

VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2015-29

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR AND FISCAL OFFICER TO EXECUTE A SUBDIVISION PUBLIC IMPROVEMENT SECURITY AGREEMENT FOR MAINTENANCE OF STREETS AND SANITARY SEWER IN VISTA POINTE SUBDIVISION, SECTION 4, IN THE VILLAGE OF SOUTH LEBANON, AND DECLARING AN EMERGENCY

WHEREAS, the public improvements in Vista Pointe Subdivision, Section 4, have been constructed, and reviewed, approved and certified in writing by the Village's Administrator and Engineer as having been constructed and completed in a satisfactory manner; and,

WHEREAS, in accordance with Section 15.20.7 (4) of the Subdivision Regulations, upon completion of the construction of the public improvements, the developer is required to post a Maintenance Bond in the amount of ten (10) percent of the actual construction costs of the Improvements, and no improvements shall be accepted by the Village Council until the developer has posted an approved Maintenance Bond which shall extend for a period of one (1) year from the date of acceptance by the Village in the case of all Improvements within easements and public rights-of-way; and,

WHEREAS, the Village desires to enter into the attached Subdivision Public Improvement Security Agreement for Maintenance of Streets and Sanitary Sewer; and,

WHEREAS, immediate action is required to assure compliance with the Subdivision Regulations and that the Village has a sufficient and reasonable maintenance bond for public improvements in place, and such action is necessary in order to preserve the public peace, health, safety or welfare of the Village.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of South Lebanon, Ohio, at least two-thirds of all members elected thereto concurring:

Section 1. That the Council does hereby approve and authorize the Mayor and Fiscal Officer to execute the attached Subdivision Public Improvement Security Agreement for Maintenance of Streets and Sanitary Sewer for Vista Pointe Subdivision, Section 4, in the Village of South Lebanon.

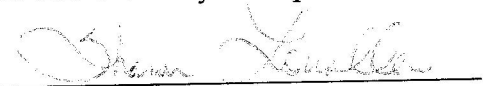
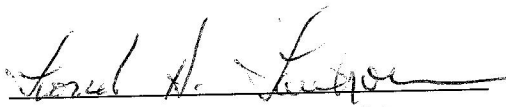
Section 2. That the Council is acting in its administrative capacity in adopting this Resolution.

Section 3. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 4. That this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code § 731.30 for the immediate preservation of the public peace, health, safety and general welfare; and, this Resolution shall be in full force and effective immediately upon its passage.

Section 5. That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 17th day of September, 2015.

Attest:  
Sharon Louallen, Fiscal Officer/Clerk Lionel Harold Lawhorn, Mayor

Rules Suspended: 9/17/2015 (if applicable)	Effective Date - / /2015
Vote - <u>6</u> Yeas ___ Nays	
First Reading - / /2015	Effective Date - / /2015
Second Reading - / /2015	
Third Reading - / /2015	
Vote - ___ Yeas ___ Nays	

Prepared by and approved as to form:

BRUCE A. MCGARY
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: Bruce McGary
Date: 9/17/15

CERTIFICATE OF POSTING

I, Sharon Louallen, Fiscal Officer of the Village of South Lebanon, Ohio do hereby certify I posted a true and accurate copy of this ordinance or resolution, summary of ordinance or resolution, or statement, order, proclamation, notice or report at five public places within the Village as authorized by Section 731.25 of the Ohio Revised Code and Ordinance 98-08 of Village of South Lebanon, Ohio.

9-18-15 Sharon Louallen
Date Sharon Louallen
Fiscal Officer
Village of South Lebanon,
Ohio

SUBDIVISION PUBLIC IMPROVEMENT SECURITY AGREEMENT
for
MAINTENANCE OF STREETS AND SANITARY SEWER
in
VISTA POINTE SUBDIVISION, SECTION 4

This Agreement made and concluded at South Lebanon, Warren County, Ohio, by and between, River's Bend Land Company, Ltd., an Ohio limited liability company (hereinafter the "Developer") and who is also acting as the Surety in accordance with the terms herein, and the South Lebanon Village Council, an Ohio municipal corporation (hereinafter "Village Council").

