

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is entered into so as to be effective on the last date of signature below by a party hereto (the “Effective Date”), by and between the **CITY OF GAHANNA**, an Ohio municipal corporation (“City”), and **CP CRESCENT, LLC**, an Ohio limited liability company (“Casto”). City and Casto may be referred to herein individually as a “Party” and collectively as the “Parties”.

W I T N E S S E T H:

WHEREAS, Crescent at Central Park LLC (“Crescent”) is the owner of certain undeveloped real property located in the City, consisting of 41.0+/- acres found generally to the south and southeast of and adjacent to the Interstate-270/Hamilton Road interchange, known on the Effective Date as Franklin County Auditor Parcel Numbers 025-013767-00 and 025-013774-00, and generally identified as the Development Land in **Exhibit A** (the “Development Land”); and

WHEREAS, Casto and Crescent are parties to a written contract pursuant to which Crescent has agreed to sell the Development Land to Casto, and Casto has agreed to purchase the same from Crescent, subject to various contingencies as set forth therein; and

WHEREAS, following the closing of its purchase of the Development Land, Casto desires to (a) develop and operate a multi-family residential community consisting of 296 units and related improvements and amenities in accordance with applicable zoning and development rights that apply thereto, with such development to occur on 16.66+/- acres within the Development Land in the general location that is identified as the “Multi-Family Property” in **Exhibit A**, and (b) develop commercial uses on that portion of the Development Land which is located outside of the boundaries of the Multi-Family Property, consisting of 24.34+/- acres in the general location that is identified as the “Commercial Property” in **Exhibit A**; and

WHEREAS, the development of the Multi-Family Property and the Commercial Property together will provide for a cohesive mixed use development with amenities to serve the Development Land, nearby office uses, and the City as a whole; and

WHEREAS, in order to facilitate all of the foregoing, City and the Parties desire to implement a tax increment financing (“TIF”) district and new community authority (“NCA”) program in accordance with relevant provisions of the Ohio Revised Code (the “ORC”) in order to provide the means of funding the costs of certain public infrastructure improvements that will benefit the Development Land and existing parkland in the area; and

WHEREAS, City has determined that the economic welfare of the City and the health of its citizens will be benefited by the development of the Development Land, and therefore it is in the best interests of City to enter into this Agreement to facilitate the same.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the Parties hereby agree as follows:

1. Community Reinvestment Area Eligibility. The Development Land is located in the City's existing Community Reinvestment Area #4 (the "CRA"). Subject to the filing of compliant and complete community reinvestment area applications, the City acknowledges that the Multi-Family Property and the Commercial Property are each eligible for a 10-year, 80% abatement of real property taxes that otherwise would be applicable thereto. Casto or individual users/developers of portions of the Commercial Property will file an application with the City from time-to-time to confirm each development project's eligibility for said abatement, and Casto also will file an application with the City prior to applying for any building permits for the Multi-Family Property to confirm the eligibility of the Multi-Family Property for the abatement. City agrees to support the timely processing and approval of each of the foregoing compliant and complete applications once filed. City and each of the relevant parties shall work cooperatively to identify the appropriate timing for filing relevant documentation with the State of Ohio and Franklin County (as applicable) so that the abatement time period begins as to relevant developments only after construction is completed in order to maximize the benefit to each development. City acknowledges that the participation of the Multi-Family Property and the Commercial Property in the CRA and the abatement that it provides are of material significance to the decision to develop these properties and represents and warrants to Casto that the CRA and the related tax abatement, subject to any abatements granted outside of the authority and control of the City, will take priority over any other exemptions that may apply to the Property as further contemplated herein.

2. Public Infrastructure Improvements. City and Casto each acknowledge and agree that the construction of a new public street northward from Tech Center Drive into the Crescent Property (as generally depicted in Exhibit A) (the "New Street") is necessary in order to serve and facilitate development on the Development Land. Casto shall construct the New Street in conjunction with the first phase of development to occur on the Development Land, provided that reimbursement of a portion of the costs of the New Street shall be made solely from Service Payments deposited in a TIF Fund, as contemplated in, and as such terms are defined in Sections 3 and 4 below. Construction of the New Street shall be completed so that it may be open for use by the general public prior to the issuance of the first temporary or permanent certificate of occupancy for a building that is constructed on Development Land. The costs of constructing the New Street (the "New Street Costs") shall include all commercially reasonable costs associated with the grading and paving of the new street; installation of water lines and sanitary sewer lines within the street right-of-way; installation of traffic control devices and signs, street tree plantings, and street lights; and all other costs customarily incurred when constructing a public street to a typical standard in the City, as well as the costs of designing, engineering, managing, and constructing all of the foregoing and all fees and permitting costs associated therewith. The New Street shall be constructed in accordance with the requirements and specifications of an approved final plat pertaining thereto. Casto shall dedicate the right-of-way for the New Street to City via the recording of the final plat and at no charge or cost to City.

