, commercial, industrial, governmental, educational, charitable, or social activity, provided that the financing is properly structured so that title to the financed property is in a governmental body.

Ga. Const. Art. IX, Sec. II, Para. VII. (a) and (b) permits the General Assembly to authorize specified public bodies to undertake and carry out community redevelopment, which may include the sale or other disposition of property acquired by eminent domain to private enterprise for private uses, and to issue tax allocation bonds for such purpose.

In 1985, the Georgia General Assembly enacted the Redevelopment Powers Law (the “RPL”), which, in its present form is found at O.C.G.A. (the “Code”) Section 36-44-1 through 36-44-36. The RPL permits cities, counties and consolidated governments (called “political subdivisions”) to redevelop property in one or more tax allocation districts (designated by the political subdivision) that are located within redevelopment areas (generally, areas that would be described as “blighted” or open areas within an urbanized and developed area) and to finance such redevelopment by means of TIF. TIF involves the issuance of tax allocation bonds to finance improvements to be made in a tax allocation district. The theory of TIF is that the improvements will make the district attractive for private sector investment in facilities that will increase the tax base of the district. The additional taxes attributable to the increase in the district’s tax base are used to pay the debt service on the tax allocation bonds. Thus, TIF is a method for making development oriented public improvements pay for themselves without increasing the burden on the taxpayers. Today, at least 34 states utilize TIF. The potential of TIF has yet to be fully realized in Georgia, for reasons that will be explained.

### Local Act Requirement

Under the RPL, a political subdivision may only exercise the powers provided for in the RPL when authorized by a local act of the General Assembly. This local act requirement is the first unnecessary obstacle in the path of the realization of the objectives of the RPL. The local act may, as to political subdivision, limit (but may not expand) the redevelopment powers provided for in the RPL. The local act requirement is difficult to justify. It permits opponents to the redevelopment of an area an opportunity to exercise political pressure at the state level to prevent local redevelopment. As the General Assembly is only in session for a short period each year, the local act requirement unnecessarily causes delays in implementation of local redevelopment activities. The local act requirement is the first reason that the objectives of the RPL have not been fully realized. In contrast, the TIF law of Florida, which utilizes TIF extensively, contains no requirement for a local act.

### Referendum Requirement

Once a local act is enacted, the political subdivision may only exercise the powers provided for in the RPL if the local act is ratified by referendum of the voters of the political subdivision. There is no valid economic reason to require a city-wide or county-wide referendum. The redevelopment areas and any tax allocation districts will not encompass the entire area of the political subdivision, and thus taxes on property not included within a particular tax allocation district will not be used to pay debt service on tax allocation bonds. The increase in tax revenues, within a particular tax allocation district, that is used to pay debt service on the tax allocation bonds issued, with respect to such district, is a function of increases in the assessed value of property in the tax allocation district. However, voters will tend to vote against any referendum ballot proposition that includes the word “tax.” This referendum requirement is the second reason that the objectives of the RPL have not been fully realized. In contrast, Florida’s TIF law contains no referendum requirement.

### Redevelopment Powers

Once the local act has been enacted and approved by referendum, the political subdivision has the right (assuming the local act does not restrict the exercise by the political subdivision of any powers provided for in the RPL) to “exercise any powers necessary or convenient to carry out the purposes of” the RPL, including, but not limited to, the power: (i) to designate redevelopment areas, (ii) to cause redevelopment plans to be prepared, approved and implemented, (iii) to create tax allocation districts, (iv) to issue tax allocation bonds, (v) to acquire and retain property, (vi) to dispose of property by public or private sale or lease, and (vii) to exercise powers conferred upon the political subdivision by the “Urban Redevelopment Law.” The political subdivision may enter into contracts relating to the exercise of such powers with private persons or entities for any period of up to 30 years. Such contracts may include, but are not limited to, contracts to convey or otherwise obligate real property for redevelopment, even though that property has not yet been acquired by the contracting political subdivision. The redevelopment powers provided for in the RPL are cumulative and supplemental to any existing powers of the political subdivision.

