

**RESOLUTION #09-0908-10**

**Authorize the approval of Havener Park Memorandum of Understanding**

**WHEREAS**, Liberty Township is preparing Havener Park for a ribbon cutting and official opening to the public the weekend of October 17th, and

**WHEREAS**, in preparation for the opening of Havener Park the Park Department is requesting authorization to purchase a sign, security gate, parking blocks and asphalt to complete the drive connection with Preservation Parks in the most cost effective manner, and

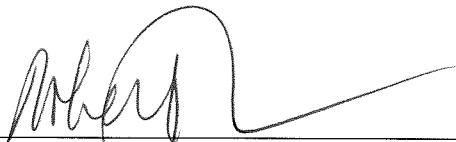
**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF LIBERTY TOWNSHIP, DELAWARE COUNTY, OHIO**, authorize the Township Administrator to execute the Memorandum of Understanding or something substantially similar to provide for the following items: an identification sign, security gate, parking blocks, cooperative asphalt and driveway preparation and related work, policing, and cost sharing or donations in a reciprocal relationship.

This Resolution shall be in force and become effective immediately upon its execution.

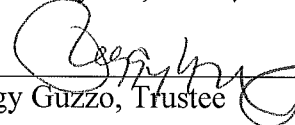
Motion made by Sybert and seconded by Guzzo.

**Vote:** yes Ms. Guzzo yes Mr. Mann yes Mr. Sybert

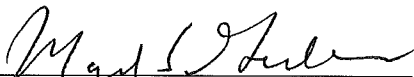
9-8-09  
Date

  
Robert Mann, Trustee

  
Curtis J. Sybert, Trustee

  
Peggy Guzzo, Trustee

CERTIFIED BY:

  
Mark S. Gerber, Fiscal Officer

## COOPERATIVE DEVELOPMENT AGREEMENT

This Cooperative Development Agreement between the Preservation Parks District of Delaware County, Ohio ("PPD") and the Liberty Township Board of Trustees, Delaware County, Ohio ("Liberty Township") is entered into this \_\_\_\_\_ day of September 2009, in Delaware County, Ohio.

### RECITALS

WHEREAS, Liberty Township accepted a donation from Phyllis A. Havener of approximately 94.1± acres of unimproved real property, pursuant to a Charitable Contribution Agreement, which requires the utilization of this property for public park, recreation and conservation purposes, which parcel is hereafter referred to as the "Havener Park Parcel" and "Havener Park"; and

WHEREAS, PPD has accepted the donation of approximately 96.91± acres of unimproved real property which requires the utilization of the property for recreational and conservation purposes, which parcel is hereafter referred to as the "Deer Haven Preserve Parcel" and "Deer Haven Preserve"; and

WHEREAS, the Delaware County Common Pleas Court has approved the conditions of such donations; and

WHEREAS, the parties (PPD and Liberty Township) wish to cooperate in the development of the adjoining Park and Preserve parcels through the statutory powers provided to PPD under Ohio Rev. Code § 1545.14 and to Liberty Township through the acceptance grant of donations and intergovernmental contracting authority provided by Ohio Rev. Code §§ 1545.14, 511.32, 755.16, 505.26, 505.261, and 505.262; and

WHEREAS, Liberty Township and PPD wish to set forth in writing the terms of this Agreement to specify the duties and responsibilities undertaken by each political subdivision with regard to the other and with regard to the development of the project known as 2007 Havener Park and Deer Haven Preserve Phase I.

### COVENANTS

FOR AND IN CONSIDERATION of the undertakings of the duties hereinafter specified, PPD and Liberty Township do hereby agree as follows:

1. PPD and Liberty Township will develop the entrance drive for (as well as) Havener Park and Deer Haven Preserve Phase I in concert with one another.
2. Liberty Township will be the contracting authority with the design professional and with any principal contractors retained by the parties to perform work, supply materials, or perform services on the project known as 2007 Havener Park and Deer Haven Preserve Phase I. No commitment is made by the PPD or Liberty

Township for cooperation beyond Phase I. The contract Administrator(s) shall have authority to execute change orders in the individual amount of \$5,000 or in the cumulative amount of \$10,000 without prior approval of the PPD and Liberty Township