WITNESSETH:

WHEREAS, the Developer was required to install certain improvements consisting of Streets and Sanitary Sewer (hereinafter the "Improvements") in Vista Pointe Subdivision, Section 4 (hereinafter the "Subdivision") situated in the Village of South Lebanon, Warren County, Ohio, in accordance with the Village of South Lebanon Subdivision Regulations [eff. August 10, 1991, as amended November 22, 2005] (hereinafter the "Subdivision Regulations"); and,

WHEREAS, it was estimated that the total cost of the Improvements was ONE HUNDRED SIXTY ONE THOUSAND NINE HUNDRED FORTY-SIX DOLLARS (\$161,946.00), based upon a pricing spreadsheet prepared by the Developer and approved by the Village Engineer; and,

WHEREAS, the performance of the construction of the Improvements (and for Sidewalk) was originally bonded by National City Bank, as the original Surety, however, in 2009, the original Surety did not renew the bonds and Developer posted cash performance bonds in the form of Cashier's Checks in the sum of \$62,946.00 for Streets and Sanitary Sewer (and \$42,980.00 for Sidewalks); and,

WHEREAS, in accordance with Section 15.20.7 (4) of the Subdivision Regulations, upon completion of the Improvements, and the approval and certification in writing by the Village Administrator and Engineer that the Improvements have been constructed and completed in a satisfactory manner, Developer shall post a Maintenance Bond in the amount of ten (10) percent of the actual construction costs of the Improvements, and no improvements shall be accepted by the Village Council until Developer has posted an approved Maintenance Bond which shall extend for a period of one (1) year from the date of acceptance by the Village in the case of all Improvements within easements and public rights-of-way; and,

WHEREAS, the Improvements have been completely performed, and reviewed, approved and certified in writing by the Village's Administrator and Engineer as being constructed and completed in a satisfactory manner, thus, the Improvements that have yet to be completed and approved by the Village Administrator and Engineer total: \$0.00; and,

WHEREAS, the Village is authorized to enter into this Agreement in accordance with Section 711.101 of the Ohio Revised Code, and the Mayor and Fiscal Officer (as authorized to execute this Agreement pursuant to Section 731.14 of the Ohio Revised Code) have been so authorized pursuant to Resolution No. 2015- 29, dated 9-17, 2015; and,

WHEREAS, the undersigned representative of the Developer is authorized to execute this Agreement in accordance with a written company resolution, operating agreement or consent action.

NOW, THEREFORE, be it agreed:

1. The Developer will provide maintenance security to the Village Council in the sum of SIXTEEN THOUSAND ONE HUNDRED NINETY FOUR DOLLARS AND SIXTY CENTS (\$16,194.60) to secure the maintenance upon the Improvements as determined to be necessary by the Village's Administrator and Engineer (hereinafter the "Maintenance Obligation"). In no event shall the sum provided for herein be less than ten percent (10%) of the estimated total cost of the Improvements as set forth above unless a written amendment hereto or new security agreement are mutually agreed to.
2. The Village Council will, upon Developer executing this Agreement, retain the sum provided for in Item 1 above from the cash performance bond currently on deposit for the Improvements (Streets and Sanitary Sewer), pass a Resolution tentatively accepting the Improvements subject to the Maintenance Obligation, and then refund to Developer the balance of the cash performance bond for the Improvements (Streets and Sanitary Sewer) in the amount of \$46,751.40.
3. During the said one (1) year maintenance period, Developer, upon being notified by the Village's Administrator and Engineer of the maintenance required upon the Improvements to bring the same into compliance with the Subdivision Regulations, shall immediately undertake to perform and complete such required maintenance within the time set forth in the notice from the Village's Administrator and Engineer.
4. 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 herein.
5. The condition of the Maintenance Obligation shall be that whenever the Developer shall be declared by the Village Council to be in default in the form of a Default Resolution passed during an open meeting of the Village Council, and the Maintenance Obligation funds in the possession of the Village as provided in Item 1 above, shall be forfeited to the Village to be used to complete required maintenance and to pay any costs incurred by the Village which are incidental to such maintenance, including, but not limited to costs associated with the publication of legal notices, preparation of additional plans, specifications and drawings, preparation of bid documents based upon the recommendations of the Village's Engineer, maintenance, and legal fees, but not exceeding the amount set forth in Item 1 above, or any amendment hereto. Prior to the Village Council declaring the Developer in default, 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, and make arrangements to cure the default within seven (7) days or such other time period agreed to by the Village (hereinafter the "Maintenance Cure Period"). The determination of the amount of funds to be forfeited to

the Village upon recommendation of the Village's Administrator and Engineer after expiration of the aforesaid notification and Maintenance Cure Period shall be final and binding upon the parties hereto.

