SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered by and among the CITY OF LAKEWOOD, a political subdivision and home rule municipality of the State of Colorado (the “City”), UNIFIED UNDER THE WILSON PROPERTY ODP, a Colorado nonprofit corporation ("UNIFIED"), THE WILD FLOWER PATIO HOMES @ WHITE FENCE HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation (the “HOA”), CRESCENT COMMUNITIES, LLC, a Delaware limited liability company (“Crescent”), and C&P PROPERTIES, LLC, a Colorado limited liability company (“C&P”), effective as of ______________, 202__ (the “Effective Date”). The City, UNIFIED, the HOA, Crescent, and C&P may sometimes be referred to collectively as the “Parties” or individually as a “Party.”

RECITALS

A. On March 27, 2019, Crescent submitted a major site plan application (the “Application”) to the City Planning Department to redevelop the parcel of land located at 6263 W. Jewell Ave., Lakewood, Colorado 80232, commonly known as White Fence Farm (the “Property”). The Application seeks authorization to construct 234 multifamily residential units, with a maximum structure height of 54 feet, on the Property (the “Project”). On May 10, 2019, the HOA sent City Planning Director Travis Parker (the “Director”) a formal request to interpret the Lakewood Zoning Ordinance as applied to the Project. Director Parker issued response letters containing his interpretations on May 21 and May 31, 2019. The HOA appealed Director Parker’s determinations to the Lakewood Board of Adjustment (the “BOA”).

B. The BOA held hearings to adjudicate the appeal on December 4, 2019, January 15, 2020, and January 22, 2020. The BOA voted 6-0 on Resolution 2020-1, which concerned the BOA’s jurisdiction to hear the appeal. The BOA twice voted 3-3 on Resolution 2020-2, which concerned the Project’s proposed density and height. The BOA voted 4-2 on Resolution 2020-3, which concerned architecture review.

C. On January 27, 2020, the Lakewood City Council, the governing body of the City (the “City Council”), held a meeting to implement certain provisions of the Lakewood Residential Growth Limitation Ordinance, Section 14.27 of the Lakewood Municipal Code (“LMC”). The City Council adopted Resolution 2020-8, which, in part, refused to apply the “Authority to Continue Provision,” LMC § 14.27.160, to the Project, such that the Project would require future “Allocations” under the Lakewood Residential Growth Limitation Ordinance.

D. On February 17, 2020, the HOA and UNIFIED appealed the BOA’s decisions to the District Court for Jefferson County pursuant to C.R.C.P. 57 and C.R.C.P. 106(a)(4), Case No. 20CV30255 (the “BOA Lawsuit”). The BOA Lawsuit is currently pending.

E. On February 24, 2020, Crescent and C&P appealed the City Council’s Resolution 2020-8 to the District Court for Jefferson County pursuant to C.R.C.P. 106(a)(4), C.R.C.P. 57, and 42 U.S.C. § 1983, Case No. 20CV30295 (the “City Council Lawsuit”). The City Council Lawsuit is currently pending. The BOA Lawsuit and the City Council Lawsuit are jointly referred to as the “Lawsuits.”
F. The Parties, without in any way conceding the validity or sufficiency of any claim or contention in the Lawsuits, now desire to fully compromise, finally settle, and fully release all claims, demands, causes of action, disputes, controversies, and/or disagreements related to the Lawsuits to avoid expense, time, effort, and uncertainty of further litigation.

G. This Agreement is intended to resolve the Lawsuits and the unique circumstances and situation presented. This Agreement does not constitute City precedent with respect to any other property or any other development within the City. Further, this Agreement does not constitute binding precedent or a final decision of the Director, the City, the City Council, or the BOA concerning the force and effect of the Wilson Property ODP on any development project other than Crescent’s Project. All Parties agree that, except as modified by the Amended Site Plan (defined below), the Property remains subject to the Wilson Property ODP.

AGREEMENT

NOW THEREFORE, in consideration of the terms, covenants, and conditions contained in this Agreement, including the Recitals, which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

I. TERMS AND CONDITIONS.

A. THE PROJECT. Upon execution of this Agreement, Crescent will prepare and submit to the Director, on behalf of the City, an amended major site plan application containing the following modifications (the “Amended Site Plan”):

1. Density: 202 units or less.

2. Height: As depicted on Exhibit A:
   a) North Building: up to 3 stories (not to exceed 42 feet in height).
   b) West Building: up to 3 stories on the northern half of the building (not to exceed 42 feet in height), and up to 4 stories on the southern half of the building (not to exceed 54 feet in height).

3. Parking: At least 299 total individual (i.e., non-tandem) parking spaces, and a parking ratio greater than or equal to 1.14 spaces per bedroom (where studio units are considered to have one bedroom).

4. Circulation: Any vehicular access to or from the Property via S. Harlan Circle shall be permanently restricted to emergency use only by a controlled-access gate, the design of which is to be approved by West Metro Fire Protection District. The controlled-access gate shall be maintained by and be the responsibility of the Property owner. Crescent shall submit such designs to the West Metro Fire Protection District, and the City shall use best efforts to facilitate review and approval thereof. The only non-emergency access to or from the Property shall be via W. Jewell Avenue.
5.  **Fencing.** Crescent shall construct a white fence of at least 48 inches in height along the S. Harlan Circle frontage on the west side of the Property, the design of which shall be comparable to the existing fence on the Property and the HOA fence surrounding the HOA properties.

