

B) PLAN COMMISSION'S CERTIFICATES

1) PRIMARY APPROVAL OF A MAJOR SUBDIVISION

The following Certificate shall appear on every major subdivision plat:

UNDER AUTHORITY PROVIDED BY CHAPTER 174 -ACTS OF 1947,
ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF INDIANA, AND
ALL ACTS AMENDATORY OR SUPPLEMENTAL THERETO, AND AN
ORDINANCE ADOPTED BY THE COMMON COUNCIL OF THE CITY OF
LEBANON, THIS PLAT WAS GIVEN PRIMARY APPROVAL BY THE CITY OF
LEBANON, AS FOLLOWS:

Approved by the City Plan Commission at a meeting held _____,
20_____.

Void unless secondary approval is received by _____, 20_____.

LEBANON CITY PLAN COMMISSION

President

Secretary

(SEAL)

2) SECONDARY APPROVAL OF A MAJOR SUBDIVISION

The following Certificate shall appear on every major subdivision plat prior to recording:

ALL CONDITIONS OF PRIMARY APPROVAL HAVE BEEN MET AND THIS PLAT IS GRANTED SECONDARY APPROVAL BY THE CITY PLAN COMMISSION.

Approved by the City Plan Commission at a meeting held _____, 20____.

Void unless Recorded by _____, 20_____.

LEBANON CITY PLAN COMMISSION

President

Secretary

(SEAL)

C) PLAT COMMITTEE CERTIFICATES

1) PRIMARY APPROVAL OF A MINOR SUBDIVISION

The following Certificate shall appear on every minor subdivision plat:

UNDER AUTHORITY PROVIDED BY IC 36-7-4-700, SUBDIVISION CONTROL, AND ANY AMENDMENTS THERETO, THIS PLAT WAS GIVEN PRIMARY APPROVAL BY THE CITY PLAT COMMITTEE.

Approved by the City Plat Committee at a meeting held _____, 20____.

Void unless secondary approval is received by _____, 20_____.

LEBANON CITY PLAT COMMITTEE

Chairman

Secretary

(SEAL)

2) SECONDARY APPROVAL OF A MINOR SUBDIVISION

The following Certificate shall appear on every minor subdivision plat prior to recording:

ALL CONDITIONS OF PRIMARY APPROVAL HAVE BEEN MET AND THIS PLAT IS GRANTED SECONDARY APPROVAL BY THE CITY PLAT COMMITTEE.

Approved by the City Plat Committee at a meeting held _____, 20____.

Void unless Recorded by _____, 20_____.

LEBANON CITY PLAT COMMITTEE

Chairman

Secretary

(SEAL)

3) ADMINISTRATIVE SUBDIVISION APPROVAL

The following Certificate shall appear on every administrative subdivision:

THIS SUBDIVISION HAS BEEN DETERMINED TO BE AN ADMINISTRATIVE
SUBDIVISION AND IS ELIGIBLE FOR RECORDING AS SUCH.

Approved by the City Plat Committee at a meeting held _____,
20____.

Void unless recorded by _____, 20_____.

LEBANON CITY PLAT COMMITTEE

Chairman

Secretary

(SEAL)

D) BOARD OF PUBLIC WORKS AND SAFETY'S CERTIFICATE

The following Certificate shall be used for subdivisions that require improvements or installations:

THIS PLAT WAS GIVEN APPROVAL BY THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF LEBANON, INDIANA, AT A MEETING HELD ON THE _____ DAY OF _____, 20____.

Chairman

Recording Secretary

(SEAL)

E) LEBANON UTILITIES SERVICE BOARD CERTIFICATE

The following Certificate shall be used on plats for subdivisions that require improvements or installations.

THIS PLAT WAS GIVEN APPROVAL BY THE LEBANON UTILITIES SERVICE BOARD OF THE CITY OF LEBANON, INDIANA, AT A MEETING HELD ON THE _____ DAY OF _____, 20____.

