

North Canton City Council
Finance and Property Committee

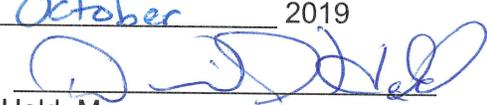
Ordinance No. 72 - 2019

An ordinance authorizing the Mayor, on behalf of the City of North Canton, to enter into a performance bond agreement the amount of \$611,138.00, between the City and McKinley-Applegrove Development Ltd., for construction of street, storm water management facilities, drainage improvements, and sewer improvements for The Sanctuary Phase 4 construction project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

- Section 1. That McKinley-Applegrove Development Ltd. has secured a performance bond in the amount of \$611,138.00, thereby guaranteeing the timely installation of necessary public utilities and other improvements as described in North Canton Codified Ordinance 1107.07, for The Sanctuary Phase 4 construction project, a copy of which is attached hereto and incorporated herein as Exhibit "A".
- Section 2. That the Mayor be, and is hereby authorized to enter into an agreement for the above-described performance bond, a copy of which is attached hereto and incorporated herein as Exhibit "B".
- Section 3. That if a provision of this ordinance is or becomes illegal, invalid, or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.
- Section 4. This ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor.

Passed in Council this 28 day of October 2019


David Held, Mayor

Signed: 10/28, 2019

ATTEST:



Laura Brown, Director of Finance

BOND No. 45BSBHW5092

Performance Bond

(NOTE: THIS BOND IS ISSUED SIMULTANEOUSLY WITH PAYMENT BOND ON PAGE 2, IN FAVOR OF THE OWNER CONDITIONED FOR THE PAYMENT OF LABOR AND MATERIAL.)

THE HARTFORD 

Know All Men By These Presents:

That McKinley-Applegrove, Ltd.
(Here insert the name and address, or legal title, of the Contractor)

as Principal, hereinafter called Contractor, and the Hartford Fire Insurance Company, a corporation organized and existing under the laws of the State of Connecticut, with its principal office in the City of Hartford, as Surety, hereinafter called Surety, are held and firmly bound unto City of North Canton

(Here insert the name and address, or legal title, of the Owner)
 as Obligee, hereinafter called Owner, in the amount of Six Hundred Eleven Thousand One Hundred Thirty Eight Dollars 00/100 Dollars (\$ 611,138.00/100),

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, Contractor has by written agreement dated June 14, 2019 entered into a contract with Owner for Sanctuary Phase 4

in accordance with drawings and specifications prepared by GBC Design, Inc.
(Here insert full name, title and address)
565 White Pond Drive Akron, Ohio 44320

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.

Now, Therefore, the condition of this obligation is such that, if Contractor shall promptly and faithfully perform said CONTRACT, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the CONTRACT, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

- (1) Complete the CONTRACT in accordance with its terms and conditions, or
- (2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount promptly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the CONTRACT falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this 28th day of August, 2019

Witness (If Individual/Partnership) <i>Christine Rogers</i>	PRINCIPAL		(Corporate Seal)
	Name <u>McKinley-Applegrove, Ltd.</u>		
	Signature <i>[Signature]</i>		
Attest (If Corporation)	By: <u>William J. Kemmer, Manager</u>		(Corporate Seal)
	Typed Name and Title		
	Name <u>Hartford Fire Insurance Company</u>		
Attest <i>[Signature]</i>	SURETY		(Corporate Seal)
	Name <u>Hartford Fire Insurance Company</u>		
	Signature <i>[Signature]</i>		
Miranda Bennett Witness to Attorney-in-Fact		By: <u>Brianna Fickeisen</u> Attorney-in-fact	

Labor And Material Payment Bond

(NOTE: THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND ON PAGE 1, IN FAVOR OF THE OWNER CONDITIONED FOR THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT.)



KNOW ALL MEN BY THESE PRESENTS:

That McKinley-Applegrove, Ltd. (Here insert the name and address, or legal title, of the Contractor) as Principal, hereinafter called Principal, and the Hartford Fire Insurance Company, a corporation organized and existing under the laws of the State of Connecticut, with its principal office in the City of Hartford, as Surety, hereinafter called Surety, are held and firmly bound unto City of North Canton

as Oblige, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of Six Hundred Eleven Thousand One Hundred Thirty Eight Dollars 00/100 (Here insert a sum equal to at least one-half of the contract price) Dollars (\$611,138.00/100), for the payment whereof Principal, and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, Principal has by written agreement dated June 14, 2019 entered into a contract with Owner for Sanctuary Phase 4 in accordance with drawings and specifications prepared by GBC, Design, Inc. 565 White Pond Drive Akron, Ohio 44320 (Here insert full name, title and address)

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.