### Redevelopment Agency

Once the local act has been enacted and approved by referendum, the local legislative body of the political subdivision may, by resolution, create a public body corporate and politic to serve as its redevelopment agency, or it may designate its existing urban redevelopment agency or housing authority as its redevelopment agency or it may designate itself as its redevelopment agency. For purposes of redeveloping its downtown area, a municipality may designate its downtown development authority as its redevelopment agency. If the local act and referendum relate to a group of political subdivisions, such as a county or consolidated government and one or more cities, those political subdivisions, by resolution of their respective local legislative bodies, may jointly create a public corporation or designate an existing public corporation which already has “redevelopment powers” under any other law, to serve as the common redevelopment agency on behalf of such political subdivisions.

The local legislative body of the political subdivision, by resolution, may delegate any of its redevelopment powers to its redevelopment agency, subject to conditions set forth in the resolution. Any delegation shall be limited by the following statutory restrictions: (i) any redevelopment plan prepared by the redevelopment agency must be approved by resolution of the local legislative body of the political subdivision before the plan can be implemented; (ii) the boundaries of any redevelopment area must be described in that resolution; (iii) one or more tax allocation districts must be created by resolution of such local legislative body; (iv) any tax allocation bonds shall be issued by resolution of such local legislative body; (v) unless the redevelopment agency is a downtown development authority, the power of eminent domain may be exercised only by such local legislative body, and (vi) if the redevelopment agency is other than the local legislative body of the political subdivision or a downtown development authority, there may not be delegated any urban development powers except those that may be conferred on an urban redevelopment agency under the provisions of the “Urban Redevelopment Law” set forth in Code Section 36-61-17.

### Redevelopment Area

The “redevelopment area” must be: (i) an urbanized or developed area that meets one or more of a number of criteria (i.e., an area that would be generally described as “blighted”); (ii) an open area located in an urbanized or developed area with the corporate limits of a municipality which, because of “blight” factors, substantially impairs or arrests the sound growth of the community; (iii) an open area located within an urbanized or developed area and which, immediately prior to becoming an open area, qualified as “blighted;” (iv) an area located within an urbanized or developed area which is substantially underutilized by containing open lots, a substantial number of buildings which are 40 years old or older or by containing structures and buildings of relatively low value, or property which has its development impaired by airport and related transportation noise or an area in which there is a shortage of housing that is affordable for persons of low or moderate income or (v) any area in which any combination of the foregoing factors are present. Because of the large variety of factors that may be considered, there is considerable room for the exercise of discretion on the part of the local legislative body of the political subdivision in the designation of an area as a redevelopment area.

### Redevelopment and Redevelopment Costs

“Redevelopment” includes any activity or service necessary or incidental to achieving the development or revitalization of the redevelopment area or portion thereof, including: (i) public works projects, (ii) the construction, repair, rehabilitation, demolition, remodeling or expansion of buildings or other facilities for use in any business, commercial, industrial, governmental, educational, charitable or social activity, (iii) projects relating to buildings or sites of historic significance, (iv) activities for improving or increasing the value of property and (v) the acquisition, retention and disposition of property for redevelopment.

“Redevelopment costs” include: (i) capital costs, (ii) financing costs, (iii) cost of professional services, (iv) imputed administrative costs for time spent by public employees in implementing the redevelopment plan, (v) relocation costs for persons or businesses displaced by the redevelopment activities, (vi) costs of studies, (vii) costs of providing information to the public, (viii) payments in lieu of taxes to be made by the political subdivision to another political subdivision or to a board of education and (ix) real property assembly costs.

Redevelopment costs relating to a tax allocation district can be paid by the political subdivision from the following sources: (i) the special fund of such tax allocation district; (ii) the general funds of the political subdivision, (iii) proceeds of tax allocation bonds issued by the political subdivision with respect to the district, (iv) proceeds of loans and (v) lease and contractual payments received pursuant to the redevelopment plan.