Chairman

Clerk of the Board

(SEAL)

F) REGISTERED LAND SURVEYOR'S CERTIFICATE

I, _____ HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, LICENSED IN COMPLIANCE WITH THE LAWS OF THE STATE OF INDIANA:

THAT THIS PLAT CORRECTLY REPRESENTS A SURVEY COMPLETED BY ME ON (___ Date ___), THAT ALL THE MONUMENTS SHOWN THEREON ACTUALLY EXIST, OR WILL BE INSTALLED, AND THAT ALL OTHER REQUIREMENTS SPECIFIED HEREIN, DONE BY ME, HAVE BEEN MET.

(Signature)

(RLS#)

(SEAL)

(A similar type of certificate may be used by Professional Engineers.)

covered by these covenants, or restrictions, in whole or in part. Invalidation of any one of the foregoing covenants, or restrictions, by judgment or court order shall in no way affect any of the other covenants or restrictions, which shall remain in full force and effect.

The right to enforce these provisions by injunction, together with the right to cause the removal, by due process of law, of any structure or part thereof erected, or maintained in violation hereof, is hereby dedicated to the public, and reserved to the several owners of the several lots in this subdivision and to their heirs and assigns.”

Witness our Hands and Seals this _____ day of _____ 20__.

(Signature)

(Signature)

State of Indiana)
)
County of Boone)

Before me the undersigned Notary Public, in and for the County and State, personally appeared (Name), (Name), (Name), and each separately and severally acknowledge the execution of the foregoing instrument as his or her voluntary act and deed, for the purposes therein expressed.

Witness my hand and notarial seal this day _____ of _____, 20__.

Notary Public

APPENDIX B
SAMPLE FORMS

SAMPLE AGREEMENT FORM FOR DEVELOPMENT OF SUBDIVISION

State of Indiana:

County of Boone:

This AGREEMENT made and entered into this ____ day of _____, 20__, by and between (name of subdivider), hereinafter designated as Owner, and the City of Lebanon, herein represented by the Board of Works and Safety.

WITNESSETH:

WHEREAS, the Owner owns and-desires to develop lots through _____, (Subdivision) _____ located in Lebanon, Indiana; and,

WHEREAS, the Record Plat of lots _____ through _____ inclusive, _____ Subdivision, will be given final approval by the Lebanon City Plan Commission, upon Owner posting a surety bond insuring the satisfactory installation and construction of the following improvements:

(Describe Improvements)

as shown on the Record Plat prepared by _____ Land Surveyor, attached hereto and made a part hereof, according to the terms and conditions of this Agreement; and,

WHEREAS, the Owner now desires final approval of the Record Plat of _____ Subdivision prior to the installation and construction of the above described improvements, which improvements will be installed and constructed at Owner's sole cost and expense:

NOW, THEREFORE, it is hereby agreed by and between the Owner and The City of Lebanon that for and in consideration of the final approval of lots _____ through _____ inclusive of _____ Subdivision, and the sale of lots therein without the above described improvements more particularly shown on the attached plan profile, having been first completed and approved, Owner binds and obligates himself within ____ months from date hereof to install and construct the described improvements in accordance with plans prepared by _____, Land Surveyor, which plans meet the requirements of the Lebanon 5ubdivision, Code, Chapter 31, of The Municipal Code of Lebanon, Indiana, as amended, and have been approved by a registered professional engineer or a registered land

surveyor (as the case may be) who has been approved by the Lebanon Board of Works and Safety, said plans being attached hereto and made a part hereof.

The Owner, in order to further insure faithful performance of said obligation, has executed a (surety bond, cashier's check or certified check) in the amount of \$_____, which bond is attached hereto and made a part hereof, to guarantee the installation and construction of the following improvements:

(Describe Improvements same as above)

according to plans and specifications therefor. Said bond or check may be cancelled only after said work has been completed, inspected and approved by written acceptance of the said Engineer or Land Surveyor.

The above described improvement shall be constructed under the supervision of (Engineer or Surveyor) in full compliance with the Specifications and requirements the City of Lebanon, and when completed said Engineer or Surveyor shall furnish the City with a Certificate of satisfactory completion.

