



CITY COUNCIL

Rusty Paul, Mayor

John Paulson – District 1
Ken Dishman – District 2
VACANT – District 3
Gabriel Sterling – District 4
Tibby DeJulio – District 5
Andy Bauman – District 6

Tuesday, May 3, 2016

Public Facilities Authority

6:30 PM

SPECIAL CALLED MEETING OF THE CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY (THE “AUTHORITY”)

City Council Chambers

CALL TO ORDER – Mayor Rusty Paul

ROLL CALL – City Clerk

APPROVAL OF MEETING AGENDA

1. **PFA16-05** Add or remove items from agenda

NEW BUSINESS

2. **PFA16-06** Approval of Authority minutes from the April 19, 2016 meeting
3. **PFA16-07** Resolution to approve forms of: (a) Contingent Payment Agreement by and between the City of Sandy Springs Public Facilities Authority (“Authority”) and Sandy Springs City Center, LLC (“Developer”); and (b) Restrictions on Leasing Agreement by and between the Authority and the Developer; and other matters, all as contemplated by that certain Real Estate Acquisition Agreement between the City and Developer concerning City Springs, approved by City Council on August 18, 2015
(Presentation led by City Manager, John McDonough)

OTHER BUSINESS

4. **PFA16-08** None at this time



ADJOURNMENT

5. **PFA16-09** Adjournment

RESOLUTION OF THE CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY TO APPROVE FORMS OF: (A) CONTINGENT PAYMENT AGREEMENT BY AND BETWEEN THE CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY ("AUTHORITY") AND SANDY SPRINGS CITY CENTER, LLC ("DEVELOPER"); AND (B) RESTRICTIONS ON LEASING AGREEMENT BY AND BETWEEN THE AUTHORITY AND THE DEVELOPER; AND OTHER MATTERS, ALL AS CONTEMPLATED BY THAT CERTAIN REAL ESTATE ACQUISITION AGREEMENT BETWEEN THE CITY AND DEVELOPER CONCERNING CITY SPRINGS, APPROVED BY CITY COUNCIL ON AUGUST 18, 2015.

WHEREAS, in June 2014, Council for the City of Sandy Springs ("City") selected a team consisting of Carter & Associates, LLC and Selig Enterprises, Inc. ("Carter/Selig") to work with the City to develop the residential and retail components of the City Springs project ("Project"); and

WHEREAS, to develop the residential and retail components of the Project, Carter/Selig formed Sandy Springs City Center, LLC, a limited liability Company ("Developer"); and

WHEREAS, City Council authorized the City Manager to negotiate an agreement with the Developer to outline the basic terms of the Developer's interest in and use and operation of the Project; and

WHEREAS, pursuant to City Council's authorization, the Developer, the City Manager, City consultants and the City Attorney negotiated the basic terms of the Developer's interest in and use and operation of the Project in the form of a letter of intent/term sheet ("LOI"); and

WHEREAS, the negotiated LOI was approved by City Council on March 3, 2015; and

WHEREAS, on August 18, 2015, City Council approved the terms of a formal Real Estate Acquisition Agreement between the Developer and the City ("Acquisition Agreement") based on the terms of the LOI; and

WHEREAS, the approved Acquisition Agreement contemplated that several additional agreements would be entered between the City and the Developer in connection with the Project; and

WHEREAS, four (4) such additional agreements were approved by Council on April 19, 2016 including: the Master Lease Agreement by and between the Authority, as Lessor, and Developer, as Lessee; the Declaration of Parking Easements and Cost Sharing Agreement made by the Authority with consent by Developer; Master Declaration of Covenants, Conditions and Restrictions made by the Authority; and the City Improvements Completion and Escrow Agreement by and among Developer, the City, and Chicago Title Insurance Company; and

WHEREAS, other agreements contemplated by the Acquisition Agreement and required for closing the transaction with the Developer include a Contingent Payment Agreement and a Restrictions on Leasing Agreement; and

WHEREAS, in accordance with the provisions of the Acquisition Agreement, the basic terms of the Contingent Payment Agreement and the Restrictions on Leasing Agreement are currently being negotiated by the parties; and

WHEREAS, the City currently owns the property on which the Project is located, but it will be conveyed to the City of Sandy Springs Public Facilities Authority ("Authority") prior to conveyance to the Developer; therefore, the documents are made between the Authority and the Developer; and

WHEREAS, because the City currently owns the property on which the Project is located, it is appropriate for the City Manager and the City Attorney to participate in negotiations with the Developer and to approve documents related to the Project; and

