

VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2015- 27

A RESOLUTION APPROVING AND AUTHORIZING MAYOR AND FISCAL OFFICER TO EXECUTE A GUARANTEE CONTRACT FOR WOODKNOLL SUBDIVISION, SECTION 2, WITH MAINSTREAM HOMES, INC., AND DECLARING AN EMERGENCY

WHEREAS, per Village Resolution 2013-25, dated July 15, 2013, the Village entered into a Developer Agreement with Mainstream Homes for the Woodknoll Subdivision, Section 2; and

WHEREAS, upon completion of said public improvements, Section 15.20.7(4) of the Village's [Subdivision Regulations] contained within the current Zoning Code requires a developer of lands within the Village to post a Maintenance Bond in the amount of ten (10) percent of the construction costs for a period of one (1) year from the date of acceptance of the improvements; and

WHEREAS, Mainstream Homes, Inc. is the developer of Woodknoll Subdivision, Section 2 in the Village and First National Bank is the surety for said developer; and

WHEREAS, on September 11, 2015, the Village Engineer certified that the public improvements for Woodknoll Subdivision, Section 2, were satisfactorily completed;

WHEREAS, First National Bank has provided a Letter of Credit in the amount of \$57,919.95, expiring on September 10, 2016, for said development; and

WHEREAS, a Guarantee Contract, attached and made a part hereof, outlines the maintenance and surety requirements of Mainstream Homes; and

WHEREAS, immediate action is required to adequately protect the Village and its citizens relating to the construction of said Development, 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 approves and authorizes the Mayor and Fiscal Officer to execute the Guarantee Contract relating to Woodknoll Subdivision, Section 2, with Mainstream Homes, Inc., a copy of which is attached hereto.

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 December, 2015.

Attest: Sharon Louallen
Sharon Louallen, Fiscal Officer/Clerk

Lionel Harold Lawhorn
Lionel Harold Lawhorn, Mayor

Rules Suspended: 12/17/2015 (if applicable)	Effective Date – 12/17/2015
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:

Date: 12/17/2015

"EXHIBIT E"
GUARANTEE CONTRACT

This Guarantee Contract ("Contract"), is entered into, the effective date of which shall be upon the last date of execution by all parties hereto, by and between the Council of the Village of South Lebanon, an Ohio Municipal Corporation (the "Village"), and Mainstream Homes, Inc. (the "Developer"), whose mailing address is 3845 E. Foster Maineville Road, Morrow, OH 45152 ("the Surety"), in accordance with the Development Plan that is on file in the office of the Village Administrator for the completion of the public and other improvements associated with the residential development known as Woodknoll Subdivision Section 2 ("the Subdivision").

WITNESSETH:

WHEREAS, the Developer has completed certain work in connection with certain Public Improvements (hereinafter "Public Improvements") for the Subdivision in accordance with the Development Agreement dated July 15, 2013, between the Village and Developer (the "Agreement"), as more fully detailed in the Development Plan on file in the office of the Village Administrator (the "Development Plan"); and,

WHEREAS, the Developer desires to guarantee that all such Public Improvements were construed in accordance with the Development Plan and the construction drawings and specifications and applicable laws and to ensure such performance by requiring said Developer to post a bond in the form of either an irrevocable letter of credit, a cash bond, or a surety bond; and,

WHEREAS, the Developer desires to guarantee the correction of any defect appearing in any Public Improvement within one (1) year after the acceptance of the Public Improvements by the Village, as a result of the failure of the Developer to construct the Public Improvement in accordance with the Development Plan and the terms of the Agreement (a "Failure") set forth in connection with the improvements located in and on said Development. This Contract shall be secured by bond in the form of either an irrevocable letter of credit, a cash bond or a surety bond, as detailed herein; and,

WHEREAS, the estimated costs of Public Improvements that were to be constructed, upon which the Performance Bond was posted, in accordance with Exhibit "D" attached to the Development Agreement was \$579,190.95, a copy of which is attached hereto; and,

WHEREAS, the Village is willing to accept a Guarantee Bond in the sum of \$57,919.10 being 10% of the estimated cost of the Public Improvements, with an expiration date of

September 10, 2016, due to the Village Engineer determining the Public Improvements had been completed and further recommended in writing on September 10, 2015 that the Village accept the Public Improvements.