- a. Notwithstanding the foregoing, after the estimated costs and bidding documents are prepared for the Phase I improvement, and more particularly for Deer Haven Preserve, any costs in excess of those originally anticipated by the bidding documents, plus the statutory 10% excess, must be approved in advance and in writing by PPD and Liberty Township.
3. The improvement will proceed in accordance with the basic programming reflected in the Master Plan dated May 21, 2007, and formally adopted by Liberty Township and PPD.
4. Liberty Township will be ultimately responsible for and pay any design professional or improvement expenses incurred in the Havener Park Parcel during calendar year 2009, except as otherwise noted in this Agreement.
5. PPD and Liberty Township will cooperate with the engineering, material purchase, and costs of improvement for any deceleration lane required by the County Engineer and the main roadway extending from the entrance at Havener Park on Liberty Road to the terminus, to be located at or near the nature center in Deer Haven Preserve.
6. Liberty Township shall be compensated by PPD for equipment and materials supplied and services rendered within the geographic boundaries of Deer Haven Preserve in unit amounts agreed-upon between the parties prior to the execution of any work.
7. The costs of engineering and roadway incurred necessary for the improvement, or necessary corrections of roadway, on the Havener Park Parcel will be absorbed and paid for by Liberty Township.
  - a. Notwithstanding the foregoing, PPD will donate funds, pay for, and be responsible to reimburse Liberty Township for any and all costs of engineering and improvements undertaken for the deceleration lane, entrance, and development of that portion of the entrance drive located in the Havener Park Parcel in an amount equivalent to twenty percent of such costs, or a cost not to exceed \$ \_\_\_\_\_.
8. PPD and Liberty Township shall agree to cooperate on the entrance design, which will incorporate elements of the Liberty Park Gates and the Liberty Park logo onto standardized PPD signage. PPD will pay 50% percent of the costs of the Gates and fifty percent of the costs of the mutually agreed-upon signage.

9. As the contracting authority, Liberty Township will require its engineer, and to the extent possible the contractors, to maintain separate accounting for those services rendered in connection with (1) Havener Park; (2) Deer Haven Preserve; and (3) the roadway leading generally from Liberty Road to the PPD nature center site.
10. Any sums owed by PPD to Liberty Township for the engineering and construction of any deceleration lane or of the main roadway leading from Liberty Township to the Phase I terminus at the PPD nature center site shall be offset and reduced by the value of landscape architect and engineering input secured through PPD's in-house landscape architect, which culminated in the preparation of the Master Plan dated May 21, 2007, which work is valued at the signing of this Agreement in the amount of 62 hours and \$1736 .
11. Upon completion of the construction and final payment to the contractor, Liberty Township will grant and deliver to PPD an easement of ingress and egress for use of the main drive from Liberty Road generally to the Deer Haven Preserve tract.
12. PPD will reserve and retain the ability to withdraw from this Agreement if, in its reasonable discretion, the project is not progressing with sufficient speed to allow for an *October 2009* public opening of the Havener Park and Deer Haven Preserve.
13. In the event this withdrawal option is exercised by PPD, only those expenses actually incurred in the design and/or improvements at that time will be billed through Liberty Township. Liberty Township will reserve the ability to reduce the scope of its contracts with the design professionals and with its contractors in the event PPD exercises this option. Specifically, in the event of a PPD withdrawal, Liberty Township's ability to reduce the scope will specifically include the elimination of Deer Haven Preserve improvements from the scope.
14. In executing this Agreement, the representatives of the respective parties represent and warrant that they have the requisite authority from their legislative bodies to bind the respective political subdivisions to these duties and obligations.
15. Any disagreements between the parties over the application of this Agreement and/or any disputes which arise out of its terms shall be resolved through final and binding arbitration, which will proceed in accordance with an arbitrator selected mutually by the parties. In the event the parties are unable to select an arbitrator, representatives of the Havener family will identify an arbitrator to resolve any disputes, and any decision reached by the arbitration will be final and binding on the parties.

IN WITNESS WHEREOF, the parties hereto set their hands this \_\_\_\_\_ day of September 2009.

PRESERVATION PARKS DISTRICT  
OF DELAWARE COUNTY, OHIO

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

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

LIBERTY TOWNSHIP BOARD OF TRUSTEES,  
DELAWARE COUNTY, OHIO

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

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

Resolution No. \_\_\_\_\_

I have reviewed the provisions of this Cooperative Development Agreement, and I find that the terms of the donation from Preservation Parks District to Liberty Township for the joint development of this park project are acceptable and hereby approved.

\_\_\_\_\_  
Judge of the Delaware County Common  
Pleas Court