WHEREAS, the Contingent Payment Agreement contains certain terms and conditions governing calculation and payment terms and conditions relating to contingent payments to be made to the Authority by the Developer, a draft of which is attached hereto; and

WHEREAS, the Restrictions on Leasing Agreement contains certain terms and conditions regarding marketing of the outparcel located at the southeastern corner of the Project and grants to the Developer certain marketing rights commencing on the effective date of the Acquisition Agreement and expiring two (2) years following the issuance of a building permit for the performing arts center, a draft of which is attached hereto; and

WHEREAS, while the Authority's Attorney and the Developer believe the Contingent Payment Agreement and the Restrictions on Leasing Agreement are in substantially final form and resolve all substantive issues between the parties relating thereto, minor revisions may be required; and

WHEREAS, the Acquisition Agreement also anticipates an agreement with the Developer containing terms and conditions for the licensing of certain intellectual property to be used in connection with development of the Project; and

WHEREAS, the Acquisition Agreement also anticipates additional documents needed to coordinate construction at the Project including, but not limited to, a construction staging agreement (referenced as a Right of Entry Agreement in the Acquisition Agreement) and various other documents granting easements to enable the Project to move forward as contemplated; and

WHEREAS, the Authority desires to approve the Contingent Payment Agreement and the Restrictions on Leasing Agreement, subject to such revisions as may be agreed by the parties and approved by the Chairman of the Authority and the Authority's attorney; and

WHEREAS, the Authority desires to authorize the Chairman of the Authority and the Authority's attorney to work with the City Manager and City Attorney to negotiate and execute an agreement with the Developer for the licensing of certain intellectual property to be used in connection with development of the Project; and

WHEREAS, the Authority desires to authorize the Chairman of the Authority and the Authority's attorney to work with the City Manager and City Attorney to negotiate such documents as may be necessary to coordinate construction of the Project including, but not limited to, a construction staging agreement and other documents granting various easements to enable the Project to move forward as contemplated;

NOW, THEREFORE, BE IT RESOLVED by the City of Sandy Springs Public Facilities Authority at its meeting on May 3, 2016, as follows:

1. The Chairman and Secretary of the Authority are hereby authorized to work with the City Manager and the City Attorney to negotiate and finalize the Contingent Payment Agreement approved in the basic form attached to this resolution, subject to such revisions as may be agreed by the parties and approved by the Chairman of the Authority and the Authority's attorney;

2. The Chairman and Secretary of the Authority are hereby authorized to work with the City Manager and the City Attorney to negotiate and finalize the Restrictions on Leasing Agreement the basic form attached to this resolution, subject to such revisions as may be agreed by the parties and approved by the Chairman of the Authority and the Authority's attorney;

3. The Chairman and Secretary of the Authority are hereby authorized to execute the Contingent Payment Agreement and the Restrictions on Leasing Agreement;

4. Following execution of the Contingent Payment Agreement and Restrictions on Leasing Agreement, the Authority's attorney shall report back to Authority any changes, additions, or deletions made to such documents subsequent to adoption of this resolution;

5. The Chairman of the Authority and the Authority's attorney are hereby authorized to work with the City Manager and City Attorney to negotiate an agreement with the Developer for the licensing of certain intellectual property to be used in connection with development of the Project;

6. The Chairman of the Authority and the Authority's attorney are hereby authorized to work with the City Manager and City Attorney to coordinate construction of the Project with the Developer including, but not limited to, negotiating construction staging and easement documents to effectuate the same;

7. The Chairman of the Authority and the Authority's attorney are hereby authorized to take any and all other steps which may be necessary to effectuate the intent of this resolution.

RESOLVED this the 3rd day of May, 2016.

Approved:

Russell K. Paul, Chairman

Attest:

Michael D. Casey, Secretary

(SEAL)

CONTINGENT PAYMENT AGREEMENT

THIS CONTINGENT PAYMENT RIGHT AGREEMENT (the “Agreement”), is dated as of _____, 2015 between SANDY SPRINGS CITY CENTER, LLC, a Georgia limited liability company (the “Developer”), and **THE CITY OF SANDY SPRINGS GEORGIA¹**, a corporate and body politic of the State of Georgia (the “City”).

RECITALS

A. Pursuant to that certain Acquisition Agreement between City and Developer dated as of _____, 2015 (the “Acquisition Agreement”), Developer is selling, assigning and transferring to Buyer the North Parcel and South Developer Parcel (as defined therein) and certain parking rights (collectively, the “Property”) as described therein in consideration of the Purchase Price as set forth in Section 2.2 of the Acquisition Agreement. Capitalized terms not defined in this Agreement shall have the meanings ascribed to them in the Acquisition Agreement.