It is further understood by and between the parties to this Agreement that in the event said improvements are not constructed within ____ months from date hereof, the City of Lebanon shall have and is hereby granted the right, without putting the said Owner in default, to ipso facto call upon the said surety to complete the improvements hereinabove described, and in default of the surety promptly causing such improvements to be constructed according to the plans and specifications therefor, the City of Lebanon shall have the right to cause the improvements to be made and to call upon said surety for payment of all costs and expenses incurred in the construction thereof.

IN WITNESS WHEREOF, these presents have been signed in the presence of the undersigned competent witnesses, at _____ on this ____ day of _____, 20____.

WITNESSES:

(NAME OF SUBDIVIDER OR DEVELOPMENT COMPANY)

By _____

CITY OF LEBANON, INDIANA

ATTEST:

By _____
Mayor

Clerk - Treasurer of the City
of Lebanon, Indiana

SAMPLE SURETY BOND

State of Indiana:

County of Boone:

KNOW ALL MEN BY THESE PRESENTS, That _____ of _____ as Surety are held and firmly bound unto the City of Lebanon, Indiana, and to all contractors, sub-contractors, journeymen, cartmen, truckmen, workmen, laborers, mechanics, and furnishers of materials jointly as their interest occur, in the sum of _____ (\$ _____) dollars, in lawful current money of the United States, for which payment will and truly be made, we bind ourselves, our heirs, successors and assigns, in solido, by these presents.

Dated and signed at _____, this _____ day of _____, 197_____.

THE CONDITIONS of this obligation are such that whereas, the above named principal did on the _____ accordance with the plans and specifications prepared by and approved by the Professional Engineer or _____

NOW, THEREFORE, if the aforesaid principal shall well and truly and faithfully perform said contract and comply with all its terms, covenants and conditions, according to its tenor and discharge all of said principal's obligations thereunder, and shall fully pay and discharge all of said principal's obligations to contractors, sub-contractors, journeymen, cartmen, workmen, laborers, mechanics, and furnishers of materials employed and furnished in the execution of said contract, then this obligation shall be null and void; otherwise to be and remain in full force, effect, and virtue.

IN TESTIMONY WHEREOF, we have hereunto set our hands, in the presence of the two undersigned competent witnesses, this day, month and year above written.

By _____
Attorney-in-Fact

(Signature of Subdivider)

WITNESSES:

SAMPLE MAINTENANCE AGREEMENT FORM

State of Indiana:

County of Boone:

THIS AGREEMENT made and entered into this ____ day of _____, 20____, by and between (name of subdivider), hereinafter designed as Owner, and the City of Lebanon herein represented by the Board of Works and Safety.

WITNESSETH:

WHEREAS, the Owner has subdivided lots ____ through _____, _____ Subdivision, and has received approval and acceptance from the Board of Works and Safety for subdivision improvements constructed therein; and

WHEREAS, under the provisions of the subdivision Ordinance, the Owner is required to maintain certain improvements for a period of three (3) years;

NOW THEREFORE, it is hereby agreed by and between the Owner and the Board of Works and Safety that the Owner hereby agrees that he will keep all filled trenches, pipes, manholes, structures, and paved or unpaved surfaces constructed by him in _____ Subdivision in good condition, and will make such repairs to any defect in materials or workmanship as may develop or be discovered when called upon to do so by the Board of Works and Safety.

It is agreed that this Agreement shall be in full force and effect for a period of three (3) years from _____, 20____.

IN WITNESS WHEREOF, these presents have been signed in the presence of the undersigned competent witnesses, at _____ on this _____ day of _____, 20____.

