

## PAY AS WE GROW AND GROW WITH A PLAN AGREEMENT

This Pay As We Grow and Grow with a Plan Agreement (the “Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Columbus, Ohio, a body corporate and politic (“Columbus”), and Romanelli & Hughes Building Company, an Ohio Corporation, with an address of 148 W Schrock Rd, Westerville, OH 43081 (“Romanelli”), Ciminello Incorporated an Ohio Corporation with an address of 567 Lazelle Rd. , Westerville, OH 43081 (“Ciminello”), Pulte Homes of Ohio, a Michigan limited liability company, with an address of 475 Metro Pl S, Dublin, OH 43017 (“Pulte”), and Ciminello Incorporated, an Ohio Corporation, with an address of 567 Lazelle road Westerville, Ohio 43081 (“Ciminello”) (collectively the “Developers” and collectively with Columbus the “Parties”). The project name is Ulry Road.

### RECITALS:

WHEREAS, the Developers collectively own approximately 55± acres of property to be redeveloped at 6450 Ulry Road (the “Developer Property”); and

WHEREAS, Columbus City Council passed Ordinance 0741-2018 on March 29, 2018, thereby rezoning the Developer Property PUD-4 for Planned Unit Development District (Rezoning # Z17-048); and

WHEREAS, the Parties to this Agreement recognize that the Developer Property is within the Northeast area subject to the Columbus policy to Pay As We Grow and Grow with a Plan (“Pay As We Grow”), and agree that participation of the Developers in the funding and completion of public infrastructure improvements that will benefit the northeast quadrant of Franklin County and Columbus, including the Developer Property, is in the mutual interest of the Parties;

NOW, THEREFORE, in the spirit of the policy of Columbus to “Pay As We Grow and Grow with a Plan,” and in order to gain mutual benefits, the Parties hereto agree as follows:

#### Article 1: Developer “Pay As We Grow” Contributions.

The Parties agree that in lieu of the Developers making 163 residential unit Pay as We Grow payments to Columbus at the standard Northeast area rate of \$2,300 per unit, the Developers shall construct the Regional Improvements (such term being defined in Article 4 below).

#### Article 2: Community Development Authority.

Prior to the issuance of the first residential building permit, the Developers shall encumber the Developer Property with a Declaration of Covenants and Restrictions for the Central College Community Development District (the “CCCDD Covenants”) for the required items to include in the document view Exhibit B. The CCCDD Covenants shall run with the land and shall require each current and future owner of all or any portion of the Developer Property to pay an annual Community Development Charge, as such term is defined in Section 349.01 of the Ohio Revised Code, to the Central College Community Development Authority (the “CCCDA”) in an amount

equal to 0.004 multiplied by the “Assessed Value” of such property for a period of twenty (20) years commencing one (1) year after the date of completion of the construction of the structures (as evidenced by a Certificate of Occupancy). The “Assessed Value” of such property shall be the assessed value (35% of the full value of such property) of such property as established from time to time by the County Auditor of Franklin County as shown on the tax duplicate for such property. As requested by the City of Columbus Department of Development, the Developers agree to take all necessary steps within sixty (60) days following its acquisition of the Developer Property to include the Developer Property in the CCCDA, including without limitation, filing a petition for inclusion of that property with Columbus City Council for its review and approval. A copy of the form of the petition is attached as Exhibit C.

Article 3: Tax Increment Financing District.

Developers support inclusion of the Developer Property within a Tax Increment Financing (TIF) District, whether such TIF District is new or existing. If requested to do so by the Columbus Department of Development, Developer will provide a letter indicating such support and take other reasonable actions in support of said TIF District.

Article 4: Regionally Beneficial Public Infrastructure Improvements by Developer:

Developers will be responsible for certain regionally beneficial public infrastructure improvements, as described and delineated in Exhibit A, in conjunction with the development of the Developer Property (the “Regional Improvements”). Construction of the Regional Improvements, as well as financing for and payment of the costs associated with the Regional Improvements, shall be the sole responsibility of the Developers.

Article 5: Miscellaneous.

- A. *Entire Agreement.* This Agreement embodies the entire agreement among the Parties with respect to the matters set forth herein.
- B. *Financial Obligations of Columbus.* The financial obligations of Columbus under this Agreement are expressly subject to future ordinances of its Council appropriation and authorizing the expenditure of such funds as area necessary to meet these financial obligations and the certificate of the Columbus City Auditor under section 159 of the Columbus City Charter.
- C. *Terms Binding.* The term of this Agreement shall be binding of all of the Parties hereto and each of their successors and assigns, including but not limited to future owners of the Developer Property.

Additional Documentation. The following exhibits are hereby incorporated into and made part of this Agreement as though specifically rewritten herein:

Exhibit A – Regionally Beneficial Public Infrastructure Improvements

Exhibit B – Required items of a Declaration of Covenants for Central College  
Community District

Exhibit C – Petition to Join the Central College Community Development District

IN WITNESS WHEREOF, Columbus, Romanelli, Ciminello, Pulte, and Ciminello have  
executed this Agreement on the day and year first set forth above.

**(Signature on following page)**

City of Columbus

By: \_\_\_\_\_

Michael H. Stevens  
Interim Director of Development

Title: Director, Department of Development

Per Ordinance: \_\_\_\_\_ - 2019

Approved As to Form:

By: \_\_\_\_\_

Zach Klein, City Attorney

Romanelli & Hughes Building Company  
an Ohio corporation

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Ciminello Incorporated  
an Ohio Corporation

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Pulte Homes of Ohio,  
Michigan limited liability company

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**  
**REGIONALLY BENEFICIAL PUBLIC INFRASTRUCTURE IMPROVEMENTS**

**“Regional Improvements”**

- Developers will widen Ulry Road to three lane section instead of a turn lane. Developers are responsible for the cost and labor of the projects design and construction. All public infrastructure improvements shall be designed to the standards of the City of Columbus or applicable public entity. Developers will not receive and reimbursements for this project.