**B. PROJECT REVIEW AND PROCEDURES.**

1.  **Architecture Consultation.** Prior to submission of the Amended Site Plan, Crescent shall conduct a non-binding consultation with the HOA regarding the Project’s architecture, construction materials, and landscaping. Following approval of the Amended Site Plan and prior to construction, Crescent shall again conduct a non-binding consultation with the HOA regarding the Project’s architecture, construction materials, and landscaping.

2.  **Staff Review.** Upon Crescent’s submission of the Amended Site Plan, the City shall expedite the processing and review thereof. The City agrees that the Director will retain jurisdiction of the Amended Site Plan and will not refer the Amended Site Plan to the Planning Commission for review.

3.  **Condition to Continue Effectiveness: City Council’s Authorization Under the Authority to Continue Provision.** Within one month of execution of this Agreement, the City Council shall include as an agenda item at a regular or special meeting and decide whether to adopt a resolution: modifying or amending Resolution 2020-8; authorizing the issuance of building permits for the Project under the Authority to Continue Provision; and confirming that the Project does not require Allocations under LMC § 14.27 (the “Amended Resolution”).

4.  **HOA and UNIFIED Support for Project.** Within seven (7) days from the execution of this Agreement, the HOA and UNIFIED shall deliver written correspondence to City staff, the City Planning Commission, the BOA, and the City Council, expressing unqualified support for the Project and the Amended Site Plan, and with particular regard to the City Council, a request to modify Resolution 2020-8 and authorize the issuance of building permits for the Project under the Authority to Continue Provision.

5.  **Stay of the Lawsuits.** Within seven (7) days from the execution of this Agreement, the Parties shall request stipulated stays of the Lawsuits.

6.  **Challenges Prohibited and Notification Required.** The HOA and UNIFIED warrant and represent that neither they nor any of their respective board members have knowledge that any of their homeowners or members intend to object to the Project before the City Council, the Director, or the City, or intend to challenge the Project, approval of the Amended Site Plan or the modification of Resolution 2020-8 to allow the Project to proceed under the Authority to Continue Provision, so long as the Amended Site Plan is consistent with the terms of this Agreement. The HOA and UNIFIED shall not challenge the Project, contest or appeal the approval of the Amended Site Plan, or contest, object to or appeal the modification of Resolution
2020-8, or provide any assistance, of any kind, to any of their homeowners, members or any third party, in any such a challenge, objection or appeal, so long as the Amended Site Plan is consistent with the terms of this Agreement. Any Party that becomes aware of any such potential challenge, objection or appeal, shall immediately notify all other Parties.

7. **Denial or Challenge of Approval Terminates Agreement.** Upon any of the following, this Agreement shall immediately terminate, unless otherwise agreed by the Parties in writing:

   a) City Council fails to adopt the Amended Resolution;

   b) The Director denies the Amended Site Plan;

   c) The Director approves the Amended Site Plan with unacceptable conditions that would cause Crescent not to proceed with the Project;

   d) The Director approves the Amended Site Plan, but a Party or person not subject to this Agreement appeals such approval; or

   e) A Party or person not subject to this Agreement challenges this Agreement.

8. **Effect of Termination.** If the Agreement terminates pursuant to Paragraph I.B.7:

   a) The Agreement is automatically void without further action of any Party, and no Party shall have any further rights or obligations hereunder;

   b) Crescent may withdraw the Amended Site Plan and reinstate and proceed with Crescent’s original major site plan pending as of the Effective Date, subject to the Lawsuits and/or further action of the BOA; and

   c) The Parties to the respective Lawsuits, or any of them, shall notify the courts with jurisdiction over the Lawsuits of the termination of this Agreement and the failure of the settlement, and shall request termination of the stays requested pursuant to Paragraph I.B.5.

II. **CONTINGENT TERMS AND CONDITIONS.** Subject to termination pursuant to Paragraph I.B.7, thirty-one (31) days after the later of the approval of the Amended Site Plan and the City Council’s adoption of the Amended Resolution (the “Effective Date of the Development and Maintenance Agreement and Declaration of Restrictive Covenants”), and assuming there is no challenge or appeal of those actions, the Parties shall execute and record the Development and Maintenance Agreement and Declaration of Restrictive Covenants, contained in Exhibit B, and the following provisions shall become effective as binding agreements of the Parties:
A. DISMISSAL OF THE LAWSUITS.

1. Within one week of the Effective Date of the Development and Maintenance Agreement and Declaration of Restrictive Covenants, the HOA and UNIFIED shall file a stipulated motion to dismiss the BOA Lawsuit with prejudice, each Party to bear its own costs and attorneys’ fees.

2. Within one week of the Effective Date of the Development and Maintenance Agreement and Declaration of Restrictive Covenants, Crescent shall file a stipulated motion to dismiss the City Council Lawsuit with prejudice, each Party to bear its own costs and attorneys’ fees.

