Rev. 07/2011

DEVELOPMENT PUBLIC IMPROVEMENT PERFORMANCE AND MAINTENANCE SECURITY AGREEMENT

WATER, SANITARY & STORM SEWER

Security Agreement No.

_____

This Agreement made and concluded at Lebanon, Ohio, by and between _____ _____ (1) (hereinafter the "Developer") and the City of Lebanon, Ohio, (hereinafter the "City"), and _____ (2) (hereinafter the "Surety").

WITNESSETH:

WHEREAS, the Developer is required to install certain improvements for _____ _____ (3) (hereinafter the "Development") situated in the City of Lebanon, Ohio, in accordance with the City of Lebanon Regulations and Standards (hereinafter called the "Improvements"); and,

WHEREAS, it is estimated that the total cost of the Improvements is _____ ($_____),and that the Improvements that have yet to be completed and approved may be constructed in the sum of _____ ($_____); and,

WHEREAS, the City of Lebanon has determined to require all developers to post security in the sum of one hundred thirty percent (130%) of the estimated cost of uncompleted or unapproved Improvements to secure the performance of the construction of uncompleted or unapproved Improvements in accordance with City of Lebanon Regulations and Standards and to require all Developers to post security in the sum of twenty percent (20%) of the estimated total cost of the Improvements after the completion of the Improvements and their tentative acceptance by the City of Lebanon to secure the performance of all maintenance upon the Improvements as may be required between the completion and tentative acceptance of the Improvements and their final acceptance by the City of Lebanon.

NOW, THEREFORE, be it agreed:

1. The Developer will provide **performance security** to the City of Lebanon in the sum of _____ ($_____) to secure the performance of the construction of the uncompleted or unapproved Improvements in accordance with City of Lebanon Regulations and

Standards (hereinafter the Performance Obligation). If any sum greater than zero (0) is inserted herein, the **minimum performance security** shall be one hundred thirty percent (130%) of the total cost of the remaining Improvements.

2. The City of Lebanon will, upon approval of the City Engineer of all Improvements in the Development, tentatively accept all Improvements.

3. The Developer shall be in default of the Performance Obligation if the construction or installation of any Improvement by the Developer is not completed within _____ years from the date of the execution of this agreement, as determined by the City Engineer. The same shall apply whenever construction of the Improvements is not performed in accordance with the City of Lebanon Regulations and Standards.

4. The condition of the Performance Obligation shall be that whenever the Developer shall be declared by the City of Lebanon to be in default, the Surety and the Developer shall, upon written notification of default by the City of Lebanon to the Surety promptly make sufficient funds available to the City of Lebanon to pay the cost of the completion of the construction of the uncompleted or unapproved Improvements in accordance with City of Lebanon Regulations and Standards, including any costs incurred by the City of Lebanon which are incidental to the completion of the construction of the uncompleted or unapproved Improvements, including, but not limited to costs associated with publication of legal notices, preparation of such additional plans, specifications and drawings as may, in the judgment of the City of Lebanon, be necessary, preparation of bid documents, etc., but not exceeding the amount set forth in Item 1 hereof. The Developer shall have the opportunity to respond in writing within two (2) weeks of receipt of notice of intent to find the Developer in default. In the case that the performance security given is in the form of a cashier's check or certified check provided directly to the City of Lebanon, the City of Lebanon may apply such funds as set forth herein upon notification of default to the Surety. The determination of the amount of funds to be disbursed by Surety to the City of Lebanon as set forth in the aforesaid notification is final and binding upon the parties hereto. However, the foregoing shall not release Developer from any liability for any deficiency between the amount of funds disbursed and the actual costs incurred by the City of Lebanon in the completion of the construction or installation of the uncompleted or unapproved Improvements and Developer expressly agrees to be liable to the City of Lebanon for any such deficiency.

5. **The City of Lebanon, the Developer and Surety mutually agree that the Performance Obligation created herein shall continue until the completion of the installation of the Improvements in accordance with City of Lebanon Regulations and Standards and that upon the Improvements having been inspected and approved for two year maintenance, the Performance Obligation shall become null and void**.

6. The Developer will provide **maintenance security** to the City of Lebanon in the sum of _____ ($_____) to secure the performance of all maintenance upon the Improvements as determined to be necessary by the City Engineer (hereinafter the Maintenance Obligation). In no event shall the sum provided for herein be less than twenty percent (20%) of the estimated total cost of the Improvements as set forth above.

7. The Developer, upon being notified by the City Engineer of the maintenance required upon the Improvements to bring the same into compliance with City of Lebanon Regulations and

Standards shall immediately undertake to perform and complete such required maintenance within the time set forth in the notice from the City Engineer.

8. The Developer shall be in default of the Maintenance Obligation should the Developer fail to complete or cause to be undertaken and completed required maintenance upon the Improvements as set forth in Item 7 hereof.

