

MEMORANDUM OF UNDERSTANDING

This Agreement entered into as of the ___ day of November, 2004 is by and among the City of Columbus, Ohio, a body corporate and politic, ("Columbus"), the Franklin County Engineer, M/I Homes of Central Ohio, LLC, an Ohio limited liability company ("M/I"), Dominion Homes, Inc., an Ohio corporation ("Dominion"), Huntington Tower Associates, LLC, an Ohio limited liability company ("Huntington") and Lifestyle Communities Ltd., an Ohio limited liability company ("Lifestyle") (M/I, Dominion, Huntington and Lifestyle are sometimes hereinafter individually referred to as a "Developer" and collectively as the "Developers").

BACKGROUND INFORMATION

Huntington is the owner or has the right to purchase the property depicted and described in Exhibit "A" as the "Huntington Property". An affiliate of Lifestyle is the owner or has the right to acquire the property depicted and described in Exhibit "A" as the "Lifestyle Property". Dominion is the owner or has the right to purchase the property depicted and described in Exhibit "A" as the "Dominion Property". M/I is the owner of the property depicted and described in Exhibit "A" as the "M/I Property".

The Huntington Property, the Lifestyle Property, the Dominion Property and the M/I Property are all located within the Central Sub – Area of the Hayden Run Corridor Plan and these properties shall constitute the Hayden Run Community Development District (the "HRCDD") of the Hayden Run Community Development Authority (the "HRCDA") to be established pursuant to Section 3 herein.

Columbus has approved the rezoning of the Dominion Property, the M/I Property, the Lifestyle Property, and the Huntington Property (collectively referred to herein as the "Developers' Property"). The parties to this Agreement acknowledge and agree that the existing infrastructure conditions in the geographic area covered by the Hayden Run Corridor Plan require remediation through the completion of certain capital improvements that will benefit the entire northwest quadrant of Franklin County. The parties to this Agreement recognize that the size, mixed uses and density of the developments contemplated by the aforesaid rezonings present a unique opportunity for public and private participation in the funding and completion of infrastructure improvements that will benefit the geographic area covered by the Hayden Run Corridor Plan and the entire northwest quadrant of Franklin County. Accordingly, in the spirit of the developing "Pay as We Grow and Grow with a Plan" policy of Columbus, the parties have entered into this Agreement.

STATEMENT OF AGREEMENT

In consideration of their mutual obligations set forth in this Agreement, the parties hereto, intending to be legally bound, covenant and agree as follows:

Section 1. Payments by Developers.

Section 1.1. Dominion. If and only if Columbus fulfills its obligations under Section 8 of the Agreement: (i) on or before December 1, 2004, Dominion shall pay to Franklin County the sum of \$1,104,648; (ii) on or before March 1, 2005, Dominion shall pay to Columbus the sum of \$494,319, and to Franklin County the sum of \$750,000 (iii) on or before June 1, 2005, Dominion shall pay to Columbus the sum of \$329,239; (iv) on or before September 1, 2005, Dominion shall pay to Franklin County the sum of \$493,857; and (v) on or before December 1, 2007, Dominion shall pay to Columbus the sum of \$173,000. If Dominion fails to submit plans for review, Dominion is still obligated to make all the payments as listed in Section i, ii, iii, and iv. Contemporaneously with the issuance of a building permit for each residential unit to be constructed on the Dominion property, Dominion shall pay to Columbus, in addition to the above sums, and in addition to the standard fee for building permits, the sum of \$1,000.

Section 1.2 M/I. If and only if Columbus fulfills its obligations under Section 8 of the Agreement: (i) on or before December 1, 2004, M/I shall pay to Franklin County the sum of \$184,118; (ii) on or before March 1, 2005, M/I shall pay to Columbus the sum of \$207,276; (iii) on or before June 1, 2005, M/I shall pay to Columbus the sum of \$54,871; and (iv) on or before September 1, 2005, M/I shall pay to Franklin County the sum of \$82,306. If M/I fails to submit plans for review, M/I is still obligated to make all the payments as listed in Section i, ii, iii, and iv. Contemporaneously with the issuance of a building permit for each residential unit to be constructed on the M/I Property, M/I shall pay to Columbus, in addition to the above sums, and in addition to the standard fee for building permits, the sum of \$1,000. Notwithstanding the foregoing, except for the standard fee for building permits, no payment shall be required with respect to the first 169 residential building permits issued to M/I.