### Redevelopment Plan--Procedures

If, in addition to the tax allocation increment of ad valorem taxes levied within a tax allocation district by the political subdivision itself, either (i) the proposed redevelopment plan contemplates the use of the tax allocation increment of ad valorem taxes levied within the district by any other political subdivision, county board or education or independent board of education (i.e., a board that sets the ad valorem tax millage for school purposes) in the sources of funds that are to be used to pay redevelopment costs within the district (including debt service on tax allocation bonds) or (ii) the proposed redevelopment plan proposes to pledge for payment, or security for payment of tax allocation bonds and other redevelopment costs, the general funds of a political subdivision, then the plan must be submitted to the governing bodies of those other political subdivisions and boards of education for their consent with respect to the use of their tax allocation increments for such purposes or, in the case of political subdivisions, of any of their general funds. The consent of those bodies, evidenced by resolutions of their legislative bodies, must be obtained before the plan is submitted for approval to the local legislative body of the political subdivision that is creating the district. If consent is denied by any such other political subdivision or board of education, the redevelopment agency would need to revise the plan to exclude the tax allocation increment or general funds contribution of any nonconsenting political subdivisions and nonconsenting boards of education. The failure to obtain such consents from other taxing units will reduce the funds available for the payment of redevelopment costs and debt service, which will necessitate either (i) a reduction in the amount of bonds to be issued (which will reduce the funds available for redevelopment and require other revisions to the plan)

or (ii) an extension of proposed bond maturities. In Georgia, any nonconsenting taxing units will be able to use, for their own governmental purposes, any increase in their tax collections that are attributable to increases in assessed values resulting from redevelopment within the district, thereby receiving an unjust “windfall” profit. Under the Florida TIF statute, consent of other taxing units, other than school districts, is not required. This consent provision may be a third reason that the redevelopment goals of the RPL have not been realized.

The redevelopment plan is then submitted to the political subdivision. Within 60 days following the submission of the plan, the local legislative body of the political subdivision must hold at least one public hearing on the redevelopment plan. Public notice of each hearing must be published at least once during the five days immediately preceding such hearing. Within 45 days following the last of the public hearings, the local legislative body of the political subdivision shall schedule a meeting to consider the plan. Public notice of such meeting must be published at least once during the 5 days immediately preceding such meeting. At such meeting, the plan may be approved as submitted, amended and approved, or rejected and returned to the redevelopment agency for further consideration. Any redevelopment plan that is rejected shall be returned to the redevelopment agency and shall be subject to the foregoing public hearing requirement if it is again submitted to the legislative body of the political subdivision for approval, either in the same form or amended form. After the plan has been adopted, it may only be amended by resolution adopted by the local legislative body of the political subdivision at a meeting, notice of which must be published at least once during the 5 days immediately preceding such meeting.

#### Redevelopment Plan-- Content

The redevelopment plan must be a written plan for the redevelopment of a redevelopment area or portion thereof which contains the 18 items of information required by Code Section 36-44-3, including: (i) the boundaries of the area proposed for redevelopment, (ii) the types of redevelopment activities to be conducted, (iii) cost data, (iv) a description of the contracts the political subdivision or the redevelopment agency will be entering into in connection with the plan, (v) the last known assessed value of the redevelopment area, (vi) the estimated assessed values after redevelopment, (vii) the tax allocation increment base of the proposed tax allocation district, (viii) financial details of the proposed tax allocation bonds, and (ix) the effective date for the creation of the tax allocation district and proposed termination date.

#### Tax Allocation Districts

A tax allocation district is a contiguous geographic area within a redevelopment area which is defined and created by the political subdivision to implement the issuance of tax allocation bonds. Proceeds of such bonds are used to finance redevelopment costs within the district and tax allocation increments from property within the district are one, but not necessarily the sole, source of payment of the debt service on those bonds. There may be one or more tax allocation districts in a redevelopment area.

Prior to the adoption of the resolution of the political subdivision approving the

redevelopment plan, the political subdivision shall obtain a determination from the state revenue commissioner of the tax allocation increment base of each proposed tax allocation district.

