# PERFORMANCE BOND AGREEMENT

**THIS AGREEMENT** is entered into by and between **LIBERTY DEVELOPMENT COMPANY,** an Ohio corporation, hereinafter referred to as "Subdivider," 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 or the City’s Consulting Engineer hired to perform services on this project.

**WHEREAS**, the Subdivider has agreed to construct the public improvements in Nagel Farms Subdivision (hereinafter "Subdivision") in accordance with the Subdivision Regulations of the City of Avon, and in accordance with a Subdivider's Agreement entered into between Subdivider and the City of Avon; and

**WHEREAS**, the Subdivision Regulations of the City of Avon contained in Avon Codified Ordinance §1244.10(d) and the Subdivider's Agreement provide that the Subdivider shall furnish financial guarantees of performance in an amount equal to 110% of the estimated construction costs, engineering and inspection fees in a form, manner of execution and surety approved by the Finance Director and the Law Director of the City of Avon; and

**WHEREAS**, based upon the estimates of cost of construction of the public improvements in the Subdivision by the Subdivider's Engineer, approved by the City Engineer, Subdivider is required to provide a financial guarantee of performance to the Finance Director of the City of Avon in the amount of Two Million Eight Hundred Forty-Seven Thousand Nine Hundred Forty-One Dollars and 75/100 Cents ($2,847,941.75).

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

1. Subdivider will post a surety bond with the City Finance Director in a form, manner of execution and surety acceptable to the City of Avon in the sum of Two Million Eight Hundred Forty-Seven Thousand Nine Hundred Forty-One Dollars and 75/100 Cents ($2,847,941.75).

2. The Subdivider and its surety shall, at all times, keep the records of said Performance Bond open to inspection by the Engineer of the City or any other duly authorized agent of the City.

3. Upon completion of all public improvements in the Subdivision to the satisfaction of the City Engineer, acceptance of dedication of said public improvements, payment of all engineering and legal expenses of the City of Avon, and compliance with all provisions of the Subdivider's Agreement upon written instruction from the Director of Finance of the City of Avon, the surety shall be released from its obligations hereunder.

4. In the event of Subdivider's default, as defined in the Subdivider's Agreement, the City shall have the right to execute on the Performance Bond herein posted and to complete construction of public improvements at the Subdivision, or any part thereof, and to pay any engineering or legal fees for the Subdivision over and above the Subdivider's deposit, and the surety is authorized and required 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 Subdivision and any applicable fees.

5. The surety 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 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 improvements or any portion thereof.

**IN WITNESS WHEREOF,** the parties have affixed their signature hereto this ________ day of _______________________, 2022.

WITNESSES:

**LIBERTY DEVELOPMENT COMPANY**

______________________________ By: ______________________________
Tom Kuluris, President & CEO

______________________________

______________________________ **CITY OF AVON**

______________________________ By: ______________________________
Bryan K. Jensen, Mayor

______________________________ By: ______________________________
Brian Fischer, Council President

______________________________

Approved as to Form

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

**ACKNOWLEDGMENT AND ACCEPTANCE
BY LENDING INSTITUTION**

The lending institution for **LIBERTY DEVELOPMENT COMPANY** for Nagel Farms Subdivision does hereby acknowledge receipt of a copy of this Performance Bond Agreement and the Subdivider's Agreement, accepts same, is 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