

CONSTRUCTION MANAGER AT-RISK AGREEMENT

THIS CONSTRUCTION MANAGER AT-RISK AGREEMENT (the “Agreement”), is entered into as of [____], 2025, by and between BENSON CAPITAL, LLC, an Ohio limited liability company and CONNECT REALTY LLC, an Ohio limited liability company (collectively referred to as the “Manager”), and the CITY OF GAHANNA, OHIO, a municipal corporation organized and validly existing under the Constitution and laws of the State of Ohio and its Charter (“City”), under the following circumstances (capitalized words and terms not otherwise defined in this Agreement having the meaning given to them in that certain Development Agreement dated as of [____], 2025 (the “Development Agreement”)) by and between the City and the Manager, in its capacity as the “Developer”:

A. The City is authorized and empowered by the laws of the State of Ohio (the “State”) including, without limitation Section 13 of Article VIII of the Ohio Constitution, Ordinance No. _____, passed and approved by City Council on _____, and in accordance with Ohio Revised Code Section 1724.10, the City has designated the GAHANNA COMMUNITY IMPROVEMENT CORPORATION, a community improvement corporation organized and existing as a corporation not for profit under the laws of the State of Ohio (“CIC”) as the City’s agency for the industrial, commercial, distribution, and research development in the City, based on City Council’s determination that the policy of the City is to promote the health, safety, morals, and general welfare of its inhabitants through such designation. City and CIC desire to develop, construct and improve an approximately ____ acres of real property and improvements thereon located in the City of Gahanna, Franklin County, Ohio, as further described in Exhibit B hereto, which real property makes up Parcel No. 02500000100; 02501028000; 02500000500; 02500001100; 02500008300; 02500003800; 02500006400; 02500010100; 02500013000; 02500003600; 02500011600; 02500008900; 02500005100; and 02500011400 in the records of the Franklin County Auditor’s Office (collectively referred to as the “Development Site” and the design and construction of a mixed-use development contemplated to be developed on the Development Site being the “Development”) and to create or preserve jobs and employment opportunities, to improve the economic welfare of the people of the State, to promote commerce and economic development, and to improve the economic and general well-being of the people of the City.

B. The City has determined that the Development is in the best interest of the City, and will benefit the people of the State, including those within the jurisdiction of the City, by creating and preserving jobs and employment opportunities and improving the economic welfare of the State and improving the economic and general well-being of the people of the City, and has determined to proceed with the Development of real and personal property comprising City facilities and the acquisition, construction, and improvement of the facilities on the Development Site as set forth in the Development Agreement.

C. The Manager has requested the City to undertake and proceed with the Development. To that end, the CIC will sell the Development Site to the Developer pursuant to the Development Agreement.

D. The Manager and the City desire to effect the completion of certain Off-Site Public Infrastructure Improvements for which the Developer is responsible under the Development

Agreement, but which are located in public easements or rights of way, all as defined more particularly within the Development Agreement. The Parties hereby propose to enter into this Agreement to evidence their respective commitments to that end.

E. In consideration of the foregoing, the Manager as construction manager hereunder will act as an independent contractor and as construction manager at risk on behalf of the City to provide the construction of the Off-Site Public Infrastructure Improvements.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements made herein, the Manager and the City agree as follows:

Section 1. As of the date hereof, the Manager is entering into the Development Agreement with the City with respect to the Development and the financing therefor. The Development Agreement shall be effective until the Development Completion Date. The City shall have no financial responsibility with respect to the Development, and the Manager is responsible to pay all costs to construct the Development, including all Off-Site Public Infrastructure Improvements identified within the Development Agreement.

Section 2. The Manager will act as an independent contractor and construction manager at risk for the City in connection with the construction of the Off-Site Public Infrastructure Improvements. Any contracts made by the Manager relating to the Off-Site Public Infrastructure Improvements shall provide that the City shall have no obligation to pay any costs incurred by the Manager under such contracts. The City and the Manager agree that the Manager will be responsible for the performance of all such contracts. The City agrees, based upon the Manager's agreement to act as the construction manager at-risk for the City for the construction of the Off-Site Public Infrastructure Improvements and subject to its right to be indemnified by the Manager hereunder, to cooperate with the Manager and to use good faith efforts to qualify the purchase of building and construction materials and fixtures incorporated into the Development as exempt from Ohio sales and use taxes.