The resolution creating a tax allocation district shall: (i) establish the boundaries of the tax allocation district; (ii) create the district effective as of December 31 of the year in which the redevelopment plan is adopted, unless the plan defers the effective date of creation to December 31 of a subsequent year; (iii) assign a name to the district (e.g., Tax Allocation District Number \_\_\_ of [name of political subdivision]); (iv) specify the estimated tax allocation increment base of the district; (v) specify the property taxes to be used for computing tax allocation increments (i.e., taxes of the political subdivision and any taxes levied by other consenting taxing units); (vi) specify the property proposed to be pledged for payment or security for payment of the tax allocation bonds (which property may include positive tax allocation increments derived from the district, all or part of general funds derived from the district<sup>1</sup> and any other property from which the bonds may lawfully be paid under Code Section 36-44-13, as determined by the political subdivision subject to the limitations of Code Sections 36-44-9 and 36-44-20); and (vii) contain findings that the redevelopment area on the whole has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the approval of the redevelopment plan and the improvement of the area is likely to enhance the value of a substantial portion of the other real property in the district. If any of this foregoing information is in the plan itself, the information may be incorporated in the resolution by reference to the plan.

The boundaries of the tax allocation district may include only those whole units of property that are assessed for ad valorem property tax purposes. The total current taxable value of property in the proposed district plus the current taxable value of property within all of the political subdivision's existing tax allocation districts, if any, may not exceed 10% of the current taxable value of all taxable property located within the area of operation of the political subdivision. This limitation, combined with the requirement that other political subdivisions (such as cities within the county if the political subdivision is a county or consolidated government or the county, if the political subdivision is a city) and the applicable county boards of education or independent boards of education must consent if their tax allocation increments are to be used for redevelopment purposes under the redevelopment plan, considerably limits the funding available for redevelopment.

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<sup>1</sup> The general funds that may be pledged are those general funds that are "derived from a designated tax allocation district." For example, certain local option sales taxes revenues that are general fund revenues and which are "derived from a designated tax allocation district" may be pledged.

Tax Allocation Increment

The tax allocation increment means, in any year, the total amount of ad valorem taxes of the political subdivision and other consenting taxing units received in such year multiplied by a fraction having (i) a numerator equal to that year's taxable value (i.e. assessed value) of all taxable property (i.e., real and personal property of the political subdivision, including property subject to local ad valorem taxation for educational purposes) within the district minus the tax allocation increment base and (ii) a denominator equal to that year's taxable value of all taxable property within the district. A tax allocation increment is "positive" in a particular year if the tax allocation increment base is less than that year's taxable value of all taxable property within the district.

For the purpose of fixing the millage rate to fund the annual budget (exclusive of redevelopment costs payable from the tax allocation increment) of the political subdivision, and of each consenting entity, the taxable value of property within the district shall, if such value is in excess of the tax allocation increment base, be deemed not to exceed the tax allocation increment base until the district is terminated. If no tax increment bonds have been issued and are outstanding, the millage rates may be increased or decreased by the political subdivision and other consenting taxing units in the normal manner. If tax allocation bonds are outstanding, each such taxing unit may not reduce its millage rate on taxable property within the district below the millage rate levied on that property on the last date tax allocation bonds were issued to pay redevelopment costs within the district.

Positive tax allocation increments shall be allocated to the political subdivision that created the tax allocation district for each year from the effective date of the district until the time when all redevelopment costs have been paid or provided for and all tax allocation bonds have been paid or provided for, subject to any agreement with the bondholders. The tax allocation increments are deposited, upon receipt, by the political subdivision, in the special fund created for the district under the redevelopment plan.

