

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into effective as of November [___], 2014, by and among the CITY OF COLUMBUS, GEORGIA a municipal corporation (the “City”) and BRIGHT-MEYERS 2001, LLC, a Georgia limited liability company (“Bright-Meyers”).

Background:

A. The Development Authority of Columbus, Georgia (the “Authority”) and Bright-Meyers are parties to that certain Option Agreement, dated as of February 6, 2014 (the “Option”), whereby the Authority granted to Bright-Meyers the exclusive right and option to purchase that certain tract of land in Columbus, Muscogee County, Georgia, as more particularly described in Exhibit “A” attached hereto and made a part hereof (the “Property”), situated near Victory Drive, Melrich Avenue and Beginning Drive.

B. Prior to the date hereof, Bright-Meyers has exercised the Option to purchase the Property and plans to develop a shopping center thereon (the “Project”).

C. The Project requires certain significant public road, storm water and other improvements, including, but not limited to, new turning lanes, a new traffic signal, closing of existing driveways, utility relocations, median modifications and restriping of existing and new roads, as more particularly described or shown on Exhibit B attached hereto and made a part hereof, which, upon completion, shall be public improvements owned, managed and repaired by the Georgia Department of Transportation (the “GDOT”) (collectively, the “Public Improvements”).

D. Pursuant to the terms and conditions of the Option, the Authority has agreed to effectuate and pay the costs of the Public Improvements.

E. The City of Columbus believes it would be beneficial to the public for the City to provide for construction of the infrastructure necessary for the construction of the Project as the Project will benefit the City.

F. Based on the foregoing, in connection with the Project, the City, on behalf of the Authority, has agreed to construct or cause to be constructed the Public Improvements.

NOW, THEREFORE, in consideration of their respective covenants and conditions herein expressed, the City and Bright-Meyers agree as follows:

Agreement:

1. Public Improvements. The Public Improvements, consisting of street and intersection improvements, including, but not limited to, new turning lanes, a new traffic signal, closing of existing driveways, median modifications and restriping of existing and new roads, and certain utility and storm sewer improvements, are to be constructed specifically as set forth

in Exhibit B attached hereto, subject to any modifications or revisions that may be required by the GDOT from time to time, and collectively referred to as the “Public Improvement Plans”.

(a) The City agrees to construct, or cause to be constructed, the Public Improvements as described in the Public Improvement Plans provided GDOT has issued the permits required to construct the Public Improvements. The construction of the Public Improvements must commence on or before June 1, 2015 and be completed no later than December 1, 2015, or such other dates as are mutually agreed to in writing by the City and Bright-Meyers. All construction undertaken by the City shall be consistent with the designs provided by Bright-Meyers and all City and GDOT codes, ordinances and regulations, as well as any other regulations or plans relative to the Public Improvements. The City shall pay all costs incurred for the construction of the Public Improvements.

(b) All Public Improvements shall be subject to the GDOT’s reasonable inspection and approval upon completion. After completion and approval of the Public Improvements, the City and GDOT will assume responsibility for the maintenance, repair and replacement of each portion of the Public Improvements. Notwithstanding the foregoing, the City hereby acknowledges and agrees that prior to the GDOT’s assumption of the responsibility for the maintenance, repair and replacement of each portion of the Public Improvements, the City, at its sole cost and expense, shall be responsible for such maintenance, repair and replacement obligations.

2. Rights of Way, Utility Easements and Construction Easements. Bright-Meyers hereby agrees to furnish the legal description for any necessary right-of-way and utility easements to the City. Bright-Meyers, by its acknowledgment below, agrees that it shall cooperate with the City to assist in completion of the Public Improvements in accordance with this MOU.

3. Remedies. In the event of any default in or breach of any terms or conditions of this MOU by any party, or any successor, or a reasonably anticipated default or breach of any terms or conditions of this MOU by any party, including, but not limited to, the City’s failure to commence or maintain the construction of the Public Improvements on the agreed to schedule, the defaulting or breaching party shall, upon written notice from the other party, proceed immediately to cure or remedy such default or breach, and shall in any event, within fifteen (15) days after receipt of notice, commence to cure or remedy such default. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party shall be entitled to all rights and remedies available at law or in equity, including, but not limited to, being fully reimbursed on demand for all of the expenses and costs incurred in connection with curing the default, or anticipated default, on behalf of the defaulting party, and may also institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to proceedings to compel specific performance by the defaulting or breaching party. The parties, their successors and assigns, further agree that the other party shall have the right and power to institute and prosecute proceedings to enjoin the threatened or attempted violation of any clauses contained herein.

4. Miscellaneous.

(a) Binding; Choice of Law. This MOU is binding upon the parties' representatives, assigns and successors. This MOU shall be taken and deemed to have been fully executed and made by the parties herein and governed by the laws of the State of Georgia.

(b) Entire MOU. The parties agree that this MOU constitutes the entire MOU between the parties and that no other agreements or representations other than those contained in this MOU have been made by the parties. This MOU shall be amended only in writing, and effective when signed by the authorized agents of the parties.

(c) Counterparts. This MOU may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

(d) Severability. In the event that any term or provision of this MOU is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision.

(e) Term and Termination: The term of this MOU shall be effective from the date hereof until the date on which all of the Public Improvements are completed in accordance with the terms and conditions hereunder.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF the parties have executed this MOU to be effective as of the day and year first above written.

CITY

CITY OF COLUMBUS, GEORGIA

By: _____

Print Name: _____

Title: _____

BRIGHT-MEYERS

BRIGHT-MEYERS 2001, LLC, a Georgia limited liability company

By: _____

Print Name: _____

Title: _____

Exhibit "A"
(Property)

[Please See Attachment]

Exhibit “B”
(Public Improvement Plans)

[Please See Attachment]