B. As a condition precedent to the purchase and sale of the Property as contemplated in Section 6.7 of the Acquisition Agreement, City and Developer have agreed that City shall be entitled to receive additional consideration in the form of a portion of certain cash flows generated from the Property following the closing of the purchase and sale under the Acquisition Agreement as more fully set forth herein.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

- (a) “Acquisition Agreement” shall have the meaning set forth in the Recitals.
- (b) “Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.
- (c) “Business Day” shall mean any day of the week other than (i) Saturday and Sunday, (ii) a day on which banking institutions in Atlanta, Georgia are obligated or authorized by law or executive action to be closed to the transaction of normal banking business, or (iii) a day on which governmental functions in Atlanta, Georgia are interrupted because of extraordinary events such as hurricanes, blizzards, power outages or acts of terrorism.
- (d) “Cash Flow” shall mean the sum of: (i) Net Operating Income; (ii) Net Sales Proceeds; and (iii) Other Proceeds (each as defined below) derived from the Property.
- (e) “Contingent Payments” shall have the meaning set forth at Section 2.1.

¹ Further discussion is warranted as to whether this Agreement should run in favor of the Authority rather than the City.

- (f) “Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general partnership, manager, or managing member interests, by contract or otherwise. “Controlling” and “Controlled” shall have correlative meanings. Without limiting the generality of the foregoing, a manager or managing member of a limited liability company shall be deemed to Control such limited liability company, and a general partner of a limited partnership shall be deemed to Control such limited partnership.
- (g) “Developer IRR” shall mean, as of any given day, the monthly compounded rate at which (a) the present value of all distributions of Cash Flow made by any Person on or before such day, equals (b) the present value of all Invested Capital (as defined below) made in such Person on or before such day, which calculation shall be determined based on financial statements prepared in accordance with generally accepted accounting principles, consistently applied. For all relevant purposes, Developer IRR shall be calculated using the Microsoft Excel XIRR function; provided, however, if such program or such function is not available, City and Developer shall agree in writing upon a mutually acceptable software program for making such calculation.
- (h) “Invested Capital” shall mean, at any time, the sum of the following amounts (without duplication): (i) all reasonable and customary costs incurred by Developer and its Affiliates in connection with the acquisition of the Property including, without limitation, the purchase price, due diligence expenses (including, without limitation, the cost of the cost of engineering, environmental, geotechnical, zoning and other due diligence reports), appraisals and market studies, reasonable attorneys’ fees actually incurred, brokerage fees, title insurance and survey costs, and closing costs; (ii) all reasonable and customary costs incurred by Developer and its Affiliates from time to time in connection with any financing or refinancing of the Property including, without limitation, commitment fees, loan origination fees, appraisal costs, attorneys’ fees, brokerage fees, title insurance and survey costs, recording fees and other closing costs; (iii) all reasonable and customary costs incurred by Developer and its Affiliates from time to time in connection with the ownership, leasing, management, development, repair or improvement of the Property including, without limitation, operating expenses, tenant improvement costs, leasing commissions, management fees and expenses, condominium common charges and assessments, debt service and other costs relating to any financing directly or indirectly secured by the Property, real estate taxes and insurance; (iv) amounts held from time to time in escrows and reserves reasonably established by Developer and its Affiliates or required by any third party lender; and (v) all reasonable and customary costs incurred by Developer and its Affiliates in connection with any sale of any portion of the Property including, without limitation, attorneys’ fees, brokerage fees, marketing expenses, transfer taxes and recording costs and other closing costs.
- (i) “Net Operating Income” shall mean all of Developer’s income from the operation and management of the Property after deducting operating expenses therefrom, but prior to the deduction of income taxes, depreciation, other non-cash items and principal and interest payments on all of Developer’s debt in connection with the Property.
- (j) “Net Sales Proceeds” shall mean the proceeds actually received by Developer as a result of the sale of a portion of the Property net of the following: (i) all amounts paid to third party lenders holding loans secured by any portion of the Property or by direct or indirect equity interests in the Property including, without limitation, principal, interest and prepayment or yield maintenance fees; and (ii) all reasonable and customary expenses actually incurred by Developer in connection with such sale including, without limitation, transfer taxes, recording fees, brokerage commissions, appraisal costs, attorneys’ fees. In connection with any sale in which some or all of the consideration consists of a purchase money note or other debt obligation or

other non-cash consideration, "Net Sale Proceeds" shall not include such amounts unless and until they are received by Developer in cash.