Site Plan:

ORD # 0741-2018; Z17-048; Page 1 of 9

**JULRY ROAD**  
 PREPARED FOR CHATELON'S INC.  
 DATE: 02-20-18

**DEVELOPMENT PLAN**



**SITE DATA**  
 143 LOTS IN PARCEL 97 X 30  
 25.21 GROSS ACRES  
 2.95 DUWAC GROSS  
 74.7 NET ACRES (W/O 8.4 ACRES P.U.C.R.O.W.)  
 3.49 DUWAC NET  
 224 ACRES OPEN SPACE REQUIRED (63 UNITS X 300' X 30')  
 102 ACRES OPEN SPACE PROVIDED

Final Site Plan Received 2/1/18 Z17-048

*2/20/18*  
 Parks Planning & Design

**EXHIBIT B**  
**REQUIRED ITEMS OF A DECLARATION OF COVENANTS FOR CENTRAL**  
**COLLEGE COMMUNITY DISTRICT**

In addition to the follow required items of text, please include a Map and Legal Description of Initial Property.

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**DECLARATION OF COVENANTS, RESTRICTIONS AND AGREEMENTS**  
**FOR A NEW COMMUNITY AUTHORITY**  
**IN THE CITY OF COLUMBUS, OHIO**

This DECLARATION OF COVENANTS, RESTRICTIONS AND AGREEMENTS FOR A NEW COMMUNITY AUTHORITY is made as of date the acknowledgement below, by Magnolia Trace, LLC, an Ohio limited liability company (the “Private Developer”).

The Private Developer owns the Initial Property pursuant to a limited warranty deed recorded on November 2, 2015, as Instrument Number 201511020155624 and a quit-claim deed recorded on January 15, 2016, as Instrument Number 201601150005961, each in the records of the Franklin County Recorder. From time to time, Additional Property owned by the Private Developer and/or Additional Private Developers may be subjected to this Declaration. The Private Developer makes this Declaration for the purposes hereinafter set forth (the Initial Property being all of the Property until any such other real estate is so added).

The Private Developer hereby declares that the Property shall be improved, held, sold, conveyed, encumbered, leased, occupied or otherwise transferred subject to the Restrictions, which constitute covenants running with the Property and are binding upon all parties now or hereafter having any right, title or interest in the Property or any part thereof, and all such persons, including their respective heirs, personal and legal representatives and successors and assigns, acquiring any right, title or interest in the Property, and as a part of the consideration therefore, agree that their right, title and interest in the Property or any part therein shall be improved, held, sold, conveyed, encumbered, leased, occupied or otherwise transferred subject to the Restrictions.

**PURPOSE AND INTENT**

The Private Developer intends that the Property will become part of a New Community District formed in accordance with Chapter 349 pursuant to agreements with the City and in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. The Private Developer is bound by the terms of this Declaration for the purpose of encouraging the orderly development of a well-planned, diversified and economically sound New Community in the City through the implementation of a New Community Development Program. The Private Developer anticipates that the costs of carrying out the New Community Development Program, including debt service on any New Community bonds, notes or loans authorized by the Community

Authority under Chapter 349 and any other cost incurred by the Community Authority in the exercise of its powers under Chapter 349, will be covered in whole or in part by the payment of the Community Development Charge by each Owner of a Chargeable Parcel. The Private Developer covenants to the City and the Community Authority, in consideration of the development approvals granted by the City, that it will take all actions necessary to add the Property to the Authority's New Community District.

In order to provide for the District, the implementation of the Community Authority's New Community Development Program and the establishment and payment of the Community Development Charge, this Declaration is for the purpose of creating covenants running with the land pursuant to which all persons now or hereafter having any right, title or interest in the Property or any part thereof, including their respective heirs, personal and legal representatives and their successors and assigns, shall acquire and hold such right, title or interest subject to the Restrictions, including, but not limited to, the obligation of the Owner of each Chargeable Parcel to pay the Community Development Charge applicable thereto.

### **DEFINITIONS**

In addition to the terms defined elsewhere in this Declaration, unless the context otherwise requires, the following words used in this Declaration, including the preambles, mean respectively:

**Additional Private Developers.** "Additional Private Developers" means one or more entities (and its or their respective successors in interest), other than the Private Developer, which agree to subject to this Declaration certain Additional Property owned or controlled by such entity and which the Private Developer determines to permit to become a party to this Declaration consistent with agreements with the City. An Additional Private Developer has the same rights as the Private Developer unless otherwise noted in the supplemental Declaration admitting the Additional Private Developer. A person or entity will be deemed a successor in interest of an Additional Private Developer only if specifically so designated in a duly recorded written instrument as a successor or assign of an Additional Private Developer under this Declaration and/or under a supplemental Declaration and will be deemed a successor in interest of such Additional Private Developer only as to the particular rights or interests of that Additional Private Developer under this Declaration or under such supplemental Declaration which are specifically designated in the recorded written instrument.

**Additional Property.** "Additional Property" means such other real estate as may be subjected to this Declaration pursuant to Article III hereof.