Now, therefore, the condition of this obligation is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the CONTRACT, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- 1. A claimant is defined as one having a direct contract with the Principal or with a sub-contractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the CONTRACT.
2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant,
(a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.
(b) After the expiration of one (1) year following the date on which Principal ceased work on said CONTRACT, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
(c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this 28th day of August, 2019

Form with signature lines for PRINCIPAL (McKinley-Applegrove, Ltd.), SURETY (Hartford Fire Insurance Company), and Witness (Miranda Bennett). Includes fields for Name, Signature, and Typed Name and Title.

POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD
BOND, T-12
One Hartford Plaza
Hartford, Connecticut 06155
Bond.Claims@thehartford.com

call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Name: SCHAUER GROUP INCORPORATED
Agency Code: 45-450168

- Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of** Unlimited :

Todd Adams, Timothy Bentivegna, Lanasu Brandt, Peter L. Butler, Brianna Fickeisen, Deanna Kidwell, David T. Schauer, Taylor Schauer, William T. Schauer, Diane Schultz, Susan Sokol of CANTON, Ohio

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on May 6, 2015 the Companies have caused these presents to be signed by its Senior Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



John Gray

John Gray, Assistant Secretary

M. Ross Fisher

M. Ross Fisher, Senior Vice President

STATE OF CONNECTICUT }
COUNTY OF HARTFORD } ss. Hartford

On this 5th day of January, 2018, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Senior Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Kathleen T. Maynard

Kathleen T. Maynard
Notary Public
My Commission Expires July 31, 2021

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of *01/05/2018* Signed and sealed at the City of Hartford.



Kevin Heckman

Kevin Heckman, Assistant Vice President

Office of Risk Assessment
50 West Town Street
Third Floor - Suite 300
Columbus, Ohio 43215
(614)644-2658
Fax(614)644-3256
www.insurance.ohio.gov

Ohio Department of Insurance

Mike DeWine - Governor

Jillian Froment - Director

Certificate of Compliance



Issued 03/21/2019

Effective 04/02/2019

Expires 04/01/2020

I, Jillian Froment, hereby certify that I am the Director of Insurance in the State of Ohio and have supervision of insurance business in said State and as such I hereby certify that

HARTFORD FIRE INSURANCE COMPANY

of Connecticut is duly organized under the laws of this State and is authorized to transact the business of insurance under the following section(s) of the Ohio Revised Code:

Section 3929.01 (A)

Accident & Health

Aircraft

Allied Lines

Boiler & Machinery

Burglary & Theft

Commercial Auto - Liability

Commercial Auto - Physical Damage

Earthquake

Fidelity

Fire

Glass

Group Accident & Health

Inland Marine

Multiple Peril - Commercial

Multiple Peril - Farmowners

Multiple Peril - Homeowners

Ocean Marine

Other Liability

Private Passenger Auto - Liability

Private Passenger Auto - Physical Damage

Surety

Workers Compensation

HARTFORD FIRE INSURANCE COMPANY certified in its annual statement to this Department as of December 31, 2018 that it has admitted assets in the amount of \$21,732,043,887, liabilities in the amount of \$13,076,831,793, and surplus of at least \$8,655,212,094.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused my seal to be affixed at Columbus, Ohio, this day and date.

Handwritten signature of Jillian Froment.

Jillian Froment, Director



HARTFORD FIRE INSURANCE COMPANY

Hartford, Connecticut

Financial Statement, December 31, 2018

Statutory Basis

ASSETS

U.S. Government Bonds	\$	442,265,403
Bonds of Other Governments		129,979,076
State, County Municipal Miscellaneous Bonds		5,862,114,698
Stocks		5,548,592,711
Short Term Investments		116,077,507
	\$	<u>12,099,029,395</u>
Real Estate	\$	331,574,149
Cash		58,641,379
Agents' Balances (Under 90 Day)		3,017,198,060
Other Invested Assets		3,341,398,040
Miscellaneous		2,884,202,864
Total Admitted Assets	\$	<u>21,732,043,887</u>

LIABILITIES

Reserve for Claims and Claim Expense.....	\$	8,845,153,352
Reserve for Unearned Premiums		2,094,533,642
Reserve for Taxes, License and Fees		52,262,120
Miscellaneous Liabilities		2,084,882,679
Total Liabilities	\$	<u>13,076,831,793</u>
Capital Paid In \$	55,320,000	
Surplus	<u>8,599,892,094</u>	
Surplus as regards Policyholders.....	\$	<u>8,655,212,094</u>
Total Liabilities, Capital and Surplus	\$	<u>21,732,043,887</u>

STATE OF CONNECTICUT
COUNTY OF HARTFORD
CITY OF HARTFORD

} ss.

Allison G. Niderno, Vice President and Controller, and Allen R. Craig, Assistant Secretary of the Hartford Fire Insurance Company, being duly sworn, each deposes and say that the foregoing is a true and correct statement of the said company's financial condition as of December 31, 2018.

Subscribed and sworn to before me this
18th day of March, 2019.