- (k) "Other Proceeds" shall mean proceeds other than Net Operating Income of Net Sales Proceeds derived from the Property including, without limitation, proceeds from business interruption, rental interruption and use and occupancy insurance, and income and proceeds from judgments, settlements or other resolutions of disputes with respect to the ownership, management and use of the Property (after deducting therefrom all costs incurred in the adjustment or collection of such amounts and in connection with restoration of any portion of the Property following a loss or casualty thereto).
- (l) "Person" shall mean any individual, estate, trust, general or limited partnership, limited liability company, limited liability partnership, corporation, governmental agency or other legal entity and any unincorporated association.

Section 1.2 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof and (d) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

ARTICLE 2 CONTINGENT PAYMENT RIGHT

Section 2.1 Contingent Payments. From and after the date hereof, City shall be entitled to receive contingent payments ("Contingent Payments") from the Cash Flow of Developer or its successors on or before March 31 of each calendar year in connection with the immediately preceding calendar year and which shall be calculated as follows:

- (a) When Developer IRR exceeds twenty percent (20%) but does not exceed twenty five percent (25%), the City will receive ten percent (10%) of all distributed Cash Flow.
- (b) When Developer IRR exceeds twenty five percent (25%), the City will receive fifteen percent (15%) of all distributed Cash Flow.

Section 2.2 Termination of Agreement. Developer's obligation to make Contingent Payments under this Agreement shall terminate upon the occurrence of any of the following events with respect to the Property and the payment of any Contingent Payment obligations accruing as of such event: (i) the conveyance of the Property, whether by foreclosure, deed-in-lieu of foreclosure, or the assignment of the Developer's ownership interest to any third party mortgage lender or its designee; (ii) condemnation of the Property or such substantial portion of the Property that City determines the remainder cannot be operated in a commercially reasonable manner; or (iii) the destruction of all of the improvements located on the Property or such a substantial portion thereof that City determines that the remainder thereof

cannot continue to be operated in a commercially reasonable manner, and Developer determines in its sole discretion not to rebuild such improvements.

ARTICLE 3 COVENANTS

Section 3.1 Transactions with Affiliates. Developer will not, and will not permit any of its subsidiaries to, sell, transfer, lease or otherwise dispose (including pursuant to a merger) any property or assets to, or purchase, lease or otherwise acquire (including pursuant to a merger) any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except in the ordinary course of business at prices and on terms and conditions not less favorable to the City or such subsidiary than could be obtained on an arm's length basis from unrelated third parties, provided that Developer has provided to City at least twenty (20) Business Days prior written notice of such potential transaction describing in reasonable detail the terms and provisions thereof and City has not notified the Developer that it objects to the arm's length basis of such potential transaction within ten (10) Business Days of its receipt of such written notice from the Borrower.

Section 3.2 Management Fees. Without the prior written consent of the City, the Developer shall not pay any management fees or similar compensation to Developer or any of its Affiliates other than as may be specifically approved in writing by City from time to time.

Section 3.3 Financial Statements. Developer shall furnish to Seller as soon as possible, but in no event later than sixty (60) days after the end of each fiscal year, financial information regarding Developer consisting of consolidated balance sheets of Developer as of the end of such year and related statements of income and cash flows of Developer for such fiscal year, prepared in conformity with generally accepted accounting principles, consistently applied.

Section 3.4 Exculpation. Notwithstanding anything appearing to the contrary in this Agreement, no direct or indirect partner, member or shareholder of Developer (or any officer, director, agent, member, manager, personal representative, trustee or employee of any such direct or indirect partner, member or shareholder) shall be personally liable for the performance of the obligations of, or in respect of any claims against, Developer arising under this Agreement. No personal judgment shall be sought or obtained against any such partner, member, shareholder, officer, director, agent, manager, personal representative, trustee or employee in connection with this Agreement.

ARTICLE 4 MISCELLANEOUS

Section 4.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated herein, and it supersedes all prior discussions, understandings or agreements between the parties.

Section 4.2 Binding On Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 4.3 Waiver. The excuse or waiver of the performance by a party of any obligation of the other party under this Agreement shall only be effective if evidenced by a written statement signed by the party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by City or Developer of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

Section 4.4 Governing Law.