B. MUTUAL RELEASE.

1. The Parties, on behalf of themselves and their current and former employees, agents, representatives, attorneys, successors and assigns fully, completely and finally waive, release, remise, acquit, and forever discharge all Parties, their employees, agents, and successors from any and all claims, demands, rights, controversies, agreements, damages, actions, expenses, fees, interest, compensation, judgment, suits, manners of obligation, debts, liabilities, torts, covenants, contracts, consequential, punitive and treble damages, or causes of action of any kind whatsoever, at law or in equity or based on any statute, known or unknown, suspected or unsuspected, from the beginning of time to the date hereof, including but not limited to the claims and allegations raised in the Lawsuits or that could have been raised in the Lawsuits, and/or in any way relating to the events giving rise to the Lawsuits and/or any other relationship between the Parties (collectively, “Released Claims”). The Released Claims do not include the general enforcement of the Lakewood City Code or other City requirements not specifically addressed in this Agreement, the Amended Site Plan, the Amended Resolution or the Development and Maintenance Agreement and Declaration of Restrictive Covenants.

2. The Parties agree to voluntarily and knowingly assume the risk of any mistake of fact, either mutual or unilateral, with respect to its losses, claims, costs, expenses, damages and fees, and shall not, under any circumstances, seek to present, directly or indirectly, further claims against the other Parties, arising out of or any way relating to the Released Claims.

3. The Parties recognize that they may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Agreement and the Released Claims, which, if known or suspected at the time of executing this Agreement, may have materially affected this settlement. Nevertheless, the Parties hereby waive any rights, claims or causes of action that might arise as a result of such different or additional claim or facts.
4. Other than the promises and terms set forth herein, the Parties are not relying on any statements made by any other Party in deciding to enter into this Agreement.

5. Notwithstanding anything to the contrary contained in this Agreement, the releases set forth above do not apply to any claims relating to the enforcement, interpretation or performance under this Agreement.

III. MISCELLANEOUS TERMS AND CONDITIONS

A. Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties with respect to the matters addressed herein and supersedes all prior representations, understandings and agreements of the Parties with respect thereto. There are no other promises, understandings, representations, warranties, covenants or agreements, verbal or otherwise, relating to the resolution of this matter, other than what is contained in this Agreement. Notwithstanding any course or dealing to the contrary, this Agreement may not be modified, nor may any of its provisions be waived, except by written instrument signed by all the Parties and approved by their respective attorneys.

B. Agreement Binds Successors and Assigns. The Parties agree that this Agreement, and the terms thereof, shall be binding on their current and former employees, agents, servants, attorneys, employers, principals, insurers, successors, assigns, subrogees and any and all other persons or entities which may have had or may have any claim on behalf of themselves (including any derivative claims), or be entitled to share in any settlement thereof. Notwithstanding the foregoing and except for the obligations set forth in this Agreement, nothing in this Agreement is intended to bind or obligate the City Council as to any decision it may make or discretion it may exercise.

C. All Parties Drafted Agreement. This Agreement shall be considered as drafted jointly by the Parties, and no uncertainty or ambiguity found in the terms hereof shall be construed for or against any Party based on an attribution of drafting to another Party. The Parties agree, represent, and warrant that they have read this Agreement, had the opportunity to discuss it with legal counsel, and know and understand its contents fully; and they voluntarily execute this Agreement, without being pressured or influenced by any statement or representation of any person acting on behalf of any other party, including any other party’s officers, directors, employees, agents, and attorneys.

D. Adequacy of Consideration. Each of the Parties acknowledge that the consideration it has given and received hereunder is fair and adequate consideration for the payments, covenants, undertakings, forbearances, promises and releases contained herein.

E. No Third-Party Beneficiaries. The Parties agree that there are no intended or incidental third-party beneficiaries of this Agreement, other than those specifically contemplated herein.

F. Governing Law. This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Colorado.
G. **Disputes.** Parties may seek all remedies available in law or equity for any breach or anticipated breach of this Agreement.

H. **Attorneys’ Fees.** In any action, suit or proceeding brought to enforce, construe or interpret this Agreement or any of its terms or conditions, the prevailing Party shall be awarded its reasonable attorneys’ fees and costs incurred in connection therewith.

I. **Severability.** In the event that a court of competent jurisdiction enters a final judgment holding invalid any material provision of this Agreement, the remainder of this Agreement shall be fully enforceable.

J. **Counterpart Execution.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document or DocuSign, and, upon receipt, shall be deemed originals and binding upon the Parties hereto. Signature pages may be detached and reattached to physically form one document. The Parties further agree that this Agreement may be executed by electronic copies of signatures, and that any electronic copies of signatures shall be binding upon the Party providing such electronic copy of signature as if it were the Party’s original signature.

K. **Integration.** This Agreement and its exhibits constitute the entire agreement of the Parties and a complete merger of all prior negotiations and agreements.

L. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation hereof.

M. **Gender and Number.** Whenever applicable, the pronouns designating the feminine, masculine, and neuter will equally apply to the feminine, masculine, and neuter genders; the singular will include the plural and the plural will include the singular.

N. **Subsequent Instruments.** The Parties agree that, upon the reasonable request of any other Party, they will execute, acknowledge, and deliver any additional instruments or documents that may be required to carry out the intentions of this Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, which may affect the property rights of the Parties as between them or others with respect to the rights and obligations created by this Agreement.

O. **Responsibility for Expenses.** Each Party shall be responsible for and pay all of its own attorneys’ fees, costs, and expenses incurred, or to be incurred, with regard to the negotiation and execution of this Agreement and, as of the Effective Date, all issues contained herein and all claims relating hereto.