Section 1.3. Lifestyle. If and only if Columbus fulfills its obligations under Section 8 of the Agreement: (i) on or before December 1, 2004, Lifestyle shall pay to Franklin County the sum of \$116,730; (ii) on or before March 1, 2005, Lifestyle shall pay to Columbus the sum of \$131,476; (iii) on or before June 1, 2005, Lifestyle shall pay to Columbus the sum of \$34,679; and (iv) on or before September 1, 2005, Lifestyle shall pay to Franklin County the sum of \$52,181. If Lifestyle fails to submit plans for review, Lifestyle is still obligated to make all the payments as listed in Section i, ii, iii, and iv. Contemporaneously with the issuance of a building permit for each residential unit to be constructed on the Lifestyle property, Lifestyle shall pay to Columbus, in addition to the above sums, and in addition to the standard fee for building permits, the sum of \$1,000. Notwithstanding the foregoing, except for the standard fee for building permits, no payment shall be required with respect to the first 213 residential building permits issued to Lifestyle

Section 1.4. Huntington. If an only if Columbus fulfills its obligations under Section 8 of the Agreement: (i) on or before December 1, 2004, Huntington shall pay to Franklin County the sum of \$272,504; (ii) on or before March 1, 2005, Huntington shall pay to Columbus the sum of \$306,929; (iii) on or before June 1, 2005, Huntington shall pay to Columbus the sum of \$81,211; and (iv) on or before September 1, 2005,

Huntington shall pay to Franklin County the sum of \$121,656. If Huntington fails to submit plans for review, Huntington is still obligated to make all the payments as listed in Section i, ii, iii, and iv. Notwithstanding the foregoing, except for the standard fee for building permits, no payment shall be required with respect to the first 89 residential building permits issued to Huntington or its successors or assigns.

Section 1.5 Total Developer Contributions of \$8,000,000. The Developers will make a total contribution in the form of cash payments, permit fees and agreed dedicated land value in the amount of \$8,000,000. The total amount of cash payments made by the Developers pursuant to Sections 1.1, 1.2, 1.3 and 1.4 shall not exceed \$7,150,000 (inclusive of payments made with respect to residential building permits issued by Columbus to the Developers). The total amount of those payments made by the Developers with respect to residential building permits issued by the Columbus to the Developers shall not exceed \$2,159,000. In addition, the agreed value of land to be contributed for regional road improvements by the Developers pursuant to Section 2 of this Agreement is \$850,000.

Section 1.6. Late Payments. Subject to Section 6 hereof, for any amount due pursuant to this Section 1 that is paid after the due date thereof (a "Late Payment"), there shall be imposed on such Late Payment a penalty of ten percent (10%) thereof plus interest accruing from the due date to the actual payment date at a rate equal to the greater of: (A) the sum of (i) the "federal short term rate" determined pursuant to Section 5703.47(A) of the Ohio Revised Code, rounded to the nearest whole number percent, and (ii) three percent; or (B) eighteen percent (18%) per year (or the maximum rate permitted under Ohio's usury laws, whichever is lower). For purposes of this section, due date means ten (10) days after written notice of payment being past due is received by the particular Developer. Each Developer agrees that its occupancy permits may be withheld until payments all late payments owed by such Developer are made.

Section 2. Developers' Contribution of Land. The agreed value of land to be granted and conveyed to or at the direction of Columbus for the construction of regional road improvements is \$850,000. (The Developers will also be contributing to or at the direction of Columbus other land for local public roads in the interior of the projects on the Developers' Property. No value is being assigned by the parties to these land contributions.) The description and timing of land contributions for regional road improvements that shall be made to or at the direction of Columbus by the Developers in connection with the development of the Developers' Property, respectively, shall be as follows:

Section 2.1. Dominion. At any time directed by Columbus after the date of both (i) Columbus' final approval of the regulating plan and preliminary plat for the Dominion Property and (ii) Columbus' final approval of the final plat and construction plans for a first phase of land development Dominion shall grant and convey to or at the direction of Columbus by plat or general warranty deed, free and clear of any liens or encumbrances, all property owned by it which is required for the right of way of the Columbus

Improvements and Franklin County Improvements (as hereinafter defined) which property is generally depicted as the “Dominion ROW” on Exhibit “A” attached hereto.