3. Tax Increment Financing District. City agrees to make reasonable efforts to have its City Council consider legislation (“TIF Legislation”) to create a tax increment financing district (a “TIF District”) which will include the Development Land. City represents and warrants to Crescent and Casto that no tax increment financing district exists on the Effective Date which applies to the Development Land. Casto, for itself and its successors and assigns in interest with respect to ownership of all or any portion of the Development Land, agrees to make “Service Payments” attributable to of its period of ownership of such real property, all pursuant to and in accordance with the TIF Legislation and this Agreement and any related or necessary agreements or declarations of covenants and restrictions recorded on the Development Land, and the requirements of applicable law, and any subsequent amendments or supplements thereto. For purposes of this Agreement, the term “Service Payments” shall be defined to mean “payments in lieu of real property taxes which shall be directed by applicable governmental authorities to a designated fund (a “TIF Fund”) created as part of or subsequent to the passage of the TIF Legislation, and which are to be used by City for the purpose of funding or reimbursing a portion of the costs of public infrastructure improvements that are described in the TIF Legislation and as permitted by relevant provisions of the ORC, and in accordance with this Agreement.”

The TIF Legislation shall provide that the TIF District shall have a term of 30 years and that (a) during any period of time when a portion of the Development Land is subject to the tax abatement contemplated in Section 1 above, the owner of that portion of real property shall make Service Payments for all eligible real property taxes which are not subject to the abatement in accordance with and pursuant to an authorized CRA, and (b) during all other time periods the owner of that portion of real property shall make Service Payments for all eligible real property taxes. The TIF District will be a so-called “non-school” TIF District which will provide for the Gahanna-Jefferson School District (“GJSD”) and the Eastland Joint Vocation School (“EJVS”) to be paid, solely from Service Payments deposited into the TIF Fund, an amount equal to the real estate taxes that would otherwise be paid to them from parcels of real property within the Development Land. For the avoidance of doubt, the Parties desire to clarify that the GJSD and the EJVS shall not be paid or reimbursed from the TIF Fund for any portion of real property taxes which are abated in accordance with and pursuant to an authorized CRA as contemplated in Section 1 above.

City and Casto agree that the TIF Legislation will specify that the New Street Costs as well as the costs of other public infrastructure improvements identified by City in the TIF Legislation may be paid or reimbursed from Service Payments. Notwithstanding the foregoing, the Service Payments deposited into the TIF Fund shall be used in a manner consistent with Section 4 below until such time as Casto has been reimbursed in full, but such payments will be made solely from and subject to available Service Payments deposited into a TIF Fund, as described in that provision.

Casto agrees to work cooperatively with the City to prepare, execute, and file all necessary applications and supporting documents in order to obtain the exemption granted by the TIF Legislation and to enable City to collect Service Payments within the TIF Fund as contemplated hereunder. City agrees to cooperate with Casto in preparing and filing such applications and supporting documents. Casto and City each agree to (i) perform such acts as are reasonably

necessary or appropriate to effectuate, claim, reserve and maintain that exemption and collect the Service Payments, including, without limitation, joining in the execution of all documentation required in connection with that exemption or the Service Payments, and (ii) take all steps necessary to ensure that the tax abatements that are contemplated in Section 1 above have priority over the TIF exemption.

Casto, for itself and its successors and assigns in interest to ownership of all or any portion of the Development Land, covenants to cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated tax incentive review council of the City ("Tax Increment Review Council") to enable the Tax Increment Review Council to review and determine annually during the term of this Agreement compliance with its terms by relevant property owners. Any information supplied to such Tax Increment Review Council will be provided solely for the purpose of monitoring compliance with this Agreement.

4. Reimbursement of Costs. Casto shall be responsible for the initial payment of the New Street Costs and all other costs related to the installation and improvement of public utility infrastructure to serve the Development Land (collectively, the New Public Street Cost and such other public infrastructure costs to be referred to herein as the "Public Infrastructure Costs"), which are currently estimated by Crescent to be in excess of Four Million Four Hundred Thousand Dollars (\$4,400,000.00). In order to assist with the financing of the Public Improvement Costs, City agrees to diligently pursue the issuance of a so-called State Infrastructure Bank Loan (a "SIB Loan") in the amount of at least Two Million and 00/100 Dollars (\$2,000,000.00).