P. **Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Agreement except by written instruments signed by the Party charged with the waiver or estoppel; no written waiver shall be deemed a continuing waiver unless specifically stated.
therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or to any act other than that which was specifically waived.

Q. **Warranty of Capacity to Execute Agreement.** Each signatory warrants and represents that he or she has the authority to execute this Agreement and to bind the Party for whom he or she is acting to the terms and provisions hereof.

R. **Governmental Immunity.** Nothing in this Agreement is intended to constitute a waiver of the immunity or other protections and provisions of the City under the Colorado Governmental Immunity Act, or under common law immunity.

[Signature Page Follows]
IN WITNESS WHEREOF, the Parties hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they signed the same freely and voluntarily.

**The City of Lakewood**, a Colorado home rule municipality, as approved by **The Lakewood City Council**, the governing body of the City of Lakewood, Colorado.

By: _______________________

Name: _____________________

Title: ______________________

Date: ______________________

**UNIFIED Under the Wilson Property ODP**, a Colorado nonprofit corporation.

By: _______________________

Name: _____________________

Title: ______________________

Date: ______________________

**The Wild Flower Patio Homes @ White Fence Homeowners Association**, a Colorado nonprofit corporation.

By: _______________________

Name: _____________________

Title: ______________________

Date: ______________________
Crescent Communities LLC, a Delaware limited liability company.

By: _______________________

Name: _____________________

Title: ______________________

Date: ______________________

C&P Properties, LLC, a Colorado limited liability company.

By: _______________________

Name: _____________________

Title: ______________________

Date: ______________________
EXHIBIT A
PROJECT HEIGHT
EXHIBIT B

DEVELOPMENT AND MAINTENANCE AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

[Exhibit Follows]
DEVELOPMENT AND MAINTENANCE AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

This Development and Maintenance Agreement and Declaration of Restrictive Covenants ("Agreement") is entered into by and among the CITY OF LAKEWOOD, a political subdivision and home rule municipality of the State of Colorado (the "City"), UNIFIED UNDER THE WILSON PROPERTY ODP, a Colorado nonprofit corporation ("UNIFIED"), THE WILD FLOWER PATIO HOMES @ WHITE FENCE HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation (the "HOA"), CRESCENT COMMUNITIES, LLC, a Colorado limited liability company ("Crescent"), and C&P PROPERTIES, LLC, a Colorado limited liability company ("C&P"), effective as of ________________, 202__, (the "Effective Date"). The City, UNIFIED, the HOA, Crescent, and C&P may sometimes be referred to collectively as the "Parties" or individually as a "Party."

RECITALS

A. C&P is the owner of certain real property located at 6263 W. Jewell Ave., Lakewood, Colorado 80232, commonly known as White Fence Farm, depicted and legally described on Exhibit 1 attached hereto and made a part hereof (the "Property"). The Property is generally bounded by W. Jewell Avenue to the south, S. Harlan Circle to the west, and Sanderson Gulch to the north and east. Crescent is the major site plan applicant to redevelop the Property as a 202-unit multifamily residential project (the "Project").

B. Several disputes had arisen between the Parties regarding the Property, the Project, and the surrounding parcels that are subject to this Agreement. In order to resolve these disputes, the Parties now desire to set forth the agreements with respect to the Project and the Property reached with and for the benefit of the Parties, and to ensure that the Project will be developed and the Property will be used in accordance with this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the terms, covenants, and conditions contained in this Agreement, including the Recitals, which are incorporated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

I. TERMS AND CONDITIONS.

A. RESTRICTIONS ON THE PROJECT AND THE PROPERTY.

1. LEED Certification. The Project shall obtain LEED Gold Certification or higher.

2. Construction Traffic. Construction traffic associated with the Project must adhere to the following conditions:

   a) Construction traffic shall use the W. Jewell Avenue access point as the primary means to enter and exit the Property. The S. Harlan Circle

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entrance may be used as an alternative if the W. Jewell Avenue entrance is infeasible due to construction activities, utility work, vehicle size, or otherwise.

b) Construction traffic is prohibited from using S. Manor Lane and is prohibited from entering S. Harlan Circle at the W. Iliff Dr. intersection.

c) Construction traffic may enter S. Harlan Circle at the S. Lake Road intersection, when necessary, but is prohibited from travelling north on S. Harlan Circle past the Property. Construction traffic may exit the Property on S. Harlan Circle, when necessary, but is prohibited from travelling north on S. Harlan Circle.


e) Violations of the restrictions set forth in this Paragraph I.A.2(a)-(d) are subject to a $200 fine per violation payable by Crescent to the HOA upon notice from the HOA.

3. Property and Project Uses. The Property and the Project are restricted to multifamily residential use and shall not contain more than 202 dwelling units. Any development at the Property must include at least 299 individual (i.e., non-tandem) parking spaces. While the Property owner may charge a reasonable fee for its tenants to lease garage parking spaces, the Property owner shall not charge tenants to use non-garage parking spaces. No other uses shall be allowed at the Property, including but not limited to any and all retail or other commercial uses. All residential leases associated with any portion of the Property shall prohibit any non-residential uses by tenants and/or guests. If construction on the Project has not commenced within 18 months of the Effective Date, any development or redevelopment of the Property shall be subject to architectural approval by the HOA.