Section 2.2. M/I. At any time directed by Columbus after the date of both (i) Columbus’ final approval of the regulating plan and preliminary plat for the M/I Property and (ii) Columbus’ final approval of the final plat and construction plans for a first phase of land development, M/I shall grant and convey to or at the direction of Columbus, by plat or general warranty deed, free and clear of any liens or encumbrances, all property owned by it which is required for the right of way of the Columbus Improvements and Franklin County Improvements which property is generally depicted as the “M/I ROW” on Exhibit “A” attached hereto.

Section 2.3. Huntington. At any time directed by Columbus after the date of both (i) Columbus’ final approval of the regulating plan and preliminary plat for the Lifestyle Property and (ii) Columbus’ final approval of the final plat and construction plans for a first phase of land development on the Lifestyle Property (or such later date directed by Columbus), Huntington shall grant and convey to or at the direction of Columbus by plat or general warranty deed, free and clear of any liens or encumbrances, all property owned by it which is required for the right of way of the Columbus Improvements and Franklin County Improvements which property is generally depicted as the “Huntington ROW” on Exhibit “A” attached hereto.

Section 2.4. Lifestyle. At any time directed by Columbus after the date of both (i) Columbus’ final approval of the regulating plan and preliminary plat for the Lifestyle Property and (ii) Columbus’ final approval of the final plat and construction plans for a first phase of land development on the Lifestyle Property (or such later date directed by Columbus), Lifestyle shall grant and convey to or at the direction of Columbus by plat or general warranty deed, free and clear of any liens or encumbrances, all property owned by it which is required for the right of way of the Columbus Improvements and Franklin County Improvements which property is generally depicted as the “Lifestyle ROW” on Exhibit “A” attached hereto.

Section 3. Community Development Authority. As soon as is practicable after the date hereof, the parties except for the County shall establish the HRCDD in accordance with Chapter 349 of the Ohio Revised Code. The HRCDA, established to manage the affairs of the HRCDD, shall consist of a board of trustees (the "Board") of seven members. The Board shall include one member appointed by M/I, one member appointed by Dominion, and one member appointed by Lifestyle. The remaining four will be appointed in accordance with Section 349.04 of the Ohio Revised Code.

Contemporaneously with or prior to the establishment of the HRCDD, the Developers shall encumber the respective portion of the Developers' Property, with a Declaration of Covenants and Restrictions for the HRCDD (the “HRCDD Covenants”). The HRCDD Covenants shall run with the land and shall require each current and future owner of all or any portion of the Developers' Property (including all future homeowners and commercial property owners) with the obligation to pay an annual Community

Development Charge (the "HRCDC"), as such term is defined in Section 349.01 of the Ohio Revised Code, to the HRCDA in an amount equal to 0.004 multiplied by the "Assessed Value" of such property for a period of 20 years commencing one year after the date of completion of the construction of the residential or commercial structures, (as evidenced by a Certificate of Occupancy), as the context requires, on such property. 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.

The documents establishing the HRCDD, the HRCDA, the HRCDC, and the HRCDD Covenants shall specifically and irrevocably provide that (i) the HRCDC collected by the HRCDA shall be paid to or at the direction of Columbus, or to a trustee designated by Columbus, for the payment of capital improvements and associated operating and maintenance costs for public services (including, but not limited to, police, fire and refuse collection services) and community facilities to serve the residents and property in the HRCDD; (ii) Columbus shall have a first lien on the amount of the HRCDC collected as is necessary to pay debt service charges for any bonds or notes issued for any public improvements required by Sections 5 and 6 of this Agreement; (iii) the remainder of any amounts above those amounts necessary for the City Columbus to meet debt service charges as provided above in (i) and (ii) are available for the HRCDA to spend on such projects as it deems appropriate (strong consideration will be given to dedicating one half of all of the HRCDC collected by the HRCDA to capital improvement projects and operations costs for schools serving the residents of the HRCDD depending on land availability and acquisition costs, and coordination with the school district on their capital and operating resources); and (iv) the HRCDD shall be expanded to include all property covered by the Hayden Run Corridor Plan. (A copy of the Hayden Run Corridor Plan is on file with Columbus.) Columbus shall work with the HRCDA to provide an agreement between both the City and HRCDA and any other necessary parties to provide for the assignment or transfer of the HRCDC to Columbus or a trustee or other party designated by Columbus pursuant to (i) and (ii) above. Otherwise, the terms and conditions of the documents establishing the HRCDD, the HRCDA, the HRCDC, and the HRCDD Covenants shall be subject to the approval of the parties except for the County hereto which approval shall not be unreasonably withheld.