In the event that the SIB Loan is issued to the City, annual Service Payments collected from the TIF District first shall be used to pay for interest and principal that is due and payable on the SIB Loan. Should there be excess Service Payments remaining in the TIF Fund in any year after required interest and principal payments have been made for the SIB Loan, then such excess Service Payments shall be distributed to Casto to reimburse it for its payment of the Public Infrastructure Costs that exceed the principal amount of the SIB Loan, plus simple interest at the rate of four and one-half percent (4.5%) per annum which shall accrue beginning on the date that the first temporary or permanent certificate of occupancy is issued for a building on the Development Land.

In the event that the SIB Loan is not issued to the City, annual Service Payments collected from the TIF District shall be used to reimburse Casto for the entirety of the Public Infrastructure Costs, plus simple interest at the rate of four percent (4.0%) per annum which shall accrue beginning on the date that the first temporary or permanent certificate of occupancy is issued for a building on the Development Land. (For purposes of this Agreement, all amounts expended by Casto with regard to the Public Infrastructure Costs and all interest which accrues thereon shall be referred to herein as the "Reimbursement"). Such Reimbursement shall be subject to the creation of an incremental assessed real property value of Twenty-One Million and 00/100 Dollars (\$21,000,000.00) for the Development Land in the aggregate by the date that is five (5) years following the issuance of the first building permit for the Multi-Family Property and such Reimbursement shall be paid solely from available funds in a TIF Fund.

If applicable, payments shall be made by City to the issuer of the SIB Loan as required by the loan documents related thereto. Payments toward the Reimbursement shall be made by City to Casto no more frequently than twice per calendar year and within thirty (30) days following each request from Casto. Reimbursements shall be made solely from funds which are on deposit in the TIF Fund (when available) and nothing herein shall be read as a debt obligation of the City or a pledge by City to use revenues from any other source to pay the Reimbursement, including but not limited to the City's general fund. All monies deposited in the TIF Fund, other than (a) funds to be paid to the GJSD and EJVS, (b) to pay reasonable administrative costs related to the administration of the TIF and the TIF Fund and collection of the Service Payments, and (c) to pay principal and interest due on the SIB Loan, shall be used only to pay the Reimbursement until such time as the Reimbursement is paid in full, subject to available funds in a TIF Fund over the term of the TIF. After payment of the Reimbursement in full, City shall be permitted to use all monies which are on deposit or deposited into the TIF Fund to pay the costs of any other public infrastructure improvements as defined by and permitted under the TIF Legislation.

5. New Community Authority. Casto agrees to petition and place the Development Land into a New Community District that will be governed by a New Community Authority and to subject the real property to a Community Development Charge in accordance with Ohio Revised Code ("ORC") Chapter 349 and as contemplated in this Section 5. All capitalized terms used but not defined in this Section 6 shall have the meanings given to them in ORC Chapter 349.

No later than sixty (60) days after the date when the City delivers a written request to Casto, provided that the first certificate of appropriateness has been approved by the City's Planning Commission so that it is legally effective for a development project on either (a) the Multi-Family Property that includes at least 296 multi-family residential units or (b) the Commercial Property (a "Certificate of Appropriateness") and further provided that such written request is not delivered more than the date that is six (6) calendar months following the Effective Date, Casto shall cause drafts of legal documents which are required under ORC 349 to create a New Community District (collectively, the "NCA Documents") to be completed and shall cause them to be delivered to City for its review. City shall then provide written comments on the same to Casto, and City and Casto shall then work cooperatively and in good faith to agree upon the forms of the NCA Documents. The Parties shall then promptly cause the petition for creation of a new community authority (the "Petition") to be filed with Gahanna City Council in accordance with ORC Section 349.03. In accordance with ORC 349 Gahanna City Council shall review and take action upon the same. City may elect, by delivering written notice to Casto within a reasonable amount of time prior to the filing of the Petition with City Council, to expand the area to which the New Community District will apply.