**Assessed Valuation.** (a) "Assessed Valuation" means, as to any Chargeable Parcel with respect to any year's budget for which the Community Development Charge is being collected, an amount equal to the assessed valuation thereof (including the buildings, structures and improvements thereon) listed on the tax duplicate of the Auditor for the preceding year (or most recent year available, if the assessed valuation for the preceding year is not available at the time the Community Development Charge is billed to Owners or certified to the County Auditor for collection) and disregarding any reductions pursuant to any applicable law for the purpose of reducing real estate taxes for certain persons in the State of Ohio (including but not limited to



reductions for persons 65 years of age or older pursuant to Section 2 of Article XII, Ohio Constitution, as the same may be amended from time to time) except the reductions described in Section 5.5. If by reason of any change of law, rate or common level of assessment the assessed valuation for purposes of the tax duplicate is to be determined as an amount which is less or more than thirty-five percent of the true value of the real property assessed, then “Assessed Valuation” either means the assessed valuation shown on the tax duplicate adjusted to equal thirty-five percent of the fair market value. If the assessed valuation listed on the tax duplicate for the preceding year does not reflect the completed value of a building on a Parcel and a building permit has been issued by a governmental authority for that Parcel, or a sale of that Parcel has occurred, then solely at the Board’s discretion, “Assessed Valuation” means either thirty-five percent of the cost of the building stated on the building permit or thirty-five percent of the sale price of that Parcel as reflected in the Auditor’s records.

(b) If the Auditor and all officials authorized by Ohio law to assess real estate in the County ever cease to assess real estate or if an assessed valuation has not yet been listed on the tax duplicate of the Auditor for the preceding year for a Parcel or if there is no longer a tax duplicate, “Assessed Valuation” means, as to any Chargeable Parcel for each year thereafter, the Assessed Valuation determined by the Board in its sole and absolute discretion using such criteria as the Board may establish from time to time subject to any applicable adjustments to be made under subsection (a) of this Section.

If any Chargeable Parcel is not separately listed on the Auditor’s tax duplicate with respect to any year, “Assessed Valuation” may be determined by the Board by equitably apportioning to such Chargeable Parcel a portion of the Assessed Valuation of the Parcel or Parcels from which such Chargeable Parcel was subdivided or created.

**Auditor.** “Auditor” means the Auditor of the County.

**Board.** “Board” means the Board of Trustees of the Community Authority.

**Chapter 349.** “Chapter 349” means Chapter 349 of the Revised Code.

**Chargeable Parcel.** “Chargeable Parcel” means any Parcel of Chargeable Property, including all buildings, structures and improvements thereon.

**Chargeable Property.** “Chargeable Property” means the Property together with all buildings, structures and improvements thereon, with the exception of the following:

All lands, buildings, structures and improvements of the United States of America, the State of Ohio, the Community Authority and all other political subdivisions or governmental instrumentalities of the State of Ohio;

All lands, buildings, structures and improvements exempt from real estate taxation under Ohio law (except tax increment financing exemptions under Section 5709.40 of the Revised Code) provided that such exemption from the Community Development Charge has been determined by the Board to be consistent with the purposes and needs of the Community Authority and not inconsistent with any commitments made with respect to any obligations of the Community Authority; and

All parcels on which no building has been constructed and which is not occupied or for which a certificate of occupancy has not been issued; provided that for any parcel on which only condominiums are to be constructed, only that portion of the parcel corresponding to the ratio between the percentage of condominium units which are occupied or for which a certificate of occupancy has been issued and the final number of condominium units to be constructed on the parcel are deemed to be Chargeable Property.

**City.** “City” means the City of Columbus, Ohio.

**Community Authority.** “Community Authority” means the Central College Community Development Authority, a body corporate and politic, established for the District pursuant to Chapter 349, or another community authority formed under that Chapter that includes the Property in its new community district.

**Community Development Charge.** “Community Development Charge” means the charge established in Articles IV and V, including all applicable penalties and interest pertaining to any unpaid amount.

**Community Facilities.** “Community Facilities” has the meaning given in Section 349.01 of the Revised Code; provided, however, that all Community Facilities provided through or under, or the operation and maintenance of which are supported from the Community Development Charge, shall be consistent with the Petition.

**County.** “County” means Franklin County, Ohio.

**Declaration.** “Declaration” means this Declaration of Covenants, Restrictions and Agreements made as of the date set forth above, as the same may from time to time be amended or supplemented in the manner prescribed in Articles III or VIII.

**Development Period.** “Development Period” means the period commencing on the date on which this Declaration is Recorded (as herein defined) and ending on the date the Private Developer has sold to other Owners (other than to other Private Developers or Additional Private Developer).

**District.** “District” or “New Community District” means the New Community District created pursuant to the Petition.

**Fiscal Meeting.** “Fiscal Meeting” means the meeting of the Board described in Article VI.

**Initial Property.** “Initial Property” means the real estate as described in Exhibit A attached hereto and incorporated herein by reference.

**Late Payment Rate.** “Late Payment Rate” means the federal short term “rate” determined pursuant to Section 5703.47(A) of the Revised Code, rounded to the nearest whole number percent, plus three percent.

**Owner.** “Owner” means, with respect to any Parcel, the owner of record from time to time, whether one or more persons or entities, of an interest in: (a) fee simple, (b) reversion, (c)

remainder, or (d) leasehold estate of 75 years or more, but shall not include the Community Authority.

**Parcel.** “Parcel” means any part of the Property.

**Petition.** “Petition” means the Petition for Organization of a New Community Authority, for the Community Authority, as approved by City Council, and as may be amended or supplemented from time to time.

**Place of Business.** “Place of Business” means any location on the Property on or in which an Owner or Tenant (including any subsidiary or other entity controlled directly or indirectly by such Owner or Tenant) conducts a professional, commercial or industrial activity or any other activity permitted by law. A contractor who is an Owner or Tenant shall have a Place of Business at each of his or her construction or work sites on the Property. Each landlord of any Parcel or any part thereof or interest therein, including each sublandlord and each assignee of such landlord or sublandlord, shall have a Place of Business at the Parcel.

