

North Canton City Council
Street and Alley Committee

ORDINANCE 38 - 2022

An ordinance authorizing the Mayor of the City of North Canton to enter into a performance agreement with McKinley-Applegrove, Ltd., for the construction of streets, storm water management facilities, drainage improvements, and sewer improvements for the Sanctuary Phase 5 development.

WHEREAS, McKinley-Applegrove, Ltd. , has secured a commercial bond, attached hereto and incorporated herein as "Exhibit B" in the amount of \$660,965.00 thereby guaranteeing the timely installation of necessary public utilities and other improvements as prescribed by the Laws of the City of North Canton for the Sanctuary Phase 5 Development.

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

- Section 1. That the Mayor of the City of North Canton be, and is hereby, authorized to enter into an agreement with McKinley-Applegrove, Ltd., for the construction of streets, storm water management facilities, drainage improvements, and sewer improvements for the Sanctuary Phase 5 development a copy of which is attached hereto and incorporated herein as "Exhibit A".
- Section 2. That if a provision of this ordinance is or becomes illegal, invalid, or unenforceable, it shall not affect the validity or enforceability of any other provision of this ordinance.
- Section 3. That this ordinance shall take effect and be in full force from and after the earliest period allowed by law.

Passed in Council this 25th day of April, 2022.

Attest: Benjamin R. Young
Benjamin R. Young, Clerk of Council

Stephan B. Wilder
Stephan B. Wilder, Mayor

Signed on: 25 April 2022

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

**The Sanctuary No. 5
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 SIXTY THOUSAND NINE HUNDRED SIXTY-FIVE AND NO/100 DOLLARS (\$660,965.00)**, 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 NO. 5** (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 \$660,965.00.

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.

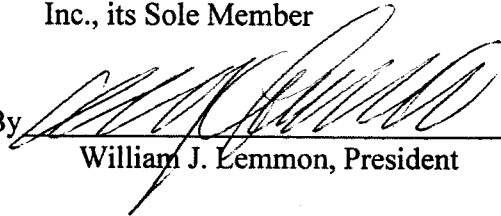
The Owner/Developer agrees to be responsible for the maintenance of the Improvements installed in accordance with the plans and specifications as filed by the Owner/Developer and as required by the North Canton City Engineer, and for providing the services necessary to guarantee access to all occupied 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 15th day of March, 2022.

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

By: McKinley Sanctuary Development, Inc., its Sole Member

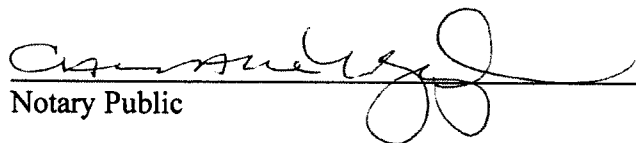
By 
William J. Lemmon, President

STATE OF OHIO, STARK COUNTY, SS:

The foregoing instrument was acknowledged before me this 15th day of March, 2022, by William J. Lemmon, President of McKinley-Sanctuary Development, Inc., an Ohio corporation, Sole Member of MCKINLEY-APPLEGROVE, LTD., an Ohio limited liability company.



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


Notary Public

This is an acknowledgment clause; no oath or affirmation was administered to signer.

APPROVED AS TO FORM BY:

Wayne A. Boyer, Esq.
City of North Canton Law Director

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.)



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, Ohio

as Obligee, hereinafter called Owner, in the amount of Six Hundred Sixty Thousand Nine Hundred Sixty Five 00/100 Dollars (\$660,965.00/100),

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 March 15, 2022 entered into a contract with Owner for The Sanctuary No. 5.

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 properly 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 15th day of March, 2022

Witness (If Individual/Partnership) Attest (If Corporation)	PRINCIPAL	(Corporate Seal)
	Name <u>McKinley-Applegrove, Ltd.</u>	
	Signature By: <u>[Signature]</u> Typed Name and Title <u>William J. Lennon, Authorized Representative</u>	
Attest	SURETY	(Corporate Seal)
	Name <u>Hartford Fire Insurance Company</u>	
	Signature By: <u>[Signature]</u> Typed Name <u>Brianna Fickeisen</u>	
	Witness to Attorney-in-Fact <u>[Signature]</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. as Principal, hereinafter called Principal, and the Hartford Fire Insurance Company as Surety, hereinafter called Surety, are held and firmly bound unto City of North Canton, Ohio

as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of Six Hundred Sixty Thousand Nine Hundred Sixty Five 00/100 Dollars (\$ 660,965.00/100)

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 March 15, 2022 entered into a contract with Owner for The Sanctuary No. 5

in accordance with drawings and specifications prepared by GBC Design, Inc. 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 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...
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...
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...
(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, 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 15th day of March, 2022

Form with signature lines for Principal (McKinley-Applegrove, Ltd.), Surety (Hartford Fire Insurance Company), and Witness to Attorney-in-Fact (Brianna Fickeisen). Includes fields for Name, Signature, and Typed Name.

POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD
 BOND, T-11
 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, Miranda Bennett, Daniel J. Boyer, Brianna Fickeisen, Deanna Kidwell, Taylor Schauer, Joseph D. Schauer, Alexander W. Schauer, Bryan D. Schauer, Jennifer Schlichting, Abigail Thouvenin 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 23, 2016 the Companies have caused these presents to be signed by its Assistant 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.



Shelby Wiggins

Shelby Wiggins, Assistant Secretary

Joelle L. LaPierre

Joelle L. LaPierre, Assistant Vice President

STATE OF FLORIDA

COUNTY OF SEMINOLE

ss. Lake Mary

On this 20th day of May, 2021, before me personally came Joelle LaPierre, to me known, who being by me duly sworn, did depose and say: that (s)he resides in Seminole County, State of Florida; that (s)he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that (s)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 (s)he signed his/her name thereto by like authority.



Jessica Ciccone

Jessica Ciccone
 My Commission HH 122280
 Expires June 20, 2025

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 March 15, 2022.

Signed and sealed in Lake Mary, Florida.



Keith D. Dozois

Keith D. Dozois, 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

Judith French - Director



Certificate of Compliance

Issued 03/22/2021

Effective 04/02/2021

Expires 04/01/2022

I, Judith French, 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)

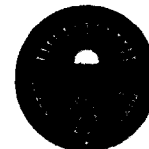
Accident & Health	Other Liability
Aircraft	Private Passenger Auto - Liability
Allied Lines	Private Passenger Auto - Physical Damage
Boiler & Machinery	Surety
Burglary & Theft	Workers Compensation
Commercial Auto - Liability	
Commercial Auto - Physical Damage	
Earthquake	
Fidelity	
Fire	
Glass	
Group Accident & Health	
Inland Marine	
Multiple Peril - Commercial	
Multiple Peril - Farmowners	
Multiple Peril - Homeowners	
Ocean Marine	

HARTFORD FIRE INSURANCE COMPANY certified in its annual statement to this Department as of December 31, 2020 that it has admitted assets in the amount of \$24,820,166,037, liabilities in the amount of \$13,572,907,518, and surplus of at least \$11,247,258,518.

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

Judith L. French

Judith French, Director



HARTFORD FIRE INSURANCE COMPANY

Hartford, Connecticut
Financial Statement, June 30, 2021
 Statutory Basis

ASSETS		LIABILITIES	
U.S. Government Bonds	\$ 1,096,941,945	Reserve for Claims	\$
Bonds of Other Governments	163,731,343	and Claim Expense.....	9,821,314,348
State, County Municipal		Reserve for Unearned Premiums	2,178,506,298
Miscellaneous Bonds	7,203,530,277	Reserve for Taxes, License	
Stocks	6,029,041,859	and Fees	33,433,709
Short Term Investments	433,457,220	Miscellaneous Liabilities	1,770,789,352
	\$ <u>14,926,702,644</u>	Total Liabilities	\$ <u>13,804,043,707</u>
Real Estate	\$ 310,389,374	Capital Paid In \$	55,320,000
Cash	59,362,319	Surplus	<u>11,326,794,801</u>
Agents' Balances (Under 90 Day)	3,066,854,934	 	
Other Invested Assets	3,743,953,400	Surplus as regards Policyholders.....	\$ <u>11,382,114,801</u>
Miscellaneous	3,078,895,837	Total Liabilities, Capital	
Total Admitted Assets	\$ <u>25,186,158,508</u>	and Surplus	\$ <u>25,186,158,508</u>

STATE OF FLORIDA
 SEMINOLE COUNTY
 CITY OF LAKE MARY

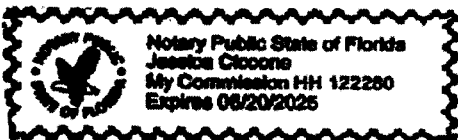
} ss.

Joelle L. LaPierre, Assistant Vice President and Shelby Wiggins, 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 June 30, 2021.

Subscribed and sworn to before me this
 17th day of August, 2021.

Jessica Ciccone

Notary Public



Joelle L. LaPierre
 Assistant Vice President

Shelby Wiggins
 Assistant Secretary