4. Fencing. The Property owner shall construct and maintain a white fence of at least 48 inches in height along the S. Harlan Circle frontage on the west side of the Property, the design of which shall be comparable to the existing fence on the Property and the HOA fence to the north of the Sanderson Gulch Area.

5. Alcohol and Marijuana Licenses. No one may apply for or obtain any licenses or permits to sell alcohol or marijuana at the Property.

6. Traffic Restrictions. Any vehicular access to or from the Property via S. Harlan Circle shall be permanently restricted to emergency use only by a controlled-access gate, the design of which is to be approved by West Metro Fire
Protection District. The controlled-access gate shall be maintained by and be the responsibility of the Property owner. The only non-emergency access to or from the Property shall be via W. Jewell Avenue. Any and all residential leases associated with any portion of the Property shall require tenants and their guests to utilize the W. Jewell Avenue entrance for all vehicular traffic.

7. Parking Restrictions. Any and all residential leases associated with the Property shall:

   a) Require tenants and their guests to park only on the Property;

   b) Prohibit storage, including but not limited to storage of recreational vehicles (RVs), trailers, boats, and non-vehicle personal items, at, on, or within the Property’s parking lots and garages; and

   c) Prohibit tenants and their guests from parking on S. Harlan Circle, S. Lamar Court, S. Kendall Court, S. Jay Way, S. Jay Court, S. Ingalls Court, S. Manor Lane, W. Colorado Lane, W. Utah Lane, S. Lake Rd, S. Ingalls Street, W. Pacific Circle, S. Ingalls Court, W. Atlantic Drive, S. Jay Court, S. Jay Way, S. Harlan Court, W. Iliff Drive, S. Gray Drive, S. Ingalls Way, W. Evans Place and S. Marshall Circle and notify tenants that any tenant or guest vehicles parked on these streets will be subject to ticketing and/or towing.

If a residential parking permit program is established in the future by the City, the owner of the Property shall notify all tenants of the program, its effective date, restrictions, and penalties, and shall provide notice to the HOA that it has done the same.

8. Pet Requirements. Any and all residential leases associated with any portion of the Property shall require tenants to collect and submit the DNA of all dogs and require tenants to adhere to pet rules and regulations that include, among other things, a prohibition on dogs defecating on the property of any home, sidewalks, or streets governed by the HOA.

9. Noise. Any and all residential leases associated with any portion of the Property shall require tenants and their guests to adhere to applicable City noise standards, as they may be amended or modified in the future.

10. Investigation of Violations and Enforcement of Lease Restrictions. The Property owner shall cooperate with the HOA to investigate all alleged violations of the required lease restrictions set forth herein, and the Property owner shall enforce all of the required lease restrictions set forth herein. The Property owner shall provide the HOA with a sample copy of its current standard residential lease for the Property upon request.
B. CITY RESPONSIBILITIES CONCERNING TRAFFIC, PARKING, AND USE OF THE WILSON FAMILY PARK.

1. Beginning after June 1, 2022, but no later than June 1, 2023, the City shall conduct an annual traffic study for three years for the S. Harlan Circle/W. Jewell Avenue (S. Lake Road) intersection and the S. Harlan Circle/W. Jewell Avenue (W. Iliff Drive) intersection to determine whether the traffic volume and/or accidents at either intersection satisfies traffic signal warrants.

2. Within six (6) months of the Effective Date, the City shall erect and maintain the parking restrictions depicted in Exhibit 2 (“No Parking Anytime” and “No Overnight Parking – 2-Hr. Max. Parking Permitted Between 7am and 10pm”) along S. Harlan Circle to the west of the Property. Upon a request from the HOA and the owner of Block 1, Lot 79 of the White Fence Farm Subdivision (currently owned by Carmel Oaks LLC) based on parking impacts from the Project or the Property, the City shall erect and maintain additional parking signs and/or restrictions as may be agreed upon by the HOA, the owner of Block 1, Lot 79 of the White Fence Farm Subdivision, and the City.

3. Within six (6) months of the Effective Date, the City shall erect and maintain the parking restrictions depicted in Exhibit 3 (“No Parking Anytime” and “No Parking Anytime – Residents and Guests of this Block Excepted” – with a symbol indicating that violators are subject to being towed) within the HOA’s neighborhood and enforce the same. The “No Parking Anytime” signs will be located on the sides of the streets with red lines as shown on Exhibit 3. The “No Parking Anytime – Residents and Guests of this Block Excepted” signs will be located on the sides of the streets with yellow lines as shown on Exhibit 3. Prior to installation of the signs, a representative from the City’s Traffic Engineering Division will work with HOA representatives regarding the placement of the signs within the neighborhood. The HOA may make minor modifications to the yellow and red lines on Exhibit 3 prior to the installation of the signs as long as such changes allow for emergency vehicle access. Upon a request from Emerald Estates Homeowners Association, Inc. and/or UNIFIED based on parking impacts from the Project or the Property, the City shall erect similar signage (“No Parking Anytime” and “No Parking – Residents and Guests Excepted”) on S. Marshall Circle and enforce the same. Upon a request from Lakewood Estates Homeowners Association, Inc. and/or UNIFIED based on parking impacts from the Project or the Property, the City shall erect similar signage (“No Parking Anytime” and “No Parking – Residents and Guests Excepted”) on the public streets within Lakewood Estates Filing No. 1 and enforce the same. The obligations contained in Paragraphs I.B.1, I.B.2, and I.B.3 requiring the expenditure of public funds are subject to annual appropriations by the Lakewood City Council (the “City Council”).