**Place of Residence.** “Place of Residence” means the place on the Property in which a person’s habitation is fixed, and to which, whenever such person is absent, such person has the intention of returning. A person shall not be considered to have lost such person’s Place of Residence by leaving it temporarily with the intention of returning.

**Private Developer.** “Private Developer” is defined in the preamble, but the defined term includes the Private Developer’s successors in interest. A person or entity shall be deemed a successor in interest of the Private Developer only if specifically so designated in a duly recorded written instrument as a successor or assign of the Private Developer under this Declaration and/or under a supplemental Declaration and shall be deemed a successor in interest of the Private Developer only as to the particular rights or interest of the Private Developer under this Declaration or under such supplemental Declaration which are specifically designated in the recorded written instrument

**Property.** “Property” means, collectively, the Initial Property and any Additional Property.

**Recorded.** “Recorded” means filed for record in the office of the Recorder of the County or in such other office as may be provided by law for the recordation of instruments conveying lands in the County.

**Resident.** “Resident” means any person who has a Place of Residence or any person or entity who has a Place of Business, including a partnership or an S corporation as defined in Section 1361 of the Internal Revenue Code of 1986, as amended.

**Restrictions.** “Restrictions” means all covenants, conditions, restrictions, charges, liens and other obligations provided for in this Declaration.

**Secretary.** “Secretary” means the person serving as the secretary of the Board, or any other person designated by the Board to receive service of process.

**Tenant.** “Tenant” means any person or entity (a) occupying any Parcel (including any part thereof and any structure or any part of any structure thereon) pursuant to a written or oral lease, rental or license agreement with the Owner, (b) by permission of the Owner or any other person or entity claiming under the Owner or (c) under a tenancy at will or sufferance.

**Terms Defined in Chanter 349.** The terms “Land Development”, “New Community”, “New Community Authority”, “New Community Development Program”, “New Community District” and “Organizational Board of Commissioners” have the meanings given in Section 349.01 of the Revised Code.

### **EXPANSION**

Additional Property may from time to time be subjected to this Declaration and the Restrictions by the Private Developer or Additional Private Developers recording a supplemental Declaration describing the Additional Property and subjecting it to the Restrictions and this Declaration; provided, however, that all Additional Property must be within the City prior to being subjected to the Restrictions and this Declaration. Such supplemental Declarations do not require the consent of the Owners of the Initial Property or compliance with the provisions of Article IX, but must be made with the consent of the Private Developer, which will be given consistent with any applicable agreements with the City. Any such expansion will be effective upon such supplemental Declaration being recorded, unless otherwise provided therein. Any expansion may be accomplished in stages by successive supplemental Declarations or in one supplemental Declaration. All owners, successors and assigns to any of the Property will take such Property subject to this Declaration for so long as this Declaration is in effect.

### **COVENANT FOR COMMUNITY DEVELOPMENT CHARGE**

**Community Development Charge Covenant.** The Private Developer, as the original Owner of each Parcel, hereby covenants, and each Owner of any Parcel, by acceptance of a deed or other instrument or conveyance therefore, covenants and is deemed to covenant to pay or secure the payment of the Community Development Charge applicable to the Owner’s Chargeable Parcel to the Community Authority as provided in Articles IV and V. The Private Developer and each Owner agree that every transfer agreement for a Parcel entered into after this Declaration is Recorded will, in compliance with Section 349.07 of the Revised Code, specifically refer to the Community Development Charge and identify the instrument number in the deed records in which this Declaration is Recorded.

**Purpose of Community Development Charge.** The Community Development Charge is established for the benefit and use of the Community Authority to cover all or part of the cost of the acquisition, development, construction, operation and maintenance of Community Facilities, Land Acquisition and Land Development.

**Creation of Lien and Personal Obligation of Community Development Charge.** The Community Development Charge is a charge and lien on each Chargeable Parcel and is also the

personal obligation of the Owner of each Chargeable Parcel, both to the extent and for the period provided in Article V.

**Enforcement of Lien and Collection of Charge.** Any lien established under this Declaration may be enforced by the Community Authority in the same manner and to the same extent (including appointment of a receiver, foreclosure sale and, where appropriate, deficiency judgment) and subject to the same procedures as in the case of foreclosure of a real property mortgage under the laws of the State of Ohio. In any such enforcement proceeding, the amount that may be recovered by the Community Authority includes all costs of such proceeding, including reasonable attorney's fees. In any such foreclosure sale, the Community Authority may become the purchaser.

The Community Authority may also cause the collection of any Community Development Charge by certifying that Community Development Charge to the Auditor for collection on the tax duplicate.

No remedy conferred upon or reserved to the Community Authority by this Declaration is intended to be exclusive of any other remedy. Each remedy is cumulative and is in addition to every other remedy given hereunder or otherwise to the Community Authority or now or hereafter existing.

## **COMMUNITY DEVELOPMENT CHARGE**

**Establishment of Community Development Charge Effective Date.** There is hereby established for the benefit of the Community Authority, as a charge on each Chargeable Parcel, an annual Community Development Charge in an amount determined in accordance with Section 5.2. Such Community Development Charge must be paid to the Community Authority by the Owner of each such Chargeable Parcel in the manner provided in this Article. Such charge may be levied and paid on each Chargeable Parcel for a period not to exceed twenty consecutive years from its first imposition on that Chargeable Parcel, consistent with applicable agreements with the City.

The Community Development Charge does not begin to accrue and will not be assessed against a Chargeable Parcel until such time as that Chargeable Parcel is occupied or a certificate of occupancy has been issued for a structure constructed on that Chargeable Parcel.

