



CITY COUNCIL AGENDA ITEM

TO: Mayor & City Council

DATE: December 11, 2014

FROM: John McDonough, City Manager

AGENDA ITEM: A Memorandum of Agreement (MOA) Regarding Financing of the Windsor Parkway Realignment Project

MEETING DATE: For Submission onto the December 16, 2014, City Council Regular Meeting Agenda

BACKGROUND INFORMATION: (Attach additional pages if necessary)

See attached:

Memorandum
MOA

CITY MANAGER APPROVAL: _____

PLACED ON AGENDA FOR: **12/16/2014**

CITY ATTORNEY APPROVAL REQUIRED: () YES () NO

CITY ATTORNEY APPROVAL: _____



To: Honorable Mayor and Members of City Council

From: Wendell Willard, City Attorney

Date: December 12, 2014 for Submission onto the December 16, 2014 City Council Meeting Agenda

Subject: Memoranda of Agreement regarding the financing of the Windsor Parkway realignment project

Background:

At the July 16, 2013 meeting, City Council approved an application from JLB Partners to rezone property on the west side of Roswell Road, approximately 135 feet north of the intersection of Windsor Parkway and Roswell Road.

At the same meeting, City Council adopted a resolution approving a proposal to realign the Windsor Parkway/Roswell Road intersection and a proposed budget for the project. The budget sources were outlined by priority and by the amounts necessary to fund the Project: (1) impact fees; (2) issuance of bonds for the Gateway Project for the benefit of JLB Chastain LLC ("JLB Phase I"), JLB Chastain Phase II LLC ("JLB Phase II") and Sandy Springs Gateway Owner, LLC ("Gateway Owner" and, together with JLB Phase I and JLB Phase II, the "Gateway Project Companies") (contingent on their approval by the City of Sandy Springs Development Authority); (3) Capital Contingency Project Fund; (4) reallocation of funds for the T-0019 Roswell Road Streetscape Project; and (5) reallocation of funds for the T-0019 Morgan Falls Road project.

On August 28, 2014, the City of Sandy Springs Development Authority approved taxable revenue bond financing for the Gateway Project of up to \$169,000,000. This will result in a tax savings of approximately \$6,300,000 over the 10 years of the agreement.

Discussion:

Agreements are needed to be approved among the City of Sandy Springs, the City of Sandy Springs Development Authority and each of the Gateway Project Companies to outline how the tax savings for this project will be allocated between the Gateway Project Companies and the City's Windsor Parkway/Roswell Road realignment project.

The agreements provide that the Gateway Project Companies shall make contract payments to the Authority in the following amounts:

- (a) For the First Year, an amount equal to 57.5% of the Savings Amount for the JLB Phase I and JLB Phase II Projects and 41.5% of the Savings Amount for the Gateway Owner Project;
- (b) For the Second and Third Years, an amount equal to 100% of the Savings Amount for each year; and
- (c) For the Fourth through Tenth Years, an amount equal to 66 2/3% of the Savings Amount for each year.

Upon receipt of each Contract Payment, the Authority shall pay an amount equal to such Contract Payment to the City for the purposes of the Windsor Parkway/Roswell Road realignment project.

These agreements will result in an allocation of approximately \$4,700,000 for the Windsor Parkway/Roswell Road realignment project and other infrastructure improvements in the vicinity of the Gateway Project.

Recommendation:

Staff recommends approval of the attached memoranda.

Attachments:

Memoranda of Agreement

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this “Agreement”) is dated as of December ____, 2014, and is entered into by and between the CITY OF SANDY SPRINGS DEVELOPMENT AUTHORITY, a public body corporate and politic of the State of Georgia (the “Authority”), the CITY OF SANDY SPRINGS, GEORGIA, a municipal corporation created and existing under the laws of the State of Georgia (the “City”), and SANDY SPRINGS GATEWAY OWNER, LLC, a Delaware limited liability company (the “Company”), in order to evidence the agreements of the respective parties hereto.

WHEREAS, the Authority is an instrumentality of the State of Georgia and a public body corporate and politic and a development authority duly created by the Development Authorities Law of the State of Georgia, O.C.G.A. § 36-62-1, *et seq.*, as amended (collectively, the “Act”);

WHEREAS, the parties have undertaken to develop an ownership structure which will facilitate the acquisition, construction and installation of a mixed-use residential development and economic development project under O.C.G.A. § 36-62-2(6)(N) in Sandy Springs, Georgia (the “Project”), which Project is to be owned by the Authority and leased to the Company pursuant to a Lease Agreement, dated as of December 1, 2014 (the “Lease Agreement”), which will inure to the economic benefit of the citizens of the City;

WHEREAS, the Company estimates that the costs of the Project will equal approximately \$39,000,000 and that the Project will result in the creation of approximately 138 new permanent employment opportunities and 259 part time permanent jobs;

WHEREAS, to induce and facilitate the Project, the Authority has made available to the Company taxable revenue bond financing of up to \$39,000,000 (the “Bond Financing”);

WHEREAS, pursuant to a Memorandum of Agreement Regarding Lease Structure and Valuation of Leasehold Interest, dated August 28, 2014 (the “MOA”), among the Authority, the Company and the Fulton County Board of Assessors (the “Board”), an executed copy of which is attached hereto as Exhibit A, during each year beginning the year following the completion date of the Project, which is estimated to be 2017, the Leasehold Interest (as defined in the MOA) of the Company in the Project will be subject to taxation by the applicable governmental jurisdictions at the fair market value of the Leasehold Interest in that year as determined by the Board in accordance with the MOA;

WHEREAS, in connection with the Project, JLB Partners, LP filed an application with the City to rezone certain property on the west side of Roswell Road, approximately 135 feet north of the intersection of Windsor Parkway and Roswell Road from A-1 conditional to MIX to allow for the acquisition, construction and installation of the Project;

WHEREAS, on July 16, 2013, the City Council of Sandy Springs adopted a resolution (the “City Resolution”) approving a proposal to realign the Windsor Parkway/Roswell Road

intersection (the “Intersection Realignment Project”) based on safety enhancement, traffic operation improvements, and cost efficiency to the City and its taxpayers;

WHEREAS, it is estimated that the Intersection Realignment Project will cost approximately \$4,500,000;

WHEREAS, the City Resolution included a proposed budget for the Intersection Realignment Project;

WHEREAS, the Intersection Realignment Project will directly benefit the Project and is an economic inducement to the Company to locate the Project in the City;

WHEREAS, the Authority has found and determined, and does hereby find and determine, that the Project constitutes a lawful and valid public purpose and will further the public purpose intended to be served by the Act; and

WHEREAS, in consideration of the above mentioned benefit to the Project derived from the Intersection Realignment Project, the Company has agreed to make certain payments, which are more fully described below.