4. The owner of the Property shall express support for additional neighborhood parking and traffic improvements for S. Harlan Circle, the S. Harlan Circle/W. Jewell Avenue (i.e., S. Lake Road) intersection, and the S. Harlan Circle/W. Jewell Avenue (i.e., W. Iliff Drive) intersection, upon the HOA’s request.
5. The City hereby represents and affirms that the Wilson Family Park (Block 1, Lot 80 of the White Fence Farm Subdivision) is held as park and open space purposes and is protected from change of use or conveyance as provided for in Section 14.3(b) of the Lakewood City Charter. Because this land was acquired in part with Jefferson County Open Space funding, any change of use or conveyance would require approval by the Jefferson County Open Space Advisory Board and the Board of County Commissioners of Jefferson County, Colorado.

C. SANDERSON GULCH AREA MAINTENANCE

1. Allocation of Responsibilities. The Parties agree to the following maintenance responsibilities for the Sanderson Gulch area as depicted on Exhibit 4 (the “Sanderson Gulch Area”), including but not limited to the maintenance responsibilities associated with “Pool #1,” “Pool #2,” and “Pool #3” as also shown on Exhibit 4.

a) Subject to annual appropriations by City Council, the City shall, with the exception of the maintenance items set forth in Paragraphs I.C.1(b) and (c) below and the exceptions set forth in Paragraph I.C.2 below, be responsible for maintaining the Sanderson Gulch Area to City standards in accordance with its regular maintenance schedules including but not limited to the following requirements that the City shall specifically:

   (1) Maintain public crossing structures, including without limitation the cleaning and repair of the box culverts, wingwalls, headwalls and rock facing materials.
   (2) Maintain vegetation commensurate with the City’s standard levels of maintenance.
   (3) Mow at least twice each year the strips of lawn on the sides of both the northern and southern Sanderson Gulch Area concrete pathways.
   (4) Remove snow from and maintain the northern and southern Sanderson Gulch Area concrete pathways.
   (5) Perform weed control commensurate with the City’s standard levels of maintenance.
   (6) Remove dead, distressed, and fallen trees and limbs.
   (7) Provide long term maintenance of open channel areas, flat bottom channel areas, all drop structures, and the outlet weir structure and repair or reconstruct major drainage structures, including box culverts, boulder drop structures, and weirs.
   (8) Repair severe erosion in the low flow channel or channel banks.
   (9) Remove large debris piles blocking channel or structures.
   (10) Remove all large trash, including for example, shopping carts and mattresses.
   (11) Pick-up litter and small trash removal.
(12) Ensure that Sanderson Gulch Area, including Pools #1-3, remain compliant and consistent with the City’s Municipal Separate Storm Sewer System (MS4) permit and any applicable drainage plans.

b) The HOA shall:

(1) Mow twice each year the native landscaping in the Sanderson Gulch Area from the HOA’s fence to the Sanderson Gulch north pedestrian pathway (and up to three feet beyond such pathway where practicable).

c) The owner of the Property shall:

(1) Mow at least twice each year all lawn areas between the Property and the Sanderson Gulch south pedestrian pathway.

(2) Dredge Pools #1-3 upon the City’s notification that the wetlands encircling Pools #1-3 are being adversely affected by sedimentation of Ponds #1-3, subject to the following conditions:

   (a) The U.S. Army Corps of Engineers issues to the Property owner, based upon the Property owner’s reasonable efforts, a Clean Water Act Section 404 permit authorizing such dredging without compensatory mitigation, or written confirmation that no 404 permit is required.

   (b) The City determines that dredging Pools #1-3 would be compliant and consistent with the City’s Municipal Separate Storm Sewer System (MS4) permit and any applicable drainage plans.

   (c) The Water Commissioner does not order Pools #1-3 to be drained.

   (d) The City, the HOA, and UNIFIED releases the Property owner from any and all liability associated with or arising from any of the following:

      (i) Design or construction deficiencies associated with Pools #1-3.

      (ii) Damages to persons or property caused by water being impounded by Pools #1-3.

      (iii) Obtaining water rights sufficient to offset depletions associated with Pools #1-3.
2. Limitations on Maintenance Activities.

   a) This Agreement does not obligate the City to prevent sedimentation of Pools #1-3, except as necessary to meet the City’s obligation to provide long term maintenance of open channel areas and/or to enforce the Property owner’s obligation under Paragraph I.C.1(c)(2).

   b) This Agreement does not obligate the Property owner to prevent sedimentation of Pools #1-3, except pursuant to Paragraph I.C.1(c)(2).

   c) The HOA and Property owner are prohibited from applying pesticides and herbicides to Sanderson Gulch Area, including Pools #1-3.

   d) Except as expressly provided for herein, nothing in this Agreement shall require the City to perform any maintenance or repair obligations on the Property or on property within the HOA.