As a condition to its acceptance of any future annexation of property covered by the Hayden Run Corridor Plan, Columbus shall require and shall take all steps necessary to add such property to the HRCDD.

Section 4. Tax Increment Financing District. As soon as is practicable after the date hereof, Columbus and the Developers shall create (and the other parties hereto shall consent to the creation of) the Hayden Run Tax Increment Financing Districts (the "HRTIFD"). The documents establishing the HRTIFD shall specifically and irrevocably provide that (i) service payments in lieu of real estate taxes (the "Service Payments") shall be paid by the then existing and future owners of all or any portion of the Developers' Property to the County Treasurer of Franklin County in the same manner as real estate taxes. The ordinance creating the HRTIFD shall direct the County Treasurer

of Franklin County to pay directly out of Service Payments an amount equal to the payments in lieu of real property taxes that the Columbus Public School District, or such other district as may exist within the HRTIFD District, would have received had the property subject to the HRTIFD not been exempted from taxation pursuant to the ordinance creating the HRTIFD. Columbus shall apply the revenue (the "TIF Revenue") it receives from the HRTIFD: first, to the payment for the infrastructure improvements described in Sections 5 and 6 herein below; second, to the cost of capital improvements to serve the residents and property in the HRTIFD.

As a condition to its acceptance of any future annexation of property covered by the Hayden Run Corridor Plan, Columbus shall require and shall take all steps necessary to subject such property to additional tax increment financing districts created to finance infrastructure improvements directly benefiting the area.

At the time of creation of the HRTIFD, the current owners of the property subject to the HRTIFD shall prepare and file with the Franklin County Recorder a declaration against the property which shall be covenants running with the property and which shall require the current and future owner(s) to make service payments in lieu of real estate property tax payments and to prepare, sign and submit such applications and other required documents, to exempt the property pursuant to Sections 5709.40, 5709.911, 5713.08, and 5715.27 of the Ohio Revised Code.

Section 5. Road Improvement Projects by Columbus and Franklin County. Columbus shall complete or cause to be completed the road improvement projects described as projects HR-2, HR-3, HR-4, HR-9 and HR-10 in Exhibit "B" attached hereto (the "Columbus Improvements"). Franklin County shall complete or cause to be completed, the road improvement project described as projects HR-1, HR-5 and HR-8 ("Franklin County Improvements") As long as the necessary funding is in place, the various phases of the aforesaid projects (design, right of way acquisition, construction and inspection) shall be completed by Franklin County and Columbus to the best of their ability in accordance with the schedule set forth in Exhibit "B" attached hereto. The cost of the aforesaid public improvements shall be funded with the revenue Columbus and Franklin County receives pursuant to Section 1 and Section 4 of this Agreement. In order to meet the construction schedule in Exhibit B in the first two years Columbus and Franklin County intends to finance a portion of the public improvements through grant funds in the amount of \$6.3 million available from the Ohio Public Works Commission. In the event such grants are not available, then in such event the roadway schedule for HR-1 shall be delayed until grant funding or sufficient TIF Revenues or HRCDC amounts are available to fund such projects. No credit enhancement shall be required of the Developers with respect to any debt instruments issued by Columbus in connection with the Columbus Improvements. If a private developer determines that a particular public improvement, or a part of said improvement, is necessary to accommodate that developer's activity, then such developer may, with approval of the government entity having jurisdiction of the improvement, implement said improvement in advance of the schedule set forth in Exhibit "B" at its own cost and be reimbursed for this cost, as approved by the City, provided that the City shall not be obligated to reimburse any

developer for any such improvement constructed in advance of the schedule set forth in Exhibit "B" unless and until there are sufficient funds available from TIF revenues or HRDC amounts which are not otherwise committed to projects set forth in Exhibit "B".

