

RESOLUTION NO. 090985

A RESOLUTION EXPRESSING THE INTENT OF THE CITY OF GAINESVILLE, FLORIDA TO LOAN FUNDS FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A GRADUATE STUDENT HOUSING FACILITY IN THE CITY OF GAINESVILLE, FLORIDA; PROVIDING FOR THE LENDING OF FUNDS FOR SUCH PURPOSE TO PROVIDENT GROUP – UF CONTINUUM PROPERTIES L.L.C., A FLORIDA LIMITED LIABILITY COMPANY, OR A RELATED ENTITY OR SUCCESSORS OR ASSIGNS; PROVIDING FOR THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS (THE CONTINUUM PROJECT) BY THE CITY IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$82,000,000 FOR THE PURPOSE OF MAKING SUCH LOAN OF FUNDS TO FINANCE ALL OR A PORTION OF THE COST OF SUCH PROJECT; AUTHORIZING THE EXECUTION OF A MEMORANDUM OF AGREEMENT PERTAINING TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING CERTAIN OTHER DETAILS WITH RESPECT THERETO.

BE IT RESOLVED by the City Commission of the City of Gainesville, Florida, that:

SECTION 1. AUTHORITY. This Resolution is adopted pursuant to the provisions of the Constitution of the State, Chapter 166, Florida Statutes, Part II of Chapter 159, Florida Statutes, the Charter of the City of Gainesville, Florida and other applicable provisions of law (collectively, the "Act").

SECTION 2. DEFINITIONS.

In addition to the terms otherwise defined herein, the following terms shall have the meanings set forth below:

"Bonds" or "Bond" means the proposed City of Gainesville, Florida Industrial Development Revenue Bonds (The Continuum Project) to be issued in one or more series in an aggregate principal amount not exceeding \$82,000,000 to be authorized by subsequent resolution of the Issuer pursuant to the Act and in accordance with the terms, conditions and limitations contained in such resolution.

"Borrower" means Provident Group – UF Continuum Properties L.L.C., a Florida limited liability company, and a wholly-owned subsidiary of Provident Resources Group Inc., a Georgia not-for-profit corporation, and its successors or assigns who have been approved by the Issuer.

"Clerk" means the Issuer's Clerk of the Commission or any Deputy Clerk of the Commission or Acting Clerk of the Commission.

"Issuer" means the City of Gainesville, Florida.

"Mayor" means the Mayor or, in his or her absence or inability to perform, the Mayor-Commissioner Pro Tempore, of the Issuer.

"Project" means the acquisition, construction and equipping of a graduate student housing facility in Gainesville, Florida, to contain approximately 465 units and approximately 612 beds, and related facilities.

SECTION 3. PROPOSAL. The Borrower has requested that the Issuer issue its revenue bonds in one or more series under the Act in an aggregate principal amount not exceeding \$82,000,000 for the purpose of paying for all or part of the cost of the Project, which amounts the Borrower has represented will, together with other available funds of the Borrower, be sufficient to pay all of the cost of the Project, such Bonds to be secured under the terms of a loan agreement between the Issuer and the Borrower in an amount sufficient to pay the principal of and interest on such Bonds as the same become due and payable.

SECTION 4. FINDINGS. The Issuer hereby finds, determines and declares as follows:

A. The Issuer is authorized and empowered by the Act to enter into transactions such as those contemplated by the Borrower, and to fully perform the obligations of the Issuer to be undertaken in connection with the financing of the Project in order to improve the industrial economy of the City and the State of Florida (the "State"), increase opportunities for gainful employment and purchasing power, and improve living conditions, and otherwise contribute to the health, prosperity and welfare of the County, the State and the inhabitants thereof.

B. The Project is a "commercial project in an enterprise zone" and a "project" within the meaning and contemplation of the Act.

C. The Borrower has requested that the Issuer issue Bonds in one or more series in an aggregate principal amount not exceeding \$82,000,000 to finance the acquisition, construction and equipping of the Project. The Bonds shall be paid solely from the repayment of a loan of the bond proceeds from the Issuer to the Borrower.

D. The availability of financing by means of revenue bonds is an important inducement to the Borrower to proceed with the acquisition, construction and equipping of the Project.

E. Based upon the representations of the Borrower with respect to the Project, the Project and the issuance of the Bonds to finance the Project will have a substantial public benefit and lessen the burdens of government.