**Amount of Community Development Charge.** Subject to waiver, reduction or termination of the Community Development Charge as provided in Sections 6.3 and 6.4, the amount of the annual Community Development Charge for each Chargeable Parcel is the product of (a) the Assessed Valuation for such Chargeable Parcel multiplied by (b) 0.004 (i.e. 4 mills; the "Millage Rate").

**Payment.** The annual Community Development Charge for each Chargeable Parcel is due and payable on the date or dates determined by the Board, provided that the Community Development Charge may not be collected more than semiannually. However, if Chapter 349 is amended to allow the payment of the Community Development Charge at more frequent intervals, the Board may increase the frequency of such installments accordingly. If the Board determines to certify the annual Community Development Charge for a Chargeable Parcel to the Auditor for

collection on the tax duplicate pursuant to Section 4.4 for any year, the entire Community Development Charge for that Chargeable Parcel will be deemed due for purposes of Section 349.07 of the Revised Code on August 1 of the preceding year, provided that, if permitted by law, the Board may provide for or require such payment to be due on other dates so as to permit the certification of the Community Development Charge not paid when due to the Auditor and provided, further, that the Community Authority is not entitled to pursue the enforcement of payment of a Community Development Charge certified to the Auditor unless that Community Development Charge has not been paid on or before the dates for payment of real property taxes prescribed by Chapter 323 of the Revised Code. No Owner may be required to prepay any installment to the Community Authority, but nothing herein precludes Owner from agreeing with the Community Authority to prepay all or any part of the semiannual installments on a monthly or other basis.

Notwithstanding the foregoing, (a) the Community Authority may enter into an agreement with any mortgage lender, for the escrowing of Community Development Charge installments with such lender with respect to any Chargeable Parcel and for the periodic payment of the escrowed installments to the Community Authority and (b) so long as such agreement continues, the Owner of any Chargeable Parcel on which such lender holds a mortgage will, if such Owner so consents, pay the Community Development Charge installments with respect thereto directly to the lender, provided, however, that the obligation to pay the Community Development Charge remains that of the Owner and is not satisfied until and unless full payment of the Community Development Charge is received by the Community Authority.

**Penalty and Interest.** For each Chargeable Parcel for which any installment of the Community Development Charge: (1) is not paid on or before the due date or dates established by the Board pursuant to Section 5.3, or (2) if such Community Development Charge was certified to the Auditor for collection on the tax duplicate pursuant to Section 4.4, is not paid on or before the dates for payment of real property taxes prescribed by Chapter 323 of the Revised Code, there may be added to the installment (a) a penalty of ten percent thereof (imposed at the same time that penalties for delinquent real property taxes are imposed pursuant to Chapter 323 of the Revised Code), (b) interest (imposed at the same time that interest on delinquent real property taxes is imposed pursuant to Chapter 323 of the Revised Code) on the sum of (A) the amount of such installment, (B) the interest that has accrued thereon for more than six months and (C) the penalty until paid at the greater of (i) the Late Payment Rate or (ii) ten percent per year (or the maximum rate permitted under Ohio's usury laws, whichever is lower), and (c) any costs of the Community Authority incurred in connection with the enforcement of the Community Development Charge or any penalties, interests or costs thereon, including reasonable attorney fees. Any payments of less than the full amount will be credited first against the penalty and second against the interest accrued to the date of payment. The applicable penalties, interest and costs are part of the Community Development Charge. To the extent any of such penalties, interest and costs owing with respect to a Community Development Charge certified to the Auditor are not collected by the Auditor or otherwise collected by the Community Authority, such amounts may be added to the amount of the Community Development Charge imposed with respect to such Chargeable Parcel in the following year. Notwithstanding anything contained herein to the contrary, an Owner is not permitted to enter into an agreement pursuant to Section 323.31 of the Revised Code with respect to a delinquent Community Development Charge without the prior written consent of the Community Authority.

**Refund and Reduced Assessed Valuation.** If the official assessed valuation of any Chargeable Parcel is reduced for any year pursuant to Sections 5715.11 through 5715.16 of the Revised Code, upon application of the Owner to the Board the Assessed Valuation will be reduced in the same amount if the Assessed Valuation was based on the official assessed valuation of the Auditor, and the Community Development Charge for such year will be proportionately reduced. If any installment of such Community Development Charge has been paid before the date of such reduction, the sole procedure for refund is that the Board will credit the same against any other amounts due or to become due to the Community Authority with respect to the Chargeable Parcel.

**Personal Obligation.** Each Owner is and remains personally obligated for the payment of the Community Development Charge with respect to that Owner's Chargeable Parcel, including any penalties and interest thereon, which is attributable to that Owner's period of ownership.

**Community Development Charge Lien.** The Community Development Charge with respect to each Chargeable Parcel, including any penalty and interest thereon, constitutes a continuing lien in favor of the Community Authority on such Chargeable Parcel. If an installment or any part of an installment of the Community Development Charge on any Parcel is not paid within the period provided in Section 5.3, the lien with respect to such delinquent installment or part thereof is enforceable in any manner provided in Section 4.4. Such lien is prior to all other liens and encumbrances thereon whatsoever, excepting real estate taxes and assessments and liens of the United States of America, the State of Ohio and all other political subdivisions or governmental instrumentalities of the State of Ohio to the extent made superior by applicable laws enacted by the Ohio General Assembly.

**Evidence of Payment.** Upon the request of the Owner or any mortgagee or lessee of any Chargeable Parcel or any prospective purchaser, mortgagee or lessee thereof, the Board will furnish written evidence of the amount of the Community Development Charge with respect thereto for the current year and the amount of any unpaid Community Development Charge, including any penalty and interest for the current or any previous year. Such evidence may be conclusively relied upon by any such party and by anyone furnishing any title evidence or opinion with respect to such Chargeable Parcel.

