

**EXHIBIT A-1**

**PERFORMANCE BOND AGREEMENT**

**THIS PERFORMANCE BOND AGREEMENT** is entered into by and between **NWQ JAYCOX I-90, LLC**, an 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 widening of approximately 600' of Chester Road east of 35765 Chester Road to five (5) travel lanes, (collectively, the "Public Improvements"), as set forth in the plans and specifications submitted to Planning Commission on June 17, 2015, and approved by the Planning Commission on June 17, 2015, subject to final approval by the City Engineer.

**WHEREAS**, the Development involves the construction and dedication of Public Improvements, as set forth in the plans and specifications approved by Planning Commission on the aforementioned date, which are to be accepted by the City; and

**WHEREAS**, the Development Regulations of the City and the Developer's Agreement provide that the Developer shall furnish a Performance Bond, or a bond with substantially the same effect, letter of credit, cash, certificates of deposit or such other financial security as is acceptable to the City, in an amount equal to or exceeding 110% of the Developer's Engineer's estimated construction costs, engineering fees and inspection fees, as approved by the City Engineer; and;

**WHEREAS**, based upon the estimates of cost of construction of the Public Improvements in the Development by the Developer's Engineer, as approved by the City

Engineer, Developer is required to provide a financial guarantee of performance to the Finance Director of the City in the amount of One Million Five Hundred Fifty Five Thousand Five Hundred Fifty Six and 13/100 Dollars (\$1,555,556.13).

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

1. Developer will deliver to the Director of Finance of the City a Performance Bond, a copy of which is attached hereto as Exhibit A, or a bond with substantially the same effect, in the amount of Six Hundred Forty-Four Thousand Three Hundred Twenty Seven and 23/100 Dollars (\$644,327.23), or, in lieu of a Performance Bond, (a) a letter of credit, drawn on a federally insured financial institution, which names the City as beneficiary, (b) cash, (c) certificates of deposit conditionally assigned to the City made by a federally insured financial institution, (d) a combination of these items, in that total amount, or (e) such other financial security as is acceptable to the City, may be delivered to the City by Developer.

2. The funds which can be drawn by Developer upon the guarantees of performance 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.

3. In the event the Developer deposits cash as permitted by Section (1)(b), 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. In the event the Developer deposits a letter of credit as permitted by Section 1(a),

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 Public Improvements in the Development. Four (4%) percent of each 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 City Engineer 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 and the City Director of Public Service, acceptance of dedication of the Public Improvements by the City, payment of all costs and expenses of the Public Improvements, payment of all engineering and legal expenses of the City, compliance with all provisions of the Developer's Agreement and upon written instruction from the Director of Finance of the City, all guarantees of the Developer's performance shall be released in accordance with the Developer's Agreement and, in the event Developer has deposited a letter of credit pursuant to subclause (a) of Section 1 hereof, the financial institution which issued the letter of credit may release the remainder of the letter of credit, and cancel the letter of credit.

7. In the event of the Developer's default, as defined in the Developer's Agreement, beyond any applicable grace period, the City shall have the right to draw from the Developer's guarantee of performance 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 deposits, and the lending institution, bonding company or other such surety, as may be applicable, is authorized to release the funds upon certification by the Director of Finance of the

City that the funds will be used for completion of construction of Public Improvements for the Development and any applicable fees.

8. The lending institution, bonding company or other such surety, as may be applicable, shall accept as full and complete evidence of default and of the resulting right of the City to complete said Public Improvements or any portion thereof a copy of the Resolution or Ordinance from the City duly authenticated by the Clerk of Council declaring said default and the intention of the City to proceed to complete the performance of said Public Improvement contracts or any portion thereof.

**IN WITNESS WHEREOF**, this Developer's Agreement is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

WITNESSES:

**NWQ JAYCOX I-90 LLC,**  
an Ohio limited liability company

By: REJ Realty LLC, its Manager

\_\_\_\_\_

By: \_\_\_\_\_  
Kristine M. McGivney, its Treasurer

**CITY OF AVON**

\_\_\_\_\_

By: \_\_\_\_\_  
Bryan K. Jensen, Mayor

\_\_\_\_\_

By: \_\_\_\_\_  
Craig Witherspoon, Council President

Approved as to Form:

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

**ACKNOWLEDGMENT**

The below-named lending institution, bonding company or other such surety for **NWQ JAYCOX I-90 LLC**, an Ohio limited liability company, does hereby acknowledge receipt of a copy of this Performance Bond Agreement and the Developer's Agreement, accepts same, and is willing to be bound by such documents as additional escrow instructions for the financial guarantees therein provided.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Printed Name of Bank or Surety

\_\_\_\_\_  
Title of Officer

\_\_\_\_\_  
Date