NOW, THEREFORE, IT IS AGREED:

1. Developer, as hereinbefore described, does herewith agree to correct any defect appearing in any Public Improvement as a result of a Failure.
2. Developer agrees that any failure in the Public Improvements shall be properly corrected pursuant to written notification from the Village received by Developer within one (1) year after September 10, 2015, being the date the Village Engineer determined the performance of the Public Improvements had been completed, and further recommended the acceptance of the Public Improvements by the Village. If, after notification by the Village, the Developer fails to make the required repairs within thirty (30) days from receiving such notification in the case of "non-emergency" items and within twenty-four (24) hours in the case of "emergency" repairs, the Village may employ the forces necessary to correct any such defect; provided however, that in the case of "non-emergency" repairs for which the correction cannot be reasonably completed within thirty (30) days because of weather conditions or other circumstances beyond the Developers control, the Developer shall so notify the Village Manager and the Village and Developer shall agree as to a reasonable number of days for the Developer to correct such defect. The Developer will be billed for any and all reasonable expenses incurred by the Village in cases where the Village is required (after notice to Developer and failure of Developer to cure such Failure within the time periods set forth above), to employ forces for purchases materials to correct a defect in accordance with this Contract. Such bill shall be paid to the Village by the Developer within thirty (30) days form the date of billing. The amount of any bills not paid within this time may be withdrawn from the \$5,000.00 Cash Nuisance Bond that was posted in conjunction with the signing of the Development Contract, provided that such Bond is still in effect, or the Guarantee Bond, or both, in the amount of any such unpaid bills.
3. Developer does herewith provide a bond in the form of Letter of Credit, dated December 18, 2015, in the sum of \$57,919.10, with an expiration date of September 10, 2016, and shall be for the benefit of the Village to insure the faithful performance of this Contract and the guarantee of the Public Improvements constructed in accordance with the Development Agreement, as well as the repair and replacements of items that deteriorate or need maintenance until the Letter of Credit's expiration date, said amount being equal to ten percent (10%) of the actual cost of the Public Improvements as certified by the Developer's engineer, in accordance with the approved

"Development Plan" on file in the office of the Village Administrator and as itemized in Exhibit "D" made part of the Development Agreement.

4. Guarantee Bond. The original Letter of Credit No. 15-01 shall serve as the Guarantee Bond herein. Failure to provide and/or maintain this Guarantee Bond for until its expiration shall be deemed a default of the Development Agreement.

DEVELOPER:

IN EXECUTION WHEREOF, Mainstream Homes, Inc., referred to as the Developer herein, has caused this Guarantee Contract to be executed by Alvin Bishop, its President, on the date stated below, pursuant to a Resolution or Consent Action authorizing such act on its behalf.

SIGNATURE: _____

NAME: Alvin Bishop

TITLE: President

DATE: _____

STATE OF _____, COUNTY OF _____, ss.

BE IT REMEMBERED, that on the _____ day of _____, 20____, before me, the subscriber, a Notary Public, in and for said County and State, personally appeared the person known or proven to me to be Alvin Bishop, whose title is President, of Mainstream Homes, Inc., whose name is subscribed hereto, and acknowledged the signing and execution of this Guarantee Contract is his free and voluntary act and deed, and the free and voluntary act and deed of Mainstream Homes, Inc., in accordance with a Resolution or Consent Action authorizing such act as its representative.

NOTARY PUBLIC: _____

MY COMMISSION EXPIRES: _____

[seal]

SURETY:

IN EXECUTION WHEREOF, 1st National Bank, referred to as the Surety herein, has caused this Guarantee Contract to be executed by Ron Fischer, whose title is Executive Vice-President, on the date stated below, pursuant to a Power of Attorney or a resolution or consent action authorizing such act on its behalf.