The New Community District and the New Community Authority that will be created to apply to the Development Land shall permit a Community Development Charge to be applied thereto at the maximum annual rate of five (5.0) mills (the "NCA Charge"). The NCA Charge for each tax parcel shall be calculated for each particular year by multiplying (a) the assessed value of the parcel as determined by the Office of the Franklin County, Ohio Auditor for the year

immediately preceding the year in which the charge is being made, and (b) 0.005. The NCA Charge shall be used, in each year which it is collected after the reimbursement contemplated in the next paragraph has been made, first to make payments of principal and interest on the SIB Loan, second to make payments of the Reimbursement, and then for any purposes permitted under ORC Chapter 349 as described in the NCA Documents. The NCA Charge shall be charged to a particular parcel of real property commencing in the year immediately following the year in which the first temporary or permanent certificate of occupancy has been issued for a building on that parcel and shall be paid in arrears in the same manner as real estate taxes. For example, if a tax parcel containing a building which is issued a permanent certificate of occupancy in 2023, then the NCA Charge shall apply to that parcel beginning in 2024 and shall be due and payable in 2025. The NCA Charge shall be assessed against the Multi-Family Property for a maximum of ten (10) years, and shall be assessed against each parcel within the Commercial Property for a maximum of thirty (30) years.

Notwithstanding the foregoing, the documents and instruments which serve to create the New Community Authority shall allow the Board, upon the affirmative vote of at least 5 of its 7 members, to increase the NCA Charge for parcels within the Crescent Commercial Property (but not the Casto Development Property) to a maximum of nine (9.0) mills, subject to the limitations provided in this paragraph. No increase in millage shall be permitted to apply to any real property containing Non-Multi Family Uses until such time as a certificate of occupancy has been issued for that property and the term of an applicable tax abatement for that property has expired. At least thirty (30) days prior to approving any permissible increase of the NCA Charge above five (5.0) mills, the Board shall be required to deliver written notification of the proposed increase to all affected property owners.

Casto shall engage, and pay the costs of legal services by, legal counsel that will draft the NCA Documents. Given that the New Community District may apply to real property outside of and in addition to the Crescent Commercial Property and the Casto Development Property, the NCA Documents shall provide that commercially reasonable fees for legal services not to exceed Twenty Thousand and 00/100 Dollars (\$20,000.00), which are incurred by Casto in drafting the NCA Documents, pursuing the approval of the same, and setting up the organizational structure of the New Community Authority, as well as costs incurred to provide maps, legal descriptions of real property, or similar supporting information for any of the foregoing (the “NCA Start-Up Costs”), shall be reimbursed to Casto from NCA Charges as they are collected, with such NCA Charges to be used for no other purpose until such reimbursement has been made in full. To provide for collection of the NCA Charge, prior to the first temporary or permanent certificate of occupancy being issued for a structure on the Development Land and provided that the New Community Authority has been legally established, a declaration of covenants shall be recorded against the property with a form that is provided as part of the NCA Documents. The NCA Documents also shall provide the form of a supplemental declaration that shall be required to be recorded by other property owners that may become subject to the NCA Charge charges by the New Community Authority in the future.

6. Reporting and Payment. Along with each request for reimbursement of the Public

Infrastructure Costs or the NCA Start-Up Costs, detailed invoices of the costs for which reimbursement is being requested shall be delivered by Casto to the board of trustees for the New Community Authority (the “Board”) along with a written certification which certifies that the costs as detailed are true and correct (all such invoices and the certification to be referred to herein as the “Cost Certification”). City shall review the same and shall deliver any written objections that it may have to the same no later than thirty (30) days after its receipt of detailed invoices. City and Casto shall then work cooperatively and in good faith to resolve the objection(s) within ten (10) days of delivery of such written objections. City and Casto each agree to provide the other with such other written information, data, invoices, or similar documentation as reasonably requested by the other to effectuate the purposes of this Agreement and to verify compliance with the terms hereof. The Board shall process any requests for reimbursement of costs as contemplated in this paragraph in accordance with the NCA Documents and other procedures which it may adopt, once formed.

7. Commitment to Office Uses; Limitation on Further Residential.

(a) Office. The Commercial Property is zoned in the SCPD, Select Commercial Planned District classification under the City’s Codified Ordinances. This zoning classification permits a wide range of commercial uses which may be developed and operated, generally ranging from retail uses, to service-oriented uses, to office uses. Casto agrees, for itself and on behalf of its successors and assigns in interest, that from and after the Effective Date and (provided that the contingencies in Section 9 below have been satisfied) for a period of seven (7) years from the date when the Applications are approved and are legally effective (the “Office Restriction Period”), it will reserve 4.0 acres of the Commercial Property for development with only corporate, administrative, professional, and/or medical office uses unless City Council otherwise acts to reduce or eliminate this restriction as determined in its sole discretion.