(a) This Agreement shall be construed and the rights and obligations of City and Developer hereunder determined in accordance with the internal laws of the State of Georgia without regard to the principles of choice of law or conflicts of law.

(b) In recognition of the benefits of having any disputes with respect to this Agreement resolved by an experienced and expert person, City and Developer hereby agree that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by any party hereto on or with respect to this Agreement or which in any way relates, directly or indirectly, to this Agreement or any event, transaction, or occurrence arising out of or in any way connected with this Agreement or the Property, or the dealings of the parties with respect thereto, shall be tried only by a court and not by a jury. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION, OR PROCEEDING.**

(c) Each of City and the Developer: (i) agrees that any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof or any documents delivered in connection herewith shall be brought only in the courts of State of Georgia or the United States District Court for the Northern District of Georgia; (ii) irrevocably submits itself to the exclusive jurisdiction of the such courts for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement or the subject matter hereof or any documents delivered in connection herewith; (ii) waives, and agrees not to assert, by way of motion, as a defense or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court; and (iii) consents to service of process by registered mail at the address to which notices are to be given if personal service is not with the exercise of reasonable efforts possible.

The provisions of this Section 4.4 shall survive the Closing or termination of this Agreement.

Section 4.5 Counterparts. This Agreement may be executed in any number of counterparts and it shall be sufficient that the signature of each party appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement.

Section 4.6 Notices. All notices or other communications required or provided to be sent by either party shall be in writing and shall be sent: (i) by United States Postal Service, certified mail, return receipt requested, (ii) by any nationally known overnight delivery service for next day delivery or (iii) by delivery in person. All notices shall be deemed to have been given upon receipt provided that such receipt occurs on or before 6:00 p.m. eastern time on a Business Day; otherwise, such notice shall be deemed to have been given on the next succeeding Business Day. All notices shall be addressed to the parties at the addresses below:

To City: City of Sandy Springs, Georgia
7840 Roswell Road, Building 500
Sandy Springs, Georgia 30350
Attention: John McDonough, City Manager

and City of Sandy Springs, Georgia
7840 Roswell Road, Building 500
Sandy Springs, Georgia 30350
Attention: Wendell Willard, City Attorney

and with a copy to: DLA Piper LLP (US)
One Atlantic Center
1201 West Peachtree Street, Suite 2800
Atlanta, Georgia 30309-3450
Attention: M. Maxine Hicks, Esq.

To Developer: Sandy Springs City Center, LLC
c/o Carter and Associates, LLC
171 17th Street NW, Suite 1200
Atlanta, Georgia 30363
Attention: Conor McNally

with a copy to: Kilpatrick Townsend & Stockton LLP
Suite 2800, 1100 Peachtree Street NE
Atlanta, Georgia 30309-4528
Attention: M. Andrew Kauss, Esq.

Any address or name specified above may be changed by notice given to the addressee by the other party in accordance with this Section 4.6. The inability to deliver notice because of a changed address of which no notice was given as provided above, or because of rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept. Any notice to be given by any party hereto may be given by the counsel for such party.

Section 4.7 Attorneys' Fees. Should either party employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including attorneys' fees, expended or incurred in connection therewith. Notwithstanding anything contained herein to the contrary, (i) "reasonable attorneys' fees" are not, and shall not be, statutory attorneys' fees under the Official Code of Georgia Annotated, (ii) if, under any circumstances, a party is required hereunder to pay any or all of the other party's attorneys' fees and expenses, the party responsible for payment shall be responsible only for actual legal fees and out of pocket expenses actually incurred by the other party at customary hourly rates for the work done, and (iii) the party responsible for payment shall not be liable under any circumstances for additional attorneys' fees or expenses under Official Code of Georgia Annotated Section 13-1-11. The provisions of this Section 4.7 shall survive the Closing or termination of this Agreement.

Section 4.8 Time Periods. Any reference in this Agreement to the time for the performance of obligations or elapsed time shall mean consecutive calendar days, months, or years, as applicable. In the event the time for performance of any obligation hereunder expires on a day that is not a Business Day, the time for performance shall be extended to the next Business Day.

Section 4.9 Modification of Agreement. This Agreement may not be amended or modified except by a written agreement signed by both City and Developer that expressly states that it is intended to amend this Agreement.

Section 4.10 Further Instruments. Each party, promptly upon the request of the other, shall execute and have acknowledged and delivered to the other any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement and which are consistent with the provisions of this Agreement.

