

**INTERGOVERNMENTAL COOPERATION AGREEMENT**

This Intergovernmental Cooperation Agreement ("Agreement") dated as of \_\_\_\_\_, 2013 by and between CENTRAL COLLEGE COMMUNITY DEVELOPMENT AUTHORITY (the "Authority"), a new community authority organized and existing under Chapter 349 of the Ohio Revised Code, and the CITY OF COLUMBUS, OHIO (the "City"), a municipal corporation duly organized and validly existing under and by virtue of the constitution and the laws of the State of Ohio.

**RECITALS:**

WHEREAS, pursuant to Chapter 349 of the Ohio Revised Code ("Chapter 349") and in accordance with a February 23, 2006 Memorandum of Understanding (the "NE MOU") among M/I Homes of Central Ohio, LLC, Dominion Homes, Inc., Homewood Corporation (collectively, the "Original Developers"), and the City, which was signed February 23, 2006, and amended August 16, 2010 (the "Amended MOU," and together with the NE MOU and any amendments and revisions thereto, including the May 5, 2011 administratively agreed upon revision thereto and any future administratively agreed upon revisions, the "MOU"), which among other things added Village Communities Corporation as a party (the "Additional Developer," and together with the Original Developers, the "Developers") and Murphy Development Company for limited purposes, the Authority was established as a new community authority under Chapter 349 to govern the Central College Community Development District (the "District"), a new community district under Chapter 349; and

WHEREAS, M/I Homes of Central Ohio, LLC, and Dominion Homes, Inc. have each filed a Declaration of Covenants, Restrictions and Agreements with respect to the Authority (collectively, the "Declaration"), respectively filed as instrument numbers 200408190194807 and 200504150070838 with the offices of the Franklin County Recorder, establishing and attaching, among other things, a four-mill community development charge (the "Charge") on the property within the District to be used to cover all or part of the cost of the acquisition, development, construction, operation and maintenance of land, land development and Community Facilities (as defined in Chapter 349), the debt service thereof and any other cost incurred by the Authority under Chapter 349; and

WHEREAS, the Authority, pursuant to Resolution No. 2010-4, issued its Central College Community Development Authority Community Facilities Note, Series 2010 (the "Series 2010 Note") in the aggregate principal amount of \$468,040 to fund the purchase of real property in the District; and

WHEREAS, prior to the execution of this Agreement, the Authority has retired the Series 2010 Note and therefore will not use the Charge to pay debt service on the Series 2010 Note; and

WHEREAS, the City and the Authority desire to follow the direction of the MOU with respect to the collection, distribution, and use of the Charge; and

WHEREAS, the City, with the cooperation of the Authority, desires to cause the construction of certain public infrastructure improvements as described herein and use the Charge along with other sources of funds to support the construction and financing of those public infrastructure improvements; and

WHEREAS, the Columbus City Council (the "City Council") adopted Ordinance No. \_\_\_\_-2013 on \_\_\_\_\_, 2013 approving this Agreement; and

WHEREAS, the Board passed Resolution No. 2013-3 on September 9, 2013 approving this Agreement; and

NOW, THEREFORE, in consideration of the foregoing and the promises of the parties hereto to be bound by the terms of this Agreement and for other good and valuable consideration, the receipt of which the parties mutually acknowledge, the City and the Authority agree to the foregoing and as follows:

## **Section I**

### **Public Infrastructure Improvements**

The City represents that it has constructed for the benefit of the Authority and its residents certain public infrastructure improvements, including Central College Full Replacement and Warner Road Phase I–Hamilton Road Warner Road Signal, with an estimated total value of \$5,167,671. In addition, the City intends to construct Warner Road Phase II, with an estimated value of \$1,521,064, by December 31, 2016, and to construct from time to time and as determined by the City, the public infrastructure improvements described in the MOU (the "Public Infrastructure Improvements"). Notwithstanding the foregoing, Sections 30 and 159 of the City's Charter forbid the City from entering into any contract, agreement, or other obligation involving the expenditure of money unless City Council first appropriates and authorizes the expenditure of funds for the same, and the Columbus City Auditor (the "City Auditor") certifies that the money required for such contract, agreement, obligation or expenditure is in the City Treasury to the credit of the fund from which it is to be drawn and has not been appropriated for any other purpose. Thus, the City's obligation to make any expenditure related to the improvements described herein is subject to the passage of one or more subsequent ordinances by Columbus City Council appropriating and authorizing the expenditure of such sums, and the certification by the City Auditor of the availability of funds for such purposes. If the City does not construct Warner Road Phase II by December 31, 2016, the Authority is released from any obligations under this Agreement.

## Section II

### **Levy, Collection, and Transfer of the Charge**

In accordance with the Declaration, and to meet the terms of the MOU, the Authority agrees to levy and collect the Charge annually for twenty years for each parcel in the District if that parcel meets the conditions for levying the Charge specified in the Declaration.

The Authority agrees that it will cause a semiannual settlement with the Franklin County Treasurer in accordance with Chapters 321 and 323 of the Ohio Revised Code on or before each February 15th and on or before each August 15th (or by such other dates as the Ohio Revised Code may specify for the settlement of accounts between the fiscal officer of the Authority and the Franklin County Treasurer for semiannual tax settlement) of all community development charges payable to the Authority as a result of the Charge levied on real property within the District.

In consideration of the City's commitments under Section I, the City and the Authority agree to and covenant the following:

1. Distribution Schedule: Any Charge receipts held by the Authority currently and any Charge receipts received by the Authority after the date of this Agreement will be distributed in the following manner:
  - a. The Board will retain the amounts necessary to fund the Authority's Administrative Expense Allowance (as defined in Section III) for that year.
  - b. The Board will transfer all remaining amounts to the City to the attention of the City Auditor within 30 days of each semiannual settlement made by the Franklin County Auditor to the Authority in connection with the Charge.
2. Subject to the Authority's Administrative Expense Allowance, the Authority grants the City a lien on the amount of the Charge collected as necessary to pay debt service charges for any bonds or notes issued by the City or otherwise paid or financed by the City to fund costs of the Public Infrastructure Improvements described in Section I or any Additional Improvements (as defined in paragraph 3 below) (the "City Public Infrastructure Bonds").
3. In accordance with the distribution schedule in paragraph (1) above, the City may retain any amounts of the Charge in excess of debt service charges of the City Public Infrastructure Bonds and may use such monies to fund other costs provided in this Agreement or to fund other public infrastructure that are identified in the MOU or are specifically authorized by a subsequent agreement between the City and the Authority (the "Additional Improvements"). The City must notify the Authority of the expense (including debt service schedules, if applicable) of any Additional

Improvements undertaken and funded by the City and for which the City will seek reimbursement through the Charge.

At such time as (i) any City Public Infrastructure Bonds have been paid in full, (ii) all other costs provided for in this Agreement have been paid in full, and (iii) any other costs of public infrastructure to be undertaken by the City as identified in the MOU, including but not limited to any obligations of the City in connection with the costs of construction of such public infrastructure or the financing thereof, and funded by the City and intended to be funded by the Charge have been paid in full, the City will, within 30 days of receiving notice from the Authority, remit to the Authority any amount relating to the Charge that the City holds. The Authority will have no continuing obligation to pay Charge amounts to the City hereunder and this Agreement will terminate.

The City and the Authority agree further that the City and the Authority may enter into future cooperative agreements consistent with the MOU and the Declaration to fund the payment of public infrastructure improvements and associated operating and maintenance costs for public services (including, but not limited to, police, fire, and refuse collection services).