NOW, THEREFORE, in consideration of the foregoing premises, the parties hereto agree as follows:

Section 1. Representations and Warranties.

The City makes the following representations and warranties:

(a) The City is a municipal corporation duly organized and lawfully operating under the Constitution and laws of the State. Under the Constitution and laws of the State, the City is authorized to execute, deliver and perform its obligations under this Agreement. The City has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a valid, binding and enforceable obligation of the City.

(b) The City has determined that the Intersection Realignment Project is in the public interest.

(c) Except as previously disclosed to the Authority and the Company in writing, no approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery and performance of this Agreement by the City, except as shall have been obtained as of the date hereof.

(d) The authorization, execution, delivery and performance by the City of this Agreement do not violate the laws or Constitution of the State and do not constitute a breach of, or a default under, any existing resolution or ordinance, court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the City, threatened against or affecting the City (or, to the knowledge of the City, any meritorious basis therefor) (i) attempting to limit, enjoin or otherwise restrict or prevent the City from undertaking and completing the Intersection Realignment Project, (ii) contesting or questioning the existence of the City or the titles of the present officers of the City to their offices or (iii) wherein an unfavorable decision, ruling or finding would (A) adversely affect the enforceability of this Agreement or (B) materially adversely affect the transactions contemplated by this Agreement.

The Authority makes the following representations and warranties:

(a) The Authority is a public body corporate and politic duly created and validly existing pursuant to the laws of the State. Under the laws of the State, the Authority is authorized to execute, deliver and perform its obligations under this Agreement. The Authority has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a valid, binding and enforceable obligation of the Authority.

(b) The Authority has determined that the Project constitutes a lawful and valid public purpose and will further the public purpose intended to be served by the Act.

(c) Except as previously disclosed to the City and Company in writing, no approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery and performance of this Agreement by the Authority, except as shall have been obtained as of the date hereof.

(d) The authorization, execution, delivery and performance by the Authority of this Agreement do not violate the laws of the State and do not constitute a breach of, or a default under, any existing resolution or ordinance, court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.

(e) There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Authority threatened, against or affecting the Authority in any court or before any governmental authority or arbitration board or tribunal which is reasonably anticipated to materially and adversely affect the transactions contemplated by this Agreement or which is reasonably anticipated to adversely affect the validity or enforceability of this Agreement or the ability of the Authority to perform its obligations under any of the foregoing.

The Company makes the following representations and warranties:

(a) The Company is a Delaware limited liability company, which is duly organized, existing and in good standing under the laws of the State of Delaware and authorized to transact business under the laws of the State of Georgia, has the power to enter into this Agreement and to perform and observe its obligations contained herein in accordance with the terms hereof, and

has, by proper action, been duly authorized to execute, deliver and perform this Agreement in accordance with the terms hereof.

(b) There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Company threatened, against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal which is reasonably anticipated to materially and adversely affect the transactions contemplated by this Agreement or which is reasonably anticipated to adversely affect the validity or enforceability of this Agreement or the ability of the Company to perform its obligations under any of the foregoing.

(c) The execution and delivery by the Company of this Agreement and the compliance by the Company with all of the provisions hereof and the consummation of the transactions contemplated hereby (A)(i) are within the corporate power of the Company, (ii) will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under, its Articles of Organization, its operating agreement, or any commitment, agreement or instrument of whatever nature to which the Company is a party or by which it may be bound, or to which any of its properties may be subject, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its activities or properties, or (iii) result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement, and (B) have been duly authorized by all necessary action on the part of the Company.

(d) Neither the Company nor any of its business or properties, nor any relationship between the Company and any other person, nor any circumstance in connection with the execution, delivery and performance by the Company of this Agreement, is such as to require the consent, approval or authorization of, or the filing, registration or qualification with, any governmental authority on the part of the Company, except for development, construction and operational permits required in connection with the Project.

(e) This Agreement is a legal, valid and binding obligation of the Company enforceable in accordance with its terms, except to the extent the enforceability hereof may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity, and (ii) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights heretofore or hereinafter enacted to the extent constitutionally applicable.

Section 2. Intersection Realignment Project.

The Company acknowledges that the willingness of the City to acquire, construct and install the Intersection Realignment Project at this time depends on the obligation of the Company to make payments pursuant to the provisions of this Agreement.

Section 3. Company Payments.

The methodology for determining the fair market value of the Leasehold Interest of the

Company is set forth in the MOA, which provides that the fair market value of the Leasehold Interest of the Company in the Project shall be equal to the “applicable percentage” (for purposes of the remainder of this Agreement, the “applicable percentage” in the MOA shall be referred to as the “Payment Percentage”) for each year as set forth below, multiplied by the fair market value of the fee interest of the Project in such year. The related “Savings Percentage” set forth below is the result of subtracting the Payment Percentage from 100%. The savings provided by the application of the leasehold valuation methodology set forth in the MOA shall be equal to the Savings Percentage for such year multiplied by the assessed value of the Project for such year (40% of the fair market value of the fee interest of the Project) and thereafter multiplied by the millage rates established by Fulton County and the City (the “Savings Amount”).

The Payment Percentage and Savings Percentage in each year during this ten (10)-year period will be as follows:

	<u>Payment Percentage</u>	<u>Savings Percentage</u>
First Year	50%	50%
Second Year	55%	45%
Third Year	60%	40%
Fourth Year	65%	35%
Fifth Year	70%	30%
Sixth Year	75%	25%
Seventh Year	80%	20%
Eighth Year	85%	15%
Ninth Year	90%	10%
Tenth Year	95%	5%

The “First Year” shall be the year commencing on January 1 of the year immediately following the Completion Date (as defined in the MOA). Following the Tenth Year, the Leasehold Interest of the Company will be subject to taxation at 100% of the fair market value of the fee interest.

For example, for the First Year, if the fair market value of the fee interest of the Project for such year equals \$50,000,000 and the applicable millage rate is .033864, the Savings Amount shall equal \$338,640 ($(\$50,000,000 \times .40) \times .033864$ [mills] $\times .5$ [50% Savings Percentage]).

Commencing in the First Year, on or before the date set for the payment of *ad valorem* property taxes in the County generally for such year, the Company shall make payments to the Authority (the “Contract Payments”) in the following amounts:

- (a) For the First Year, an amount equal to 41.5% of the Savings Amount;
- (b) For the Second and Third Years, an amount equal to 100% of the Savings Amount; and
- (c) For the Fourth through Tenth Years, an amount equal to 66 2/3% of the Savings Amount.