WITNESSES:

(NAME OF SUBDIVIDER OR DEVELOPMENT COMPANY)

ATTEST:

By: CITY OF LEBANON, INDIANA
BOARD OF WORKS AND SAFETY

Clerk-Treasurer of the City of
Lebanon, Indiana

Mayor

SAMPLE MAINTENANCE BOND FORM

State of Indiana:

County of Boone:

KNOW ALL MEN BY THESE PRESENTS, That _____, _____, as Principal, and _____, are surety and held firmly bound unto the City of Lebanon, Indiana, in the sum of _____ (\$_____) dollars, in lawful current money of the successors, and assigns, in solido, by these presents.

Dated and signed at _____, Indiana, this _____ day of _____, 20____.

THE CONDITIONS of this obligation are such, that whereas, the above named principal did on the _____ day of _____, 20____, enter into a certain contract with the Board of Works and Safety of Lebanon, Indiana to maintain for a period of ____ year(s) from _____, 20____, the improvements in _____ Subdivision, and keep all filled trenches, pipes, manholes, structures, and paved or unpaved surfaces constructed by him in good condition, and shall make such repairs to any defects in materials or workmanship as may develop or be discovered when called upon to do so by the Board of Works and Safety.

NOW, THEREFORE, if the aforesaid principal shall well and truly and faithfully perform said contract and comply with all its terms, covenants and conditions, according to its tenor and discharge all of said principal's obligations thereunder and shall fully pay and discharge all of said principal's obligations to, then this obligation shall be null and void; otherwise to be and remain in full force, effect, and virtue.

IN TESTIMONY WHEREOF, we have hereunto set our hands, in the presence of the two undersigned competent witnesses this day, month and year above written.

By: _____
Attorney-in-Fact

(Signature of Subdivider)

WITNESSES:

COMPLETION AFFIDAVIT

This is to Certify:

- (a) That the following improvements as designed and engineered for _____ Subdivision are complete and that inspection reports attested to by a Professional Engineer or Land Surveyor approved by the Lebanon Board of Works and Safety show them to be in accordance with the specifications and requirements of the Lebanon Subdivision Ordinance, Chapter 31, of "The Municipal Code of Lebanon, Indiana."
- (b) That surety has been posted to guarantee all materials and workmanship and to guarantee repair of any damage that may be inflicted upon the improvements listed in the course of completion of the subdivision; and
- (c) That the Board of Works and Safety of Lebanon, Indiana has accepted these improvements and will henceforth be responsible for all maintenance on them subject to the terms of the maintenance agreement with the subdivider.

(List Improvements)

BOARD OF WORKS AND SAFETY, LEBANON, INDIANA

Date: _____, 20____.

APPENDIX C

SAMPLE SUBDIVISION IMPROVEMENT AGREEMENT FORM

Note: This document is an example only. It is the intention of the Lebanon Plan Commission that the agreement on each subdivision be suited to the particular conditions which apply, and modifications to this form should be made and agreed upon by the respective parties as needed.

- A) Parties: The parties to this subdivision improvement agreement (“the agreement”) are (“the developer”) and the City of Lebanon, Indiana (“the city”)
- B) Effective Date: This agreement shall be effective upon it’s execution by both parties.

RECITALS

WHEREAS, the developer seeks permission to subdivide property within the city to be known as (“the subdivision”); and

WHEREAS, the city seeks to protect the health, safety, and general welfare of the community by requiring the completion of various improvements related to the subdivision and thereby to limit the harmful effects of sub-standard subdivisions; and

WHEREAS, the purpose of this agreement is to protect the city from the cost of completing subdivision improvements itself and is not executed for the benefit of those providing work, services, or material to the subdivision or for the benefit of lot or home buyers in the subdivision; and

WHEREAS, the mutual promises, covenants, and obligations contained in this agreement are authorized by state law and the city’s Subdivision Control Ordinance;

THEREFORE, the parties hereby agree as follows:

DEVELOPER’S OBLIGATIONS

- A) IMPROVEMENTS: No improvements in this subdivision shall be commenced before this agreement has been executed. After the agreement is executed, the developer will construct and install, at his own expense, those on-site and off-site subdivision improvements listed on Exhibit A attached hereto and incorporated herein by this reference (“the improvements”). Prior to its incorporation into this document, Exhibit A must be reviewed by the Zoning Administrator for verification that the list of improvements and estimated costs are acceptable. The developer’s obligation to complete the improvements will arise upon record approval by the Zoning Administrator, will be independent of any obligations of the city contained herein and will not be conditioned on the commencement of building construction in the development or sale of any lots or improvements within the subdivision.

