

ESCROW AGREEMENT

This Escrow Agreement (“*Agreement*”) is made and entered into by and among the **CITY OF COLUMBUS, OHIO**, (the “*City*”), a municipal corporation, acting by its City Attorney; and **DOMINION HOMES, INC.**, (the “*Developer*”), an Ohio corporation; and the **COLUMBUS CITY AUDITOR** (the “*Escrow Agent*”):

WITNESSETH:

WHEREAS, the City of Columbus and Dominion Homes, Inc. desire to enter into this Agreement to facilitate the acquisition of the following described real property interest(s) necessary for *Holly River Ave. 12” Water Main from Janklow Ln. to Hayden Run Rd. & Britton/Cosgray Connector 16” Water Main from Hayden Run Rd. to CSXT Railroad 2005* (abbreviation is: **Britton/Cosgray 16” Water Main**); and,

PERPETUAL WATER UTILITY EASEMENT

Situated in the State of Ohio, County of Franklin, City of Columbus, Survey No. 3453 of the Virginia Military District and being over, across and through that tract conveyed to New York Central Lines, LLC of record in Instrument Number 200212180325201 between the elevations of 920.00 feet and 930.00 feet (elevations are based on NAVD88) and described as follows:

Beginning at the northeast corner of that 93.195 acre tract conveyed to Dominion Homes, Inc. of record in Instrument Number 200409220221891, the east corner of that 2.268 acre tract conveyed to Dominion Homes, Inc. of record in Instrument Number 200411090257812, a corner to the remainder of that 161.25 acre tract conveyed to Rings Farms, Ltd. of record in Instrument Number 199901050002791, in the west railroad right-of-way line for said New York Central Lines, Inc.

Thence N 39° 15’ 59” W, with said west railroad right-of-way line, 47.50 feet;

Thence N 83° 22’ 17” E, across said railroad right-of-way, 78.38 feet to the east right-of-way line for said railroad;

Thence S 39° 15’ 59” E, with said east railroad right-of-way line, 47.50 feet;

Thence S 83° 22’ 17” W, across said railroad right-of-way, 78.38 feet to the

Point of Beginning. **Containing 0.072 acre**, more or less.

All references refer to the records of the Recorder’s Office, Franklin County, Ohio.

EMH&T, INC., John C. Dodgion, P.S. No. 8069, 3/15/05.

WHEREAS, the *City* is authorized to enter into this Agreement by virtue of Ordinance No. _____, enacted by the Columbus City Council on the _____ day of _____, 200__;

NOW THEREFORE, in consideration of the covenants and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the *City*, *Developer*, and *Escrow Agent* do hereby covenant and agree as follows, intending to be legally bound hereby:

1. ESCROW FUNDS

A. Immediately upon any written demand by the *City*, said demands occurring at various times during the term of this Agreement, but not an unreasonable time prior to the anticipated incurrence of the respective obligations by the *City*, *Developer* shall deposit, or cause to be deposited, with the *Escrow Agent* by certified check, cash, or any other means acceptable to the *Escrow Agent*, the initial amount of Fifteen Thousand Dollars(\$15,000.00), and such other amounts as are determined by the *City* to be necessary for said acquisition. The initial amount of Fifteen Thousand Dollars(\$15,000.00) is the *City's* estimate of acquisition costs associated with the acquisition of the parcels of real property, including but not limited to the *City's* estimated fair market value of the parcels, court costs, recording fees, negotiator's fees, attorney fees, witness fees, and pro-rated property taxes(the "*Acquisition Costs*").

B. The term "*Escrow Principal*" is defined to be, and shall be comprised of, any and all funds deposited from time to time by *Developer* with the *Escrow Agent* pursuant to the provisions of the Escrow Agreement.

C. Upon receipt of any Escrow Principal, the *Escrow Agent* shall cause said Escrow Principal to be deposited to and held in an escrow or trust fund in the name of the *Escrow Agent* and identified as **Fund No. 324-030** (the "*Escrow Account*"). All Escrow Principal deposited to and held in the Escrow Account shall at all time be invested by the *Escrow Agent* in such a manner so as to accrue interest (the "*Escrow Interest*") at the *City's* annual average Investment Earnings Rate, said interest to be retained by *Escrow Agent* as fees for administering the Escrow Account in accordance with the Agreement.

D. The term "*Escrow Fund*" is defined to be and shall be comprised of the Escrow Principal.

2. DISBURSEMENT OF ESCROW FUNDS

Unless the *City* (by proper authorization by the Columbus City Council) and *Developer* otherwise direct in writing, the *Escrow Agent* shall disburse the Escrow Funds only as follows:

A. Upon the *Escrow Agent's* receipt from the *City's* Real Estate Division of (I) an executed purchase contract for the *City's* acquisition of a required parcel of real property, (ii) a complaint, settlement, or judgment entry to be filed with the Franklin County Common Pleas Court for the *City's* acquisition of a required parcel of real property, or (iii) vouchers accompanied by necessary invoices for other Acquisition Costs, to, and in the amount of, respectively, (I) the seller under any such purchase contract for the amount stated therein, (ii) the Franklin County Common Pleas Clerk of Courts for any such complaint, settlement, or judgment entry for the amount stated therein, or (iii) to the payees of, and in the amount of, invoices tendered.

