

**INTERGOVERNMENTAL COOPERATION AGREEMENT
(HR-2 ROAD IMPROVEMENT PROJECT)**

This Intergovernmental Cooperation Agreement ("Agreement") dated as of _____, 2009 by and between THE HAYDEN RUN COMMUNITY DEVELOPMENT AUTHORITY, a new community authority organized and existing under Chapter 349 of the Ohio Revised Code (the "Authority"), and the CITY OF COLUMBUS, OHIO, a municipal corporation duly organized and validly existing under and by virtue of the constitution and the laws of the State of Ohio (the "City").

RECITALS:

WHEREAS, pursuant to Chapter 349 of the Ohio Revised Code ("Chapter 349") and in accordance with a Memorandum of Understanding (the "MOU"), attached hereto as Exhibit A, dated November 22, 2004, among the City, the Franklin County Engineer, M/I Homes of Central Ohio, LLC, Dominion Homes, Inc., Huntington Tower Associates, LLC, and Lifestyle Communities, Ltd. (collectively, the "Developers"), the Authority was established as a new community authority under Chapter 349 to govern the Hayden Run Community Development District (the "District"), a new community district under Chapter 349; and

WHEREAS, the Amended and Restated Declaration of Covenants, Restrictions and Agreements for the Hayden Run Community Development Authority in the City of Columbus, Ohio (the "Declaration"), attached hereto as Exhibit B, filed with the offices of the Franklin County Recorder and the Franklin County Auditor on September 7, 2007, establishing and attaching, among other things, the Community Development Charge (the "Charge") on the property within the District to be used to cover all or part of the cost of the acquisition, development, construction, operation and maintenance of land, land development and Community Facilities (as defined in Chapter 349), the debt service thereof and any other cost incurred by the Authority under Chapter 349; and

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

WHEREAS, the Authority, pursuant to Resolutions No. 2007-2 and 2008-06 of its Board of Trustees (the "Board") adopted on September 19, 2007 and August 19, 2008, respectively, certified the Charge for imposition and collection on certain property within District;

WHEREAS, the City, with the cooperation of the Authority, desires to complete the road improvement project described as HR-2 in Exhibit B to the MOU and use the Charge along with other sources of funds to support the construction and financing of such road improvements;

WHEREAS, the City Council of the City (the "City Council") adopted Ordinance No. 0312-2008 on March 17, 2008 approving this Agreement;

WHEREAS, the Board passed Resolution No. 2008-2 on February 12, 2008 approving this Agreement; and

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

Section I

Public Infrastructure Improvements

The City agrees to complete or cause the completion of the road improvement project described as HR-2 in Exhibit B to the MOU pursuant to plans submitted to the City by EMH&T on behalf of the Developers and approved by the City's Division of Transportation (the "Public Infrastructure Improvements"). The City agrees to use its best efforts to complete or cause the completion of the Public Infrastructure Improvements by the second quarter of 2009.

Pursuant to Sections 30 and 159 of the Columbus City Charter no contract, agreement, or other obligation of the City involving the expenditure of money pursuant to the terms of this Agreement shall be entered into unless City Council first shall have appropriated and authorized the expenditure of funds for the same, and the City Auditor (the "City Auditor") shall have certified that the money required for such contract, agreement, obligation or expenditure is in the City Treasury to the credit of the fund from which it is to be drawn and has not been appropriated for any other purpose.

Section II

Levy, Collection, and Transfer of the Charge

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

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

The City and the Authority acknowledge that the Franklin County Auditor has previously paid the first half semiannual Charge settlement for collection year 2008 in the amount of \$52,323.35 (the "First Half Charge") to the City. The City shall retain the First

Half Charge for use as described below. The Authority shall retain the second half semiannual Charge settlement for collection year 2008 in the amount of \$54,735.73 (the "Second Half Charge") and the Authority shall use the Second Half Charge to pay Administrative Expenses (as defined in Section III). The Authority shall also retain the first half semiannual Charge settlement for collection year 2009 to pay Administrative Expenses and the Authority shall transfer the second half semiannual Charge settlement for collection year 2009 to the City, within thirty (30) days of such settlement made by the Franklin County Auditor to the Authority in connection with the Charge, for use as described below.

The City and the Authority agree and covenant that (i) the full amount of the Charge collected by the Authority in each calendar year, except as described above, less the Administrative Expense Allowance, as defined in Section III for that year, which shall be retained by the Authority in an account of the Authority as directed by the Board and used to pay Administrative Expenses, shall be transferred to the City to the attention of the City Auditor within thirty (30) days of each semi-annual settlement made by the Franklin County Auditor to the Authority in connection with the Charge; (ii) the City shall have a first lien on the amount of the Charge collected as necessary to pay debt service charges for any bonds or notes issued to fund costs of the Public Infrastructure Improvements (the "HR2 Bonds") or any Additional Improvements (as defined in clause (iii) below) (the "Additional Bonds"), provided that amounts received by the City from the tax increment financing districts applicable to real property comprising the District shall be first used to pay debt service charges on the HR2 Bonds and any Additional Bonds; and (iii) the City shall retain any amounts of the Charge in excess of debt service charges of the HR2 Bonds and any Additional Bonds and shall use such monies to fund other costs provided in this Agreement or to fund other public infrastructure that are identified in the MOU or are specifically authorized by a subsequent agreement between the City and the Authority (the "Additional Improvements"). The City shall promptly notify the Authority of the expense (including debt service schedules, if applicable) of any Additional Improvements undertaken and funded by the City and intended to be funded by the Charge.