9. The condition of the Maintenance Obligation shall be that whenever the Developer shall be declared by the City of Lebanon to be in default, the Surety and the Developer shall, upon written notification of default by the City of Lebanon to the Surety promptly make sufficient funds available to the City of Lebanon to pay the cost of the required maintenance upon the Improvements, including any costs incurred by the City of Lebanon which are incidental to the performance of such maintenance, including, but not limited to costs associated with the publication of legal notices, preparation of additional plans, specifications and drawings, as may, in the judgment of the City of Lebanon, be necessary, preparation of bid documents, etc. but not exceeding the amount set forth in Item 6 hereof. The Developer shall have the opportunity to respond in writing within two (2) weeks of receipt of notice of intent to find the Developer in default. In the case that the maintenance security given is in the form of a cashier's check or certified check provided directly to the City of Lebanon, the City of Lebanon may apply such funds to the completion of the required maintenance upon the Improvements upon notification of default to the Surety. The determination of the amount of funds to be disbursed by Surety to the City of Lebanon as set forth in the aforesaid notification is final and binding upon the parties hereto. However, the foregoing shall not release Developer from any liability for any deficiency between the amount of funds disbursed and the actual costs incurred by the City of Lebanon in the performance of maintenance upon the Improvements and Developer expressly agrees to be liable to the City of Lebanon for any such deficiency.

10. That upon expiration of the one year from the date of the tentative acceptance of the Improvements by the City of Lebanon and upon satisfactory completion of any required maintenance upon the Improvements to bring the Improvements into compliance with City of Lebanon Regulations and Standards, the City of Lebanon hereby agrees to release the maintenance security and give final acceptance to the Improvements. The Developer shall request, in writing directed to the City Engineer, a final inspection of the Improvements and the Developer shall be responsible for all maintenance as may be necessary and as may accrue from the commencement of the one year maintenance period and until such written request for inspection is delivered.

11. In the case of default pursuant to Items 3 and 4 or 8 and 9 hereof, Developer shall make available to the City of Lebanon all plans, specifications and drawing relating to the Improvements and hereby directs all third parties, including engineers and consultants, who may possess such plans, specifications and drawings, or copies thereof, to provide the same to the City of Lebanon upon request and presentation of this security agreement or a copy thereof and agrees to hold such third parties harmless from the provision of such plan specifications and drawings pursuant to this item. Developer does hereby consent to the use of such plans, specifications and drawings by the City of Lebanon to complete the construction of the uncompleted or unapproved Improvements or the performance of maintenance upon the same in the case of default pursuant to Items 3 and 4 or 8 and 9 hereof.

12. In the case of conflict between the provisions of this agreement and any other security agreement relating to the same Improvements, the provisions of this agreement shall take precedence.

13. Any notice, correspondence, inquiry or request for inspection permitted or required under this security agreement shall be given as follows:

A. To the City Engineer:

Office of the City Engineer
Attn. City Engineer
50 South Broadway
Lebanon, OH 45036
Ph. (513) 228-3130

B. To the Developer:

_____

_____

_____

_____

Ph. (_____) _____-_____

C. To the Surety:

_____

_____

_____

_____

Ph. (_____) _____-_____

All notices and requests for inspection, unless otherwise specifically provided herein, shall be by certified mail, return receipt requested and shall be complete upon mailing. **All parties are obligated to give notice of any change of address.**

14. The security to be provided herein shall be by:

_____ **Certified check or cashier's check** (attached) (**CHECK # _____**)

_____ **Original Letter of Credit** (attached) (**LETTER OF CREDIT # _____**)

_____ **Original Escrow Letter** (attached)

_____ **Surety Bond** (this security agreement shall serve as the bond when signed by an authorized representative of a surety company authorized to do business within the State of Ohio with a **power of attorney attached** evidencing such authorized signature).

_____ **Surety obligation of national bank** (by signing this security agreement the authorized representative of the national bank undertaking this surety obligation does certify, for and on behalf of the undersigned national bank, that the bank has a segregated deposit sufficient in amount to the bank's total potential liability).

15. **The term "Surety" as used herein includes a bank, savings and loan or other financial institution where the security provided is a letter of credit, escrow letter or surety obligation of a national bank. The term "Surety" when referring to a bank, savings and loan or other financial institution is not intended to create obligations beyond those provided by Paragraphs 4 and/or 9 of this security agreement.**

16. **In the event that Surety shall fail to make funds available to the City of Lebanon in accordance with Paragraphs 4 or 9, as applicable, within thirty (30) days after notification of default, then amounts due shall bear interest at eight per cent (8%) per annum.**

IN EXECUTION WHEREOF, the Developer and the Surety have caused this security agreement to be executed on the date stated below.

DEVELOPER:

Pursuant to a resolution authorizing the undersigned to execute this agreement.

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

SURETY:

Pursuant to an instrument authorizing the undersigned to execute this agreement.

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

[**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**]

IN EXECUTION WHEREOF, the City of Lebanon has caused this security agreement to be executed by the City Manager, on the date stated below.

CITY OF LEBANON
CITY MANAGER

SIGNATURE: _____

PRINTED NAME: _____

DATE: _____

RECOMMENDED BY:

By: _____
CITY ENGINEER

APPROVED AS TO FORM:

By: _____
CITY ATTORNEY

Key:

1. Name of Developer
2. Name of Person, Firm, Entity, etc. who is providing the security whether that be a bank or other financial institution (in the case of a letter of credit or escrow letter) (Surety Company in the case of a bond) or the Developer itself (in the case of a certified check or cashier's check)
3. Name of development or subdivision with section number and phase number where applicable