The 4.0 acres of office uses may be located within any portion of the Commercial Property and need not be in one location, it being the intent that such uses may and will be developed in locations that are market-driven. Casto agrees that during the Office Restriction Period the City shall be permitted to elect not to process any applications that, if approved, would cause there to be less than 4.0 acres available within the Commercial Property for office development, regardless of the fact that other uses are permitted under the existing zoning. The restrictions that are contemplated in this Section 7(a) shall be memorialized in a declaration of restrictive covenants that is in substantially similar form to that which is attached hereto as **Exhibit B** (the “Declaration”), which must be recorded with the Office of the Recorder of Franklin County, Ohio before the City will be required to issue any building permit(s) for construction on any portion of the Development Land in accordance with the City’s Codified Ordinances. Once at least 4.0 acres within the Commercial Property have been transferred and conveyed by Casto to one or more third parties that develop or intend to develop such acreage with office uses, the requirement so this Section 7(a) shall no longer apply to the Commercial Property and the provisions of the Declaration which address the commitments made by Casto in this Section 7(a) shall be released and terminated by City by executing and recording all relevant instruments.

(b) Additional Residential. Casto, as the owner of the Commercial Property and for itself and on behalf of its successors and assigns in interest, agrees that from and after the Effective Date and (provided that the contingencies in Section 9 below have been satisfied) for a period of forty (40) years from the Effective Date (the “Residential Restriction Period”), it will not file any rezoning, variance, conditional use, or similar applications with the City seeking to permit the development, use, and/or operation of residential uses of any kind (other than hotels) on the Commercial Property. The restrictions that are contemplated in this Section 8(b) shall be memorialized in the Declaration.

(c) Conditions on Restrictions. Crescent’s agreement to subject the Crescent Commercial Property to the restrictions contemplated in Sections 7(a) and 7(b) above are expressly conditioned upon (a) the CRA that applies to the Development Land remaining effective and applicable to the Development Land for the same term (i.e., 10 years) and same percentage of real property taxes being abated (i.e., 80%) as apply to it on the Effective Date, and (b) the City timely performing its obligations with respect to the creation of the TIF District and payment of the Reimbursement as provided herein. The rights of City and the obligations of Crescent as set forth in this Section 7 are contractual in nature, and in the event that City alleges a breach of Crescent’s obligations in this regard it shall be permitted to seek injunctive relief in the Franklin County Court of Common Pleas to compel Crescent’s compliance.

8. Contingencies to Performance. The obligations of Casto under this Agreement shall be expressly conditioned upon:

(a) The TIF Legislation having been approved by City Council so that it is legally effective on or before December 31, 2022;

(b) A development plan and Certificate of Appropriateness shall have been approved by the City’s Planning Commission so that they are both legally effective on or before the date that is three (3) calendar months after applications for both have been filed with the City for the development of at least 296 multi-family residential units on the Multi-Family Property.

(c) Casto shall have closed on its purchase and acquisition of the Casto Development Property on or before December 15, 2022;

(d) City shall have timely performed all of its obligations hereunder.

9. Miscellaneous.

(a) Amendment; Waiver. No amendment or waiver of any provision of this Agreement shall be effective against any Party hereto unless in writing and signed by that Party.

(b) Enforceability. If any provision of this Agreement is or becomes invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not affect the

remainder of this Agreement and the remainder of this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable portion were not contained herein, provided and to the extent such construction would not materially and adversely frustrate the original intent of the parties hereto as expressed herein.

(c) Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, each of the Parties and their respective successors and assigns. Neither of the Parties may assign its rights and obligations under this Agreement to an unaffiliated third party without the other Parties' prior written consent, not to be unreasonably withheld, conditioned, or delayed. Casto shall be permitted to assign its rights and obligations hereunder to another business entity in which it or its principals holds a controlling ownership interest.

(d) Warranties and Representations. Each Party to this Agreement represents and warrants to the other Party as follows:

(i) It has the full right, power, and authority to enter into this Agreement and to carry out its obligations hereunder, and the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly and validly authorized by all necessary action.

(ii) This Agreement has been duly executed and delivered by it, and it constitutes a valid and binding obligation, enforceable against it in accordance with its terms.

(e) Notices. All notices and other communications hereunder shall be sufficiently given and shall be deemed given when personally delivered, when mailed by registered or certified mail, postage prepaid, or by e-mail, addressed the appropriate party at its address indicated as follows:

If to Casto: Casto Communities
Attn: Brent Sobczak, President
250 Civic Center Drive, Suite 500
Columbus, Ohio 43215
bsobczak@castoinfo.com

With a copy to: Aaron L. Underhill, Esq.
Underhill & Hodge LLC
8000 Walton Parkway, Suite 260
New Albany, Ohio 43054
aaron@uhlfirm.com

If to City: City of Gahanna
200 South Hamilton Road
Gahanna, Ohio 43230
Attn: City Attorney
Email: _____

or such different addresses of which notice shall have been given in accordance with this Agreement.