Promptly after the Fulton County Tax Commissioner mails tax bills for each year, the Authority shall provide the Company with an invoice for the amount of the Contract Payment due for such year. Each Contract Payment shall be paid to the Authority at the notice address set forth in Section 7(c) below. Upon receipt of each Contract Payment, the Authority shall promptly pay an amount equal to such Contract Payment to the City. The preceding agreement between the Authority and the City shall constitute an intergovernmental agreement as provided in Section 3, below.

Section 4. Intergovernmental Agreement.

This Agreement shall also constitute an intergovernmental agreement under Georgia Constitution Art. IX, Sec. III, Para. I between the Authority and the City. Such intergovernmental agreement is subject to the 50-year term limit contained in such provision of the Georgia Constitution, but shall expire earlier upon its complete performance.

Section 5. Effective Date of this Agreement; Duration of Term.

This Agreement shall become effective as of the date of the closing of the Bond Financing and the interests created by this Agreement shall then begin, and, subject to the other provisions of this Agreement, shall expire on the later of (a) December 31, 2026, or (b) the date the Company Payments have been paid in full.

Section 6. Agreement by City.

Promptly following the date of closing of the Bond Financing, the City shall commence construction of the Intersection Realignment Project, and shall diligently thereafter pursue the Intersection Realignment Project to completion. In the event the City has not substantially completed the Intersection Realignment Project by December 31, 2015, the Company shall have the option, in its sole discretion, to terminate this Agreement by providing the Authority and the City with a written termination notice no later than January 31, 2016. In the event the Company exercises such termination option, the Company shall not be liable for the payment of any Contract Payments under Section 3, above, and this Agreement shall terminate as to all parties without any further liability on the part of any party. The parties hereby agree and acknowledge that Intersection Realignment Project includes the temporary traffic signal construction performed by Brooks-Berry-Haynie & Associates, Inc. which was initially paid by the Company. The City shall reimburse the Company for these initial costs to the extent they relate to the Intersection Realignment Project. All expenditures required to be made for construction unrelated to the Intersection Realignment Project shall be paid by the Company.

Notwithstanding anything herein to the contrary, in the event that there is a delay in the construction commencement date or the construction completion date (collectively, the "Deadlines") caused by events and circumstances beyond the control of the City, and the City has shown diligence in attempting to timely meet such Deadlines, the Company shall agree to extend such Deadlines to accommodate such events and circumstances.

Section 7. Miscellaneous.

(a) Assignment by the Company. The Company hereby agrees that all rights and benefits of the Company under this Agreement shall be transferred and assigned by the Company to any party to which the Lease Agreement is transferred and assigned and that such transfer and assignment of the Lease Agreement shall be contingent upon the transfer and assignment hereof to such party. Upon any such assignment, the assignee shall be responsible for payment of all Contract Payments hereunder and the Company shall have no further obligations under this Agreement. Any such assignment shall not require the consent of the City or Authority, except to the extent the Authority's consent is required under the terms of the Lease Agreement.

(b) Estoppel Certificates. Upon ten business days written request of the Company, the Authority and the City will provide a statement to (a) any lender providing financing for the Project or (b) a proposed assignee of the Lease Agreement concerning (i) whether a default exists under this Agreement, and if so specifying the nature of such default; (ii) whether this Agreement has been amended, and if so, specifying the amendments; and (iii) any other matter concerning this Agreement reasonably requested by such holder or proposed assignee.

(c) Notices. Any notice required to be given by any party pursuant to this Agreement, shall be in writing and shall be deemed to have been properly given, rendered or made only if personally delivered, or if sent by Federal Express or other comparable commercial overnight delivery service, addressed to each other party at the addresses set forth below (or to such other address as the City or the Company may designate to each other from time to time by written notice), and shall be deemed to have been given, rendered or made on the day so delivered or on the first business day after having been deposited with the courier service:

If to the City: City of Sandy Springs, Georgia
7840 Roswell Road, Building 500
Sandy Springs, Georgia 30350
Attention: John F. McDonough

with a copy to: Law Office of Wendell K. Willard
7840 Roswell Road
Building 300, Suite 330
Sandy Springs, Georgia 30350
Attention: Wendell K. Willard, Esq.

and to: Gray Pannell & Woodward LLP
3060 Peachtree Road, Suite 730
Atlanta, Georgia 30305
Attention: James R. Woodward, Esq.

If to the Authority: City of Sandy Springs Development Authority
7840 Roswell Road, Building 500
Sandy Springs, Georgia 30350
Attention: Chairman

with a copy to: Law Office of Wendell K. Willard

7840 Roswell Road
Building 300, Suite 330
Sandy Springs, Georgia 30350
Attention: Wendell K. Willard, Esq.

If to the Company: Sandy Springs Gateway Owner, LLC
3060 Peachtree Road
Suite 200
Atlanta, Georgia 30305
Attention: John Graham, Manager

with a copy to: Hartman Simons & Wood LLP
6400 Powers Ferry Road NW
Suite 400
Atlanta, Georgia 30339
Attention: William L. Lovell, Esq.

(d) No Partnership or Agency. No partnership or agency relationship between or among the parties shall be created as a result of this Agreement.

(e) Governing Law; Jurisdiction and Venue. The transactions contemplated hereunder and the validity and effect of this Agreement are exclusively governed by, and shall be exclusively construed and enforced in accordance with, the laws of the State of Georgia, except for the state's conflict of law rules. The Company consents to jurisdiction over it and to venue in Fulton County, Georgia.

(f) Amendments. Any amendments, deletions, additions, changes or corrections hereto must be in writing executed by the parties hereto.

(g) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

(h) Counterparts. This Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

(i) No Personal Liability of Representatives of Public Bodies. No official, member, director, officer, agent, or employee of the Authority or the City shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations, and warranties, as appropriate, of such public bodies. Without limitation, and without implication to the contrary, all parties hereto waive and release any and all claims against each such official, member, director, officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of such public bodies into this Agreement.

(j) No Personal Liability of Representatives of Company. No official, member,

manager, director, officer, agent, or employee of the Company shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations, and warranties, as appropriate, of such entity. Without limitation, and without implication to the contrary, all parties hereto waive and release any and all claims against each such official, member, manager, director, officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of such entity into this Agreement.

- (k) Time is of the Essence. Time is of the essence of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement and caused it to be delivered as of the following effective date: December _____, 2014.