General funds of a city, county or consolidated government may be pledged, but only (i) if those general funds are derived from a designated tax allocation district and are used to pay tax increment bonds issued for the redevelopment of that district and (ii) only to the extent that the positive tax increments or lease or other contract payments in the districts special fund are insufficient at any time to pay debt service due on the bonds. If a county has pledged any of its general funds to tax allocation bonds issued by a city, it shall pay the pledged funds to the appropriate financial officer of the municipality for deposit in the special fund. Any general funds so pledged shall be deposited in the special fund created for the district under the redevelopment plan. Any lease or other contractual payments received under the redevelopment plan shall also be deposited upon receipt in the special fund. Moneys derived from positive tax allocation increments, general fund moneys and moneys derived from lease or other contract payments shall be accounted for separately within the special fund. General funds derived from the tax allocation district may be used for payment of tax allocation bonds only to the extent that positive tax allocation increments and lease or other contract payments in the special fund are insufficient at any time to pay the debt service due on such bonds. Subject to any agreement

with bondholders, moneys in the special fund may be temporarily invested in the same manner as other funds of the political subdivision that created the district. If, after all redevelopment costs and tax allocation bonds of the district have been paid or provided for, there remains in the special fund any moneys derived from positive tax allocation increments, such amounts shall be paid over to each county, municipality, consolidated government or county or independent board of education ratably to their most recent contributions to the special fund. If there then remains, in the special fund, any other moneys, those other moneys shall be paid over to each political subdivision which contributed to the special fund in proportion to the respective total contributions each made to such fund. Note, that this latter distribution is only to political subdivisions, which is defined to mean municipalities, counties and consolidated governments, and does not include county boards of education or independent boards of education.

Amounts in the special fund may be used only to pay redevelopment costs of the district or to satisfy claims of holders of the tax allocation bonds. When tax allocation bonds are issued by the political subdivision, all or a part of such special fund shall be irrevocably pledged to the payment of debt service thereon. The special fund, or the portion thereof, so pledged shall be subject to a lien that is enforceable by the bondholders and may be used only (except for temporary investments) to pay debt service until the bonds have been paid or defeased.

The existence of the tax allocation district shall terminate when the local legislative body of the political subdivision, by resolution, dissolves the district. No dissolution is permitted until all redevelopment costs (including debt service) have been paid.

#### Tax Allocation District Bonds

The term “tax allocation district bonds” means bonds, notes or other obligations issued by the political subdivision to finance, wholly or in part, redevelopment costs within the tax allocation district and which are issued on the basis of pledging, in whole or in part, the projected increase in ad valorem tax revenues resulting from the proposed redevelopment of property with the district for the repayment of such bonds. Tax allocation district bonds shall not constitute debt within the meaning of Article IX, Section V of the Constitution. A referendum is not required.

Tax allocation district bonds may be issued by resolution of the local legislative body of the political subdivision for the sole purpose of paying redevelopment costs within the district and may not be issued in an amount exceeding the estimated aggregate redevelopment costs. Both current and advance refunding bonds may be issued. Tax allocation district bonds may have a maturity of not more than 30 years and may bear interest at a fixed or variable rate. Any limitations on interest rate found in the Revenue Bond Law, the Georgia usury laws or any other Georgia laws are not applicable to such bonds. Tax allocation district bonds are required to be validated under the Revenue Bond Law and shall bear a certificate of validation.

Such bonds shall be payable from (i) real or personal property acquired pursuant to the redevelopment plan which is pledged to the payment of debt service, (ii) the pledged tax allocation increment and (iii) any other source from which redevelopment costs may be paid that

is pledged to the payment of debt service. Each bond shall state that it is payable only from the pledged sources and does not otherwise constitute an indebtedness or charge against the general taxing powers of the political subdivision or of any consenting taxing units. To increase the security for and marketability of the tax allocation bonds or notes, the local legislative body of the political subdivision may create a lien upon any public improvements or public works financed thereby or the revenues therefrom and may make covenants and do any acts not inconsistent with the Georgia Constitution or the RPL in order to secure such bonds and to make them more marketable.

#### Bond Anticipation Notes

If tax allocation district bonds have been validated, then bond anticipation notes may be issued to provide funds that would otherwise be provided by the bonds, and it is not necessary to validate the bond anticipation notes. The aggregate amount of the bond anticipation notes may not exceed the aggregate par amount of the validated bonds.