(f) Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the City other than in his or her official capacity, and the members of the Gahanna City Council nor any official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the City contained in this Agreement.

(g) Applicable Law. This Agreement will be governed by the laws of the State of Ohio without regard to conflicts of laws principles. Any action taken pursuant to or to enforce the terms of this Agreement shall be undertaken in the federal or state courts located in Franklin County, Ohio, with each Party hereby consenting to the jurisdiction and venue for those courts.

(h) Counterparts and Signatures. This Agreement may be executed in counterparts, each of which when taken together shall constitute one and the same instrument. Copies of signatures on this Agreement shall be deemed to be original signatures for all purposes.

(i) Recitals. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

(j) City Council Action. The execution of this Agreement has been authorized by action of Gahanna City Council in Ordinance Number _____.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the dates written below.

City:

CITY OF GAHANNA

By: _____

Print Name: _____

Title: _____

Date: _____

By: _____

Ray Mularski, City Attorney

CASTO:

CP CRESCENT, LLC,
an Ohio limited liability company

By: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT A

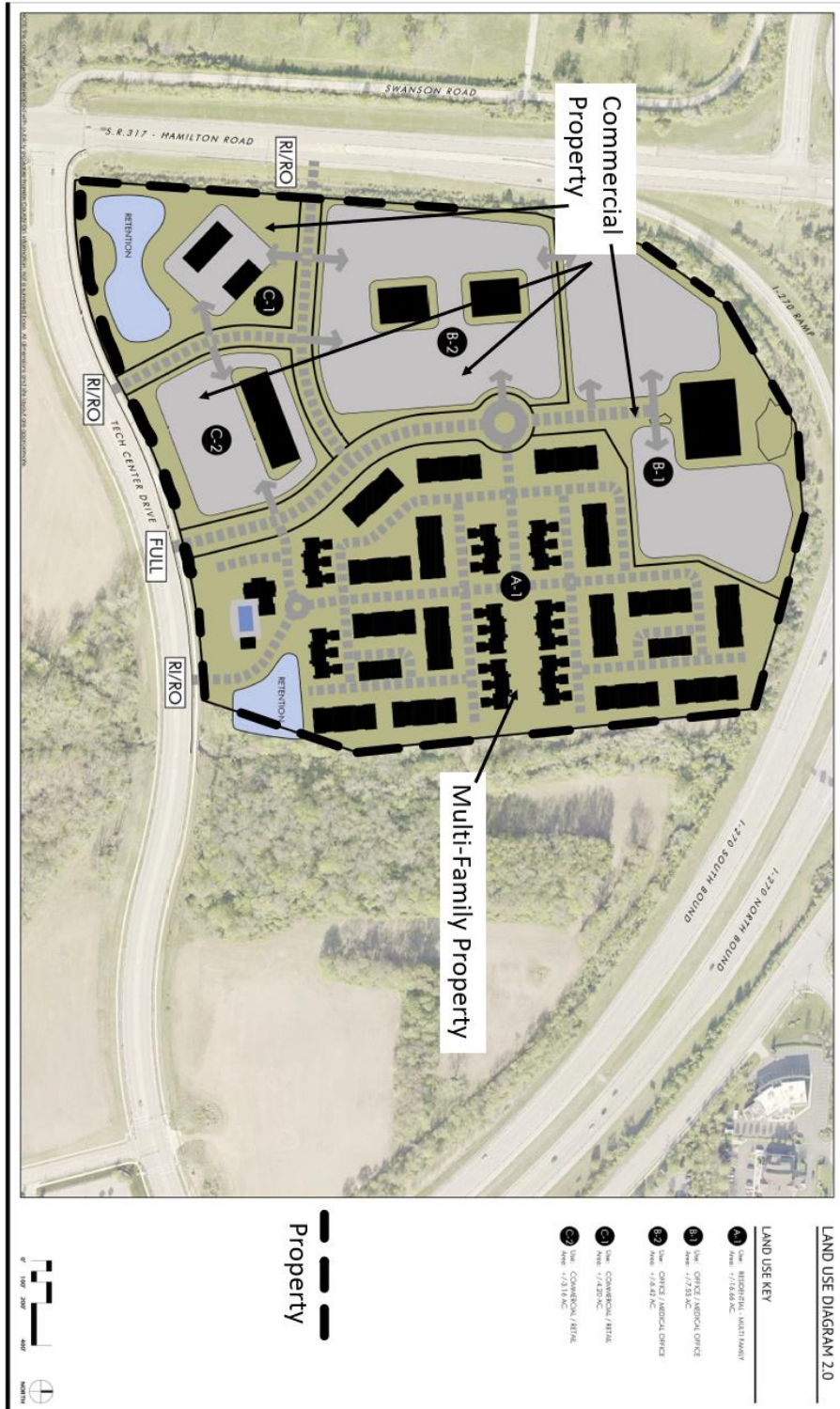


EXHIBIT B

Form of Declaration of Restrictions

USE RESTRICTION AGREEMENT

THIS USE RESTRICTION AGREEMENT (this "Agreement") is made so as to be effective on the last date of signature by a party hereto (the "Effective Date"), by and between **CP CRESCENT LLC**, an Ohio limited liability company having its address at 250 Civic Center Drive, Suite 250, Columbus, Ohio 43215 ("CP"), and the **CITY OF GAHANNA**, an Ohio municipal corporation having its address at 200 S. Hamilton Road, Gahanna, Ohio 43230 (the "City").

BACKGROUND

WHEREAS, CP is the owner of certain real property (the "Property") located in the City, consisting of [_____] +/- acres found generally to the south and southeast of and adjacent to the Interstate-270/Hamilton Road interchange, known on the Effective Date as Franklin County Auditor Parcel Number(s) _____, as more specifically described and depicted in **Exhibit A** (attached hereto and incorporated herein by reference), and which CP acquired by and through its acceptance of a deed which is of record with the Office of the Recorder of Franklin County, Ohio as Instrument Number _____; and

WHEREAS, CP has agreed to place certain limited use restrictions on the development and use of the Property for the benefit of the City.

NOW, THEREFORE, CP and the City agree that the use restrictions as described herein shall apply to the Property and shall be enforceable as provided herein:

1. Office Use Restriction: For the period of time beginning on the Effective Date and ending at 11:59 P.M. on the day before the seventh (7th) anniversary of the Effective Date (the "Office Restriction Period"), CP (and its successors and assigns in interest with regard to all or any portion of the Property) shall reserve a minimum of four (4.0) acres of the Property for the construction and development of offices uses including, by way of example and not by limitation, corporate, professional, administrative, and medical offices, or some combination thereof. The four (4.0) acres of office uses may be located within any portion of the Property and need not be in a particular location or a single location, it being the intent that such uses will be developed in locations that are market-driven. CP agrees that during the Office Restriction Period the City shall be permitted to elect not to process any applications that, if approved, would cause there to be less than four (4.0) acres available within the Property for office development, regardless of the fact that other uses may then be permitted to be constructed, developed, and/or operated pursuant to the zoning classification that applies to the Property. During the Office Restriction Period, CP hereby waives any action or claim that it may allege or have against the City relating to the City's failure to approve relevant permits for a proposed development, operation, or use which is

permitted by the applicable zoning of the Property but, if issued, would cause the restriction contemplated in this paragraph to be violated.

2. Residential Use Restriction: For the period of time beginning on the Effective Date and ending at 11:59 P.M. on the day before the fortieth (40th) anniversary of the Effective Date (the “Residential Restriction Period”), CP (on behalf of itself and its successors and assigns in interest with regard to all or any portion of the Property) agrees that it shall not file any rezoning applications, variance applications, conditional use applications, or similar applications with the City which, if approved by the City using procedures required under its Codified Ordinances, have the effect of permitting or allowing any residential uses to be constructed, developed, or operated on any portion of the Property. The foregoing restriction shall apply to so-called “residential hotels” as defined in Ohio Revised Code Section 3731.01(A)(4) as it exists on the Effective Date, but shall not apply to the construction, development, and/or operation of any other types of hotels as defined in Ohio Revised Code Section 3731.01 (also as it exists on the Effective Date), and further shall not apply to the filing of any rezoning applications, variance applications, conditional use applications, or similar applications with the City which, if approved by the City using procedures required under its Codified Ordinances, would have the effect of permitting the construction, development, and/or operation of such other types of hotels.