CITY:

CITY OF SANDY SPRINGS, GEORGIA

By: _____
Mayor

Attest: _____
Clerk

(SEAL)

AUTHORITY:

**CITY OF SANDY SPRINGS DEVELOPMENT
AUTHORITY, GEORGIA**

By: _____
Chairman

Attest: _____
Secretary

COMPANY:

SANDY SPRINGS GATEWAY OWNER, LLC

By: _____

Name: John Graham

Title: Manager

EXHIBIT A

Memorandum of Agreement Regarding Lease Structure
and Valuation of Leasehold Interest

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this “Agreement”) is dated as of December ____, 2014, and is entered into by and between the CITY OF SANDY SPRINGS DEVELOPMENT AUTHORITY, a public body corporate and politic of the State of Georgia (the “Authority”), the CITY OF SANDY SPRINGS, GEORGIA, a municipal corporation created and existing under the laws of the State of Georgia (the “City”), and JLB CHASTAIN LLC, a Georgia limited liability company (the “Company”), in order to evidence the agreements of the respective parties hereto.

WHEREAS, the Authority is an instrumentality of the State of Georgia and a public body corporate and politic and a development authority duly created by the Development Authorities Law of the State of Georgia, O.C.G.A. § 36-62-1, *et seq.*, as amended (collectively, the “Act”);

WHEREAS, the parties have undertaken to develop an ownership structure which will facilitate the acquisition, construction and installation of a mixed-use residential development and economic development project under O.C.G.A. § 36-62-2(6)(N) in Sandy Springs, Georgia (the “Project”), which Project is to be owned by the Authority and leased to the Company pursuant to a Lease Agreement, dated as of December 1, 2014 (the “Lease Agreement”), which will inure to the economic benefit of the citizens of the City;

WHEREAS, the Company estimates that the costs of the Project will equal approximately \$65,000,000 and that the Project will result in the creation of approximately 12 new permanent employment opportunities and 250 construction jobs;

WHEREAS, to induce and facilitate the Project, the Authority has made available to the Company taxable revenue bond financing of up to \$65,000,000 (the “Bond Financing”);

WHEREAS, pursuant to a Memorandum of Agreement Regarding Lease Structure and Valuation of Leasehold Interest, dated August 28, 2014 (the “MOA”), among the Authority, the Company and the Fulton County Board of Assessors (the “Board”), an executed copy of which is attached hereto as Exhibit A, during each year beginning the year following the completion date of the Project, which is estimated to be 2017, the Leasehold Interest (as defined in the MOA) of the Company in the Project will be subject to taxation by the applicable governmental jurisdictions at the fair market value of the Leasehold Interest in that year as determined by the Board in accordance with the MOA;

WHEREAS, in connection with the Project, JLB Partners, LP filed an application with the City to rezone certain property on the west side of Roswell Road, approximately 135 feet north of the intersection of Windsor Parkway and Roswell Road from A-1 conditional to MIX to allow for the acquisition, construction and installation of the Project;

WHEREAS, on July 16, 2013, the City Council of Sandy Springs adopted a resolution (the “City Resolution”) approving a proposal to realign the Windsor Parkway/Roswell Road

intersection (the “Intersection Realignment Project”) based on safety enhancement, traffic operation improvements, and cost efficiency to the City and its taxpayers;

WHEREAS, it is estimated that the Intersection Realignment Project will cost approximately \$4,500,000;

WHEREAS, the City Resolution included a proposed budget for the Intersection Realignment Project;

WHEREAS, the Intersection Realignment Project will directly benefit the Project and is an economic inducement to the Company to locate the Project in the City;

WHEREAS, the Authority has found and determined, and does hereby find and determine, that the Project constitutes a lawful and valid public purpose and will further the public purpose intended to be served by the Act; and

WHEREAS, in consideration of the above mentioned benefit to the Project derived from the Intersection Realignment Project, the Company has agreed to make certain payments, which are more fully described below.

NOW, THEREFORE, in consideration of the foregoing premises, the parties hereto agree as follows:

Section 1. Representations and Warranties.

The City makes the following representations and warranties:

(a) The City is a municipal corporation duly organized and lawfully operating under the Constitution and laws of the State. Under the Constitution and laws of the State, the City is authorized to execute, deliver and perform its obligations under this Agreement. The City has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a valid, binding and enforceable obligation of the City.

(b) The City has determined that the Intersection Realignment Project is in the public interest.

(c) Except as previously disclosed to the Authority and the Company in writing, no approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery and performance of this Agreement by the City, except as shall have been obtained as of the date hereof.

(d) The authorization, execution, delivery and performance by the City of this Agreement do not violate the laws or Constitution of the State and do not constitute a breach of, or a default under, any existing resolution or ordinance, court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the City, threatened against or affecting the City (or, to the knowledge of the City, any meritorious basis therefor) (i) attempting to limit, enjoin or otherwise restrict or prevent the City from undertaking and completing the Intersection Realignment Project, (ii) contesting or questioning the existence of the City or the titles of the present officers of the City to their offices or (iii) wherein an unfavorable decision, ruling or finding would (A) adversely affect the enforceability of this Agreement or (B) materially adversely affect the transactions contemplated by this Agreement.

The Authority makes the following representations and warranties:

(a) The Authority is a public body corporate and politic duly created and validly existing pursuant to the laws of the State. Under the laws of the State, the Authority is authorized to execute, deliver and perform its obligations under this Agreement. The Authority has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a valid, binding and enforceable obligation of the Authority.

(b) The Authority has determined that the Project constitutes a lawful and valid public purpose and will further the public purpose intended to be served by the Act.

(c) Except as previously disclosed to the City and Company in writing, no approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery and performance of this Agreement by the Authority, except as shall have been obtained as of the date hereof.

(d) The authorization, execution, delivery and performance by the Authority of this Agreement do not violate the laws of the State and do not constitute a breach of, or a default under, any existing resolution or ordinance, court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.

(e) There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Authority threatened, against or affecting the Authority in any court or before any governmental authority or arbitration board or tribunal which is reasonably anticipated to materially and adversely affect the transactions contemplated by this Agreement or which is reasonably anticipated to adversely affect the validity or enforceability of this Agreement or the ability of the Authority to perform its obligations under any of the foregoing.

The Company makes the following representations and warranties:

(a) The Company is a Georgia limited liability company, which is duly organized, existing and in good standing under the laws of the State of Georgia and authorized to transact business under the laws of the State of Georgia, has the power to enter into this Agreement and to perform and observe its obligations contained herein in accordance with the terms hereof, and

has, by proper action, been duly authorized to execute, deliver and perform this Agreement in accordance with the terms hereof.

(b) There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Company threatened, against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal which is reasonably anticipated to materially and adversely affect the transactions contemplated by this Agreement or which is reasonably anticipated to adversely affect the validity or enforceability of this Agreement or the ability of the Company to perform its obligations under any of the foregoing.