Section 4.11 Descriptive Headings; Word Meaning. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions of this Agreement. Words such as "herein", "hereinafter",

“hereof” and “hereunder” when used in reference to this Agreement, refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. The word “including” shall not be restrictive and shall be interpreted as if followed by the words “without limitation.”

Section 4.12 Time of the Essence. Time is of the essence of this Agreement and all covenants and deadlines hereunder. Without limiting the foregoing, Developer and City hereby confirm their intention and agreement that time shall be of the essence of each and every provision of this Agreement, notwithstanding any subsequent modification or extension of any date or time period that is provided for under this Agreement. The agreement of Developer and City that time is of the essence of each and every provision of this Agreement shall not be waived or modified by any conduct of the parties, and the agreement of Developer and City that time is of the essence of each and every provision of this Agreement may only be modified or waived by the express written agreement of Developer and City that time shall not be of the essence with respect to a particular date or time period, or any modification or extension thereof, which is provided under this Agreement.

Section 4.13 Construction of Agreement. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties, it being recognized that both Developer and City have contributed substantially and materially to the preparation of this Agreement.

Section 4.14 Waivers; Amendments. No failure or delay by any party in exercising any right or power under this Agreement operates as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any party therefrom is effective unless the same shall be set forth in a written document signed by the parties affected thereby.

Section 4.15 Costs and Expenses. Each party to this Agreement shall bear all of its legal, accounting, investment banking, and other expenses incurred by it or on its behalf in connection preparation, negotiation, execution, delivery and administration of this Agreement, the consummation of the transactions contemplated by this Agreement and the enforcement of their rights hereunder.

Section 4.16 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement is effective when (a) it has been executed by the Administrative Agent and (b) the Administrative Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement may be by facsimile.

Section 4.17 Severability. If any one or more of the provisions contained in this Agreement are held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall negotiate in good faith to replace the invalid, illegal or unenforceable provisions with valid, legal and enforceable provisions that,

from an economic perspective, create an effect that most nearly and fairly approaches the effect of the invalid, illegal or unenforceable provisions.

Section 4.18 **Assignment.** City may assign this Agreement to an Affiliate of City without the further consent of Developer. Without the prior written consent of City in its sole discretion, Developer shall not, directly or indirectly, assign this Agreement or any of its rights hereunder. Any attempted assignment in violation hereof shall, at the election of City, be of no force or effect and shall constitute a default by Developer. Notwithstanding the foregoing, Developer may assign this Agreement, or any of its rights hereunder, without the City's prior written consent, to one or more Affiliate of Developer, so long as such Affiliate is Controlled by Carter and Associates, LLC. Subject to the foregoing limitations, the covenants and agreements in this Agreement contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, successors, and assigns, provided that in no event shall this Agreement be binding upon (i) any third party who acquires any portion of the Property from Developer in any purchase and sale transaction or (ii) any third party mortgage lender (or its designee) which acquires any portion of the Property, whether by foreclosure, deed-in-lieu of foreclosure, or the assignment of the Developer's ownership interest in the Property.

Section 4.19 **Confidentiality.** Except as otherwise required by law or court order, or as authorized or permitted by the City, Developer shall not disclose the terms of this Agreement. Developer will take reasonable measures to avoid any unintentional or inadvertent disclosure of any confidential information to any unauthorized person by its employees, agents, or attorneys. Developer will not use any confidential information for Developer's own gain, except as specifically permitted by this Agreement. The provisions of this Section 4.19 shall survive the expiration or termination of this Agreement.

Section 4.20 **No Third Party Beneficiaries.** The provisions of this Agreement are solely for the purpose of defining the rights and obligations of City and Developer, and no other person or entity shall have any right, power, title or interest by way of subrogation or otherwise, in and to the rights, powers, title and provisions of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, City and Developer hereto have executed this Agreement as of the date first written above.

CITY:

**THE CITY OF SANDY SPRINGS,
GEORGIA**, a public body politic and corporate
of the State of Georgia

By: _____
Name: _____
Title: _____
Date: _____, 2015

DEVELOPER:

SANDY SPRINGS CITY CENTER, LLC, a
Georgia limited liability company

By: Carter and Associates, LLC,
its Managing Member

Name: _____
Title: _____
Date: _____, 2015

RESTRICTIONS ON LEASING AGREEMENT

RESTRICTIONS ON LEASING AGREEMENT (“Agreement”) is made as of the _____ day of _____, 2015, by and between **SANDY SPRINGS CITY CENTER, LLC**, a Georgia limited liability company (“Developer”) and **CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY**, a public body politic and corporate of the State of Georgia (the “Authority”).