F. Notice of a public hearing to be held before the Issuer on the date hereof, inviting comments and discussion concerning the issuance of the Bonds by the Issuer to finance the Project was published in *The Gainesville Sun*, a newspaper of general circulation in Gainesville, Florida, at least 14 days prior to the date hereof.

G. Following such notice, a public hearing was held by the Issuer on the date hereof, during which comments and discussions concerning the plan of finance and concerning issuance of the Bonds by the Issuer to finance the Project were requested and heard.

H. Issuance of the Bonds in an amount not exceeding \$82,000,000 is hereby approved by the City Commission for the purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended. The City Commission is the elected legislative body of the Issuer and has jurisdiction over the entire area in which the Project will be located.

I. The Bonds shall not be deemed to constitute a debt, liability or obligation, or a pledge of the faith and credit, of the Issuer or a debt, liability or obligation or pledge of the faith and credit or taxing power, of the Issuer or of the State of Florida or of any political subdivision thereof, but the Bonds shall be payable solely from the revenues and proceeds to be derived by the Issuer from payments received under the financing agreements entered into between the Issuer and the Borrower or from an irrevocable direct-pay letter of credit provided as security for the Bonds.

SECTION 5. DETERMINATION. If, upon further investigation of the Borrower and its proposal, the Issuer is able to find:

A. That the Issuer, the Borrower and the proposed purchaser or purchasers of the Bonds have executed or will concurrently with the issuance of the Bonds execute the documentation required for the financing of the Project as contemplated hereby;

B. That adequate provision has been made in the documents for the operation, repair and maintenance of the Project at the expense of the Borrower and for the payment of the principal of, premium, if any, and interest on the Bonds and reserves, if any, therefor;

C. That the interest on the Bonds will be excluded from gross income for federal income tax purposes under existing laws of the United States;

D. That, based on the criteria established by the Act, the Borrower is financially responsible and fully capable of and willing to fulfill all of its obligations under the terms and provisions of the loan agreement to be negotiated between the parties, under which the Borrower will be obligated, among other things, to pay amounts sufficient to timely discharge the debt service on the Bonds, and to operate, repair and maintain the Project at the Borrower's expense;

E. That any other requirements, determinations and conditions that the Issuer may reasonably require in connection with the financing have been satisfied;

then the Issuer shall, and by passage of this Resolution hereby agrees to, issue Bonds to finance the acquisition, construction and equipping of the Project in accordance with the provisions and authority of the Act and this Resolution. The principal amount, terms of maturity, interest rate and other details of the Bonds will be determined by the Borrower and the Issuer and subsequently adopted by resolution of the Issuer.

SECTION 6. AUTHORIZATION TO EXECUTE. The Mayor and the Clerk are authorized, in the name and on behalf of the Issuer pursuant to this Resolution, to execute and deliver a Memorandum of Agreement (the "Memorandum of Agreement") of even date herewith between the Borrower and the Issuer in substantially the form attached to this Resolution as Exhibit "A," with such changes as the officers signing such Memorandum of Agreement may approve, execution thereof to be conclusive evidence of such approval. Any action taken by the Borrower in furtherance of the acquisition, construction and equipping of the Project is hereby ratified, confirmed and approved. The officers executing such Memorandum of Agreement are further authorized to do all acts which may be required or may be advisable with respect thereto.

The Mayor and the Clerk of the Issuer are further authorized to take such further action and execute such further instruments as may be necessary to fully effectuate the purpose and intention of the Memorandum of Agreement and this Resolution.

SECTION 7. PRIORITY. Nothing herein shall be deemed to restrict the Issuer or the State of Florida or any agency or political subdivision thereof in determining the order or priority of the issuance of bonds by the Issuer or to require the Issuer to give the Bonds priority as to the time of issuance over any other bonds previously or subsequently approved by the Issuer for issuance, and such

prioritization by the Issuer could result in the inability of the Issuer to issue the Bonds.

SECTION 8. EXPRESSION OF INTENT. This Resolution constitutes a declaration of the official intent of the Issuer, within the contemplation of Section 1.150-2 of the Income Tax Regulations promulgated by the Department of the Treasury, to permit the Borrower to use proceeds of the Bonds to reimburse itself for planning, design, legal any other costs and expenses originally paid by the Borrower in connection with acquisition, construction and equipping of the Project with funds other than proceeds of the Bonds prior to the issuance of the Bonds (the "Advanced Funds").