SIGNATURE: _____

NAME: Ron Fischer

TITLE: Executive Vice-President

DATE: _____

STATE OF _____, COUNTY OF _____, ss.

BE IT REMEMBERED, that on the _____ day of _____, 20____, before me, the subscriber, a Notary Public, in and for said County and State, personally appeared the person known or proven to me to be Ron Fischer, whose title is Executive Vice-President of 1st National Bank, whose name is subscribed hereto, and acknowledged the signing and execution of this Guarantee Contract is his free and voluntary act and deed, and the free and voluntary act and deed of 1st National Bank, in accordance with a Power of Attorney or resolution or consent action authorizing such act as its representative.

[seal]

NOTARY PUBLIC: _____

MY COMMISSION EXPIRES: _____

VILLAGE:

IN EXECUTION WHEREOF, the Council of the Village of South Lebanon, Ohio, has caused this Agreement to be executed by its Mayor, and its Fiscal Officer, on the date stated below, pursuant to Resolution Number 20____-_____, dated _____.

SIGNATURE: _____

SIGNATURE: _____

NAME: _____

NAME: _____

TITLE: Mayor _____

TITLE: Fiscal Officer _____

DATE: _____

DATE: _____

STATE OF OHIO, COUNTY OF WARREN, ss.

BE IT REMEMBERED, that on the _____ day of _____, 20____, before me, the subscriber, a Notary Public, in and for said County and State, personally appeared the persons known or proven to me to be _____, Mayor, and _____, Fiscal Officer, of the Village of South Lebanon, Ohio, and acknowledged the signing and execution of this Agreement is their free and voluntary act and deed, in accordance with a Village Resolution authorizing them to so act.

[seal]

NOTARY PUBLIC: _____

MY COMMISSION EXPIRES: _____

APPROVED AS TO FORM:

**VILLAGE SOLICITOR
SOUTH LEBANON, OHIO**

By: _____
Village Solicitor

EXHIBIT D

Woodknoll Subdivision Section 2
 Bond Estimate
 2-May-13

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST
202	CLEARING AND GRUBBING (Completed)	1	LUMP	\$ 7,650.00	\$ 7,650
203	EXCAVATION (Completed)	11619	CU YD		\$ 23,400
203	EMBANKMENT (Completed)	9534	CU YD		\$ 11,200
204	SUBGRADE COMPACTION	4379	SQ YD	1.50	\$ 6,569
304	AGGREGATE BASE	1308	CU YD	35.00	\$ 45,780
407	TACK COAT	438	GAL	2.00	\$ 876
408	PRIME COAT	1752	GAL	3.00	\$ 5,256
448	ASPHALT CONCRETE INTERMEDIATE COURSE	183	CU YD	150.00	\$ 27,450
448	ASPHALT CONCRETE SURFACE COURSE	183	CU YD	175.00	\$ 32,025
609	COMBINED CURB & GUTTER	2466	FEET	18.00	\$ 44,388
603	8" SANITARY SEWER	1055	FEET	25.00	\$ 26,375
604	SANITARY MANHOLE	5	EACH	3,000.00	\$ 15,000
603	6" SANITARY LATERAL	1500	FEET	15.00	\$ 22,500
638	8" WATER LINE	580	FEET	75.00	\$ 43,500
538	WATER SERVICE	25	EACH	350.00	\$ 8,750
638	8" TAPPING SLEEVE AND VALVE	1	EACH	3,500.00	\$ 3,500
638	FIRE HYDRANT	4	EACH	2,500.00	\$ 10,000
638	8" GATE VALVE	2	EACH	1,000.00	\$ 2,000
603	STORM SEWER - 12" HDPE	192	FEET	46.00	\$ 8,832
603	STORM SEWER - 12" RCP	100	FEET	56.00	\$ 5,600
603	STORM SEWER - 18" RCP	127	FEET	70.00	\$ 8,890
603	STORM SEWER - 24" HDPE	387	FEET	53.00	\$ 20,511
603	STORM SEWER - 24" RCP	260	FEET	79.00	\$ 20,540
603	STORM SEWER - 48" RCP	200	FEET	160.00	\$ 32,000
604	CATCH BASIN TYPE 2-2A	2	EACH	1,200.00	\$ 2,400
604	CATCH BASIN TYPE 3A	1	EACH	2,250.00	\$ 2,250
604	CATCH BASIN TYPE 3A	6	EACH	1,700.00	\$ 10,200
604	STORM MANHOLE	3	EACH	3,000.00	\$ 9,000
604	DOUBLE 24" HEADWALL	2	EACH	920.00	\$ 1,840
604	CULVERT HEADWALL	2	EACH	5,000.00	\$ 10,000
625	STREET LIGHTS	5	EACH	2,000.00	\$ 10,000
630	SIGNS	6	EACH	250.00	\$ 1,500
832	SWPPP	1	EACH	5,000.00	\$ 5,000
659	SEEDING AND MULCHING	1	LUMP	3,000.00	\$ 3,000
SUBTOTAL					\$ 487,782
COMPLETED WORK					\$ (42,250)
ESTIMATED COST					\$ 445,532
PLUS INFLATION & CONTINGENCY (30%)					\$ 133,659
TOTAL AMOUNT OF PERFORMANCE BOND					\$ 579,190.95