3. Covenants to Run with the Land: During the Office Restriction Period and the Residential Restriction Period, respectively, the relevant covenants and restrictions contained in this Agreement shall be binding upon and run with the Property and shall be enforceable by the City. Upon the expiration of the Office Restriction Period, the covenants and restrictions contained in Section 1 above shall be deemed to be of no further force and effect without the need to record any additional instruments with the Office of the Recorder, Franklin County, Ohio (the “Recorder”). Likewise, upon the expiration of the Residential Restriction Period, the covenants and restrictions contained in Section 2 above shall be deemed to be of no further force and effect without the need to record any additional instruments with the Recorder.

4. Remedies: CP and the City agree that (a) this Agreement and the covenants and restrictions contained herein shall be enforceable against CP and its successors and assign with respect to the ownership of all or any portion of the Property, and (b) in the event of any violation of this Agreement, a remedy at law will be inadequate and the City may suffer irreparable injury, and (c) the City shall be entitled to seek and obtain, in addition to any other relief available at law or in equity, injunctive relief (including but not limited to) a temporary restraining order and a preliminary and/or permanent injunction, to restrain an owner, tenant, or occupant of the Property from violating the covenants and restrictions provided herein, together with any other remedy to which the City may be entitled at law or in equity including, but not limited to, an award for lost business profits and consequential damages.

5. No Waiver; Remedies Not Exclusive: No delay or omission by the City in the exercise of any right or power occurring upon any violation or breach under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. Nor shall a waiver by the City of any of the covenants, conditions or agreements hereof be construed to be

a waiver of any subsequent violation or breach thereof or of any other covenant, condition or agreement herein contained, unless the City expressly releases the application of the covenant, conditions or agreement by a duly executed amendment filed of record with the Recorder. Any waiver of rights in favor of the City or of any restrictions contained herein shall require action by Gahanna City Council. The remedies of the City arising under the clauses and covenants of this Agreement and by operation of law shall be separate, distinct, and cumulative, and none of them shall be in exclusion of the others or in exclusion of any remedies available at law or in equity not specifically provided for in this Agreement.

6. Severability: CP acknowledges and represents that the duration and scope of the use restrictions are reasonable. The invalidity of any covenant, restriction, condition, limitation, or any other provision of this Agreement, or any part thereof, shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Agreement.

7. Venue; Jury Trial Waiver: All questions concerning the validity or intention of this Agreement shall be resolved under the laws of the State of Ohio. The parties to this Agreement hereby designate the Court of Common Pleas of Franklin County, Ohio, as the court of proper jurisdiction and exclusive venue for any actions or proceedings relating to this Agreement; hereby irrevocably consent to such designation, jurisdiction and venue; and hereby waive any right to a jury trial and any objections or defenses relating to jurisdiction or venue with respect to any action or proceeding initiated in the Court of Common Pleas of Franklin County, Ohio.

8. Successors and Assigns: This Agreement shall be binding upon CP, its successors and assigns, and each of their respective tenants and occupants.

9. Amendment; Entire Agreement: All headings and titles are for reference and convenience only and do not form a part of this Agreement. This Agreement represents the complete understanding between the parties and supersedes all prior written and oral covenants, promises, agreements, conditions, representations, warranties, statements, and understandings, all of which have been merged herein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding or effective unless reduced to writing, signed by the party against whom enforcement is sought, and filed with the Recorder.

[Signature pages follow]

IN WITNESS WHEREOF, Crescent and the City have executed this Agreement so as to be effective on the Effective Date.

Crescent:

CP CRESCENT LLC, an Ohio limited liability company

By: _____

Print Name: _____

Title: _____

STATE OF OHIO)
) SS.
COUNTY OF FRANKLIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, the _____ of **CP CRESCENT LLC**, an Ohio limited liability company, who acknowledged that he/she did execute the foregoing instrument on behalf of said corporation and that the same is his/her free act and deed and that no oath or affirmation was administered to the signor.

Notary Public

City:

CITY OF GAHANNA,
an Ohio municipal corporation

By: _____

Print Name: _____

Title: _____

STATE OF OHIO)
) SS.
COUNTY OF FRANKLIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, the _____ of the **CITY OF GAHANNA**, an Ohio municipal corporation, who acknowledged that he/she did execute the foregoing instrument on behalf of said municipality and that the same is his/her free act and deed and that no oath or affirmation was administered to the signor..

Notary Public

Approved as to Form:

By: _____
Raymond J. Mularski, City Attorney

This instrument prepared by:
Aaron L. Underhill, Esq.
Underhill & Hodge LLC
8000 Walton Parkway, Suite 260
New Albany, Ohio 43054
(614) 335-9320

EXHIBIT A

Description and Depiction of the Property

[TO BE ADDED]