Laurie Hansen

Notary Public



Allison G. Niderno

Vice President and Controller

Allen R. Craig
Assistant Secretary

**PERFORMANCE AGREEMENT
CONSTRUCTION OF STREET, STORM WATER
MANAGEMENT FACILITIES, DRAINAGE IMPROVEMENTS,
AND SANITARY SEWER IMPROVEMENTS**

**The Sanctuary (Phase Four)
City of North Canton, Stark County, Ohio
(The "Development")**

KNOW ALL MEN BY THESE PRESENTS, that MCKINLEY-APPLEGROVE, LTD., an Ohio limited liability company (hereinafter known as the "Owner/Developer"), agrees to be held and firmly bound unto the CITY OF NORTH CANTON (hereinafter known as "North Canton") in the sum of SIX HUNDRED ELEVEN THOUSAND ONE HUNDRED THIRTY-EIGHT DOLLARS and NO/100 (\$611,138.00), good and lawful money of the United States of America, for the payment of which said sum of money well and truly to be made, Owner/Developer does hereby bind itself, its successors and assigns by this instrument to the faithful performance and construction of Street, Storm Water Management Facilities, Drainage Improvements and Sanitary Sewer Improvements (hereinafter collectively, the "Improvements") for THE SANCTUARY (Phase Four) (the "Development"), as set forth in the Plans and Specifications for the same to be submitted to and approved by the City of North Canton Engineer, as appropriate for construction.

The faithful performance of this Agreement is secured by a commercial bond issued by The Hartford Fire Insurance Company in the amount of \$611,138.00.

The conditions and obligations are such that the Owner/Developer has or will construct the Improvements for the Development in accordance with Plans and Specifications filed with the North Canton City Engineer, and set forth herein; and that the Owner/Developer shall bear the entire cost and expense of the construction of the Improvements for the Development until the same are accepted by the City of North Canton.

NOW, THEREFORE, if said Owner/Developer, until one (1) year after the City of North Canton accepts said Improvements, shall maintain the Improvements subject to the final approval of the North Canton authorities and if the said Owner/Developer shall save harmless the City against any and all claims, demands or suits by reason of the construction of the Improvements and will indemnify the City against any and all expenses incurred in the defense

of any such suits or any damages, judgments, or decrees, which might be awarded against the City because of such suit.

If said Owner/Developer constructs the Improvements in full accordance with the plans and specifications approved by the North Canton City Engineer, then this obligation shall be void; otherwise, it shall remain in full force and effect.

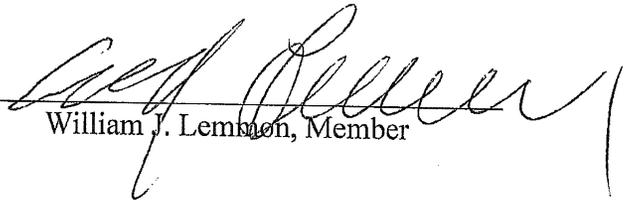
The Owner/Developer agrees to be responsible for the maintenance of the Improvements installed in accordance with the plans and specifications as filed by the Owner/Developer and as required by the North Canton City Engineer, and for providing the services necessary to guarantee access to all occupied property, excluding snow removal, for a period of one (1) year after the City of North Canton has accepted the required Improvements. The Owner/Developer agrees to be responsible for routine maintenance of all Improvements and to repair all failures due to faulty construction as soon as they become apparent. The Owner/Developer agrees to make repairs due to erosion or abuse by utility companies installing utilities and to repair all failures for other reasons during the one (1) year period. The Owner/Developer agrees to restore the Improvements at the end of the maintenance period.

The remainder of this page was left intentionally blank.

IN WITNESS WHEREOF, the Owner/Developer has hereunto set its hand this 24th day of August, 2019.

MCKINLEY-APPLEGROVE, LTD., an
Ohio limited liability company

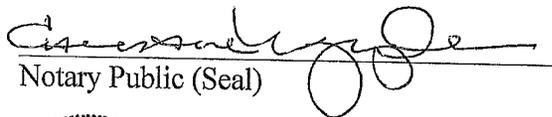
By: MCKINLEY HOLDINGS, LLC,
its Sole Member

By 
William J. Lemmon, Member

STATE OF OHIO, COUNTY OF STARK

BEFORE ME, a Notary Public in and for such County and State, personally appeared William J. Lemmon, one of the Managers of McKinley Holdings, LLC, the Sole Member of **MCKINLEY-APPLEGROVE, LTD.**, an Ohio limited liability company, who acknowledged that he did sign the foregoing instrument for and on behalf of such company, and that the same is his free act and deed, personally and in the aforementioned capacity, and the free act and deed of such company.

IN TESTIMONY, I set my hand and official seal this 24th day of August, 2019.


Notary Public (Seal)

APPROVED AS TO FORM BY:

Timothy L. Fox, Director of Law



CHRISTINE M. SNYDER
Notary Public, State of Ohio
My Commission Expires 11-06-2023