Due to the necessity to integrate some of the Columbus Improvements with other improvements being constructed by the Developers it is necessary and desirable that the Developers assist Columbus in the supervision of the engineers and contractors selected by Columbus to complete some of the Columbus Improvements as follows: Dominion, M/I and Huntington shall assist Columbus in the supervision of the engineer or engineers selected by Columbus to prepare the construction plans of all of the Columbus Improvements. Dominion shall assist Columbus in the supervision of the contractors selected by Columbus to complete the projects described as projects HR-2 in Exhibit "B" attached hereto; and Lifestyle shall assist Columbus in the supervision of the contractors selected by Columbus to complete the projects described as projects HR-3 and HR-4 in Exhibit "B" attached hereto. In providing assistance to Columbus, the Developers shall have no authority to bind Columbus to anything or to in any way amend any contract between Columbus and any engineer or contractor. The sole intent of the assistance is to help expedite and coordinate the timely completion of the Columbus Improvements and the other improvements being completed by the Developers. The assistance shall be provided by the aforesaid Developers free of charge.

All public improvements shall be designed to the standards of the City of Columbus or applicable public entity. In addition, public and private infrastructure, including sidewalks and bike paths, shall be subject to all reviews and approvals by the applicable public entity.

Section 6. Payments by Columbus and the Developers to Franklin County. The parties anticipate that the Franklin County Improvements will be completed by Franklin County in accordance with the schedule set forth in Exhibit "B" attached hereto. The parties have agreed to contribute to the cost of the completion of Franklin County Improvements from the funding being paid by the Developers pursuant to Section 1 of this Agreement and from the revenue received by Columbus as contemplated in Section 4 of this Agreement. This contribution shall be effectuated by the Developers completing the payments to Franklin County as required in Section 1 of this Agreement and by Columbus paying the sum of \$2,595,000 (Bond proceeds) to Franklin County in respect of project HR-1 no later than January 1, 2006. Notwithstanding anything in Section 1 to the contrary, Columbus and the Developers shall have no obligation to complete any payments if Franklin County is in any way not completing the Franklin County Improvements in accordance with the schedule therefore set forth in Exhibit "B" attached hereto. Columbus and the Developers may delay the making of such payments for periods equal in length to the number of days which the completion of the Franklin County Improvements is behind the schedule therefore as set forth in Exhibit "B" attached hereto.

Section 7. Development Phasing. The parties acknowledge and agree that it is necessary and desirable that roadway construction and other public improvements are phased with

build out of the Developers' Property. Accordingly, a schedule for the completion of the Columbus Improvements and the Franklin County Improvements has been established. In order to further promote the coordination of the phasing of development within the Developers' Property with the completion of the improvement of the intersection of Hayden Run Road and Avery Road, the improvement of Cosgray Road and the improvement of the intersection of Cosgray Road and Hayden Run Road, the parties have agreed as follows: No more than 1,100 permits for 1,100 residential units in the aggregate other than residential sales centers shall be issued until January 1, 2006. No building permits for commercial structures other than club house, residential sales centers and fitness facility for the residential portion of the development shall be issued prior to April 1, 2006. During the period between the date of this Agreement and January 1, 2006 the maximum number of residential building permits that may be issued to each Developer shall be as follows: Dominion – 579; M/I -200; Lifestyle – 321.

The issuance of building permits will be in compliance with the Columbus City Code. Accordingly, notwithstanding any other provision of this Agreement, no limits upon the issuance of building permits shall be applied after January 1, 2006 to any Developer who has made all of the payments then due and payable by it under Section 1 of this Agreement.

It is the intent of the parties that during the entire period of this Agreement that no Developer which has made all of its required payments then due and payable hereunder: (i) be penalized for the failure to complete projects which are not in that Developer's control, or (ii) be denied building permits as a result of a failure of one or more other Developers failing to make any payment or perform any obligation required hereunder.