RECITALS

A. Authority owns certain real property more particularly described in Exhibit A attached hereto (the “Outparcel”).

B. The City of Sandy Springs, the predecessor-in-interest of Authority, and Developer have entered into that certain Acquisition Agreement (the “Acquisition Agreement”) dated _____, 2015, for the purchase and sale of the certain real estate (collectively, the “Developer Property”) within the proposed “Sandy Springs City Springs” mixed-use project to be located in Sandy Springs, Georgia (the “Project”), which Project is to include, among other things, retail, office, residential and municipal facilities, as well as a performing arts center (the “Performing Arts Center”).

C. Because of unique aspects of Developer’s proposed construction on the Developer Property (“Developer’s Project”), Developer desires to (i) coordinate the marketing of the Outparcel for lease on behalf of Authority for retail development and use; and (ii) retain certain rights to enter into a transaction with Authority for the sale or lease of any portion of the Outparcel by Authority for retail development and use, if Authority elects to enter into any such transaction in its sole and absolute discretion.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, Developer and Authority agree as follows:

1. Exclusive Right to Market Outparcel. In the event that Authority intends, in its sole and absolute discretion, to market the Outparcel for retail development and use (“Retail Purposes”), which use shall specifically exclude restaurants, bars, coffee shops, bakeries, food markets and retail uses attendant thereto, Authority shall enter into an agreement with Developer or its affiliate substantially in accordance with that certain “Exclusive Leasing Agency Agreement” attached at Exhibit B hereto.

2. Exclusive Rights Regarding the Sale or Lease of Outparcel. In the event that Authority elects, in its sole and absolute discretion, to sell or lease either or both of the Outparcels for Retail Purposes, Authority shall make the Outparcel exclusively available for sale or lease by Developer as applicable. The terms in connection with any such sale or lease (e.g., purchase price or rent) shall be determined by Authority in its sole and absolute discretion.

3. No Use of Outparcel for Residential Purposes. Authority agrees not to sell or lease the Outparcel for residential purposes.

4. Term of Agreement. The term of this Agreement (the “Term”) and any obligations of Authority described at Sections 1 through 3 hereunder shall commence on the date of this Agreement and shall continue until the occurrence of any of the following:

(a) two (2) years following the issuance of a building permit for the Performing Arts Center;

(b) Developer’s sale or assignment of all or a material portion of its property interests in the Project to an party not controlled, directly or indirectly, by Carter and Associates, LLC;

(c) Authority’s sale or condemnation of all or a material portion of the Property, or a total or material partial destruction of the Property if Authority elects not to restore the Property;

(d) Developer’s refusal to enter into an Exclusive Leasing Agency Agreement in substantial accordance with Exhibit B hereto;

(e) a default by Developer arising from the occurrence of any of the following: (i) Developer ceases doing business as a going concern, (ii) the termination or suspension of any required real estate brokerage or other required license of Developer, (iii) Developer makes an assignment for the benefit of creditors, (iv) Developer admits in writing its inability to pay its debts as they become due, (v) Developer is the subject of a voluntary or involuntary petition in bankruptcy, (vi) Developer is adjudicated as bankrupt or insolvent, (vii) Developer files or has filed against it any petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or dissolution under any present or future state or federal bankruptcy or insolvency law, or a receiver or liquidator is appointed for all or a substantial part of Leasing Agent’s assets or properties; or (viii) illegal or fraudulent conduct by Developer; or

(f) a default by Developer following any of the following events: (i) Developer’s gross negligence or willful misconduct in connection with the services to be performed by Developer hereunder; (ii) the conviction of Developer or any of Developer’s principals for, or admission of, a felony offense; (iii) the indictment of Developer or any of Developer’s principals for a criminal offense involving or relating to the business of the Authority or the services to be performed by Developer hereunder; (iv) Developer’s act of fraud, dishonesty or embezzlement with respect to the business of the Authority or the services to be performed by Developer hereunder; (v) Developer’s willful misconduct in breach of this Agreement; or (vi) any material breach by Developer of this Agreement and the expiration of any applicable cure right without a cure thereof.

5. Memorandum of Agreement. A memorandum of this Agreement shall be signed and notarized by both parties and recorded in the official real estate records of Fulton County, Georgia immediately following the recordation of the grant deed conveying fee title to the Outparcel to Buyer.