(c) The execution and delivery by the Company of this Agreement and the compliance by the Company with all of the provisions hereof and the consummation of the transactions contemplated hereby (A)(i) are within the corporate power of the Company, (ii) will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under, its Articles of Organization, its operating agreement, or any commitment, agreement or instrument of whatever nature to which the Company is a party or by which it may be bound, or to which any of its properties may be subject, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its activities or properties, or (iii) result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement, and (B) have been duly authorized by all necessary action on the part of the Company.

(d) Neither the Company nor any of its business or properties, nor any relationship between the Company and any other person, nor any circumstance in connection with the execution, delivery and performance by the Company of this Agreement, is such as to require the consent, approval or authorization of, or the filing, registration or qualification with, any governmental authority on the part of the Company, except for development, construction and operational permits required in connection with the Project.

(e) This Agreement is a legal, valid and binding obligation of the Company enforceable in accordance with its terms, except to the extent the enforceability hereof may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity, and (ii) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights heretofore or hereinafter enacted to the extent constitutionally applicable.

Section 2. Intersection Realignment Project.

The Company acknowledges that the willingness of the City to acquire, construct and install the Intersection Realignment Project at this time depends on the obligation of the Company to make payments pursuant to the provisions of this Agreement.

Section 3. Company Payments.

The methodology for determining the fair market value of the Leasehold Interest of the

Company is set forth in the MOA, which provides that the fair market value of the Leasehold Interest of the Company in the Project shall be equal to the “applicable percentage” (for purposes of the remainder of this Agreement, the “applicable percentage” in the MOA shall be referred to as the “Payment Percentage”) for each year as set forth below, multiplied by the fair market value of the fee interest of the Project in such year. The related “Savings Percentage” set forth below is the result of subtracting the Payment Percentage from 100%. The savings provided by the application of the leasehold valuation methodology set forth in the MOA shall be equal to the Savings Percentage for such year multiplied by the assessed value of the Project for such year (40% of the fair market value of the fee interest of the Project) and thereafter multiplied by the millage rates established by Fulton County and the City (the “Savings Amount”).

The Payment Percentage and Savings Percentage in each year during this ten (10)-year period will be as follows:

	<u>Payment Percentage</u>	<u>Savings Percentage</u>
First Year	50%	50%
Second Year	55%	45%
Third Year	60%	40%
Fourth Year	65%	35%
Fifth Year	70%	30%
Sixth Year	75%	25%
Seventh Year	80%	20%
Eighth Year	85%	15%
Ninth Year	90%	10%
Tenth Year	95%	5%

The “First Year” shall be the year commencing on January 1 of the year immediately following the Completion Date (as defined in the MOA). Following the Tenth Year, the Leasehold Interest of the Company will be subject to taxation at 100% of the fair market value of the fee interest.

For example, for the First Year, if the fair market value of the fee interest of the Project for such year equals \$50,000,000 and the applicable millage rate is .033864, the Savings Amount shall equal \$338,640 ($(\$50,000,000 \times .40) \times .033864$ [mills] $\times .5$ [50% Savings Percentage]).

Commencing in the First Year, on or before the date set for the payment of *ad valorem* property taxes in the County generally for such year, the Company shall make payments to the Authority (the “Contract Payments”) in the following amounts:

- (a) For the First Year, an amount equal to 57.5% of the Savings Amount;
- (b) For the Second and Third Years, an amount equal to 100% of the Savings Amount; and
- (c) For the Fourth through Tenth Years, an amount equal to 66 2/3% of the Savings Amount.

Promptly after the Fulton County Tax Commissioner mails tax bills for each year, the Authority shall provide the Company with an invoice for the amount of the Contract Payment due for such year. Each Contract Payment shall be paid to the Authority at the notice address set forth in Section 7(c) below. Upon receipt of each Contract Payment, the Authority shall promptly pay an amount equal to such Contract Payment to the City. The preceding agreement between the Authority and the City shall constitute an intergovernmental agreement as provided in Section 3, below.

Section 4. Intergovernmental Agreement.

This Agreement shall also constitute an intergovernmental agreement under Georgia Constitution Art. IX, Sec. III, Para. I between the Authority and the City. Such intergovernmental agreement is subject to the 50-year term limit contained in such provision of the Georgia Constitution, but shall expire earlier upon its complete performance.

Section 5. Effective Date of this Agreement; Duration of Term.

This Agreement shall become effective as of the date of the closing of the Bond Financing and the interests created by this Agreement shall then begin, and, subject to the other provisions of this Agreement, shall expire on the later of (a) December 31, 2026, or (b) the date the Company Payments have been paid in full.

Section 6. Agreement by City.

Promptly following the date of closing of the Bond Financing, the City shall commence construction of the Intersection Realignment Project, and shall diligently thereafter pursue the Intersection Realignment Project to completion. In the event the City has not substantially completed the Intersection Realignment Project by December 31, 2015, the Company shall have the option, in its sole discretion, to terminate this Agreement by providing the Authority and the City with a written termination notice no later than January 31, 2016. In the event the Company exercises such termination option, the Company shall not be liable for the payment of any Contract Payments under Section 3, above, and this Agreement shall terminate as to all parties without any further liability on the part of any party.

Notwithstanding anything herein to the contrary, in the event that there is a delay in the construction commencement date or the construction completion date (collectively, the "Deadlines") caused by events and circumstances beyond the control of the City, and the City has shown diligence in attempting to timely meet such Deadlines, the Company shall agree to extend such Deadlines to accommodate such events and circumstances.

Section 7. Miscellaneous.

(a) Assignment by the Company. The Company hereby agrees that all rights and benefits of the Company under this Agreement shall be transferred and assigned by the Company to any party to which the Lease Agreement is transferred and assigned and that such transfer and assignment of the Lease Agreement shall be contingent upon the transfer and assignment hereof to such party. Upon any such assignment, the assignee shall be responsible for payment of all

Contract Payments hereunder and the Company shall have no further obligations under this Agreement. Any such assignment shall not require the consent of the City or Authority, except to the extent the Authority's consent is required under the terms of the Lease Agreement.

(b) Estoppel Certificates. Upon ten business days written request of the Company, the Authority and the City will provide a statement to (a) any lender providing financing for the Project or (b) a proposed assignee of the Lease Agreement concerning (i) whether a default exists under this Agreement, and if so specifying the nature of such default; (ii) whether this Agreement has been amended, and if so, specifying the amendments; and (iii) any other matter concerning this Agreement reasonably requested by such holder or proposed assignee.