#### Loans from Financial Institutions

As an additional source of financing for redevelopment costs, the political subdivision, or its redevelopment agency, may borrow funds from financial institutions and, in connection therewith, may pledge or assign lease contracts or revenues received from lease contracts on property owned by the political subdivision or its redevelopment agency. The maximum permitted maturity of such loans may not exceed 25 years. The contractual obligations to such financial institutions shall not constitute a debt within the meaning of Article IX, Section V of the Constitution.

#### Contracts

A political subdivision may enter into any contract relating to its exercise of its redevelopment powers under the RPL with any private entity for any period not exceeding 30 years. Such contracts may include, without being limited to, contracts to convey or otherwise obligate real property for redevelopment under the RPL although that property has not yet been acquired at the time of contracting by the political subdivision.

#### Federal Tax Law Aspects

If the tax allocation bonds finance only public infrastructure improvements and/or land or facilities which will be and remain public property, under circumstances under which the federal “private activity bond” tests are not met, the bonds can be issued as federally tax-exempt “governmental purpose” bonds.

If the bonds finance land and improvements (but not buildings) which are to be sold to developers or other private business users, the bonds may, if they meet certain federal requirements, be issued as federally tax-exempt “qualified redevelopment bonds.” If the tax allocation bonds do not qualify as “governmental purpose bonds” or as “qualified redevelopment bonds,” they may be issued as federally taxable “private activity bonds.”

Tax allocation bonds can be issued as tax-exempt “governmental purpose bonds,” tax-exempt “qualified redevelopment bonds,” and taxable “private activity bonds” which would be authorized as separate series by the same resolution, validated in a single validation action, secured by the same sources of funds (i.e., tax allocation increments) to finance different components of the redevelopment program. Thus, the costs of public infrastructure and land relating thereto could be issued as “governmental purpose bonds,” the land costs and development costs attributable to land to be sold to developers (i.e., building lots) could be issued as “qualified redevelopment bonds” and the cost of any land and buildings to be sold or leased to private business users could be issued as taxable “private activity bonds.” The bonds would be a single issue for state law purposes, but can be treated as separate “issues” for federal tax purposes, in accordance with income tax regulations Section 1.150T-1. All three series would be payable from the tax allocation increment. The “private activity bonds” could also be payable from the proceeds from the sale or leasing of land and buildings to private business users and the “qualified redevelopment bonds” could also be payable from proceeds of building lots.

If the bonds are tax-exempt “governmental purpose bonds” or are federally taxable “private activity bonds,” private sector credit support, such as developer guarantees, may be provided. However, such private sector credit support could not be used to secure tax-exempt “qualified redevelopment bonds.”

## II. COMMUNITY IMPROVEMENT DISTRICT FINANCING

### Introduction

In Georgia, public improvements may be financed through community improvement districts (“CIDs”). However, the provisions of the Georgia statutes relating to CIDs, is quite restrictive when compared to legislation in other states.

### Local Act Requirement

Under Article IX, Section 9 of the Georgia Constitution, the General Assembly is authorized, by local act, to create one or more CIDs for any county or city or may create joint CIDs encompassing land that is only partially within a city. The local act creating the CID must provide that the administrative body of the CID shall either (i) be the governing authority of the city or county for which the CID is created or (ii) include representation of the governing authority of the city or county (or both, where the CID is partly in a city and partly in an unincorporated area). This Constitutional requirement for a local act creates an unreasonable and unnecessary impediment to the use of CIDs. The provisions of Florida law relating to Community Development Districts (“CDDs”), which are similar to CIDs, do not require a local act. Although under the Florida CDD law, the governing body of the city or county may serve as the governing body of a CDD, it is not required that the governing board of the CID must include representation of the governing authority of the city or county. More often than not, the governing body of the CDD consists of representatives of a real estate developer that owns the land in the CDD and has requested the city or county to create the CDD to provide federally tax-exempt bond financing for the public infrastructure needed to serve the proposed real estate

development.