At such time as (i) the HR2 Bonds have been paid in full, (ii) all other costs provided for in this Agreement have been paid in full, and (iii) any other costs of public infrastructure to be undertaken by the City as identified in the MOU, including but not limited to any obligations of the City in connection with the costs of construction of such public infrastructure or the financing thereof, and funded by the City and intended to be funded by the Charge have been paid in full, then any amount relating to the Charge and held by the City shall, within thirty (30) days, of the receipt of notice from the Authority, be remitted to the Authority and the Authority shall have no continuing obligation to pay Charge amounts to the City hereunder and this Agreement shall terminate.

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

Section III

Administrative Expenses

"Administrative Expenses" means those reasonable expenses incurred by the Authority (1) in connection with the establishment and expansion of the Authority; and (2) the operation and administration of the Authority, including but not limited to accounting and legal services and expenses (including but not limited to defense of third party lawsuits, state audits and payment of any judgment liens), and the levy and collection of the Charge. The "Administrative Expense Allowance" for each calendar year shall equal an amount budgeted by the Board of the Authority and such amount shall not exceed: (a) \$80,000 in calendar year 2008, which may include costs associated with the establishment of the Authority, and the operation and administration of the Authority through the end of calendar year 2008, and thereafter (b) (i) \$20,000 (in 2009 dollars, adjusted in accordance with the consumer price index published by the U.S. Department of Labor Bureau of Labor Statistics from time to time, or, if such index is no longer published, another reasonably equivalent index as determined by the Treasurer of the Board with the consent of the City and such consent shall be provided by the Director of the Department of Development in a reasonable amount of time and such consent shall not be unreasonably withheld), plus any expenses for state audits, defense of third party lawsuits or payment of any final judgment liens, for any calendar year after 2008, which may include items identified under clause (a) above that remain unpaid, and (ii) \$5,000 for operation and administration of the Authority during any previous calendar year, if necessary because Charge revenues collected in the previous year were insufficient to pay such costs. Within thirty (30) days following the end of each calendar year, the Authority shall transfer any remaining amount of the Administrative Expense Allowance for the previous calendar year to the City to the attention of the City Auditor; provided, however, the Authority may retain a balance of up to \$2,500 as a reserve to pay future Administrative Expenses.

The Authority shall provide the City with the Authority's approved annual budget within thirty (30) days of the approval of such budget by the Board and such budget shall include the estimated amount for the Administrative Expenses. Should the Administrative Expense Allowance be insufficient in any year to pay for the Authority's Administrative Expenses, the Authority may request that the City permit an additional Administrative Expense Allowance and such request by the Authority will not be unreasonably withheld by the City. All notifications and requests under this paragraph, and any approvals or disapprovals by the City under this paragraph, shall be addressed to or made by the City Auditor on behalf of the City.

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

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

Section IV

Binding Effect; Assignment

The Authority and the City, for themselves, their successors, executors, administrators and assigns, agree to the full performance of the covenants contained in this Agreement. The Authority may not assign this Agreement absent prior written consent of the City.

Section V

Amendment

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

Section VI

Severability

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

Section VII

Governing Law

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

With a copy to: City of Columbus, Ohio
90 West Broad Street
Columbus, Ohio 43215
Attention: City Attorney

To the Authority: The Hayden Run Community
Development Authority
7881 Sarahurst Drive
Dublin, Ohio 43016
Attention: John Sweeney, Secretary

With a copy to: Squire, Sanders & Dempsey L.L.P.
1300 Huntington Center
41 South High Street
Columbus, OH 43215
Attention: Gregory R. Daniels, Esq.

Section X

Representations and Warranties

The City and the Authority each represents and warrants as of the date of delivery of this Agreement that:

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

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

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

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

(e) No consent, approval, license or exemption by, order or authorization of, or filing, recording or registration with, any governmental authority, other than those already obtained, is required to be obtained or made by

it in connection with its execution and delivery of this Agreement or the performance by it of its obligations hereunder.

Section XI

Miscellaneous

Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities or imposing any legal duties or obligations, on any person or persons other than the City or the Authority, whether such rights, privileges, immunities, duties, or obligations are regarded as contractual, equitable or beneficial in nature as to such person or persons.

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

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

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

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

CITY OF COLUMBUS, OHIO

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Approved as to Form

By: _____

Richard C. Pfeiffer, Jr.
Columbus City Attorney

**THE HAYDEN RUN COMMUNITY
DEVELOPMENT AUTHORITY**

By: _____

Vice-Chair

By: _____

Treasurer

AUTHORITY'S FISCAL OFFICER'S CERTIFICATE

The undersigned, Treasurer and fiscal officer of The Hayden Run Community Development Authority (the "Authority"), hereby certifies that the moneys required to meet the obligations of the Authority during the years 2008 and 2009 under the foregoing Intergovernmental Cooperation Agreement have been lawfully appropriated by the Board of Trustees of the Authority for such purposes and are in the treasury of the Authority or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Treasurer, The Hayden Run Community
Development Authority

Dated: _____, 2009

EXHIBIT A

**Memorandum of Understanding
Dated November 22, 2004**

EXHIBIT B

**Amended and Restated Declaration of Covenants, Restrictions and Agreements
for the Hayden Run Community Development Authority
in the City of Columbus, Ohio**