

SECOND AMENDMENT TO THE INFRASTRUCTURE AGREEMENT

THIS SECOND AMENDMENT TO THE INFRASTRUCTURE AGREEMENT (this “Second Amendment”) is made and entered into effective as of the ___ day of November, 2004 (the “Effective Date”) by and between THE CITY OF COLLEGE STATION, TEXAS, a municipal corporation and home-rule city of the State of Texas situated in Brazos County, acting by and through its City Council (the “City”) and CRESCENT POINTE LTD., (“CRESCENT”) a Texas limited partnership (formerly known as College Main Apartments, Ltd. (“COLLEGE”)) relating to that certain Infrastructure Agreement executed by and between the City, TAC REALTY, INC., a Texas corporation (“TAC”) and CRESCENT on the 21st day of September, 2001 (the “Original Agreement”), as amended by that certain First Amendment to the Infrastructure Agreement executed by and between the City, TAC, and CRESCENT on the 12th day of December, 2001 (the “First Amendment”).

RECITALS:

A. Phase I improvements involving the extension of Copperfield Drive as provided for in the City of College Station Highway 30/60 Corridor Master Plan dated September 2001 (“Master Plan”) have been completed as of the Effective Date of this Second Amendment.

B. The Phase II improvements from the Master Plan (“Phase II Improvements”) were to be undertaken by the City and CRESCENT. The City and CRESCENT desire to complete the Phase II Improvements without creating a Public Improvement District (“PID”).

AGREEMENT:

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, including, without limitation, the mutual covenants contained in this Second Amendment, the receipt and sufficiency of which are hereby acknowledged by the parties, the City and CRESCENT hereby AGREE, each with the other, as follows:

1. Capitalized Terms.

- (a) Any capitalized term that is used in this Second Amendment and is not defined herein shall have the same meaning ascribed to it in the Original Agreement.
- (b) “Utilities” shall be as defined in the Original Agreement except for gas and/or gas lines, which shall no longer be included as a Utility.
- (c) “Lighting” shall mean street lighting and pedestrian lighting.
- (d) “Other Improvements” shall mean the plans and specifications attached hereto as Exhibit “A” and incorporated herein for all purposes.
- (e) “Improvements” shall include Utilities and Other Improvements.

- (f) "Phase II Streets" shall refer to the cul-de-sac and loop described in the Master Plan and associated drainage.
- 2. No PID. The City shall not place the COLLEGE Property in a PID to fund up to \$500,000 of the total cost of the Phase II Improvements.
- 3. Amendments.
 - A. Paragraph 4 of the Original Agreement is amended by adding the following sentence to the end of the paragraph: "The City further agrees that CRESCENT shall not be assessed for all or any portion of the cost of the Phase II Improvements, including Crescent Pointe Parkway."
 - B. Paragraph 6 of the Original Agreement is hereby deleted in its entirety and replaced with the following:
 - 6. Phase II Improvements:
 - (a) The City, at its sole cost and expense shall construct or contract for the installation of those certain Phase II Streets in accordance with the plans attached hereto as Exhibit "B", those certain Utilities in accordance with the plans and specifications attached hereto as Exhibit "C", along with associated Lighting, all such construction or installation to be completed by December 1, 2005. The payment for the improvements called for in this paragraph shall not exceed the funds remaining from Phase I Improvements plus \$1,200,000.
 - (b) CRESCENT, at its sole cost and expense shall construct or contract for the installation of a gas line (the "Gas Line") and the Other Improvements to the COLLEGE Property in accordance with the list attached hereto as Exhibit "D", such construction or installation to be completed by December 1, 2005. CRESCENT shall install the Gas Line in accordance with the plans and specifications as required by Oncor Gas. The payment for the installation of the Gas Line and the Other Improvements called for in this paragraph shall be \$194,365.
 - (c) CRESCENT, at its sole cost and expense shall construct or contract for the installation of certain additional Other Improvements to the COLLEGE property in accordance with the list attached hereto as Exhibit "E", such construction or installation to be completed within two (2) years of the Effective Date of this Second Amendment. The payment for the installation of the additional Other Improvements called for in this paragraph shall be \$305,835.