Section 3. (a) The City hereby expressly authorizes the Manager, or any agent or contractor of the Manager, and the Manager unconditionally agrees, for the benefit of the City to take all action reasonably necessary or desirable (i) for the acquisition, construction, installation, and equipping of the Off-Site Public Infrastructure Improvements as construction manager at-risk for the City and on its behalf pursuant to and in accordance with the Development Plan, as the same may be amended from time to time, and (ii) for the performance and satisfaction of any and all of its or of the City's obligations under any construction contract entered into pursuant to this Agreement relating to the Off-Site Public Infrastructure Improvements and to fulfill (or cause a contractor or agent of Manager to fulfill) in all material respects all of the obligations of the Manager hereunder and the Developer's obligation under the Development Agreement to construct the Off-Site Public Infrastructure Improvements, including without limitation:

(i) all design and supervisory functions relating to the site preparation and the acquisition, construction, installation and equipping of the Off-Site Public Infrastructure Improvements and performance of all remaining architectural and engineering work related thereto;

(ii) negotiation, execution and performance of its obligations under all contracts and arrangements for site preparation and for acquisition, construction, installation and equipping of the Off-Site Public Infrastructure Improvements (including, without limitation, the removal of all waste and rubbish and the enforcement of all construction warranties) on such terms and conditions as are customary and reasonable in light of local and national standards and practices;

(iii) negotiation, execution and performance of its obligations under all contracts and arrangements to procure all labor, materials and equipment necessary to or desirable for any of the foregoing;

(iv) obtaining all necessary permits, licenses, consents, approvals, entitlements and other authorizations, required under applicable laws (including without limitation Environmental Laws), from all governmental authorities in connection with the site preparation and for the acquisition, construction, installation, and equipping of the Off-Site Public Infrastructure Improvements in accordance with the Development Plan, and all of the foregoing required for the use and occupancy of the Off-Site Public Infrastructure Improvements by the Manager and the Developer, respectively;

(v) maintaining all books and records with respect to the foregoing and operation and management of the Off-Site Public Infrastructure Improvements; and

(vi) payment of all costs and expenses and performance of all other acts necessary in connection with the foregoing.

(b) The Manager has entered into a general contractor agreement with [____], as the General Contractor for the construction of the Off-Site Public Infrastructure Improvements (the “General Contractor Agreement”). In addition, the Manager shall be authorized to enter into one or more construction contracts as construction manager at-risk for the City for the construction of the Off-Site Public Infrastructure Improvements (collectively, the “Contracts”). Manager warrants that those Contracts shall include the provisions set forth on Exhibit A to this Agreement and the limitation on the City’s obligations set forth in this Agreement.

(c) Subject to the terms and conditions of this Agreement and the Development Agreement, the Manager shall have sole management and control over the site preparation and the construction, installation, and testing means and methods of all components of the Off-Site Public Infrastructure Improvements provided that the Manager, as Developer under the Development Agreement, shall permit the City and its respective employees and agents at their own risk to enter upon the Development Site at all reasonable times to inspect the same, but no such inspection shall unreasonably interfere with the Developer’s operation and use of the Off-Site Public Infrastructure Improvements facilities; provided, no such inspection shall be conducted without prior written notice (not less than two business days’ notice except in case of emergency, in which case no prior written notice is required) and in observance of all applicable health, life and safety regulations. The City shall have the right to request and receive reasonable summary information from the Manager regarding the construction of the Off-Site Public Infrastructure Improvements from time to time.

(d) Manager shall comply with Ohio Revised Code Sections 1311.01 to 1311.22, inclusive. Without limiting the generality of such obligation, the Manager shall, promptly after the filing of the Memorandum, but prior to the performance of any labor or work or the furnishing of any materials for the Off-Site Public Infrastructure Improvements that may give rise to a mechanic's lien, prepare and file with the Franklin County Recorder a Notice of Commencement; shall post and keep posted a copy of the same in a conspicuous place on the Development Site during construction of the Off-Site Public Infrastructure Improvements; shall serve a copy of the same on each general contractor; and shall amend such Notice of Commencement, as and when necessary, and likewise file, post and serve each amendment, all as required by Ohio Revised Code Section 1311.04. Manager shall maintain a complete record of the foregoing, of each Notice of Furnishing received by Manager and of each release and waiver of a right to a mechanic's lien. Manager shall provide the City with notice of any mechanic's lien, Notice of Furnishing, or amendment to any such lien or notice within forty-eight (48) hours of the actual receipt of any such lien or notice by the Manager. If any such lien is imposed upon the either the City's fee interest or the Manager's interest in the Off-Site Public Infrastructure Improvements or the Development Site other than the Permitted Encumbrances identified in the Development Agreement, the Manager shall cause the same to be released or discharged within sixty (60) days thereafter; provided, however, that if the Manager, in good faith, desires to contest, or to permit another person to contest the same, the Manager shall be permitted to do so, but in such case the Manager shall cause the person so contesting to indemnify and save the City harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure upon any such lien, restriction or other encumbrance, cause the same to be discharged and removed prior to the execution of such judgment. In the event that the Manager shall fail to remove any such liens in the manner herein provided, then the City may, but shall not be obligated to, take such action or actions as it deems appropriate to cause their removal.

