

**SUBDIVISION PUBLIC IMPROVEMENT PERFORMANCE AND MAINTENANCE
SECURITY AGREEMENT**

EROSION & SEDIMENT CONTROL

Security Agreement No.

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

WITNESSETH:

WHEREAS, the Developer is required to install certain improvements in _____
_____ **Subdivision, Section/Phase** _____ (3) (hereinafter the "Subdivision") situated in
_____ (4) Township, Warren County, Ohio, in accordance with the Warren County
Erosion and Sediment Control Regulations adopted November 16, 2006 (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 County Commissioners 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 Warren County Erosion and Sediment Control Regulations 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 County Commissioners 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 County Commissioners.

NOW, THEREFORE, be it agreed:

1. The Developer will provide **performance security** to the County Commissioners in the sum of _____ to secure the performance of the construction of the uncompleted or unapproved Improvements in accordance with Warren County Erosion and Sediment Control Regulations (hereinafter the Performance Obligation). If any sum greater

than zero (0) is inserted herein, the **minimum performance security** shall be twenty percent (20%) of the total cost of the Improvements.

2. The County Commissioners will, upon approval of the District Administrator of the Warren County Soil & Water Conservation District of all Improvements in the Subdivision, 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 performed in accordance with the Warren County Erosion and Sediment Control Regulations.
4. The condition of the Performance Obligation shall be that whenever the Developer shall be declared by the County Commissioners to be in default, the Surety and the Developer shall, upon written notification of default by the County Commissioners to the Surety promptly make sufficient funds available to the County Commissioners to pay the cost of the completion of the construction of the uncompleted or unapproved Improvements in accordance with Warren County Erosion and Sediment Control Regulations, including any costs incurred by the County Commissioners 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 County Commissioners, 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 County Commissioners, the County Commissioners 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 County Commissioners 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 County Commissioners in the completion of the construction or installation of the uncompleted or unapproved Improvements and Developer expressly agrees to be liable to the County Commissioners for any such deficiency.
5. **The County Commissioners, 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 Warren County Erosion and Sediment Control Regulations and that upon the Improvements having been inspected and approved for two years maintenance, the Performance Obligation shall become null and void after the Developer posts the maintenance security provided for herein.**
6. The Developer will provide **maintenance security** to the County Commissioners in the sum of _____ to secure the performance of all maintenance upon the Improvements as determined to be necessary by the District Administrator of the Warren

County Soil & Water Conservation District (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 District Administrator of the Warren County Soil & Water Conservation District of the maintenance required upon the Improvements to bring the same into compliance with Warren County Erosion and Sediment Control Regulations shall immediately undertake to perform and complete such required maintenance within the time set forth in the notice from the District Administrator of the Warren County Soil & Water Conservation District.
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 County Commissioners to be in default, the Surety and the Developer shall, upon written notification of default by the County Commissioners to the Surety promptly make sufficient funds available to the County Commissioners to pay the cost of the required maintenance upon the Improvements, including any costs incurred by the County Commissioners 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 County Commissioners, 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 County Commissioners, the County Commissioners 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 County Commissioners 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 County Commissioners in the performance of maintenance upon the Improvements and Developer expressly agrees to be liable to the County Commissioners for any such deficiency.
10. That upon expiration of the two years from the date of the tentative acceptance of the Improvements by the County Commissioners and upon satisfactory completion of any required maintenance upon the Improvements to bring the Improvements into compliance with Warren County Erosion and Sediment Control Regulations, the County Commissioners hereby agree to release the maintenance security and give final acceptance to the Improvements. The Developer shall request, in writing directed to the District Administrator of the Warren County Soil & Water Conservation District, 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 **two 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 County Commissioners 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 County Commissioners 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 County Commissioners 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 County Commissioners:

Warren County Board of County Commissioners
Attn: County Administrator
406 Justice Drive
Lebanon, OH 45036
Ph. (513) 695-1250

B. To the District Administrator:

Warren County Soil & Water Conservation District
District Administrator
320 East Silver Street
Lebanon, OH 45036
Ph. 513.695.1337

C. To the Developer:

Ph. (_____) _____ - _____

D. 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 County Commissioners 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.**
17. This Agreement shall not be assignable or transferrable by the Developer or Surety to any third party or parties without the express written consent of the County Commissioners. Developer and Surety waive any successor developer or successor surety claim or defense unless the County Commissioners have executed a written consent of assignment.
18. This Agreement shall be construed under the laws of the State of Ohio. The Developer and Surety hereby stipulate to the venue for any and all claims, disputes, interpretations and litigation of any kind arising out of this Agreement, being exclusively in the Warren County, Ohio Court of Common Pleas (unless both parties mutually agree in writing to attempt to resolve by alternate dispute resolution prior to litigation), and do further waive any right to bring or remove such claims, disputes, interpretation and litigation of any kind arising out of this Agreement, in or to any other state or a federal court.

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 Warren County Board of County Commissioners have caused this security agreement to be executed by the President of the Board, on the date stated below, pursuant to Board Resolution Number _____, dated _____.

**WARREN COUNTY
BOARD OF COUNTY COMMISSIONERS**

SIGNATURE: _____

PRINTED NAME: _____

TITLE: President _____

DATE: _____

RECOMMENDED BY:

By: _____
**DISTRICT ADMINISTRATOR OF THE
WARREN COUNTY SOIL & WATER
CONSERVATION DISTRICT**

APPROVED AS TO FORM:

By: _____
COUNTY PROSECUTOR

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 subdivision with section number and phase number where applicable
4. Name of Township