1160 E. Main Street, P.O. Box 119, Lebanon, Ohio 45036
www.bankwith1st.com

Irrevocable Standby Letter of Credit

December 31~~8~~, 2015

Beneficiary

Council of the Village of South Lebanon,
An Ohio Municipal Corporation
99 South High Street
South Lebanon, OH 45065
Warren County, Ohio

Applicant

Mr. Alvin Bishop, President
Mainstream Homes, Inc.
3845 E. Foster-Maineville Road
Morrow, OH 45152

Letter of Credit No.: 15-01
Amount: \$5257,991.20
Expiration Date: September 10, 2016
Regarding: ~~Maintenance Bond~~ Guarantee bond, Woodknoll Subdivision Section 2

Ladies and Gentlemen:

We hereby establish this irrevocable standby Letter of Credit No. 15-01 (LOC), by order of, for the account of, and on behalf of the named Applicant, and in favor of you, the named Beneficiary, for unconditional drawings, in one or more drafts, up to an aggregate amount not exceeding the Amount of this LOC first stated above.

We hereby undertake to promptly honor your draft(s) drawn on us, for all or partial amounts of this LOC. This LOC is issued, presentable and payable and we guaranty to the drawers, endorsers, and bona fide holders of this LOC that drafts under and in compliance with its terms will be honored.

Subject to the express terms and conditions herein, funds under this LOC are unconditionally available to you upon presentation or delivery to our office, in a manner described as follows: a written notice bearing the original signature of an officer of the Beneficiary certifying "we are hereby authorized to draw under the LOC" and to be accompanied by the original of this

Phone: 513-932-3221

Toll Free 888-932-3221

Fax: 513-932-7119

◆ Lebanon Colony Square ◆ Fields Ertel ◆ Maineville ◆ Mason ◆ Morrow ◆
◆ Towne Mall ◆ Wal-Mart Lebanon ◆ Wal-Mart Eastgate ◆ Wal-Mart West Chester ◆



LOC, a Resolution of the Village Council of South Lebanon declaring performance default and forfeiture. Any partial draws against this LOC shall reduce the amount available hereunder.

This LOC expires with our close of business on the Expiration Date first stated above.

This LOC is subject to the Uniform Customs and practice for Documentary Credits as published and updated from time to time by the International Chamber of Commerce.

1st National Bank

Ron Fischer
Executive Vice President

Phone: 513-932-3221

Toll Free 888-932-3221

Fax: 513-932-7119

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