All of the expenditures initially to be made with the Advanced Funds and then to be reimbursed by the Borrower from proceeds of the Bonds will be for costs of a type properly chargeable to the capital account of the Project under general income tax principles, non-recurring working capital expenditures (of a type not customarily payable from current revenues), or costs of issuing the Bonds. Other than any preliminary expenditures for architectural, engineering, surveying, soil testing, costs of issuing the Bonds or similar purposes that may have been paid more than sixty days prior to the date of this Resolution, no expenditures to be reimbursed have been paid more than sixty days earlier than the date of this Resolution.

SECTION 9. APPROVALS. Any approval given herein shall not be construed as (i) an endorsement of the creditworthiness of the Borrower or the financial viability of the Project, (ii) a recommendation to any prospective purchaser to purchase the Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (iv) approval of any necessary zoning or rezoning applications or approval or acquiescence to the alteration of existing zoning, comprehensive plan, land development code, building code or other land use regulations nor approval for any other regulatory permits or approvals relating to the Project, and the Issuer shall not be construed by reason of its adoption of this Resolution to make any such endorsement, finding, or recommendation or to have waived any right of the Issuer to have estopped the Issuer from asserting any rights or responsibilities it may have in such regard.

SECTION 10. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

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PASSED AND ADOPTED this 6th day of May, 2010.

CITY OF GAINESVILLE, FLORIDA

(SEAL)

By: _____
Mayor

ATTEST:

Clerk of the Commission

APPROVED AS TO FORM AND
LEGALITY

City Attorney

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EXHIBIT "A"

MEMORANDUM OF AGREEMENT

This is a Memorandum of Agreement dated as of the 6th day of May, 2010, between the CITY OF GAINESVILLE, FLORIDA, a public body corporate and politic of the State of Florida (the "Issuer"), and PROVIDENT GROUP – UF CONTINUUM L.L.C., a Florida limited liability company (together with its successors or assigns, the "Borrower").

WHEREAS, the Issuer is authorized and empowered by the provisions of the Constitution and laws of the State of Florida, including, without limitation, Chapter 166, Florida Statutes and Part II, Chapter 159, Florida Statutes, and the Charter of the Issuer (the "Act") to issue revenue bonds for the purposes of providing funds to pay all or any part of the cost of any "project" as defined in Part II of Chapter 159, Florida Statutes, and to lease or sell such projects to others, or loan the proceeds from the sale of such bonds to others to finance the acquisition, construction and equipping of such projects; and

WHEREAS, the Borrower desires to finance the acquisition, construction and equipping of certain graduate student housing facilities and related facilities (the "Project") in Gainesville, Florida.

WHEREAS, the Issuer desires to encourage the Borrower to acquire, construct, equip and operate the Project in the City of Gainesville, to promote the industrial economy of the Issuer and the State of Florida (the "State"), increase opportunities for gainful employment and purchasing power, lessen the burdens of government and otherwise contribute to the prosperity, health, education and welfare of the Issuer and the State and the inhabitants thereof; and

WHEREAS, the Issuer has initially determined that it has the authority to finance the acquisition, construction and equipping of the Project within the geographic boundaries of the Issuer, which Project shall constitute a "commercial project in an enterprise zone" and a "project" within the meaning of the Act, and to make a loan to the Borrower to enable the Borrower to finance or refinance the acquisition, construction and equipping of the Project; and

WHEREAS, the Borrower wishes to obtain assurances from the Issuer that it will finance, in whole or in part, the cost of the acquisition, construction and equipping of the Project from proceeds received from the sale of the Issuer's revenue bonds; and

WHEREAS, the Issuer, by its adoption on the date hereof of its resolution (the "Inducement Resolution"), has indicated its willingness to proceed with such financing as an inducement to the Borrower to finance or refinance the acquisition, construction and equipping of the Project; and

WHEREAS, subject to compliance with all requirements of law, including the requirements of the Act, and in accordance with the terms hereof, the Issuer desires to make all reasonable efforts to issue and to sell its revenue bonds in one or more series in an aggregate amount up to, but not in excess of, \$82,000,000 (the "Bonds"), for the purpose of financing the cost of the Project, subject and pursuant to the Inducement Resolution; and

WHEREAS, the Issuer wishes to enter into certain agreements with the Borrower with respect to the issuance of the Bonds and the acquisition, construction and equipping of the Project

NOW, THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

1. The Issuer agrees:

(a) That, if the Borrower meets all prerequisites for the issuance of the Bonds established by the Issuer, it will make all reasonable efforts to authorize the issuance and sale of the Bonds pursuant to the terms of the Constitution of the State, the Act and the Inducement Resolution and this Memorandum of Agreement; and