### **PROCEDURE FOR WAIVER, REDUCTION OR TERMINATION OF THE COMMUNITY DEVELOPMENT CHARGE**

**Fiscal Meeting.** The Board may hold a Fiscal Meeting to determine whether any of the Community Development Charge should be waived, reduced or terminated. The Fiscal Meeting will be held on such date as the Board determines. The Fiscal Meeting is open to the public, and the Board may not waive, reduce or terminate the Community Development Charge except at a Fiscal Meeting.

**Notice of Fiscal Meeting.** Notice of the Fiscal Meeting must be given by the Board in compliance with Section 121.22 of the Revised Code. Such notice must specify the place, date and hour of the Fiscal Meeting.

**Waiver, Reduction or Termination.** At any Fiscal Meeting, the Board may waive, reduce or terminate all or a portion of the Community Development Charge for one or more years or to a stated date. The reduction or waiver of a portion of the Community Development Charge authorized by this Section 6.3 may include but is not limited to an additional reduction or waiver, separate and distinct from any other reduction or waiver, for the early payment of the Community Development Charge by an Owner.

The Board shall have no right to increase the Community Development Charge Millage Rate established under Section 5.2 or extend the time period for the imposition of the Community Development Charge under Section 5.1.

Except as otherwise provided in this Declaration: (a) every action taken by the Board pursuant to this Article must be governed by, and taken with reference to, the fiscal requirements of the Community Authority for the year for which the Community Development Charge is to be collected as reflected in the budget for that year adopted by the Board, which budget may provide for reasonable reserves and the development of funds for future uses and contingencies, and (b) any action by the Board relating to the waiver, reduction or termination of any of the Community Development Charge may be taken only after (i) the Board has determined that the Community Development Charge to be waived, reduced or terminated is not needed for any of the purposes for which the Community Development Charge has been established as set forth in Section 4.2, and (ii) the City has provided its written consent for such waiver, reduction or termination. Notwithstanding any other provision of the Declaration, if a Chargeable Parcel is removed from the District, the Community Development Charge permanently terminates as to the Chargeable Parcel immediately on the date that such Chargeable Parcel has been removed from the District.

**Discretion of the Board.** Subject to the provisions of this Declaration and all applicable provisions of valid agreements of the Community Authority, the decision to waive, reduce or terminate the Community Development Charge as provided herein is otherwise solely within the discretion of the Board.

## **DURATION, AMENDMENT AND TERMINATION**

**Effective Date.** The Restrictions are effective and are deemed covenants running with the land when this Declaration is recorded (the “Effective Date”). Subsequent to the Effective Date, no Community Development Charge may be collected, and the Community Authority shall have no rights or obligations hereunder, until the Community Authority executes and there is recorded an instrument, which may be included in this Declaration, by which the Community Authority joins in this Declaration for the purposes of accepting the duties, responsibilities and benefits imposed and conferred on it by the Restrictions.

**Duration and Effect.** The Restrictions (a) are and must be construed as covenants running with the land; (b) binding upon the Private Developer, the Community Authority and each Owner and Resident; and (c) inure to the benefit of and be enforceable by (i) the Private Developer or the Community Authority (regardless of whether or not any such beneficiary owns an interest in any Parcel), (ii) each Owner, and (iii) the City. Unless amended, stayed or terminated as provided in this Article, the Restrictions continue in full force and effect until December 31, 2043, and



thereafter the Restrictions shall be automatically renewed for successive ten-year periods unless terminated pursuant to Section 7.3.

**Stay or Termination of Restrictions.** The Restrictions are terminated, if and effective as of the date when, there occurs a dissolution of the Community Authority pursuant to Chapter 349. Notwithstanding any other provision of this Declaration, no termination, stay or amendment of the Restrictions is effective to the extent it is inconsistent with the express obligations of the Community Authority under the terms of any outstanding Community Authority bonds, notes, loans or agreements authorized by the Community Authority under Chapter 349. Further, except as hereafter provided, no termination due to dissolution of the Community Authority pursuant to Chapter 349 is effective unless approved in writing (i) by the City, and (ii) by the Private Developer or, if the Private Developer no longer owns any Parcels, by a majority vote of Owners of all Parcels, with each Parcel receiving one vote, at the time of execution of such termination document. Notwithstanding any other provision of this Declaration, the Restrictions terminate and are null and void automatically as to any Chargeable Parcel if and on the date that such Chargeable Parcel is removed from the District. No amendments to this Section 7.3 are permitted without the written consent of the Owners at the time such amendment is proposed.

If a final judicial adjudication is rendered or lawful executive or legislative action is taken by the government of the State of Ohio which effectively enjoins or prevents the Community Authority from (a) implementing or collecting the Community Development Charge or (b) carrying out any other substantial or important duty or responsibility imposed on it under this Declaration or receiving or accepting any other substantial or important benefit granted to it by this Declaration, the City, the Community Authority and the Private Developer will, within thirty days after the rendition of such adjudication or the taking of such action (or such longer period that they may agree upon), attempt to agree upon a course of action that will remedy any defect identified in such adjudication or created by such action and if, within such thirty-day (or extended) period no course of action is agreed upon by the City, the Community Authority and the Private Developer, subject to any applicable restrictions pertaining to outstanding agreements, bonds, notes or loans authorized by the Community Authority under Chapter 349, the Restrictions are terminated on such date as is designated in a written declaration of termination by the Private Developer if within the Development Period or by the Community Authority if after the Development Period.

If the Restrictions are required or permitted to be terminated or stayed pursuant to this Section, such termination or stay becomes effective when a certificate or other document stating the authority for such termination or stay and signed by the person or entity or entities empowered to effect such termination or stay is Recorded. If the Restrictions terminate, stay or resume automatically, the Private Developer or the Community Authority will promptly cause a certificate or other document to be Recorded which states the authority for such termination, stay or resumption and the effective date thereof.