6. Miscellaneous Provisions.

(a) Notices. Whenever any notice, demand or request is required or permitted hereunder, such notice, demand or request shall be in writing and shall be deemed to have been properly given or served (i) when delivered in fact to the other proper party (and including all individuals that are required to receive copies), or (ii) three (3) days after deposited in the United States mail, with adequate postage prepaid and sent by registered or certified mail with return receipt requested, to the addresses set out below or at such other addresses as are specified by written notice so given in accordance herewith, or (iii) the day after deposited with Federal Express, Express Mail or other overnight delivery service, for next day delivery addressed to the appropriate party at the addresses set forth below:

To Authority: City of Sandy Springs Public Facilities Authority
7840 Roswell Road, Building 500
Sandy Springs, Georgia 30350
Attention: John McDonough, City Manager
jmcdonough@sandyspringsga.gov

and The City of Sandy Springs, Georgia
7840 Roswell Road, Building 500
Sandy Springs, Georgia 30350
Attention: Wendell Willard, City Attorney
wwillard@sandyspringsga.gov

To Developer: Sandy Springs City Center, LLC
c/o Carter and Associates, LLC
171 17th Street NW, Suite 1200
Atlanta, Georgia 30363
Attention: Conor McNally
cmcnally@carterusa.com

with a copy to: Kilpatrick Townsend & Stockton LLP
Suite 2800, 1100 Peachtree Street NE
Atlanta, Georgia 30309-4528
Attention: M. Andrew Kauss, Esq.
akauss@kilpatricktownsend.com

(b) Authority. Each of Authority and Developer represents and warrants to the other that the person executing this Agreement on behalf of such party has the full right, power and authority to enter into and execute this Agreement on such party's behalf.

(c) Entire Agreement. This Agreement including the Exhibits hereto represents the entire understanding between Authority and Developer with respect to the subject matter hereof and supersedes all other written or oral agreements heretofore made by or on behalf of Authority and Developer with respect to or relating to the subject matter hereof. This

Agreement may be changed only by an agreement in writing signed by the authorized representatives of the parties hereto.

(d) No Assignment. Developer's rights pursuant to this Agreement shall not inure to any third party successor or assignee; provided, however, that Developer's rights may be assigned to an affiliate of Developer controlled directly or indirectly at all times by Carter and Associates, LLC.

(e) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF GEORGIA WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAW PRINCIPLES. Each party expressly consents and submits to jurisdiction in the federal or state courts located in Georgia.

(f) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

(g) Severability. If any provision hereof is declared invalid, illegal or unenforceable by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability, so that the remainder of that provision and all remaining provisions of this Agreement will continue in full force and effect.

(h) Interpretation. This Agreement shall be fairly interpreted in accordance with its terms and conditions; no term or condition of this Agreement shall be strictly interpreted in favor or against either party to this Agreement.

(i) No Waiver. No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof.

(j) No Third Party Beneficiary. No provision of this Agreement shall be construed to provide or create any third party beneficiary right or any other right of any kind in any third party.

(k) Attorneys' Fees. In any action or proceeding which Buyer, any subsequent Authority or Developer brings to enforce its respective rights hereunder or to enforce any judgment granted in connection therewith, the unsuccessful party shall pay all costs incurred by the prevailing party (whether or not the action or proceeding is pursued to judgment), including reasonable attorneys' fees fixed by the court, and said costs and attorneys' fees shall be a part of the judgment in said action. For purposes of this Agreement a party shall be considered the "prevailing party" to the extent that (i) such party initiated the litigation and substantially obtained the relief which it sought) whether by judgment, voluntary agreement or action of the other party, trial or alternative dispute resolution process), (ii) such party did not initiate the litigation and did not receive judgment in its favor, but the party receiving the judgment did not substantially obtain the relief which it sought, or (iii) the other party to the litigation withdrew its claim or action without having substantially received the relief which it was seeking.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment the day and year first above written.

DEVELOPER:

Signed, sealed and delivered in the presence of: SANDY SPRINGS CITY CENTER, LLC, a Georgia limited liability company

Witness

By: Carter and Associates, LLC, a Georgia limited liability company, its Managing Member

Notary Public

By: _____

My Commission Expires:

Name: _____

Title: _____

[NOTARY SEAL]

AUTHORITY:

Signed, sealed and delivered in the presence of: CITY OF SANDY SPRINGS PUBLIC FACILITIES AUTHORITY, a political subdivision of the State of Georgia

Witness

By: _____

Notary Public

Name: _____

Title: _____

My Commission Expires:

[NOTARY SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

EXCLUSIVE LEASING AGENCY AGREEMENT