



BOARD OF COUNTY COMMISSIONERS

WARREN COUNTY, OHIO

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MEMORANDUM

TO: Developers developing subdivisions
within Warren County, Ohio

cc: Township Boards of Trustees
District Administrator, Soil & Water Conservation District
Sanitary Engineer
County Engineer
County Prosecutor

FROM: Warren County Board of County Commissioners

DATE: **July 28, 2016**

SUBJECT: Subdivision Public Improvements Performance
Security Requirements

Included are **amended** documents necessary to post security for the completion of improvements intended to be accepted for public use within the Subdivision you are developing in the unincorporated area of Warren County. There are four general types of improvements for which the security requirements apply. They are (1) Erosion & Sediment Control [E&SC-4, 07/2016]; (2) Water and Sanitary Sewer [WA-3 , 07/2016]; (3) Streets and Appurtenances [ST-1, 07/2016]; and (4) Sidewalks [SW-2, 07/2016]. The performance of the proper installation and maintenance of each separate type of improvement must be secured separately. Below is the address and telephone number of the department having supervision of the various types of improvements.

1. Streets, Appurtenances and Sidewalks (Form ST-1 and Form SW-2)

Warren County Engineer
105 Markey Road
Lebanon, OH 45036
Ph: (513) 695-3336

2. Water and Sanitary Sewer (Form WA-3)

Warren County Water and Sewer Department
406 Justice Drive
Lebanon, OH 45036
Ph: (513) 695-1380

3. Erosion & Sediment Control (Form E&SC-4)

Warren County Soil and Water Conservation District
320 E. Silver Street
Lebanon, OH 45036
Ph: (513) 695-1337

The County will accept security in any of five separate forms, you may, at your option, select the form of security as best suits your situation. The five forms of acceptable security are as follows:

1. **Certified check or cashier's check** payable to the Board of Warren County Commissioners. This check shall be deposited by the County in an appropriate fund and encumbered for the purposes set forth in the Security Agreement. Upon completion and proper maintenance of all improvements to County specifications, the principal amount of the funds will be disbursed back to the Developer.
2. **Original Letter of Credit** in favor of the Board of Warren County Commissioners. **Please note that the Letter of Credit must include the following language for automatic renewal and notice to the County in case of non-renewal:**

“It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for successive one year periods from its present or any future expiration date unless at least sixty (60) days before any such expiration date we notify the Warren County Administrator, at the address listed above, in writing by certified or registered mail, that we elect not to consider this letter of credit renewed for any such additional period, **at such time the Board of Warren County Commissioners may declare the Developer to be in default and demand immediate payment of all sums under this Letter of Credit.**”

If the Letter of Credit contains a draft presentment deadline, it is mandatory that the Letter of Credit include the following language:

“The draft presentment deadline set forth in this letter of credit shall automatically be extended for one year periods unless at least sixty (60) days prior to any draft presentment deadline, or any prior extension thereof, the _____ (name of financial institution) Bank notifies the Warren County Administrator, 406 Justice Drive, Lebanon, Ohio 45036, that the draft presentment deadline shall not be extended for a successive one year period, **at such time the Board of Warren County Commissioners may declare the Developer to be in default and demand immediate payment of all sums under this Letter of Credit.**”

The Letter of Credit must also contain the following language:

“The Security Agreement referenced by this Letter of Credit and all its terms and conditions, is attached hereto, made a part hereof, and fully incorporated herein, as if fully rewritten”.

Payment pursuant to the Letter of Credit shall not be conditioned except upon notification by the Board of Warren County Commissioners to the issuing financial institution that the developer is in default of the installation and/or maintenance of improvements within the subject subdivision.

The Letter of Credit must state that it is being issued in connection with the installation of improvements in a particular subdivision being developed by a certain developer. This reference must be specific and identify the subdivision and section or phase thereof as may be applicable. Additional reference must be made that the letter of credit is being issued in connection with the security agreement between the County Commissioners and the developer.

3. **Original Escrow Letter** (Form EL-5) issued by a financial institution.

“The Security Agreement referenced by this Original Escrow Letter and all its terms and conditions, is attached hereto, made a part hereof, and fully incorporated herein, as if fully rewritten”.

4. **Surety Bond** issued by a surety company authorized to do business in the State of Ohio. An authorized representative must sign the security agreement which will

serve as the bond. A power of attorney from the surety company authorizing the signature on behalf of the surety company must accompany the security agreement.