3. Notwithstanding any previous agreement or documentation to the contrary, the City affirms that from the Effective Date of this Agreement, the only responsibility of the HOA related to the Sanderson Gulch Area is the maintenance item set forth in Paragraph I.C.1(b) and the only responsibility of Summer Field Town Homes @ White Fence Farm Homeowners Association (“Summer Field”) related to the Sanderson Gulch Area is to mow and maintain the irrigated lawn area between Summer Field’s property line and the Sanderson Gulch pedestrian pathways and to mow twice per year the native landscaping up to three feet beyond the pedestrian pathways where practicable.

D. COVENANTS RUNNING WITH LAND. Each of the restrictions, requirements, and/or responsibilities set forth in this Paragraph I of this Agreement shall constitute a covenant that burdens, attaches to, and runs with the Property and the Sanderson Gulch Area for the benefit of Crescent, C&P, UNIFIED, the HOA, and/or the City (as appropriate) and shall be binding upon Crescent, C&P, UNIFIED, the HOA, and the City (subject to annual appropriations by City Council), and their heirs, successors, and assigns and any other persons or entities which may acquire a real property interest in all or any part of the Property or the Sanderson Gulch Area as covenants running with the land. These covenants may be enforced by each Party or by any person or entity having an ownership interest in the Property or the Sanderson Gulch Area, in any action at law or in equity.

II. MISCELLANEOUS TERMS AND CONDITIONS.

A. Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties with respect to the matters addressed herein and supersedes all prior representations, understandings and agreements of the Parties with respect thereto. There are no other promises, understandings, representations, warranties, covenants or agreements, verbal or otherwise, relating to the resolution of this matter, other than what is contained in this Agreement. Notwithstanding any course or dealing to the contrary, this Agreement may not be modified or terminated, nor may any of its provisions be waived,
except by written instrument signed by all the Parties and approved by their respective attorneys.

B. **All Parties Drafted Agreement.** This Agreement shall be considered as drafted jointly by the Parties, and no uncertainty or ambiguity found in the terms hereof shall be construed for or against any Party based on an attribution of drafting to another Party. The Parties agree, represent, and warrant that they have read this Agreement, had the opportunity to discuss it with legal counsel, and know and understand its contents fully; and they voluntarily execute this Agreement, without being pressured or influenced by any statement or representation of any person acting on behalf of any other party, including any other party’s officers, directors, employees, agents, and attorneys.

C. **Adequacy of Consideration.** Each of the Parties acknowledge that the consideration it has given and received hereunder is fair and adequate consideration for the payments, covenants, undertakings, forbearances, promises and releases contained herein.

D. **No Third-Party Beneficiaries.** The Parties agree that there are no intended or incidental third-party beneficiaries of this Agreement, other than those specifically contemplated herein.

E. **Governing Law.** This Agreement shall be construed, enforced, and administered in accordance with the laws of the State of Colorado.

F. **Disputes.**

1. **Negotiation Before Arbitration.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation. Any Party may give the other party written notice of any dispute not resolved in the normal course of business. Within twenty-one (21) days after delivery of the notice, the receiving Party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party’s position and a summary of arguments supporting that position, and (b) the name and title of the individual(s) who will represent that Party. Within thirty-five (35) days after delivery of the notice, the Parties shall meet, remotely or in-person, at a mutually acceptable time and place. Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting described above (“**First Meeting**”). Such closure shall not preclude continuing or later negotiations, if desired. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the Parties, their agents, employees, experts, and attorneys are confidential, privileged, and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation. At no time prior to the First Meeting shall either side initiate arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by arbitration rules or by agreement of the Parties and except
if a Party refuses to engage in negotiation. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures in this Paragraph are pending and for twenty-one (21) calendar days thereafter. The Parties will take such action, if any, required to effectuate such tolling.

2. **Arbitration.** If any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, is not resolved by negotiation pursuant to Paragraph II.F.1 above, then the matter shall be determined by arbitration in Denver, Colorado before an arbitrator with at least ten (10) years of experience in land use matters. The arbitration shall be administered pursuant to American Arbitration Association’s Commercial Arbitration and Mediation Procedures and shall proceed under in accordance with the expedited procedures set forth therein. The prevailing Party shall be awarded its reasonable attorney’s fees and costs, in addition to any other relief to which it may be entitled from the non-prevailing Party (“Award”). Judgment on the Award may be entered in any court having jurisdiction.

G. **Attorneys’ Fees.** In any action, suit or proceeding brought to enforce, construe or interpret this Agreement or any of its terms or conditions, the prevailing Party shall be awarded its reasonable attorneys’ fees and costs incurred in connection therewith.

H. **Severability.** In the event that a court of competent jurisdiction enters a final judgment holding invalid any material provision of this Agreement, the remainder of this Agreement shall be fully enforceable.

I. **Counterpart Execution.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document or DocuSign, and, upon receipt, shall be deemed originals and binding upon the Parties hereto. Signature pages may be detached and reattached to physically form one document. The Parties further agree that this Agreement may be executed by electronic copies of signatures, and that any electronic copies of signatures shall be binding upon the Party providing such electronic copy of signature as if it were the Party’s original signature.

J. **Integration.** This Agreement and its exhibits constitute the entire agreement of the Parties and a complete merger of all prior negotiations and agreements.

K. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation hereof.