In performing its duties under this Agreement, the Manager shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, veteran status, or ancestry, and to ensure that applicants for employment are considered for employment and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, veteran status, or ancestry, the Manager shall incorporate the requirements of this paragraph in all of the respective contracts for any of the Off-Site Public Infrastructure Improvements (other than subcontracts for standard commercial supplies or raw materials), and shall require all contractors for any part of the Off-Site Public Infrastructure Improvements to incorporate such requirements in all subcontracts for such work.

At such times as the City requests, the Manager shall be required to provide the City with evidence, reasonably satisfactory to the City, that there has been material compliance with this Section. Upon completion of the Off-Site Public Infrastructure Improvements facilities, the Manager shall provide a sworn affidavit of compliance from the general contractor.

Section 4. The Manager warrants to the City all of the following with regard to the construction of the Off-Site Public Infrastructure Improvements:

- (a) All materials and equipment will be new;
- (b) All work will be free from defects in design, material, and workmanship;

- (c) All work will comply with applicable laws and regulations; and
- (d) All work will be for the purposes for which it is specified.

The Manager also warrants to the City that elements of the construction of the Off-Site Public Infrastructure Improvements for which there are no express standards in any written agreement between the Manager and the City establishing quality and fitness will comply with best industry practices.

Section 5. The Manager shall defend, indemnify and hold the City and any and all officials thereof harmless against any and all loss, cost, expense, claims or actions actually incurred and arising out of or connected with the execution of this Agreement and the consummation of the transactions provided for herein and contemplated hereunder, including, without limitation, the reasonable fees and expenses of counsel to the City, any sales taxes due with respect to material or services provided in connection with the Off-Site Public Infrastructure Improvements, any amounts payable under or as a result of any contract relating to the Off-Site Public Infrastructure Improvements, any losses or claims asserted by any third party against the City on account of the Off-Site Public Infrastructure Improvements or the ownership by the City of an interest in the Off-Site Public Infrastructure Improvements, and all other expenses relating to the Off-Site Public Infrastructure Improvements, unless caused by the gross negligence or willful misconduct of the City, its agents or employees, to the extent permitted by applicable law by way of Section 35, Article II of the Ohio Constitution and Section 4123.74 of the Ohio Revised Code, as well as any other similar immunity provided for or by any statute, law or constitutional provision of the State of Ohio and of any other applicable state. The obligations in this paragraph shall survive the termination of this Agreement.

Section 6. Notwithstanding any implication to the contrary herein, the City is not obligated to use any money or assets in connection with the development of the Off-Site Public Infrastructure Improvements or to satisfy any duties, obligations, requirements and liabilities hereunder, including the failure to perform any such duty, obligation or requirement and any liability resulting therefrom.

Section 7. This Agreement shall become a binding agreement between the Manager and the City upon the execution hereof by the Manager and the City.

Section 8. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but which counterparts when taken together shall constitute one Agreement.

Section 9. The City will be named as co-obligee on any performance bond issued in connection with the Off-Site Public Infrastructure Improvements that names the Manager, or any assignee of the Manager, as an obligee (though no performance bond is required by the City). The Manager shall provide written evidence of the City's co-obligee status through a rider or other documentation to the satisfaction of the City.

Section 10. The parties may not assign this Agreement without the consent of the other party, which shall not be unreasonably withheld, conditioned or delayed; provided, however, the

Manager may assign this Agreement to any person or entity permitted under the Development Agreement upon written notice to the City.