(b) That it will (but only to the extent of the net proceeds received from the sale of the Bonds) make a loan to the Borrower to finance or refinance the acquisition, construction and equipping of the Project, with installment payments due under a loan agreement between the Issuer and the Borrower to be at least sufficient to pay the principal of, interest on and redemption premiums, if any, with respect to the Bonds as and when the same shall become due and payable, together with all other costs and expenses connected with such financing and the operation and maintenance of the Project; and

(c) That, in the event the Issuer acquires an interest in or a mortgage on the Project, it will convey or release any such interest it retains in the Project to the Borrower upon payment by the Borrower of the amount required to retire the outstanding Bonds, and all other costs connected with such financing; and

(d) That, in the event that the cost of the Project exceeds the sum of net proceeds available from the first issuance of Bonds, and if the aggregate principal amount of Bonds issued therefor is less than \$82,000,000 the Issuer will use its reasonable efforts to issue additional bonds, subject to and in compliance with the Constitution of the State, the Act and other documents executed in connection with the original issuance of the Bonds, up to a maximum aggregate principal amount of \$82,000,000.

2. The Borrower agrees:

(a) That the Borrower will use all reasonable efforts to find one or more purchasers for the Bonds; and

(b) That the Borrower will enter into a loan agreement with the Issuer, under the terms of which the Borrower will be obligated to pay to the Issuer sums sufficient to pay the principal of, interest on and redemption premiums, if any, with respect to the Bonds when the same shall become due and payable, to operate, maintain and repair the Project at its own expense, to report annually to the Issuer the annual bond indebtedness outstanding and any other information necessary to comply with Section 218.32, Florida Statutes, and to pay all other costs incurred by the Issuer in connection with the financing of the Project, except as may be paid out of Bond proceeds or otherwise; and

(c) That, so long as this Memorandum of Agreement is in effect, all risk of loss to the Project will be borne by the Borrower.

3. All commitments of the Issuer under Paragraph 1 hereof and of the Borrower under Paragraph 2 hereof are subject to the mutual agreement of the Issuer and the Borrower as to the terms and conditions of the above-referenced loan agreement and of the Bonds and the other instruments and proceedings relating to the Bonds, and to the sale of the Bonds pursuant to such terms and conditions. It is the intent of the parties hereto that the Bonds shall be prepared in such form and shall be issued, underwritten and sold and the proceeds thereof used, all as may be mutually agreed upon by the parties in accordance with the requirements and provisions of the Constitution of the State and the Act.

4. The Borrower and the Issuer further agree as follows:

(a) The Borrower is hereby authorized, subject to the conditions set forth herein, to acquire and equip the Project, and to perform such other functions and services as may, in the opinion of the Borrower, be desirable in connection with financing or refinancing of the acquisition, construction and equipping of the Project. The Borrower may advance such funds as may be necessary to accomplish such purposes and shall be entitled to reimbursement for such expenses from, and only to the extent of, the net proceeds received from the sale of the Bonds in accordance with subparagraph (b) below.

(b) To the extent of the net proceeds derived from the sale of the Bonds, and only from such proceeds, and in accordance with the provisions of the Act and the Internal Revenue Code of 1986, as amended (the "Code"), the Borrower will be entitled to reimbursement

for all costs and expenses, direct or indirect, incurred by the Borrower after the date sixty (60) days prior to the earlier of the date hereof or the date of the adoption by the Board of Directors of the Borrower meeting the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, in the acquisition, construction and equipping of the Project. Costs and expenses for which the Borrower may claim reimbursement include, but are not limited to, costs and expenses related to acquisition, construction and equipping of the Project and all components thereof, architectural, engineering and supervisory services used with respect to the Project, acceptance fees of any trusts established in connection with the issuance and sale of the Bonds, legal, accounting and financial advisory fees and expenses, underwriting fees, filing fees and printing and engraving costs incurred in connection with the authorization, sale and issuance of the Bonds, the execution and filing of a trust agreement, if any, to be hereafter executed by the Issuer and a trustee to be named therein, and such other agreements as may be required by the initial purchaser or purchasers of the Bonds, fees, costs and expenses disbursed or incurred in connection with or related to this Memorandum of Agreement and the Bonds, the acquisition, construction and equipping of the Project, labor, services and materials used or furnished in site improvement for the site of the Project, and the equipping of the Project, and all other fees and expenses disbursed or incurred by the Borrower in connection with the Project or the Bonds and properly allowable under the Act and the Code. All such costs shall be reimbursed to the Borrower in accordance with the terms of the Act and the Code.

