

EXHIBIT A-1

PERFORMANCE BOND AGREEMENT

THIS AGREEMENT is entered into by and between **PACIFIC RESTAURANT ENTERPRISES, LLC**, a Washington 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 mean 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 October 19, 2016 as part of the Final Development Plan. Said approval was contingent upon engineering approval, which approval took place on April 11, 2017.

WHEREAS, said Development requires the construction and dedication of Public Improvements within the public right of way, viz., upgrading of an existing mechanical traffic control device (traffic light) and new pavement markings on Detroit Road in the City of Avon, Ohio; 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 Forty Nine Thousand Nine Hundred Eighty Five and 00/100 (\$49,985.00) 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 (a) a letter of credit, drawn on a federally insured financial institution, payable to the City, in the amount of Forty Nine Thousand Nine Hundred Eighty Five and 00/100 (\$49,985.00) Dollars, (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 security acceptable to the City.

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 the public improvements 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 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, all guarantees of the Developer's performance shall be released in accordance with the Developer's Agreement.

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 deposit, 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 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, 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 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:

PACIFIC RESTAURANT ENTERPRISES, LLC.

By: _____
Thomas Cook, Managing Member

CITY OF AVON

By: _____
Bryan K. Jensen, Mayor

By: _____
Craig L. 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 **PACIFIC RESTAURANT ENTERPRISES, 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