5. **Surety Obligation of National Bank.** A national bank may bind itself as surety to indemnify the County should the Developer default in the installation of the subdivision improvements if it has a segregated deposit sufficient to cover the bank's total potential liability. Therefore, an authorized representative of the national bank must sign the security agreement, which signature shall also constitute a certification that the national bank has a segregated deposit sufficient in amount to cover the bank's total potential liability.

The County will accept only the five types of security listed above.

Irrespective of the type of security selected by the Developer, all security agreements must be signed by the Surety.

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 the security agreement. In the event that Surety fails to make funds available to the County Commissioners in accordance with the security agreement within thirty (30) days after notification of default, then amounts due shall bear interest at eight per cent (8%) per annum.

In addition to the Security Agreements, a Snow and Ice Removal Agreement (Form SR-6) must be executed with the political subdivision which has jurisdiction of the roads within the Subdivision. The political subdivision with jurisdiction of the roads is probably the township(s) in which the subdivision is situated.

Other than filing in the blanks, no other alterations to the Security Agreements or escrow letter may be made. Do not retype the security agreements or the escrow letter. Use only the forms provided or photocopies thereof. Security agreements and escrow letters which have been altered or retyped will not be accepted. The Subdivision name on a Security Agreement must exactly match the name of the subdivision on the record subdivision plat. **No exceptions.** For example, if the name of the subdivision is Spicewood, the name on the agreement must be spelled the same. The spelling Spice Wood is not the same as Spicewood. In addition, if the subdivision is Section One, referring to as Section 1 is not the same.

Upon completion of the Security Agreements by the Developer and the Surety, they **must** be returned to the department having supervision of the type of improvement involved.

All Security Agreements, with the exception of Erosion & Sediment Control, must be submitted to the responsible County department with the plat of the improvement. In no circumstances will such Security Agreements be approved by a County department until the plat has been approved by that County department. **Security Agreements for Erosion & Sediment Control are required prior to any grading activity, whether or not a plat is required at that time.**

After execution by the official of the responsible County department, the Security Agreements and snow and ice removal agreement must be delivered to the Warren County Prosecutor's Office, 520 Justice Drive, Lebanon, Ohio 45036, Ph. (513) 695-1325 for approval as to form. You must leave contact information (name and telephone number) for the Prosecutor's Office to reach you. **Do not deliver to or leave your mylars/plats/plans at the Prosecutor's Office.** After approval as to form of the Security Agreements and Snow and Ice Removal Agreement, the Prosecutor's Office will contact you for the documents to be picked up by you. **With the exception of Erosion & Sediment Control (that does not require platting) which shall be returned to the Soil & Water Conservation District,** you are responsible for delivering the documents to the Warren County Regional Planning Commission for placement upon the County Commissioners agenda and approval by the County Commissioners. All Security Agreements, including required attachments, and snow and ice removal agreements, upon presentation, must bear **original signatures** before placement upon the County Commissioners agenda for consideration. Photocopies and faxes are **not acceptable** under any circumstances including upon representation that originals will follow. The County Commissioners meet on Tuesdays and Thursdays. For consideration by County Commissioners on Tuesday, all documents must be delivered to the Warren County Regional Planning Commission no later than noon on the previous Thursday. For consideration by the County Commissioners on Thursday, all documents must be delivered to the County Commissioners Clerk no later than noon on the previous Tuesday. **All Security Agreements, except Erosion & Sediment Control that does not require platting, and subdivision plats applicable to a particular subdivision will be submitted together as one packet by the Warren County Planning Commission for consideration by the Warren County Commissioners and Security Agreements for performance of improvements in a Subdivision are a prerequisite to final approval of subdivision plats. The Security Agreement for Erosion & Sediment Control will be submitted independently by the Warren County Soil & Water Conservation District to the Warren County Commissioners for approval.**

Following performance of improvements in a Subdivision, the Developer may request a reduction in the bond. Such requests may be made in writing to the County department having supervision of the improvement, and shall be granted in the sole discretion of the County Commissioners.

A copy of each of the following Security Agreements is included:

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| Form ST-1 | Streets and Appurtenances (Rev. 07/2016) |
| Form SW-2 | Sidewalks (Rev. 07/2016) |
| Form WA-3 | Water and/or Sanitary Sewer (Rev. 07/2016) |

Form E&SC-4 Erosion & Sediment Control (Rev. 07/2016)
Form EL-5 Escrow Letter (07/2016)
Form SR-6 Agreement for Snow and Ice Removal for Unaccepted Streets 07/2016)

This memorandum is effective immediately.