### **Section III**

#### **Administrative Expenses**

“Administrative Expenses” means those reasonable expenses that the Authority incurs in its operation and administration, including but not limited to accounting and legal services and expenses (including but not limited to defense of third-party lawsuits, state audits and payment of any judgment liens), and in the levy and collection of the Charge. The “Administrative Expense Allowance” for each calendar year equals an amount budgeted by the Board of the Authority to meet Administrative Expenses and may not exceed (i) \$22,000 (in 2013 dollars, adjusted in accordance with the consumer price index published by the U.S. Department of Labor Bureau of Labor Statistics from time to time, or, if such index is no longer published, another reasonably equivalent index as determined by the Treasurer of the Board with the consent of the City, which consent must be provided by the Director of the Department of Development in a reasonable amount of time and may not be unreasonably withheld), plus any expenses for state audits, defense of third-party lawsuits or payment of any final judgment liens, for any calendar year after 2012, and (ii) \$5,000 for operation and administration of the Authority during any previous calendar year, if necessary because Charge revenues collected in that previous year were insufficient to pay such costs. For so long as the Authority is required to make the transfer to the City described in Section II.1.d., the Authority agrees that within 30 days following the end of each calendar year, it will transfer any unspent portion of the Administrative Expense Allowance for the previous calendar year to the City to the attention of the Director of the Development Department; provided, however, the Authority may retain a balance of up to \$2,500 as a reserve to pay future Administrative Expenses.

The Authority must provide the City with the Authority's approved annual budget within 30 days of the Board's approval of such budget and such budget must include the estimated amount for the Administrative Expenses. If the Administrative Expense Allowance proves insufficient in any year to pay for the Authority's Administrative Expenses, the Authority may request that the City permit an additional Administrative Expense Allowance; the City may not unreasonably withhold its authorization of such a request by the Authority. All notifications and requests under this paragraph, and any approvals or disapprovals by the City under this paragraph, must be addressed to, or made by, the City Auditor on behalf of the City.

The Authority and the City agree that the City may use up to \$20,000 in revenues received from the Authority for payment of out-of-pocket legal and administrative expenses incurred by the City relating to the preparation of this Agreement and relating to the calculation, collection, and monitoring of the Charge.

The Authority may request the City to provide the Authority with an accounting of the City's use of the Charge provided for in this Agreement and the City will, within 45 days of the City's receipt of such request from the Authority, provide such accounting to the Authority.

#### **Section IV**

##### **Binding Effect; Assignment**

The Authority and the City, for themselves, their successors, executors, administrators and assigns, agree to the full performance of the covenants contained in this Agreement. The Authority may assign this Agreement only with the City's prior written consent.

#### **Section V**

##### **Amendment**

This Agreement may only be amended by written instrument signed by both parties.

#### **Section VI**

##### **Severability**

The invalidity of any portion or amendment of this Agreement will not affect the validity of any other provision. If any provision of this Agreement is held to be invalid, the parties agree that the other provisions will remain in full force and effect.

## **Section VII**

### **Governing Law**

This Agreement is governed by, construed under and enforced in accordance with the laws of the State of Ohio. The venue for any disputes arising under the Agreement will be the Franklin County Common Pleas Court.

## **Section VIII**

### **Extent of Covenants; No Personal Liability**

All covenants, obligations and agreements of the City and the Authority contained in this Agreement are effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement constitutes a covenant, obligation or agreement of any present or future member, officer, agent or employee of the City or the Authority, or the legislative authority of the City or the Authority in other than his or her official capacity, and neither the members of those legislative authorities nor any official executing this Agreement will be subject to any personal liability or accountability by reason of the covenants, obligations or agreements of the City or the Authority contained in this Agreement.