(c) Notices. Any notice required to be given by any party pursuant to this Agreement, shall be in writing and shall be deemed to have been properly given, rendered or made only if personally delivered, or if sent by Federal Express or other comparable commercial overnight delivery service, addressed to each other party at the addresses set forth below (or to such other address as the City or the Company may designate to each other from time to time by written notice), and shall be deemed to have been given, rendered or made on the day so delivered or on the first business day after having been deposited with the courier service:

If to the City: City of Sandy Springs, Georgia
7840 Roswell Road, Building 500
Sandy Springs, Georgia 30350
Attention: John F. McDonough

with a copy to: Law Office of Wendell K. Willard
7840 Roswell Road
Building 300, Suite 330
Sandy Springs, Georgia 30350
Attention: Wendell K. Willard, Esq.

and to: Gray Pannell & Woodward LLP
3060 Peachtree Road, Suite 730
Atlanta, Georgia 30305
Attention: James R. Woodward, Esq.

If to the Authority: City of Sandy Springs Development Authority
7840 Roswell Road, Building 500
Sandy Springs, Georgia 30350
Attention: Chairman

with a copy to: Law Office of Wendell K. Willard
7840 Roswell Road
Building 300, Suite 330
Sandy Springs, Georgia 30350
Attention: Wendell K. Willard, Esq.

If to the Company: JLB Chastain LLC

3890 West Northwest Highway
7th Floor
Dallas, Texas 75220
Attention: Bay W. Miltenberger

with a copy to: JLB Realty LLC
3715 Northside Parkway, N.W.
Suite 4-200
Atlanta, Georgia 30327
Attention: Hudson Hooks

with a copy to: Geary, Porter & Donovan, P.C.
16475 Dallas Parkway
Suite 400
Addison, Texas 75001-6837
Attention: David M. Tatum, Esq.

(d) No Partnership or Agency. No partnership or agency relationship between or among the parties shall be created as a result of this Agreement.

(e) Governing Law; Jurisdiction and Venue. The transactions contemplated hereunder and the validity and effect of this Agreement are exclusively governed by, and shall be exclusively construed and enforced in accordance with, the laws of the State of Georgia, except for the state's conflict of law rules. The Company consents to jurisdiction over it and to venue in Fulton County, Georgia.

(f) Amendments. Any amendments, deletions, additions, changes or corrections hereto must be in writing executed by the parties hereto.

(g) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

(h) Counterparts. This Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

(i) No Personal Liability of Representatives of Public Bodies. No official, member, director, officer, agent, or employee of the Authority or the City shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations, and warranties, as appropriate, of such public bodies. Without limitation, and without implication to the contrary, all parties hereto waive and release any and all claims against each such official, member, director, officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of such public bodies into this Agreement.

(j) No Personal Liability of Representatives of Company. No official, member,

manager, director, officer, agent, or employee of the Company shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations, and warranties, as appropriate, of such entity. Without limitation, and without implication to the contrary, all parties hereto waive and release any and all claims against each such official, member, manager, director, officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of such entity into this Agreement.

- (k) Time is of the Essence. Time is of the essence of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement and caused it to be delivered as of the following effective date: December _____, 2014.

CITY:

CITY OF SANDY SPRINGS, GEORGIA

By: _____
Mayor

Attest: _____
Clerk

(SEAL)

AUTHORITY:

**CITY OF SANDY SPRINGS DEVELOPMENT
AUTHORITY, GEORGIA**

By: _____
Chairman

Attest: _____
Secretary

COMPANY:

JLB CHASTAIN LLC

By: JLB Chastain Management L.P.,
a Georgia limited partnership,
its Managing Member

By: JLB Chastain GP LLC,
a Georgia limited liability company,
its General Partner

By: _____
Bay W. Miltenberger, Manager

EXHIBIT A

Memorandum of Agreement Regarding Lease Structure
and Valuation of Leasehold Interest

DRAFT DATE: 12/12/14

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (this “Agreement”) is dated as of December ____, 2014, and is entered into by and between the CITY OF SANDY SPRINGS DEVELOPMENT AUTHORITY, a public body corporate and politic of the State of Georgia (the “Authority”), the CITY OF SANDY SPRINGS, GEORGIA, a municipal corporation created and existing under the laws of the State of Georgia (the “City”), and JLB CHASTAIN PHASE II LLC, a Georgia limited liability company (the “Company”), in order to evidence the agreements of the respective parties hereto.

WHEREAS, the Authority is an instrumentality of the State of Georgia and a public body corporate and politic and a development authority duly created by the Development Authorities Law of the State of Georgia, O.C.G.A. § 36-62-1, *et seq.*, as amended (collectively, the “Act”);

WHEREAS, the parties have undertaken to develop an ownership structure which will facilitate the acquisition, construction and installation of a mixed-use residential development and economic development project under O.C.G.A. § 36-62-2(6)(N) in Sandy Springs, Georgia (the “Project”), which Project is to be owned by the Authority and leased to the Company pursuant to a Lease Agreement, dated as of December 1, 2014 (the “Lease Agreement”), which will inure to the economic benefit of the citizens of the City;

WHEREAS, the Company estimates that the costs of the Project will equal approximately \$65,000,000 and that the Project will result in the creation of approximately 12 new permanent employment opportunities and 250 construction jobs;

WHEREAS, to induce and facilitate the Project, the Authority has made available to the Company taxable revenue bond financing of up to \$65,000,000 (the “Bond Financing”);

WHEREAS, pursuant to a Memorandum of Agreement Regarding Lease Structure and Valuation of Leasehold Interest, dated August 28, 2014 (the “MOA”), among the Authority, the Company and the Fulton County Board of Assessors (the “Board”), an executed copy of which is attached hereto as Exhibit A, during each year beginning the year following the completion date of the Project, which is estimated to be 2019, the Leasehold Interest (as defined in the MOA) of the Company in the Project will be subject to taxation by the applicable governmental jurisdictions at the fair market value of the Leasehold Interest in that year as determined by the Board in accordance with the MOA;

WHEREAS, in connection with the Project, JLB Partners, LP filed an application with the City to rezone certain property on the west side of Roswell Road, approximately 135 feet north of the intersection of Windsor Parkway and Roswell Road from A-1 conditional to MIX to allow for the acquisition, construction and installation of the Project;

WHEREAS, on July 16, 2013, the City Council of Sandy Springs adopted a resolution (the “City Resolution”) approving a proposal to realign the Windsor Parkway/Roswell Road

intersection (the “Intersection Realignment Project”) based on safety enhancement, traffic operation improvements, and cost efficiency to the City and its taxpayers;

WHEREAS, it is estimated that the Intersection Realignment Project will cost approximately \$4,500,000;

WHEREAS, the City Resolution included a proposed budget for the Intersection Realignment Project;

WHEREAS, the Intersection Realignment Project will directly benefit the Project and is an economic inducement to the Company to locate the Project in the City;

WHEREAS, the Authority has found and determined, and does hereby find and determine, that the Project constitutes a lawful and valid public purpose and will further the public purpose intended to be served by the Act; and

WHEREAS, in consideration of the above mentioned benefit to the Project derived from the Intersection Realignment Project, the Company has agreed to make certain payments, which are more fully described below.