- B) SECURITY: To secure the performance of his obligations hereunder, the developer will deposit with the city on or prior to the effective date, a financial guarantee acceptable to the city. The guarantee for this subdivision consists of the following:

[Insert Description Here]

[The guarantee will be payable on demand to the city and will bear an expiration date not earlier than two years after the effective date of this agreement. The guarantee will be payable to the city at any time upon presentation to the issuing party (i) an affidavit executed by the Board of Public Works and Safety stating that the developer is in default under this agreement; and (ii) the original guarantee document.] This document is Exhibit B attached hereto and incorporated herein by this reference. Sidewalks required within the development shall be installed as buildings are completed on the lots within the subdivision, and the financial guarantee for such sidewalks shall be a cash escrow deposited with a financial institution. The costs for manufacture and placement of street and traffic control signs shall be paid directly to the city before the street improvements are accepted for maintenance by the Board of Public Works and Safety.

- C) STANDARDS: The developer will construct the improvements according to the standards and specifications required by the Lebanon Plan Commission (“the commission”) as set forth on Exhibit C attached hereto and incorporated herein by this reference. Before its incorporation into this agreement, Exhibit C must be signed by the engineer and the Planning Administrator.
- D) WARRANTY: The developer warrants that the improvements, each and every one of them, be free from defects for a period of [one to five] year(s) from the date that the city accepts said improvement. Prior to the city’s release of all or part of the financial guarantee, the developer shall provide [one to five] year(s) maintenance guarantees in the amount of 25% of the original financial guarantee or 25% of the value of the completed improvements, whichever is less. These guarantees shall run to the Board of Public Works and Safety and Lebanon Utilities Service Board.
- E) PRECONSTRUCTION MEETING: Prior to beginning any improvements, the developer and the licensed professional responsible for the improvement plans shall meet on the site with representatives of the city to discuss the installation of improvements and inspection schedules.
- F) COMMENCEMENT AND COMPLETION PERIODS: The developer will complete the improvements, each and every one of them, within two years from the effective date of this agreement (the “completion period”). The developer will not cease construction activities for any period of more than 60 consecutive days (the “abandonment period”) without written authorization to do so from the engineer. The developer shall notify the city at least 48 hours before commencing any improvements, and shall notify the city utilities department at least 48 hours before commencing any sewer or water improvements.
- G) AS-BUILT PLANS: After completion of all public improvements and prior to the release of the financial guarantee for said improvements, the developer shall provide the city two copies of drawings showing the actual locations of all installed street improvements, sanitary and storm sewer improvements, water

mains, fire hydrants, valves and stubs, monuments and markers, drainage facilities and other installed permanent improvements. These drawings shall be certified by a registered professional engineer or land surveyor. One copy of these plans shall be submitted to the city and one copy shall be submitted to Lebanon Utilities.

- H) **CERTIFICATION:** The developer who prepared the improvement plans shall be responsible for the stakeout, inspection, and certification of completion in accordance with Exhibit C. Performance guarantees shall not be released or allowed to expire until such certification has been made.
- I) **COMPLIANCE WITH LAW:** The developer will comply with all relevant laws, ordinances, and regulations in effect at the time of record subdivision plat approval when fulfilling his obligations under this agreement.

