

Utility Use and Occupancy Agreement

This Utility Use and Occupancy Agreement (“Agreement”), effective as of that date set forth below, is entered into by and between The City of Lebanon, Tennessee (“Utility”) and _____ (“Developer”),

WHEREAS, Developer is in the process of developing a residential neighborhood to consist of an estimated _____ dwellings and/or apartment facilities (hereafter “_____”) and intends to construct the necessary facilities to provide _____ service to _____; and

WHEREAS, it is appropriate to construct such facilities within the right-of-way for Highway _____ which is owned by The State of Tennessee Department of Transportation (“TDOT”) and which is described on that certain “Application and Utility Use and Occupancy Agreement” (the “Application”) attached hereto as “Exhibit “A””; and

WHEREAS, TDOT requires that Utility serve as the applicant in the Application and Utility agrees to cooperate with Developer in obtaining the permission to install the facilities described in the Application, provided certain requirements and agreements are met.

NOW THEREFORE, for and in consideration of the foregoing premises, the Parties agree as follows:

1. Developer will perform all the work and satisfy all requirements described in Items 1 through 10 described in Application as attached as Exhibit “A”.
2. Developer will obtain all necessary permits and approvals from any applicable governmental agency to conduct the work described in the Application, at the sole expense of Developer.
3. Developer shall provide all plans, specifications, and materials to carry out the installation of the _____ facility at the sole expense of Developer.
4. Developer hereby acknowledges and agrees to assume all responsibilities and for compliance with the requirements of Utility set out in the Application, including but not limited to Section 8 of the Application whereby Developer agrees to indemnify and hold harmless TDOT and Utility, as well as its employees, officers and agent from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of TDOT and Utility, its employees, its contractors, or any person acting for or on its or their behalf in the performance of the Utility Work relating to this Agreement. Developer further agrees it shall be liable for the reasonable cost of attorneys for TDOT and Utility in the event such services are necessitated to enforce the terms of this Agreement or otherwise enforce the obligations of Developer to TDOT and

Utility. In the event of any such suit or claim, Developer shall give TDOT and Utility immediate notice thereof and shall provide all assistance required by TDOT and Utility in their defense. TDOT and Utility shall give Developer written notice of any such claim or suit, and Developer shall have full right and obligation to conduct Developer's own defense thereof. Nothing contained herein shall be deemed to accord to Developer, through its attorney(s), the right to represent TDOT and Utility in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

5. Simultaneous with execution of this Agreement Developer shall provide Utility with a performance bond or Letter of Credit in the amount of \$_____, which shall be in a form acceptable to Utility and which shall provide that Utility may draw upon said bond to complete any of the work or to satisfy any requirement not conducted properly under the Application by Developer. Provided, however, prior to exercising such right, Utility agrees to notify Developer of such failure and Developer shall have a period of five (5) business days in which to cure such failure. A maintenance bond or letter of credit in the amount of 10% of the original performance bond or letter of credit, shall be retained during the required warranty period for one year (12 months) from the date of written acceptance by the Utility.
6. Developer warrants and represents to commence said construction as soon as reasonably possible from the date hereof until such time as the lines are completed by the Developer and activated by the Utility. Utility acknowledges and agrees upon acceptance of the facilities by the Utility, and the end of the required one year warranty period, that Developer be released from further responsibility for this Application and the performance bond or letter of credit described in Section 5 shall be returned to the Developer.

Executed to be effective as of the ____ day of _____, _____.

By: _____

Title: _____

Date: _____

CITY OF LEBANON

By: _____

Title: _____

Date: _____