#### Activation of the CID

Following enactment of the local act, the city (if the CID is located entirely within the city), the county (if the CID is located entirely in the unincorporated area of the county), or both (if the CID is partially within the city and partially in the unincorporated area), then activate the CID by resolution after first obtaining written consents to the creation of the CID from both (i) a majority of the owners of real property within the CID and (ii) the owners of at least 75% in value (based on tax digest value) of real property within the CID which will be subject to taxes, fees and assessments levied by the CID.

#### Provision of Public Facilities

The CID may construct public infrastructure facilities, such as streets, public transportation facilities, parking facilities, terminal and dock facilities, parks and recreational facilities, storm water facilities and water and sanitary sewer facilities.

#### Taxes, Fees and Assessments

The CID may levy taxes, fees and assessments on real property within the CID (excluding all real property used for residential, agricultural or forestry purposes) in an amount not to exceed 2.5% (or such lower amount as provided for in the particular local act) of the assessed value of such taxable real property. Such taxes, fees and assessments may be used only for the purpose of providing such facilities and services and paying debt service on the bonds, which are (without the need for a referendum) full faith and credit obligations of the CID, but not debts of the related city or county.

#### CIDs are of Limited Usefulness

The exclusion from CID taxation of real property used for residential, agricultural and forestry purposes, severely limits the usefulness of CIDs in Georgia. In Georgia, CID financing is a viable method for providing public infrastructure that will be serving projects such as regional malls, office parks and industrial parks and other commercial or industrial developments, but could not be used, for economic reasons, to provide financing for large residential developments. In Florida, CDDs, and in California, “Mello Roos” Districts, are frequently used to finance public infrastructure serving large residential real estate developments.

#### Legislative Recommendations

The Georgia Constitution should be amended to provide that CIDs may be created by cities and counties pursuant to general law and to eliminate the exemption from taxation by the CID of real property used for residential, agricultural and forestry purposes. A general law should then be enacted under which CIDs would be created at the local level. In the alternative, a general law should be enacted giving counties and cities broad powers to levy special assessment and to issue special assessment bonds and providing that the county’s or city’s

development serve as its development agency.

#### Federal Tax Aspects

In most cases, bonds issued by CIDs to finance public infrastructure, will be “governmental purpose bonds” rather than private activity bonds. However, if private businesses have a special legal entitlement to the use of the bond financed facilities (i.e., a right that exceeds the right of members of the general public), the bonds may be private activity bonds (depending on the extent of such use and other factors). The provisions of the federal private activity bond regulations relating to such bonds are highly complex and are beyond the scope of this discussion.

### **III. BUSINESS IMPROVEMENT DISTRICTS**

#### Introduction

The City Business Improvement District Act, Code Sections 36-43-1 through 36-43-9 (the “BID Act”), provides for the creation of business improvement districts (“BIDs”) by municipalities that are located wholly in Georgia for the provision of supplemental services. “Supplemental services” means those services provided for the improvement and promotion of the district, including, but not limited to, advertising, promotion, sanitation, security, and business recruitment and development.

#### Petition Requirement

Although there is no requirement that a local act be enacted in order for a municipality to create a BID, and there is no referendum requirement, no district plan for the creation of a BID may be adopted by the governing authority of a municipality except upon a written petition signed and acknowledged by either (i) at least 51% of the municipal taxpayers of the proposed district or (ii) municipal taxpayers owning at least 51% (by assessed value) of the taxable property subject to ad valorem real and personal property taxation in the proposed district. The petition must be accompanied by a proposed district plan, which shall include a budget, a formula for imposing assessments on the taxpayers within the district and (if desired) design and rehabilitation standards.

#### District Plan Adoption Procedures

Following receipt of the petition, the municipality’s governing authority shall refer the plan to the appropriate municipal departments for review of its sufficiency, the reasonableness of assessments and financial feasibility. The departments shall submit reports to the governing authority as to such matters. The governing authority shall hold a public hearing on the creation of the BID. Notice of the hearing shall be published at least 10 days prior to the hearing.

