

## **CASH MAINTENANCE AND PLEDGE AGREEMENT**

WATER THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, between CROSS VALLEY DISTRICT, a municipal corporation ("District"), and \_\_\_\_\_ ("Developer").

### **I. RECITALS**

1.1 The District and Developer are parties to a \_\_\_\_\_ (Water/Sewer) Developer Extension Agreement dated \_\_\_\_\_, 20\_\_\_\_\_, (the "Extension Agreement"), which requires the conveyance by the Developer of certain water or sewer facilities to the District (the "Project") following completion and acceptance by the District.

1.2 The Developer is required to furnish the District with a maintenance guarantee to guarantee maintenance of the Project for a period of two (2) years and pursuant to such provision, Developer desires to furnish the District with cash in lieu of a corporate surety maintenance bond as the required maintenance guarantee.

1.3 The District will accept, hold and disburse such cash as set forth below.

1.4 Therefore, the parties in consideration of the terms and conditions herein stated, now agree as follows:

### **II. CASH MAINTENANCE BOND**

2.1 The Developer shall provide the District cash funds ("Funds") in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) to guarantee the Developer's maintenance of the Project installed pursuant to the Extension Agreement referenced in Paragraph 1.1 above.

2.2 The District shall hold and deposit such funds in an interest-bearing account in the \_\_\_\_\_ Bank ("Bank"), such account to be in the sole name of the District.

2.3 The conditions under which the District will disburse or utilize such Funds for the completion of Developer's obligation under the Extension Agreement are such that:

a. If the Developer shall maintain and remedy the Project free from defects in materials and workmanship for a period of two (2) years following completion and acceptance by the District, the District shall disburse the Funds together with interest thereon, less charges for the District's administrative and other costs referenced in this Agreement, to Developer within 780 days of such acceptance; or

b. If the Developer does not so maintain and remedy the Project free from defects in materials and workmanship for a period of two years following completion and acceptance by District, the District shall have the right to use the Funds, including any interest thereon, to maintain the system to the District's satisfaction and specifications referenced in the Extension Agreement; in such event, the District shall return any unused Funds and/or interest thereon to the Developer within 780 days of such acceptance.

### **III. PLEDGE AND SECURITY AGREEMENT**

3.1 The Developer hereby grants to the District, its successors and assigns, a security interest in the Funds, which Funds will be delivered to the District and placed in the District's possession and control. The Developer further grants to the District a security interest in all proceeds of Funds, whether in the form of profits, dividends, accrued interest, or otherwise. The funds and proceeds therefrom shall secure all other of the Developer's obligations under the Extension Agreement, together with all addenda thereto, including this addendum.

3.2 For purposes of the security interest granted herein, the Bank shall be the agent of the District for possession of the Funds such that possession of the Funds by Bank shall be deemed to be possession of the Funds by the District.

3.3 The Developer warrants that, except as provided herein, the Developer has full title to the Funds and the Funds are free and clear of any other security interest, encumbrance, or claim of right, title, or ownership. The Developer will not create or permit the existence of any lien or security interest, other than that hereby created in the Funds, without the express written consent of the District, nor shall the Developer assign any interest in the Funds without said written consent, such consent to be in the District's sole discretion.

3.4 The Developer agrees to repay to the District all sums which the District may reasonably expend or incur in conserving or protecting the Funds, or in enforcing its security interest herein, including without limitation such sums as may be charged by the Bank or any governmental entity with respect to the Funds. The sums agreed to be paid herein shall be secured by this Agreement.

3.5 The District shall have the right to enforce and collect on its security interest in the Funds in accordance with the terms and provisions contained in this Agreement. Enforcement and collection of the District's security interest in the Funds shall be in addition to all other rights and remedies granted by law, equity, or contract to the District to see reimbursement of additional damages incurred and/or to enforce the provision of the Extension Agreement and this Agreement, should the Funds be insufficient to discharge the Developer's obligations to the District.

### **IV. GENERAL PROVISIONS**

4.1 This Agreement shall serve as an addendum to the Extension Agreement and shall supersede and amend such Extension Agreement to the extent provided herein.

4.2 All time limits set forth herein are of the essence. All parties agree to perform all obligations under this Agreement with due diligence.

4.3 In the event that this Agreement or any obligation secured by it is referred to an attorney for protecting or defending the priority of the District's interest in the Funds or for collection or realization procedures, the Developer agrees to pay a reasonable attorneys' fee, including fees incurred in both trial and appellate courts or fees incurred without suit, and all court costs and costs of the public officials. The sums agreed to be paid herein shall be secured by this Agreement.

4.4 The District will cause to be performed certain services by its legal counsel, engineers, and District personnel to carry out the foregoing purposes, including but not limited to, the preparation and administration of this and any related agreements and documents. Developer agrees to pay the cost of such services as a condition of the District's agreement herein.

DISTRICT:

CROSS VALLEY WATER DISTRICT

By \_\_\_\_\_

Its \_\_\_\_\_

DEVELOPER:

By \_\_\_\_\_

Its \_\_\_\_\_

FIRST FINANCIAL NORTHWEST BANK, hereby consents and agrees that it is the agent of CROSS VALLEY WATER DISTRICT ("District") for purposes of possession by CROSS VALLEY WATER DISTRICT of cash funds in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), which funds the District has a security interest in pursuant to this Agreement, and pursuant to RCW 62A.9-304.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

First Financial Northwest Bank

Clearview Branch

By \_\_\_\_\_

Its \_\_\_\_\_

STATE OF WASHINGTON )  
                          )ss.  
COUNTY OF SNOHOMISH )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_ BANK to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

DATED \_\_\_\_\_

\_\_\_\_\_  
Notary Public in and for the State of  
Washington residing at \_\_\_\_\_

\_\_\_\_\_  
My Appointment Expires \_\_\_\_\_