L. **Gender and Number.** Whenever applicable, the pronouns designating the feminine, masculine, and neuter will equally apply to the feminine, masculine, and neuter genders; the singular will include the plural and the plural will include the singular.

M. **Subsequent Instruments.** The Parties agree that, upon the reasonable request of any other Party, they will execute, acknowledge, and deliver any additional instruments or
documents that may be required to carry out the intentions of this Agreement, including such instruments as may be required by the laws of any jurisdiction, now in effect or hereinafter enacted, which may affect the property rights of the Parties as between them or others with respect to the rights and obligations created by this Agreement.

N. **Responsibility for Expenses.** Each Party shall be responsible for and pay all of its own attorneys’ fees, costs, and expenses incurred, or to be incurred, with regard to the negotiation and execution of this Agreement and, as of the Effective Date, all issues contained herein and all claims relating hereto.

O. **Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Agreement except by written instruments signed by the Party charged with the waiver or estoppel; no written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver shall operate only as to the specific term or condition waived, and not for the future or to any act other than that which was specifically waived.

P. **Warranty of Capacity to Execute Agreement.** Each signatory warrants and represents that he or she has the authority to execute this Agreement and to bind the Party for whom he or she is acting to the terms and provisions hereof.

Q. **Governmental Immunity.** Nothing in this Agreement is intended to constitute a waiver of the immunity or other protections and provisions of the City under the Colorado Governmental Immunity Act, or under common law immunity.

[Signature Page Follows]
IN WITNESS WHEREOF, the Parties hereto, and each of them, further represent and declare that they have carefully read this Agreement and know the contents thereof, and that they signed the same freely and voluntarily.

The City of Lakewood, a Colorado home rule municipality, as approved by The Lakewood City Council, the governing body of the City of Lakewood, Colorado.

By: _______________________
Name: _______________________
Title: _______________________
Date: ______________________

UNIFIED Under the Wilson Property ODP, a Colorado nonprofit corporation.

By: _______________________
Name: _______________________
Title: _______________________
Date: ______________________

The Wild Flower Patio Homes @ White Fence Homeowners Association, a Colorado nonprofit corporation.

By: _______________________
Name: _______________________
Title: _______________________
Date: ______________________
Crescent Communities LLC, a Delaware limited liability company.

By: _______________________
Name: _____________________
Title: ______________________
Date: ______________________

C&P Properties, LLC, a Colorado limited liability company.

By: _______________________
Name: _____________________
Title: ______________________
Date: ______________________
EXHIBIT 1
LEGAL DESCRIPTION

That part of the Southeast ¼ of the Southwest ¼ of Section 24, Township 4 South, Range 69 West of the 6th P.M., County of Jefferson, State of Colorado, described as:

Commencing at the South ¼ corner of said Section 24, whence the Southeast corner of said Section bears North 89 Degrees 18 Minutes 30 Seconds East, a distance of 2645.50 feet and the Southwest corner of said Section bears South 89 Degrees 18 Minutes 54 Seconds West, a distance of 2644.92 feet;
Running thence North 00 Degrees 31 Minutes 21 Seconds West, a distance of 30.00 feet, more or less, to a point on the North right-of-way line of West Jewell Avenue;
Thence South 89 Degrees 18 Minutes 54 Seconds West, a distance of 377.24 feet to the True Point of Beginning;
Thence, continuing along said right-of-way line, South 89 Degrees 18 Minutes 54 Seconds West, a distance of 655.09 feet;
Thence, leaving said right-of-way line, North 02 Degrees 40 Minutes 53 Seconds West, a distance of 294.04 feet to the point of curvature of a curve to the right with a 400.00 foot radius and a 43 Degrees 00 Minutes central angle;
Thence along said curve, a distance of 300.20 feet to its point of tangency;
Thence North 40 Degrees 19 Minutes 07 Seconds East, a distance of 103.97 feet;
Thence South 70 Degrees 55 Minutes East, a distance of 110.03 feet;
Thence North 77 Degrees 48 Minutes East, a distance of 75.71 feet;
Thence South 38 Degrees 59 Minutes East, a distance of 54.04 feet;
Thence South 01 Degree 24 Minutes East, a distance of 82.02 feet;
Thence South 64 Degrees 55 Minutes East, a distance of 468.81 feet;
Thence South 79 Degrees 27 Minutes East, a distance of 105.18 feet;
Thence South 33 Degrees 23 Minutes West, a distance of 52.70 feet;
Thence South 69 Degrees 30 Minutes West, a distance of 131.32 feet;
Thence South 50 Degrees 10 Minutes West, a distance of 110.09 feet;
Thence South 00 Degrees 41 Minutes 06 Seconds East, a distance of 119.81 feet, more or less, to the True Point of Beginning.

Also knows as:

Lot 24, Block 2, White Fence Farm Subdivision, County of Jefferson, State of Colorado.
Recorded with the Jefferson County Clerk and Recorder at Reception Number F1217305.
EXHIBIT 2
S. HARLAN CIRCLE PARKING SIGNAGE PLAN

[Exhibit Follows]
EXHIBIT 3
WILD FLOWER PATIO HOMES PARKING SIGNAGE PLAN

[Exhibit Follows]
EXHIBIT 4
SANDERSON GULCH AREA

[Exhibit Follows]