

EXHIBIT A-1

PERFORMANCE BOND AGREEMENT

THIS AGREEMENT is entered into by and between **AVON 83, LLC, (The MarketPlace at Avon)**, Ohio Limited Liability Company, hereinafter referred to as "Developer", and the City of Avon, Lorain County, Ohio, hereinafter referred to as "City." "Council" as referred to herein, shall refer to the City Council of Avon, Lorain County, Ohio, and "City Engineer" shall refer to the City Engineer of the City of Avon, Lorain County, Ohio or his designee hired to perform services on this project. The term "Development" shall refer to the installation/construction of improvement(s) as set forth in the plans and specifications submitted to Planning Commission and approved on January 16, 2013 as part of the Final Development Plan.

WHEREAS, said Development requires the construction and dedication of Public Improvements within a public easement over private property as set forth in the plans and specifications approved by Planning Commission on the aforementioned dates. Said project is located in the vicinity of The MarketPlace at Avon development (north side of Detroit Road, west of Middleton) in Avon, Ohio and to be accepted by the City, viz., a sanitary sewer, waterlines and appurtenances thereto; and

WHEREAS, the Development Regulations of the City of Avon and the Developer's Agreement provide that the Developer shall furnish a surety bond, letter of credit, cash or other financial guarantee acceptable to the City of Avon in an amount equal to or exceeding 110% of the engineer's estimated construction costs, engineering fees and inspection fees; and;

WHEREAS, based upon the estimates of cost of construction of the public improvements in the Development by the Developer's Engineer, approved by the City Engineer, Developer is required to provide a financial guarantee of performance to the Finance Director of the City of Avon in the amount of Thirty-Eight Thousand Four Hundred and Six and 00/100 (\$38,406.00) Dollars.

NOW, THEREFORE, in consideration of the foregoing promises and to ensure the faithful performance of said Developer's Agreement, the Developer has undertaken the following:

1. Developer will deliver to the Director of Finance of the City of Avon an Irrevocable Letter of Credit in a form and from a lending institution acceptable to City in the amount of Thirty-Eight Thousand Four Hundred and Six and 00/100 (\$38,406.00) Dollars.

2. The funds which can be drawn by Developer upon the letter of credit shall be used for the sole purpose of payment of the cost of construction of public improvements in the Development and for engineering and/or legal fees related to said Development in the event these deposits are exceeded. These funds are hereby irrevocably assigned to the City of Avon for these purposes.

3. Before delivering checks in payment for the aforesaid invoices, the lending institution shall require the contractor, subcontractor or supplier to furnish an appropriate Affidavit stating that all subcontractors, labor, machinery, material and fuel have been paid for, and require copies of insurance, and lien waivers. All invoices must be accompanied by a letter from the City Engineer approving payment.

4. The lending institution's liability under the irrevocable letter of credit shall be reduced at the time payments are made and in the amount of such payments that are made for construction of improvements in the Development. Four (4%) percent of the invoice amount will

be retained by the lending institution throughout the course of construction until the public improvements are completed.

5. The Developer and its lending institution shall at all times keep the records of said letter of credit open to inspection by the Engineer of the City or any other duly authorized agent of the City.

6. Upon completion of all public improvements in the Development to the satisfaction of the City Engineer, acceptance of dedication of the public improvements by the City of Avon, payment of all cost and expenses of the improvements, payment of all engineering and legal expenses of the City of Avon, compliance with all provisions of the Developer's Agreement and upon written instruction from the Director of Finance of the City of Avon, the lending institution may release all or part of the remainder of the letter of credit.

7. In the event of the Developer's default, as defined in the Developer's Agreement, the City shall have the right to draw from the Developer's letter of credit to complete construction of the public improvements at the Development, or any part thereof, and to pay any engineering or legal fees pertinent to the installation of all public improvements for the Development over and above the Developer's deposit, and the lending institution is authorized to release the funds upon certification by the Director of Finance of the City of Avon that the funds will be used for completion of construction of public improvements for the Development and any applicable fees.

8. The lending institution shall accept as full and complete evidence of default and of the resulting right of the City of Avon to complete said project or any portion thereof a copy of the Resolution or Ordinance from the City of Avon duly authenticated by the Clerk of Council declaring said default and the intention of the City of Avon to proceed to complete the performance of said public improvement contracts or any portion thereof.

IN WITNESS WHEREOF, the parties have affixed their signatures hereto this ____ day
of _____, 20____.

WITNESSES:

AVON 83, LLC

By: _____
David B. Orlean, Member

CITY OF AVON

By: _____
James A. Smith, Mayor

By: _____
Daniel S. Zegarac, Council President

Approved as to Form

John A. Gasior, Esq.
Law Director, City of Avon

ACKNOWLEDGMENT

The lending institutions for **AVON 83, LLC** does hereby acknowledge receipt of a copy of this Performance Bond Agreement and the Developer's Agreement, accept same, and are willing to be bound by these documents as additional escrow instructions for the financial guarantees therein provided.

Signature of Officer

Printed Name of Bank or Surety

Title of Officer

Date