NOW, THEREFORE, in consideration of the foregoing premises, the parties hereto agree as follows:

Section 1. Representations and Warranties.

The City makes the following representations and warranties:

(a) The City is a municipal corporation duly organized and lawfully operating under the Constitution and laws of the State. Under the Constitution and laws of the State, the City is authorized to execute, deliver and perform its obligations under this Agreement. The City has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a valid, binding and enforceable obligation of the City.

(b) The City has determined that the Intersection Realignment Project is in the public interest.

(c) Except as previously disclosed to the Authority and the Company in writing, no approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery and performance of this Agreement by the City, except as shall have been obtained as of the date hereof.

(d) The authorization, execution, delivery and performance by the City of this Agreement do not violate the laws or Constitution of the State and do not constitute a breach of, or a default under, any existing resolution or ordinance, court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the City, threatened against or affecting the City (or, to the knowledge of the City, any meritorious basis therefor) (i) attempting to limit, enjoin or otherwise restrict or prevent the City from undertaking and completing the Intersection Realignment Project, (ii) contesting or questioning the existence of the City or the titles of the present officers of the City to their offices or (iii) wherein an unfavorable decision, ruling or finding would (A) adversely affect the enforceability of this Agreement or (B) materially adversely affect the transactions contemplated by this Agreement.

The Authority makes the following representations and warranties:

(a) The Authority is a public body corporate and politic duly created and validly existing pursuant to the laws of the State. Under the laws of the State, the Authority is authorized to execute, deliver and perform its obligations under this Agreement. The Authority has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a valid, binding and enforceable obligation of the Authority.

(b) The Authority has determined that the Project constitutes a lawful and valid public purpose and will further the public purpose intended to be served by the Act.

(c) Except as previously disclosed to the City and Company in writing, no approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery and performance of this Agreement by the Authority, except as shall have been obtained as of the date hereof.

(d) The authorization, execution, delivery and performance by the Authority of this Agreement do not violate the laws of the State and do not constitute a breach of, or a default under, any existing resolution or ordinance, court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.

(e) There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Authority threatened, against or affecting the Authority in any court or before any governmental authority or arbitration board or tribunal which is reasonably anticipated to materially and adversely affect the transactions contemplated by this Agreement or which is reasonably anticipated to adversely affect the validity or enforceability of this Agreement or the ability of the Authority to perform its obligations under any of the foregoing.

The Company makes the following representations and warranties:

(a) The Company is a Georgia limited liability company, which is duly organized, existing and in good standing under the laws of the State of Georgia and authorized to transact business under the laws of the State of Georgia, has the power to enter into this Agreement and to perform and observe its obligations contained herein in accordance with the terms hereof, and

has, by proper action, been duly authorized to execute, deliver and perform this Agreement in accordance with the terms hereof.

(b) There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the Company threatened, against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal which is reasonably anticipated to materially and adversely affect the transactions contemplated by this Agreement or which is reasonably anticipated to adversely affect the validity or enforceability of this Agreement or the ability of the Company to perform its obligations under any of the foregoing.

(c) The execution and delivery by the Company of this Agreement and the compliance by the Company with all of the provisions hereof and the consummation of the transactions contemplated hereby (A)(i) are within the corporate power of the Company, (ii) will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under, its Articles of Organization, its operating agreement, or any commitment, agreement or instrument of whatever nature to which the Company is a party or by which it may be bound, or to which any of its properties may be subject, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its activities or properties, or (iii) result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement, and (B) have been duly authorized by all necessary action on the part of the Company.

(d) Neither the Company nor any of its business or properties, nor any relationship between the Company and any other person, nor any circumstance in connection with the execution, delivery and performance by the Company of this Agreement, is such as to require the consent, approval or authorization of, or the filing, registration or qualification with, any governmental authority on the part of the Company, except for development, construction and operational permits required in connection with the Project.

(e) This Agreement is a legal, valid and binding obligation of the Company enforceable in accordance with its terms, except to the extent the enforceability hereof may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity, and (ii) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights heretofore or hereinafter enacted to the extent constitutionally applicable.

Section 2. Intersection Realignment Project.

The Company acknowledges that the willingness of the City to acquire, construct and install the Intersection Realignment Project at this time depends on the obligation of the Company to make payments pursuant to the provisions of this Agreement.

Section 3. Company Payments.

The methodology for determining the fair market value of the Leasehold Interest of the

Company is set forth in the MOA, which provides that the fair market value of the Leasehold Interest of the Company in the Project shall be equal to the “applicable percentage” (for purposes of the remainder of this Agreement, the “applicable percentage” in the MOA shall be referred to as the “Payment Percentage”) for each year as set forth below, multiplied by the fair market value of the fee interest of the Project in such year. The related “Savings Percentage” set forth below is the result of subtracting the Payment Percentage from 100%. The savings provided by the application of the leasehold valuation methodology set forth in the MOA shall be equal to the Savings Percentage for such year multiplied by the assessed value of the Project for such year (40% of the fair market value of the fee interest of the Project) and thereafter multiplied by the millage rates established by Fulton County and the City (the “Savings Amount”).

The Payment Percentage and Savings Percentage in each year during this ten (10)-year period will be as follows:

	<u>Payment Percentage</u>	<u>Savings Percentage</u>
First Year	50%	50%
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Seventh Year	80%	20%
Eighth Year	85%	15%
Ninth Year	90%	10%
Tenth Year	95%	5%

The “First Year” shall be the year commencing on January 1 of the year immediately following the Completion Date (as defined in the MOA). Following the Tenth Year, the Leasehold Interest of the Company will be subject to taxation at 100% of the fair market value of the fee interest.

For example, for the First Year, if the fair market value of the fee interest of the Project for such year equals \$50,000,000 and the applicable millage rate is .033864, the Savings Amount shall equal \$338,640 ($(\$50,000,000 \times .40) \times .033864$ [mills] $\times .5$ [50% Savings Percentage]).

Commencing in the First Year, on or before the date set for the payment of *ad valorem* property taxes in the County generally for such year, the Company shall make payments to the Authority (the “Contract Payments”) in the following amounts:

- (a) For the First Year, an amount equal to 57.5% of the Savings Amount;
- (b) For the Second and Third Years, an amount equal to 100% of the Savings Amount; and
- (c) For the Fourth through Tenth Years, an amount equal to 66 2/3% of the Savings Amount.