(c) If the net proceeds derived from the sale of the Bonds shall be less than the cost of the Project, the Borrower agrees to complete the Project at the Borrower's expense so that the condition of the Project shall be adequate for the operation of the Project as an educational facility and a commercial project in an enterprise zone. The Borrower shall be entitled to reimbursement from the Issuer for such cost overruns only to the extent of the net proceeds received from the sale of such additional bonds as the Issuer, in its sole discretion, may authorize, sell and deliver. The Issuer does not make any warranty, either expressed or implied, that the funds derived from the sale of the Bonds will be sufficient to pay all of the costs incurred in connection with the acquisition, construction and equipping of the Project or that any additional bonds will be issued or may be sold. The Borrower recognizes that the Borrower shall not be entitled to reimbursement from the Issuer for costs incurred by it in completing the Project, except to the extent of moneys otherwise available from the sale of the Bonds and any additional bonds, and agrees that the

Borrower shall not be entitled to any abatement or diminution of the loan installments payable under the loan agreement to be entered into between the Borrower and the Issuer upon the delivery of the Bonds because of such unreimbursed costs.

5. The Borrower agrees to indemnify, defend and hold harmless the Issuer, its elected and appointed officers, employees and its agents against any and all liability, loss, costs, cost overruns, expenses, charges, claims, damages and attorney's fees of whatever kind or nature, which the Issuer, its elected and appointed officers, employees or its agents may incur or sustain by reason or in consequence of the relationship existing between the Issuer and the Borrower with respect to the execution and delivery of this Memorandum of Agreement, the issuance and sale of the Bonds or the acquisition, construction and equipping of the Project. The Borrower agrees to pay directly to the Issuer's counsel the reasonable fees and expenses of the Issuer's counsel with respect to this Memorandum of Agreement or relating to the subject matter hereof. The Borrower hereby releases the Issuer, the elected and appointed officers of the Issuer, and its agents from any liability, loss, cost, expenses, charges, claims, damages and reasonable attorneys fees of whatever kind or nature which may result from the failure of the Issuer to issue the Bonds regardless of the reason therefor.

6. If for any reason the Issuer shall fail to deliver the Bonds and receive the proceeds thereof within one year after completion of the Project, if the Issuer sooner abandons its efforts to issue the Bonds in accordance with the Inducement Resolution and this Memorandum of Agreement, or if the Borrower shall terminate this Memorandum of Agreement by written notice to the Issuer, this Memorandum of Agreement shall terminate. Nothing contained herein, however, shall release the Borrower from its obligations to indemnify the Issuer in accordance with the terms of this Memorandum of Agreement.

7. This Memorandum of Agreement may be supplemented and amended from time to time by written agreement signed by both parties, and shall be superseded by the loan agreement to be executed by the Issuer and the Borrower, upon the execution thereof, to the extent the terms thereof conflict with the terms contained herein.

8. This Memorandum of Agreement, and the rights, duties and obligations of the Borrower hereunder, may be assigned by the Borrower subject to approval of the assignee by the Issuer.

9. The Borrower recognizes and agrees to the terms of the Resolution adopted by the Issuer of even date herewith. Nothing herein shall be deemed to restrict the Issuer or the State of Florida or any agency or political subdivision thereof in determining the order or priority of the issuance of bonds by the Issuer or to require the Issuer to give the Bonds priority as to issuance or as to

the time of issuance over any other bonds previously or subsequently approved by the Issuer for issuance. Also, nothing herein shall be deemed to require that the Issuer agree to submit itself to the jurisdiction of the courts of any state other than Florida or to be subject to service or process in any such other jurisdiction.

10. Execution of this Memorandum of Agreement by the Issuer shall not be construed as (i) an endorsement of the creditworthiness of the Borrower or the financial viability of the Project, (ii) a recommendation to any prospective purchaser to purchase the Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (iv) approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the portions of the Project located in the Issuer.

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IN WITNESS WHEREOF, the parties hereto have set their hands and seal as of the day and year first above written.

CITY OF GAINESVILLE, FLORIDA

(SEAL)

ATTEST:

By: _____
Mayor

Clerk of the Commission

APPROVED AS TO FORM AND LEGALITY

City Attorney

PROVIDENT GROUP – UF CONTINUUM PROPERTIES, L.L.C., a Florida limited liability company

By: Provident Resources Group Inc., its sole member

By: _____
Name: Steve E. Hicks
Title: President and Chief Executive Officer