- (d) CRESCENT, at its sole cost and expense shall secure any and all permits required to construct and install the Gas Line and Other Improvements called for in paragraph 6(b) and (c) above.
- (e) Within ten (10) business days of the execution hereof, CRESCENT shall provide a commercially acceptable guaranty (“Guaranty”) in the form of either a letter of credit or performance bond to secure the payment of \$500,000 or the installation of at least \$500,000 worth of improvements to include the Gas Line and Other Improvements in paragraph 6(b) and (c) above. Prior to the release of the Guaranty by City, CRESCENT shall provide a notarized affidavit stating that all bills for labor and materials incurred have been paid in full and that any existing claims from manufacturers, materialmen, and subcontractors have been released.
- (f) CRESCENT shall provide to City a complete itemized sworn statement of the construction account for the Gas Line and Other Improvements installed and completed, certified by CRESCENT and its contractor as correct. City shall review said statement in order to determine that: 1) there are no discrepancies in the submittal, 2) the costs reflect the actual cost expended by CRESCENT for the Gas Line and Other Improvements, and 3) the cost of the improvements meets the requirements in this Second Amendment.
- (g) Paragraph 6(a), (b) and (c) above shall be subject to force majeure in regard to completion dates.
- (h) CRESCENT shall form the Property Owners Association (POA) called for in the proposed Crescent Pointe Protection Covenants (the “Covenants”), attached hereto as approved by the City as Exhibit “F”, before any portion of COLLEGE Property is conveyed but in any case no later than June 2005. CRESCENT shall cause the POA to maintain and replace as needed the Other Improvements for a period of at least 50 years after their installation. CRESCENT shall provide evidence of the filing of the Covenants with the Brazos County courthouse to City within ten (10) days of filing.
- (i) Provided, if after completion of the Phase II Streets and Improvements called for in paragraph 6(a), (b) and (c) above, City has not spent the total of \$4,850,000 it budgeted for Phase I and Phase II Improvements and/or CRESCENT has not spent \$500,000 on Phase II Improvements, then as many of the residual Other Improvements identified in Exhibit “G” attached hereto will be completed by City and/or CRESCENT until these funding limits are attained.

- (j) Upon completion of all Improvements provided for in this paragraph, neither the CITY or CRESCENT shall have any further obligations, except that 1) the City shall maintain the roadways and sidewalks and pay for the monthly electrical expenses for lighting, and shall maintain/replace lighting fixtures as needed, and 2) CRESCENT and/or POA shall maintain the Other Improvements and pay for monthly water expenses for irrigation.
 - C. Paragraph 21 of the Original Agreement is hereby deleted in its entirety.
- 4. Ratification. The terms of the Original Agreement and First Amendment are modified and amended pursuant to the terms of this Second Amendment and are hereby conformed to be consistent with the terms and provisions of this Second Amendment. Except as provided in this Second Amendment, the terms of the Original Agreement and First Amendment (including, without limitation, all Exhibits attached to each thereto) are hereby confirmed and ratified for all purposes and shall remain in full force and effect as originally provided.
 - 5. Multiple Counterparts. Multiple copies of this Second Amendment may be executed by the parties. Each such executed copy shall have the full force and effect of an original executed instrument.

[signatures and acknowledgements appear on following pages]

EXECUTED to be effective as of the Effective Date shown above.

THE CITY:

THE CITY OF COLLEGE STATION, TEXAS

By: _____
Ron Silvia, Mayor

ATTEST:

By: _____
Connie Hooks, City Secretary

APPROVED:

By: _____
Thomas E. Brymer, City Manager

By: _____
Jeff Kersten, Director of Finance

APPROVED AS TO FORM:

By: _____
James P. Plummer,
Fulbright & Jaworski L.L.P.

CRESCENT:

CRESCENT POINTE LTD., a Texas limited partnership (formerly known as College Main Apartments, Ltd.)

BY: Cambridge Interests, Inc.,
a Texas corporation, its General Partner

By: _____
Emanuel H. Glockzin, Jr., President

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the _____ day of _____, 2004 by Ron Silvia, Mayor of THE CITY OF COLLEGE STATION, a municipal corporation and home-rule city of the State of Texas situated in Brazos County, Texas, on behalf of said municipal corporation.

NOTARY PUBLIC, STATE OF TEXAS
Notary's Printed Name: _____
My commission expires: _____

THE STATE OF TEXAS §

COUNTY OF BRAZOS §

This instrument was acknowledged before me on this the _____ day of _____, 2004 by Emanuel H. Glockzin, Jr., President of Cambridge Interests, Inc., a Texas corporation and General Partner of CRESCENT POINTE LTD., a Texas limited partnership (formerly known as College Main Apartments, Ltd.), on behalf of said limited partnership.