All rights and obligations which accrued under the Restrictions prior to the date of termination or stay survive such termination or stay, including without limitation, all personal obligations and liens under the Declaration.

## AMENDMENTS AND SUPPLEMENTS

**Amendments or Supplements Not Requiring Consent of Owners.** Without the consent of or notice to any of the Owners, the Community Authority may amend or supplement this Declaration (a) to cure any ambiguity, inconsistency or formal defect or omission or eliminate any typographical or other inadvertent error; (b) to grant to or confer upon the Private Developer until the Community Authority is formed and, thereafter, the Community Authority, for the benefit of the Owners, the Private Developer or the Community Authority, any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners, the Private Developer or the Community Authority; (c) to make or accommodate adjustments in the manner or method for billing and collecting the Community Development Charge or to reduce or eliminate all or a portion of the Community Development Charge; (d) as provided in Article III; (e) to conform this Declaration to any amendment permitted by Chapter 349 of the Revised Code to the Petition; (f) to permit the Private Developer or Community Authority to comply with any obligations imposed upon it by law; (g) to specify further the duties and responsibilities of, and to define further the relationship among, the Owners, the Private Developer, the Community Authority, and the City; (h) to admit Additional Private Developers to this Declaration by supplemental Declaration under Article III or otherwise; or (i) to make any other amendment which, in the judgment of the Private Developer until the Community Authority is formed and, thereafter, the Community Authority, is not to the material prejudice of the Owners.

**Amendments or Supplements Requiring Consent of Owners.** Except as provided in Sections 6.3, 7.3 or 8.1, no provision of this Declaration may be amended or supplemented in whole or in part or terminated without the written consent of (a) the Private Developer while it owns any Parcels (b) not less than **66% of the number of Owners** of all Parcels and (c) the City.

For the purposes of this Section, “Parcel” means such Chargeable Parcel which has a separate listing on the tax duplicate of the Auditor or on the records of any other official authorized by Ohio law to assess real estate in the County. However, should each unit of a residential condominium not have a separate listing on the tax duplicate as provided above, then until such time, each condominium unit chargeable by its condominium association for such unit’s share of that Chargeable Parcel’s real property taxes will also be considered a Parcel for purposes of this Section only. All Owners of a Parcel are deemed to constitute one Owner and together only have one consent for the Parcel.

In connection with any agreement, bonds, notes or loans authorized by the Community Authority under Chapter 349, the Community Authority may agree that no amendment may be made to this Declaration and no waiver, reduction or termination of the Community Development Charge may be made without the consent of or on behalf of the holders of such securities or without the consent of any provider of a “Credit facility” as defined in Section 9.98(G) of the Revised Code. Further, notwithstanding any other provision herein to the contrary, no such actions may be taken without the written consent of the City.

The Secretary will determine (a) whether the Owners have consented to any amendment or supplement of this Declaration, and (b) whether, if their consent is necessary, the Private Developer or the holders of any outstanding Community Authority agreements, bonds, notes or

loans issued under Chapter 349 or provider of a “Credit facility” as defined in Section 9.98(G) of the Revised Code have consented to any such amendment or supplement of this Declaration. Such determinations of the Secretary are conclusive against all Owners.

**Recording of Amendments.** Promptly after any amendment or supplement of this Declaration, the Secretary will cause to be Recorded a written instrument certified by the Secretary setting forth such amendment or supplement and stating that any required written consents were obtained.

## **MISCELLANEOUS**

**Priority.** The Restrictions contained in this Declaration take priority over all other covenants, conditions, restrictions or easements applicable to any Parcel whatsoever, to the extent permitted by law and except as otherwise provided herein.

**Reservation.** Subject to the Declaration being recorded, but prior to the Property being included in the District pursuant to Chapter 349, Private Developer may sell to purchasers (the “Purchasers”) lots or condominium interests that may comprise a part of the Property and be included as part of the District (the “Lots”). Each Purchaser, and each Purchaser’s successors and assigns, is deemed an Owner and takes title to the Lots subject to the Declaration. In order to more fully provide for the inclusion of the Lots as part of the District, Private Developer hereby reserves to itself and its successors and assigns a reservation in the Lots and a beneficial interest and control therein solely for the purpose of including the Lots as part of the District. In consideration of the transfer of a Lot to a Purchaser, a Purchaser takes title to a Lot subject to such reservation. In recognition of such reservation, and in order to more fully evidence Private Developer’s reservation, Purchaser irrevocably constitutes and appoints Private Developer as such Purchaser’s true and lawful attorney-in-fact, coupled with an interest, in such Purchaser’s name, place and stead for the limited purpose of taking, and delegates to the Private Developer the authority to take, all such action that is necessary and appropriate, in accordance with Chapter 349, to include a Purchaser’s Lot within the District. Acceptance by a Purchaser of a deed or other instrument of conveyance from Private Developer or from any other Owner constitutes appointment of the attorney-in-fact as provided herein. The durable power of attorney is coupled with an interest and is not affected by the death or disability of the Purchaser.

**No Reverter.** No covenant, condition, restriction or reservation contained in this Declaration is intended to create or may be construed as creating a possibility of reverter.

**Severability.** In case any section or provision of this Declaration or any Restriction, agreement, obligation, act or action or part thereof, made, assumed, entered into, done or taken under this Declaration or a Restriction or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability does not affect the remainder of this Declaration or any other section or provision of this Declaration or any other Restriction, agreement, obligation, act or action, or part thereof, made, assumed, entered into, done or taken under this Declaration, all of which will be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein. Any illegality, invalidity or inoperability does not affect any legal, valid and operable section, provision, restriction,

agreement, obligation, act, action, part or application, all of which is deemed to be effective, operative, made assumed, entered into, done or taken in the manner and to the full extent permitted by law from time to time.