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IN WITNESS WHEREOF, the parties hereto have executed this Construction Manager At-Risk Agreement as of the day and year set forth above.

MANAGER

BENSON CAPITAL, LLC

By: _____

Name: _____

Title: _____

CONNECT REALTY LLC

By: _____

Name: _____

Title: _____

CITY OF GAHANNA, OHIO:

By: _____

Its: _____

Date:

Approved as to Form:

Law Director

EXHIBIT A

ADDENDUM TO CONSTRUCTION CONTRACTS

Paragraphs 1 through 8 below shall be incorporated into all Contracts, as that term is defined in the Construction Manager At-Risk Agreement dated as of [____], 2025 (“Agreement”) between the City and Manager as defined in the Agreement.

Required Contract Provisions – Contract #[____], dated [_____] [date of contract] (the “General Contractor Agreement”)

1. Contractor acknowledges that Manager is acting as construction manager at-risk for the development of the Off-Site Public Infrastructure Improvements for the City, the owner of the Off-Site Public Infrastructure Improvements, in connection with the work included in this General Contractor Agreement (“Work”).

2. Contractor indemnifies and defends the City from and against any and all claims whatsoever arising out of or related to the Agreement, the City’s ownership of the Development and Off-Site Public Infrastructure Improvements, and the City’s interest in the Development Site under the Development Agreement, as defined in the Agreement. This covenant shall survive the termination of this General Contractor Agreement.

3. Contractor acknowledges that the City is not and shall not be obligated to use any money or assets in connection with the Work or to satisfy any duties, obligations, requirements or liabilities whatsoever under this General Contractor Agreement. The Contractor irrevocably acknowledges and agrees that it will look solely to the Manager for the payment of any additional amounts due or allegedly due under this General Contractor Agreement, and that it will not assert or bring any claim against the City with respect to any such amounts.

Without limiting the foregoing, it is expressly understood and agreed that neither the Construction Manager, the Contractor, nor any other person shall have any right or claim to any payment from, or any claim on any revenues of, the City other than amounts made available by the Manager to pay any obligations under this General Contractor Agreement, and no obligation of the City hereunder, or under any other contract made by the Manager for or on behalf of the City with respect to the Development, shall constitute a general debt or a pledge of the general credit of the City, or give rise to any pecuniary liability of the City.

4. Contractor represents and warrants to the Construction Manager and City that, to the best of Contractor’s knowledge, information and belief, it is and will remain in compliance and, upon request, will provide to the Manager appropriate statements or affidavits (and will procure the same from all subcontractors and provide them to the Manager) stating that it is in compliance with all legal requirements to be eligible to contract with the City, and that it has not received written notice of any finding for recovery having been issued against it by the Auditor of the State of Ohio which is “unresolved” under Section 9.24, Ohio Revised Code.

5. Contractor shall include the provisions of paragraphs 1 through 4, or otherwise provide notice of the binding character of the paragraphs, in all subcontracts that it issues (or contracts for the supply of materials to be used in the Work).

6. Contractor acknowledges that the City may be entitled to an Ohio sales and use tax exemption pursuant to Section 5739.02(B) of the Ohio Revised Code for building and construction materials or services incorporated into the real estate being improved by the Work and the Contractor shall not pay any such Ohio sales or use tax to the extent that exemption is applicable, but only if the Manager has timely provided the Contractor with an appropriate certification (or copy thereof) signed by the City, evidencing the availability of such exemption. Contractor shall, and shall require all subcontractors and vendors to, retain copies of all records required under Section 5739.03 of the Ohio Revised Code in connection with the sales or use tax exemption for at least five years after completion of the Work and shall provide those records to the Tax Commissioner of the State of Ohio upon request. This covenant shall survive the termination of this General Contractor Agreement.

7. Contractor acknowledges that the City is not obligated to use any money or assets to satisfy any duties, obligations, requirements or liabilities of the City with respect to the Development, and the Manager is responsible to pay all costs to construct the Development in accordance with the Development Agreement, as defined in the Agreement.

8. Contractor acknowledges that the City is a third-party beneficiary to the General Contractor Agreement but only with respect to the provisions of this Addendum. Manager agrees that, with respect to the provisions of this Addendum, Contractor shall be entitled to rely on direction given by the City even if it is contrary to direction given by Manager.

[End of Addendum]

EXHIBIT B

DEVELOPMENT SITE DESCRIPTION