NOTARY PUBLIC, STATE OF TEXAS
Notary's Printed Name: _____
My commission expires: _____

EXHIBIT “A”

Other Improvements – Plans and Specifications

[Attached]

EXHIBIT "B"

Phase II Street Improvements by City

[Attached]

EXHIBIT “C”

Plans and Specifications for Utilities by City

[Attached]

EXHIBIT "D"

List of Other Improvements by CRESCENT

1st Phase – Other Improvements

ITEM	SIZE	QTY		UNIT \$	TOTAL \$
James Carroll Kell Design Fee					\$18,469.65
Insurance					\$6,625.00
Engineering					\$6,115.00
All Irrigation					
SIDES OF STREET					
<i>Includes F.M. 60 frontage; does not include Adams addition</i>					
Irrigation					
Grass		238,770	sf	\$0.20	\$47,754.00
Plant Beds		14,682	sf	\$0.60	\$8,809.20
				Sub-Total:	\$56,563.20
				12% Contingency:	\$6,787.58
				SIDES OF STREET TOTAL:	\$63,350.33
MEDIANS					
Irrigation					
Grass		28,953	sf	\$0.45	\$13,028.85
Plant Beds		3,774	sf	\$0.60	\$2,264.40
				Sub-Total:	\$15,293.25
				12% Contingency:	\$1,835.19
				MEDIANS TOTAL:	\$17,128.44
Insurance					\$5,387.00
Install					
2" Gas Line as per TXU					\$72,085.58
Insurance					\$5,203.50
Total					\$194,364.50

EXHIBIT "E"

List of Additional Other Improvements by CRESCENT

2nd Phase

ITEM	SIZE	QTY		UNIT \$	TOTAL \$
ENTRY CORNERS – HARDSCAPE					
<i>Three entry corners, hardscape only</i>					
Signs		3	ea	\$25,000.00	\$75,000.00
Stone walls	3' height	315	lf	\$150.00	\$47,250.00
Stone walls	6' height	306	lf	\$325.00	\$99,450.00
Stone columns w/logo	8' height	6	ea	\$1,500.00	\$9,000.00
Iron fencing @ entry walls	6' height	108	lf	\$40.00	\$4,320.00
Raised stone platform for planters	2.5' height	3	ls	\$6,500.00	\$19,500.00
Decorative lighting – grnd mtd fixtures incl. electrical		6	ea	\$1,000.00	\$6,000.00
Decorative wall-mounted lights		15	ea	\$350.00	\$5,250.00
				Sub-Total:	\$265,770.00
				15% Contingency:	\$39,865.50
				ENTRY CORNERS HARDSCAPE TOTAL:	\$305,635.50

EXHIBIT “F”

Crescent Pointe Protective Covenants

[Attached]

EXHIBIT "G"

Other Improvements by City

ITEM	SIZE	QTY		UNIT \$	TOTAL \$
SIDES OF STREET					
<i>Includes F.M. 60 frontage; does not include Adams addition</i>					
Fine grading, grass preparation		238,770	sf	\$0.03	\$7,163.10
Planting:					
Trees	45 gallon	116	ea	\$320.00	\$37,120.00
Trees	65 gallon	236	ea	\$500.00	\$118,000.00
Shrubs	5 gallon	87	ea	\$22.00	\$1,914.00
Shrubs	15 gallon	15	ea	\$90.00	\$1,350.00
Groundcover & perennials	1 gallon	4,666	ea	\$5.50	\$25,663.00
Seasonal color	4" pots	1,810	ea	\$1.75	\$3,167.50
Zoysia grass	solid sod	26,530	sy	\$4.00	\$106,120.00
Mulch for plant beds		93	cy	\$30.00	\$2,790.00
				Sub-Total:	\$303,287.60
				12% Contingency:	\$36,394.51
			SIDES OF STREET TOTAL:		\$339,682.11
MEDIANS					
Fine grading, grass preparation		28,953	sf	\$0.03	\$868.59
Planting:					
Trees	65 gallon	70	ea	\$500.00	\$35,000.00
Shrubs	5 gallon	267	ea	\$22.00	\$5,874.00
Groundcover & perennials	1 gallon	1,271	ea	\$5.50	\$6,990.50
Seasonal color	4" pots	585	ea	\$1.75	\$1,023.75
Zoysia grass	solid sod	3,217	sy	\$4.00	\$12,868.00
Mulch for plant beds		25	cy	\$30.00	\$750.00
				Sub-Total:	\$63,374.84
				12% Contingency:	\$7,604.98
			MEDIANS TOTAL:		\$70,979.82
PROPERTY BOUNDARY CORNERS					
Stone columns w/ logo	8' height	3	ea	\$1,500.00	\$4,500.00
				Sub-Total:	\$4,500.00
				15% Contingency:	\$675.00
			BOUNDARY CORNERS TOTAL:		\$5,175.00
LOOP STREET CORNERS					
Low stone wall with logo	30" ht.	132	lf	\$180.00	\$23,760.00
Concrete paver access to walls		108	sf	\$6.00	\$648.00
				Sub-Total:	\$24,408.00
				15% Contingency:	\$3,661.20
			LOOP STREET CORNERS TOTAL:		\$28,069.20
			GRAND TOTAL – CITY OF COLLEGE STATION COSTS:		\$443,906.13