B. Upon the *Escrow Agent's* receipt from the *City's* Real Estate Division of vouchers accompanied by necessary invoices for negotiator and attorney fees of the *City's* Real Estate Division at the hourly rate charged other *City* agencies for such services, and in the amount of invoices tendered.

C. Upon the *Escrow Agent's* receipt of a written direction from the *City* pursuant to the provisions of Section 3 of this Agreement, to the order of *Developer* in accordance with such written direction.

D. Upon the *Escrow Agent's* receipt of written notice signed by both the *City* and *Developer* stating that all expenses associated with the *City* acquiring and holding parcels of real property have been completed, to the order of *Developer* all Escrow Funds remaining in the Escrow Account.

3. TERMINATION

A. In the event *Developer* fails to deposit the initial estimated Acquisition Costs within five(5) days of the *City's* rightful demand therefor, this agreement may be terminated unilaterally by the *City*, or if the *Developer*, after making deposit of the initial estimated Acquisition Costs, fails to deposit with the *Escrow Agent* any additional amounts determined by the *City* to be necessary to the acquisition of the subject real property interests, the *City* may terminate its acquisition of the required parcel(s) of real property, pay any Acquisition Costs not paid, retain in the Escrow Account such funds as in the *City's* opinion are sufficient to pay those expenses imposed per O.R.C. §163.21, and direct the *Escrow Agent* to return the remainder of the Escrow Funds, if any, to the order of *Developer*.

B. In the event that *Developer* wishes to withdraw its request for the *City* to acquire one or all of the required parcels of real property after this escrow agreement has been fully executed and the initial deposit amount has been made, the *City* may, but shall not be required to do so, terminate its acquisition of such parcel or parcels, pay any acquisition costs related thereto, retain in the Escrow Account such funds as in the *City's* opinion are sufficient to pay those expenses related to such parcel or parcels imposed per O.R.C. §163.21, and direct the *Escrow Agent* to return the remainder of the Escrow Funds related to such parcel or parcels, if any, to the order of *Developer*.

4. LIABILITY AND AUTHORITY OF ESCROW AGENT

The *Escrow Agent* shall have no liability arising out of the disbursement of any of the Escrow Funds in accordance with the terms of this Agreement or the taking of any other action in respect of the Escrow Funds or the Escrow Account in accordance with the terms of this Agreement, except to the extent that the *Escrow Agent* shall act in bad faith, with gross negligence or with willful or wanton misconduct. Except as otherwise expressly provided herein, the *Escrow Agent* shall have no authority or obligation to act in respect of the Escrow Account or the Escrow Funds until such time as the *Escrow Agent* is directed to do so (a) in a writing signed by the *City* and *Developer*, or (b) by a court or competent jurisdiction.

5. NOTICES

All notices required to be given shall be in writing and shall be deemed to have been given if delivered personally or if mailed by registered or certified U.S. mail, postage prepaid, addressed as follows:

If to the *City*, to:
Chief Real Estate Attorney
Real Estate Division
Department of Law
109 North Front Street
Columbus, Ohio 43215

If to the *Escrow Agent*, to:
Honorable Hugh J. Dorrian
City Auditor
City Hall, Room 111
90 West Broad Street
Columbus, Ohio 43215
with a copy to:
Chief Real Estate Attorney

If to *Developer*, to:
Thomas L. Hart, V.P.
Dominion Homes, Inc.
5501 Frantz Road
P.O. Box 7166
Dublin, Ohio 43017

The parties hereto shall have the right to redesignate the addresses to which notices hereunder shall be mailed by a writing forwarded to the other parties hereto in accordance with this Section 5.

6. AMENDMENTS

This Agreement shall not be modified, changed or altered in any respect, unless in writing and signed by each party to this Agreement.

7. SUCCESSORS AND ASSIGNS

This Agreement and the rights and obligations hereunder shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

The *City*, *Developer*, and *Escrow Agent*, being duly authorized, have caused this instrument to be subscribed and to be effective as of the last date on which the last party executes this Agreement.

DOMINION HOMES, INC.

an Ohio corporation

Thomas L. Hart, Vice President

Date: _____

CITY OF COLUMBUS, OHIO

a municipal corporation

Richard C. Pfeiffer, Jr., City Attorney

Date: _____

Ordinance No. _____

COLUMBUS CITY AUDITOR

Escrow Agent

Hugh J. Dorrian, City Auditor

Date: _____

Ordinance No. _____

This instrument prepared by:
CITY OF COLUMBUS, DEPARTMENT OF LAW
By: Richard A. Pieplow(3-16-05) revised(10-25-05)
Real Estate Attorney
Real Estate Division
For: Division of Water
Re: Britton Cosgray Water Main