**Construction.** The Board, where specifically authorized herein to act, has the right to construe the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction is final and binding as to all persons and entities benefited or bound by the provisions of this Declaration.

**Headings.** The headings of the Articles and Sections are for convenience only and do not affect the meaning or construction of the contents of this Declaration.

**Interpretation and References.** Any reference in this Declaration to a section or provision of the Revised Code or to the laws of Ohio, unless otherwise provided herein, includes that section or provision and those laws as from time to time amended, supplemented or superseded. However, no such amendment, supplementation or supersession, or further action by the General Assembly, alters the obligation to pay the Community Development Charge in the amount and manner and at the times provided in this Declaration, or otherwise impairs the application of the Restrictions, except to the extent that the Restrictions cannot be sustained by reason of such amendment, supplementation or supersession.

Unless the context otherwise indicates, the masculine gender is deemed to include the feminine and neuter, and the singular is deemed to include the plural, and vice versa.

References in this Declaration to sections and articles, unless otherwise stated, are to sections and articles of this Declaration. The terms “hereof”, “herein”, “hereby”, “hereto” and “hereunder”, and similar terms, mean and refer to this Declaration.

*(No further text on this page; signature page follows)*

IN WITNESS WHEREOF, Private Developer has caused this Declaration to be executed by its duly authorized representative as of the day and year of the acknowledgement below.

**MAGNOLIA TRACE, LLC**  
 an Ohio limited liability company

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO     )  
    ) SS.  
 COUNTY OF FRANKLIN    )

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_ 2019, by \_\_\_\_\_, the \_\_\_\_\_ of Magnolia Trace, LLC, an Ohio limited liability, on behalf of the company.

\_\_\_\_\_  
 Notary Public

This document prepared by:  
 Greg Daniels  
 Squire Patton Boggs (US) LLP  
 2000 Huntington Center  
 41 South High Street  
 Columbus, Ohio 43215

**EXHIBIT C**  
**PETITION TO JOIN THE CENTRAL COLLEGE COMMUNITY DEVELOPMENT**  
**DISTRICT**

AMENDMENT TO PETITION FOR ORGANIZATION  
OF A NEW COMMUNITY AUTHORITY

TO THE CITY COUNCIL

OF THE CITY OF COLUMBUS, OHIO:

Pursuant to Chapter 349 of the Ohio Revised Code, [NAME OF DEVELOPER] (the "Developer") applies to amend the Petition for Organization of a New Community Authority (the "Petition") for the Central College Community Development Authority (the "Authority"). The Developer states as follows:

1. Columbus City Council enacted Ordinance No. 0976-2008 on June 16, 2008, directing the City Clerk to execute the Petition behalf of the City of Columbus (the "City") pursuant to Chapter 349 of the Ohio Revised Code, and that Petition was signed by the City Clerk to indicate the approval of the Petition by the City as the sole "proximate city" as that term is defined in Section 349.01(M) of the Ohio Revised Code.

2. The Petition was filed in the office of the Clerk of the Franklin County Board of County Commissioners and in the office of the City Clerk as required by Section 349.03(A) of the Ohio Revised Code.

2. The Columbus City Council, as the "organizational board of commissioners" as that term is defined in Section 349.01(F) of the Ohio Revised Code, enacted Ordinance No. 1122-2008 on July 7, 2008, determining that the Petition complied as to form and substance with the requirements of Section 349.03(A) of the Ohio Revised Code and fixing the time and place for a hearing on the establishment of the Authority; and

3. Columbus City Council, as the organizational board of commissioners, held a hearing on the Petition on July 28, 2008, after public notice was duly published in accordance with Section 349.03(A) of the Ohio Revised Code; and

4. Columbus City Council, as the organizational board of commissioners, enacted Ordinance No. 1270-2008 on July 28, 2008, determining that the "new community district" would be conducive to the public health, safety, convenience and welfare and was intended to result in the

development of a “new community”, as those terms are defined in Section 349.01(A) of the Ohio Revised Code, and declaring the Authority organized and a body politic and corporate; and

5. Section 349.03(B) of the Ohio Revised Code authorizes the amendment of the Petition by filing an application to add land to the new community district (the “District”) at any time after the creation of the Authority, and upon the filing of such an application the organizational board of commissioners shall follow the same procedure to approve the amendment as required by that Section 349.03 of the Ohio Revised Code in relation to the Petition; and

6. The Developer, as the “developer” for the Additional Property within the meaning of Section 349.01(E) of the Ohio Revised Code, desires to amend the Petition in order to add certain parcels of real property (collectively, the “Additional Property”) to the District, with legal descriptions of the Additional Property attached hereto as Exhibit A; and

7. The Developer declares that the addition of the Additional Property to the District will be conducive to the public health, safety, convenience and welfare, and will be consistent with the development of the new community, and will not jeopardize the plan of the new community; and

8. All of the Additional Property to be included in the District is owned or controlled (within the meaning of Section 349.01(E) of the Ohio Revised Code) by the Developer; and

9. The Developer requests that Columbus City Council, as the organizational board of commissioners, determine that this amendment complies as to form and substance with the requirements of Section 349.03 of the Ohio Revised Code, and the Developer further requests that Columbus City Council fix the time and place of a hearing on this amendment, which hearing, pursuant to Section 349.03(A) of the Ohio Revised Code, must be held not less than thirty nor more than forty-five days after the filing of this amendment.

IN WITNESS WHEREOF, the Developer has caused this amendment to be duly executed as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.



MAGNOLIA TRACE, LLC

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION OF ADDITIONAL PROPERTY