Promptly after the Fulton County Tax Commissioner mails tax bills for each year, the Authority shall provide the Company with an invoice for the amount of the Contract Payment due for such year. Each Contract Payment shall be paid to the Authority at the notice address set forth in Section 7(c) below. Upon receipt of each Contract Payment, the Authority shall promptly pay an amount equal to such Contract Payment to the City. The preceding agreement between the Authority and the City shall constitute an intergovernmental agreement as provided in Section 3, below.

Section 4. Intergovernmental Agreement.

This Agreement shall also constitute an intergovernmental agreement under Georgia Constitution Art. IX, Sec. III, Para. I between the Authority and the City. Such intergovernmental agreement is subject to the 50-year term limit contained in such provision of the Georgia Constitution, but shall expire earlier upon its complete performance.

Section 5. Effective Date of this Agreement; Duration of Term.

This Agreement shall become effective as of the date of the closing of the Bond Financing and the interests created by this Agreement shall then begin, and, subject to the other provisions of this Agreement, shall expire on the later of (a) December 31, 2028, or (b) the date the Company Payments have been paid in full.

Section 6. Agreement by City.

Promptly following the date of closing of the Bond Financing, the City shall commence construction of the Intersection Realignment Project, and shall diligently thereafter pursue the Intersection Realignment Project to completion. In the event the City has not substantially completed the Intersection Realignment Project by December 31, 2015, the Company shall have the option, in its sole discretion, to terminate this Agreement by providing the Authority and the City with a written termination notice no later than January 31, 2016. In the event the Company exercises such termination option, the Company shall not be liable for the payment of any Contract Payments under Section 3, above, and this Agreement shall terminate as to all parties without any further liability on the part of any party.

Notwithstanding anything herein to the contrary, in the event that there is a delay in the construction commencement date or the construction completion date (collectively, the "Deadlines") caused by events and circumstances beyond the control of the City, and the City has shown diligence in attempting to timely meet such Deadlines, the Company shall agree to extend such Deadlines to accommodate such events and circumstances.

Section 7. Miscellaneous.

(a) Assignment by the Company. The Company hereby agrees that all rights and benefits of the Company under this Agreement shall be transferred and assigned by the Company to any party to which the Lease Agreement is transferred and assigned and that such transfer and assignment of the Lease Agreement shall be contingent upon the transfer and assignment hereof to such party. Upon any such assignment, the assignee shall be responsible for payment of all

Contract Payments hereunder and the Company shall have no further obligations under this Agreement. Any such assignment shall not require the consent of the City or Authority, except to the extent the Authority's consent is required under the terms of the Lease Agreement.

(b) Estoppel Certificates. Upon ten business days written request of the Company, the Authority and the City will provide a statement to (a) any lender providing financing for the Project or (b) a proposed assignee of the Lease Agreement concerning (i) whether a default exists under this Agreement, and if so specifying the nature of such default; (ii) whether this Agreement has been amended, and if so, specifying the amendments; and (iii) any other matter concerning this Agreement reasonably requested by such holder or proposed assignee.

(c) Notices. Any notice required to be given by any party pursuant to this Agreement, shall be in writing and shall be deemed to have been properly given, rendered or made only if personally delivered, or if sent by Federal Express or other comparable commercial overnight delivery service, addressed to each other party at the addresses set forth below (or to such other address as the City or the Company may designate to each other from time to time by written notice), and shall be deemed to have been given, rendered or made on the day so delivered or on the first business day after having been deposited with the courier service:

If to the City: City of Sandy Springs, Georgia
7840 Roswell Road, Building 500
Sandy Springs, Georgia 30350
Attention: John F. McDonough

with a copy to: Law Office of Wendell K. Willard
7840 Roswell Road
Building 300, Suite 330
Sandy Springs, Georgia 30350
Attention: Wendell K. Willard, Esq.

and to: Gray Pannell & Woodward LLP
3060 Peachtree Road, Suite 730
Atlanta, Georgia 30305
Attention: James R. Woodward, Esq.

If to the Authority: City of Sandy Springs Development Authority
7840 Roswell Road, Building 500
Sandy Springs, Georgia 30350
Attention: Chairman

with a copy to: Law Office of Wendell K. Willard
7840 Roswell Road
Building 300, Suite 330
Sandy Springs, Georgia 30350
Attention: Wendell K. Willard, Esq.

If to the Company: JLB Chastain Phase II LLC

3890 West Northwest Highway
7th Floor
Dallas, Texas 75220
Attention: Bay W. Miltenberger

with a copy to: JLB Realty LLC
3715 Northside Parkway, N.W.
Suite 4-200
Atlanta, Georgia 30327
Attention: Hudson Hooks

with a copy to: Geary, Porter & Donovan, P.C.
16475 Dallas Parkway
Suite 400
Addison, Texas 75001-6837
Attention: David M. Tatum, Esq.

(d) No Partnership or Agency. No partnership or agency relationship between or among the parties shall be created as a result of this Agreement.

(e) Governing Law; Jurisdiction and Venue. The transactions contemplated hereunder and the validity and effect of this Agreement are exclusively governed by, and shall be exclusively construed and enforced in accordance with, the laws of the State of Georgia, except for the state's conflict of law rules. The Company consents to jurisdiction over it and to venue in Fulton County, Georgia.

(f) Amendments. Any amendments, deletions, additions, changes or corrections hereto must be in writing executed by the parties hereto.

(g) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

(h) Counterparts. This Agreement may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

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(j) No Personal Liability of Representatives of Company. No official, member,

manager, director, officer, agent, or employee of the Company shall have any personal liability under or relating to this Agreement. Rather, the agreements, undertakings, representations, and warranties contained herein are and shall be construed only as corporate agreements, undertakings, representations, and warranties, as appropriate, of such entity. Without limitation, and without implication to the contrary, all parties hereto waive and release any and all claims against each such official, member, manager, director, officer, agent, or employee, personally, under or relating to this Agreement, in consideration of the entry of such entity into this Agreement.

- (k) Time is of the Essence. Time is of the essence of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement and caused it to be delivered as of the following effective date: December _____, 2014.

CITY:

CITY OF SANDY SPRINGS, GEORGIA

By: _____
Mayor

Attest: _____
Clerk

(SEAL)

AUTHORITY:

**CITY OF SANDY SPRINGS DEVELOPMENT
AUTHORITY, GEORGIA**

By: _____
Chairman

Attest: _____
Secretary

COMPANY:

JLB CHASTAIN PHASE II LLC

By: JLB Chastain Phase II Management LLC,
a Georgia limited liability company,
its Manager

By: _____
Bay W. Miltenberger, Manager

EXHIBIT A

Memorandum of Agreement Regarding Lease Structure
and Valuation of Leasehold Interest