Following the public hearing, the governing authority may, by ordinance, approve, approve with modifications or disapprove the plan. At the time of approval, the plan shall include all of the following: (i) a map of the district, (ii) a description of the boundaries of the

district, such description to be sufficient to identify the lands included in the district, (iii) the present and proposed uses of such lands, (iv) the supplemental services to be provided within the district, (v) the maximum millage to be levied for providing supplemental services, (vi) the proposed time for the implementation and completion of the plan, (vii) any design and rehabilitation standards that may be mandated for buildings located within the district, (viii) any rules and regulations that are to be applicable to the district and (ix) any other item required to be incorporated in the plan by the governing authority. The boundaries of the district may not include land on which is located telephone central office and switchboard facilities serving an area exceeding the boundaries of the district. Any district plan thus adopted may be amended from time to time or rescinded or its budget may be revised by ordinance.

### Powers

Upon the establishment of the BID, the governing authority of the municipality may exercise the following powers with respect to the district: (i) to adopt a plan for the provision of supplemental services; (ii) to adopt budgets for the implementation of such supplemental services; (iii) to fix and levy annually an ad valorem millage upon real and personal property within the district, to make such assessment liens upon such property and to enforce such liens in the same manner as other city taxes; (iv) to provide supplemental services or to contract with downtown development authorities for all or a part of such services as are required to implement the plan; (v) to mandate design and rehabilitation standards for buildings within the district, subject to any applicable historic preservation requirements or ordinances, if necessary to prevent or eliminate blight, to establish and improve property values and to foster economic development within the district, to establish deadlines for compliance with those standards and to provide for their enforcement; and (vi) to levy and collect a surcharge on existing business licenses and occupation taxes upon businesses and occupations within the district and to enforce liens for nonpayment of said surcharges in the same manner as other city taxes.

### Financial Matters

No amounts assessed and collected pursuant to the plan shall be spent for any purpose not authorized by the plan, except for such costs as are attributable to billing and collection. The cost of supplemental services shall not include the cost to the district of services performed by the municipality on a city-wide basis.

The expenses incurred for such supplemental services shall be financed in accordance with the district plan (i.e., by property taxes, business licenses and occupation taxes). Such property taxes, business license fees and occupational taxes shall be levied, assessed and collected in the same manner, at the same time, and by the same officers as other city taxes and assessments. The statute contains no provisions for borrowing or the issuance of bonds or notes.

### Termination of the BID

Any BID created or renewed pursuant to Code Section 36-43-5 shall terminate and cease to exist on a specific date specified by the creating or renewing ordinance that is no less than 5

years and no more than 10 years from the date of enactment of such ordinance.

### Observations

The limitation in the BID Act that provides that “the cost of supplemental services shall not include the cost to the district of services performed by the municipality on a city-wide basis” would prevent the payment of costs of sanitation and security (which are generally provided on a city-wide basis) if the limitation were interpreted to relate to categories of service, as contrasted with levels of service. Thus, the only way to reconcile the inclusion of sanitation and security as a supplemental service under the BID Act is to interpret the foregoing limitation as pertaining to levels of service, so that any sanitation or security service provided in excess of the level of service provided on a city-wide basis qualifies as a permissible supplemental service cost.

The BID Act states that its legislative purpose is to provide a means for restoring and promoting commercial and other business activities within business districts within large cities that are in an economically depressed condition, yet the operative provisions of the BID Act contains no requirement: (i) as to the size of the municipality that creates the BID, (ii) that the properties within the BID be primarily business properties, or (iii) that the area encompassed by the BID be in an economically depressed condition. Thus, perhaps, it may be possible to use a BID to provide additional police protection or garbage pickup services for an upscale residential subdivision.

### **More Information**

This paper is a quick-reference guide for company executives and managers, participants in the real estate and financial industries, economic developers and their advisors. The information in this paper is general in nature. Various points which could be important in a particular case have been condensed or omitted in the interest of readability. Specific professional advice should be obtained before this information is applied to any particular case.

If you have any questions or comments, we would be pleased to provide more information. Please contact:

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