Section 8. Expedited Plan Review. The parties acknowledge that there has been a protracted period of planning and study involved in the creation of the Hayden Run Corridor Plan and the completion of the zoning of the projects contemplated by this Agreement. In order to be able to complete first phases of land development during the 2004 development season, the Developers anticipate that they each will be submitting the regulating plans, preliminary plats, land development construction plans and final plats for each of their respective projects as soon as possible after the Date of this Agreement. Columbus shall immediately accept for review and concurrently review the regulating plan, preliminary plat, land development construction plans and final plats submitted by each of the Developers. Columbus shall complete its review and approval of each regulating plan and preliminary plat expeditiously upon receipt. Columbus shall complete its review and approval of each set of land development construction plans and final plats expeditiously upon receipt in order that development of first phases can be completed during the 2004 development season. Further, it is the intent of this Section that the review of all documents for a particular development, including subsequent phases will be commenced expeditiously upon receipt, and that all such plans will be reviewed by Columbus concurrently. For example, the review of a preliminary plat for a particular development will not be deferred until after the approval of the regulating plan for that development. Similarly, for example, the review and approval of the land

development construction plans for a particular development will not be deferred until after the approval of the regulating plan and the preliminary plat.

Section 9. Contributions by Other Governmental entities and Developers of Projects in other Jurisdictions. The parties acknowledge and agree that the Columbus Improvements and the Franklin County Improvements will benefit residents of Dublin, Hilliard and Washington Township and have been designed to accommodate future development of property in addition to the Developers' Property and that the cost of the Columbus Improvements and the Franklin County Improvements is currently being paid solely by Columbus, Franklin County and the Developers. Accordingly, Columbus shall use its good faith efforts to work with Dublin, Hilliard and Washington Township to (i) contribute to the payment of the cost of the Columbus Improvements and the Franklin County Improvements and (ii) work with developers of property in their respective jurisdictions which benefit from the completion of the Columbus Improvements and the Franklin County Improvements to contribute to the payment of the cost of the Columbus Improvements and the Franklin County Improvements. Contributions by these other jurisdictions and by developers of this other property may include, but shall not be limited to direct payments to Columbus or Franklin County, inclusion of property in the HRTIFD and/or inclusion of property in HRCDD.

Section 10. Entire Agreement. This Agreement embodies the entire agreement among the parties in respect to the completion of road, school and other infrastructure improvements and the payment of impact fees or any other fees (other than permit and inspection fees in effect on the date of this Agreement) in connection with the development of the Developers' Property and the completion of the Columbus Improvements, Franklin County Improvements, school facilities and any and all other community improvements. The Developers and their successors and assigns shall have no obligation to complete any additional road, school, community facility or other infrastructure improvements (other than the road and infrastructure improvements inside their respective developments) or to pay any other sums with respect to road, school, community facility and other infrastructure improvements.

Section 11. Financial Obligations of Columbus. The financial obligations of Columbus under this Agreement are expressly subject to future ordinances of its Council appropriating and authorizing the expenditure of such funds as are necessary to meet these financial obligations and the certification of the Columbus City Auditor under Section 159 of the Columbus City Charter and other parties shall have no claim in law or equity to enforce the provisions of this Agreement requiring such expenditures until the aforesaid acts have occurred.

Section 12. Terms Binding. The terms of this Agreement shall be binding on each of the parties hereto, and each of their successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands and caused this Memorandum of Understanding to be executed on the _____ day of _____, 2004.

CITY OF COLUMBUS, OHIO

**FRANKLIN COUNTY,
OHIO**

By: Hector Guzmán
Its: Public Service Director

By: Dean Ringle
Its: Franklin County Engineer

By: Mark Barbash
Its: Development Director

APPROVED AS TO FORM:

**APPROVED AS TO
FORM:**

Richard C. Pfeiffer, Jr.
Columbus City Attorney

Ronald J. O'Brien
Franklin County Prosecutor

IN WITNESS WHEREOF, the undersigned parties have executed this Memorandum of Understanding as of the date first written above.

Dominion Homes, Inc.,
an Ohio corporation

By: _____

Name: Robert Meyer
Title: Senior Vice President and General
Counsel

M/I Homes of Central Ohio, LLC
an Ohio limited liability company

By: _____

Name: Robert Schottenstein
Title: President

Huntington Tower Associates, LLC,
an Ohio limited liability company

By: _____

Name: Paul S. Coppel
Title: Managing Member

Lifestyle Communities Ltd.,
an Ohio limited liability company

By: _____

Name: Michael Deascentis
Title: President