6. That upon expiration of the one (1) year from the date of the tentative acceptance of the Improvements by the Village Council and upon satisfactory completion of any required maintenance upon the Improvements to bring the Improvements into compliance with the Subdivision Regulations, upon review and recommendation of the Village's Administrator and Engineer, the Village Council hereby agrees to release the maintenance security and pass a Resolution providing for final acceptance for public maintenance by the Village Council of the Improvements. The Developer shall request, in writing directed to the Village's Administrator and 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 (1) year maintenance period and until such written request for inspection is delivered.
7. In the case of default, Developer shall make available to the Village's Engineer 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 Village Council 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 Village Council 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.
8. In the case of conflict between the provisions of this Security Agreement and any other security agreement or bond relating to the same Improvements, the provisions of this Agreement shall prevail.
9. Any notice, correspondence, inquiry or request for inspection permitted or required under this security agreement shall be given as follows:

A. To the Village Council:

South Lebanon Village Council
Attn: Village Administrator
99 N. High Street
South Lebanon, OH 45065
Ph. (513) 494-2296
Fx. (513) 494-1656
Email: jhaddix@southlebanonohio.org

B. To the Village's Engineer:

Choice One Engineering
Attn. Nicholas J. Selhorst, P.E.
Address: 203 Loveland Avenue
Loveland, OH 45140
Ph. (513) 239-8554
Fx. (513) _____
Email: nns@choiceoneengineering.com

C. To the Developer:

Mr. Bill Hines
Mr. David E. Haid
941 Chatham Lane #100
Columbus, OH 43221
Ph. (614) 457-0200
Fx. (614) 457-7295 *del*
Email: DAVID@JHG.HOMES.COM *del*

D. To the Surety:

Mr. Bill Hines
Mr. David E. Haid
941 Chatham Lane #100
Columbus, OH 43221
Ph. (614) 457-0200
Fx. (614) 457-7295 *del*
Email: DAVID@JHG.HOMES.COM *del*

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.**

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

- Certified check or cashier's check** (CASHIER'S CHECK # received 01/11/2011)
- 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).

IN EXECUTION WHEREOF, the Developer/Surety has caused this Security Agreement to be executed on the date stated below.

DEVELOPER:

Pursuant to written authorization for the undersigned to execute this agreement.

RIVER'S BEND LAND COMPANY, LTD.

SIGNATURE: David E Haid, President

PRINTED NAME: DAVID E HAID

TITLE: PRESIDENT

DATE: 8/21/15

SURETY:

Pursuant to written authorization for the undersigned to execute this agreement.

RIVER'S BEND LAND COMPANY, LTD.

SIGNATURE: David E Haid, President

PRINTED NAME: DAVID E HAID

TITLE: PRESIDENT

DATE: 8/21/15

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IN EXECUTION WHEREOF, the South Lebanon Village Council has caused this Security Agreement to be executed by the Mayor and Fiscal Officer, on the date stated below, pursuant to Resolution Number 2015-29, dated 9-17-15.

SIGNATURE: Lionel H. Lawhorn

PRINTED NAME: Lionel H. Lawhorn

TITLE: Mayor

DATE: 9-17-15

SIGNATURE: Sharon Louallen

PRINTED NAME: Sharon Louallen

TITLE: Fiscal Officer

DATE: 9-17-15

RECOMMENDED BY:

VILLAGE OF SOUTH LEBANON
VILLAGE ENGINEER

By: Nick Delhoro

Name: Choice One Engineering

Date: 8-26-15

PREPARED AND APPROVED
AS TO FORM BY:

VILLAGE OF SOUTH LEBANON
VILLAGE SOLICITOR

By: _____

Name: Bruce A. McGary

Date: _____