CITY'S OBLIGATIONS

- A) **PLAT APPROVAL:** The city will grant record plat approval to the subdivision when the terms and conditions imposed by the commission have been satisfied.
- B) **INSPECTION AND CERTIFICATION:** The city will inspect the improvements as they are constructed in accordance with the installation and inspection schedule referred to in Section 7.
- C) **NOTICE OF DEFECT:** The city will provide timely notice to the developer whenever inspection reveals that an improvement does not conform to the standards and specifications shown on Exhibit C or is otherwise defective. The developer will have 30 days from the issuance of such notice to cure or substantially cure the defect. The city may not declare a default under this agreement during the 30-day cure period on account of any such defect unless it is clear that the developer does not intend to cure the defect. The developer will have no right to cure defects in or failure of any improvement found to exist after the maintenance guarantee expires.
- D) **STREET AND TRAFFIC CONTROL SIGNS:** At a mutually agreed upon time during or after the construction process, the city will install street and traffic control signs as shown on Exhibit C.
- E) **ACCEPTANCE FOR MAINTENANCE:** The city will accept for purposes of maintenance only, any validly certified improvement within 30 days of the developer's certification that the improvement was completed in compliance with Exhibit C. The city's acceptance for maintenance is expressly conditioned upon the presentation by the developer of a policy of title insurance, where appropriate, for the benefit of the city showing that the developer owns the improvement in fee simple and that there are no liens, encumbrances, or other restrictions on the improvement unacceptable to the city in its reasonable judgement.
- F) **REDUCTION OF SECURITY:** After the acceptance for maintenance of any improvement, the amount which the city is entitled to draw on the performance guarantee will be reduced by an amount equal to 75% of the original guarantee for said improvement as shown on Exhibit A. At the request of the developer and upon recommendation of the Zoning Administrator, the city will execute a letter verifying the acceptance of the improvement for maintenance and waiving

its right to draw upon the guarantee to the extent of such amount. A developer in default under this agreement will have no right to such a letter.

- G) USE OF PROCEEDS: The city will use funds drawn under the guarantee only for the purposes of completing the improvements or correcting defects in or failures of the improvements.
- H) EVENTS OF DEFAULT: The following conditions, occurrences, or actions will constitute a default by the developer during the completion period:
- 1) Developer's failure to schedule and hold the required preconstruction meeting.
 - 2) Developer's failure to give the required prior notice of commencement of improvements.
 - 3) Developer's failure to adhere to the agreed upon construction schedule.
 - 4) Developer's failure to complete construction of the improvements within two years of record subdivision approval.
 - 5) Developer's failure to cure the defective construction of any improvement within the applicable cure period.
 - 6) Developer's failure to perform work on the improvements for a period of more than 60 consecutive days without prior approval.
 - 7) Developer's insolvency, the appointment of a receiver for the developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the developer.
 - 8) Foreclosure of any lien against the property or a portion of the property or assignment or conveyance of the property in lieu of foreclosure.
- I) MEASURE OF DAMAGES: The measure of damages for breach of this agreement will be the reasonable cost of completing the improvements. For improvements upon which construction has not begun, the estimated cost of the improvements as shown on Exhibit A will be prima facie evidence of the minimum cost of completion; however, neither that amount or the amount of the financial guarantee establishes the maximum amount of the developer's liability. The city will be entitled to complete all unfinished improvements at the time of default regardless of the extent to which development has taken place or whether development ever commenced.
- J) CITY'S RIGHTS UPON DEFAULT: When any event of default occurs, the city may draw upon the financial guarantee to the extent of the face amount less 75% of the amount of the guarantee for all improvements theretofore accepted for maintenance by the city. The city will have the right to complete improvements itself or contract with a third party for completion, and the developer hereby grants to the city, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the property for the purposes of constructing, maintaining, and repairing such improvements. Alternatively, the city may assign the proceeds of the financial guarantee to a subsequent developer or other party who has acquired the subdivision by purchase, foreclosure, or otherwise, who will then have the same rights of completion as the city if, and only if, the subsequent developer or party agrees in writing to complete the unfinished improvements. In addition, the city also may suspend record plat approval during which time the developer will have no right to sell, transfer, or otherwise convey lots or structures within the subdivision without express written approval of the city or until the improvements are completed and accepted by the city. These remedies are

cumulative in nature, except that during the warranty period, the city's only remedy will be to draw funds under the maintenance guarantee.