## **Section IX**

### **Notices**

All notices, certificates, requests or other communications hereunder must be in writing and mailed by registered or certified mail, postage prepaid, and addressed to the appropriate address as provided herein. The City or the Authority, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications may be sent. If, because of the suspension of delivery of certified or registered mail or for any other reason, notice, certificates or requests or other communications are unable to be given by the required class of mail, any notice required to be mailed by the provisions of this Agreement may be given in such other manner as the City or the Authority judges most effectively approximates mailing thereof, and the giving of that notice in that manner for all purposes of this Agreement will be deemed to be in compliance with the requirement for the mailing thereof. Except as otherwise provided herein, the mailing of any notice will be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery will be deemed complete upon receipt of the notice by the delivery service.

All communications hereunder, except as herein otherwise specifically provided, shall be in writing and mailed or delivered:

To the City: City of Columbus, Ohio  
50 West Gay Street, Third Floor  
Columbus, Ohio 43212-9040  
Attention: Director of the Development Department

and

City of Columbus, Ohio  
90 West Broad Street  
Columbus, Ohio 43215  
Attention: City Auditor

With a copy to: City of Columbus, Ohio  
77 North Front Street  
Columbus, Ohio 43215  
Attention: City Attorney

To the Authority: The Central College Community  
Development Authority  
2185 Blackoak Ave.  
Columbus, OH 43229  
Attention: Treasurer

With a copy to: Squire Sanders (US) LLP  
2000 Huntington Center  
41 South High Street  
Columbus, OH 43215  
Attention: Gregory R. Daniels, Esq.

## **Section X**

### **Representations and Warranties**

The City and the Authority each represent and warrant as of the date of delivery of this Agreement that:

(a) It is a political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio.

(b) It (i) has the power to execute and deliver this Agreement and perform its obligations hereunder, (ii) has taken or caused to be taken all necessary actions to authorize the execution and delivery of this Agreement and the

performance of its obligations hereunder, and (iii) has duly executed and delivered this Agreement.

(c) Its execution and delivery of this Agreement do not, and its performance of its obligations hereunder will not, (i) violate Ohio law, (ii) violate any court order, judgment or decree applicable to it, or (iii) result in a breach of, constitute a default under, or result in the creation of a lien or right of acceleration under any agreement or instrument to which it is a party.

(d) There is no pending litigation naming it as a defendant and no litigation overtly threatened in writing against it that challenges its existence or the validity or enforceability of this Agreement or seeks to enjoin its performance of its obligations hereunder.

(e) No consent, approval, license or exemption by, order or authorization of, or filing, recording or registration with, any governmental authority, other than those already obtained, is required to be obtained or made by it in connection with its execution and delivery of this Agreement or the performance by it of its obligations hereunder.

## **Section XI**

### **Miscellaneous**

Nothing in this Agreement confers any legal rights, privileges, or immunities or imposes any legal duties or obligations, on any person other than the City or the Authority, whether such rights, privileges, immunities, duties, or obligations are regarded as contractual, equitable or beneficial in nature as to such person.

This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. Signatures transmitted by facsimile or electronic means are deemed original signatures.

The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

This Agreement constitutes the entire agreement between the parties with respect to the matters covered herein and supersedes prior agreements and understandings between the parties.

(Signatures on next page)



The City and the Authority have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

**CITY OF COLUMBUS, OHIO**

By: \_\_\_\_\_  
Steven R. Schoeny  
Director of the Development Department

Approved as to Form

By: \_\_\_\_\_  
Richard C. Pfeiffer, Jr.  
Columbus City Attorney

**THE CENTRAL COLLEGE COMMUNITY  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
David W. Paul  
Treasurer, Board of Trustees

AUTHORITY'S FISCAL OFFICER'S CERTIFICATE

The undersigned, Treasurer and fiscal officer of The Central College Community Development Authority (the "Authority"), hereby certifies that the moneys required to meet the obligations of the Authority during the year 2013 under the foregoing Intergovernmental Cooperation Agreement have been lawfully appropriated by the Board of Trustees of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

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Treasurer, The Central College Community  
Development Authority

Dated: \_\_\_\_\_, 2013