- K) **INDEMNIFICATION:** The developer hereby expressly agrees to indemnify and hold the city harmless from and against all claims, costs, and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development site and elsewhere pursuant to this agreement. The developer further agrees to aid, defend, and indemnify the city in the event that the city is named as a defendant in an action concerning the performance of work pursuant to this agreement except where such suit is brought by the developer. The developer is not an agent or employee of the city.
- L) **NO WAIVER:** No waiver of any provision of this agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this agreement signed by both city and developer; nor will the waiver of any default under this agreement be deemed a waiver of any subsequent default or defaults of the same type. The city's failure to exercise any right under this agreement will not constitute the approval of any wrongful act by the developer or the acceptance of any improvement.
- M) **AMENDMENT OR MODIFICATION:** The parties to this agreement may amend or modify this agreement only by written instrument executed on behalf of the city by the city attorney or his designee and by the developer or his authorized officer. Such amendment or modification will be properly notarized before it may be effective.
- N) **ATTORNEY'S FEES:** Should either party be required to resort to litigation, arbitration, or mediation to enforce the terms of this agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including but not limited to reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator, or mediator awards relief to both parties, each will bear its own costs in their entirety.
- O) **VESTED RIGHTS:** The city does not warrant by this agreement that the developer is entitled to any other approval(s) required by the city, if any, before the developer is entitled to commence development of the subdivision or to transfer ownership of property in the subdivision.
- P) **THIRD PARTY RIGHTS:** No person or entity who or which is not a party to this agreement will have any right of action under this agreement, except that if the city does not exercise its rights within 60 days following an event of default, a purchaser of a lot or structure in the subdivision may bring an action in mandamus to compel the city to exercise its rights.
- Q) **SCOPE:** This agreement constitutes the entire agreement between the parties and no statement(s), promise(s), or inducement(s) that is/are not contained in this agreement will be binding on the parties.
- R) **TIME:** For the purpose of computing the abandonment and completion periods and time periods for city action, such times in which war, civil disasters, acts of God, or extreme weather conditions occur or exist will not be included if such

times prevent the developer or city from performing his/its obligations under the agreement.

- S) SEVERABILITY: If any part, term, or provision of this agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of the agreement.

- T) BENEFITS: The benefits of this agreement to the developer are personal and may not be assigned without the express written approval of the city. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this agreement are personal obligations of the developer and also will be binding on the heirs, successors, and assigns of the developer. There is no prohibition on the right of the city to assign its rights under this agreement. The city will release the original developer's financial guarantee if it accepts new security from any developer or lender who obtains the property. However, no act of the city will constitute a release of the original developer from his liability under this agreement.

- U) NOTICE: Any notice required or permitted by this agreement will be deemed effective when personally delivered in writing or three days after notice is deposited with the U.S. Postal Service, postage pre-paid, certified, and return receipt requested, and addressed as follows:

If to the developer: (To be completed by developer)

If to the city: City Hall
201 East Main Street
Lebanon, Indiana 46052

- V) RECORDING: Either developer or city may record a copy of this agreement in the office of the recorder of Boone County, Indiana.

- W) IMMUNITY: Nothing contained in this agreement constitutes a waiver of the city's sovereign immunity under applicable state law.

- X) PERSONAL JURISDICTION AND VENUE: Personal jurisdiction and venue for any civil action commenced by either party to this agreement whether arising out of or relating to the agreement or letter of credit will be deemed to be proper only if such action is commenced in the Circuit or Superior Court in Boone County. The developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

Dated this _____ day of _____, 19__.

Board of Public Works
City of Lebanon, Indiana

Attest: _____
Clerk-Treasurer

Acknowledgement

State of Indiana, County of _____, ss:

Before me, the undersigned notary public in and for said county personally appeared

_____ And acknowledged the execution of the (name of signers, their official capacity and agency name) foregoing agreement on this _____ day of _____, 19__.

Witness my hand and seal the said last named date my commission expires:

_____ Notary Public