Cash Set Aside Agreement Maintenance

☐ **Public Works Improvements**
☐ **Landscaping**

DATE POSTED: ____________________

BOND NO.: _______________________

RE: Bothell Subdivision/Plat/Permit No.: ____

Owner/Developer Contractor: ____

Project Address: ____

WHEREAS, ______________________________________ , hereinafter referred to as "the Developer" has applied to the City of Bothell, hereinafter referred to as "the City", for ______________________________________ to construct the project known as ______________________________ on a site located at __________________________________, and

WHEREAS, the above named Developer has constructed and installed certain improvements in connection with the above described project; and

WHEREAS, in order to provide security for the obligation of the Principal to repair and/or replace said improvements against defects in workmanship, materials or installation for a period of twenty four (24) months after written and final acceptance of the same and approval by the City; and

WHEREAS, in order to enable the City to release the performance bond or other instrument of security filed by the Developer with the City in connection with the installation and/or construction of such improvements, this Cash Set Aside Agreement has been secured and hereby submitted to the City;

WHEREAS, ____ hereinafter referred to as "the Financial Institution" is a financial institution qualified to do business in the State of Washington,

NOW, THEREFORE, it is understood and agreed that this obligation shall continue in effect until released in writing by the City of Bothell, after the Developer has performed and satisfied the following conditions:

1. Escrow Account.

   Developer shall establish an escrow account with the Financial Institution in the amount of $___________________________, Account No. __________________________.

   At no time shall any portion of the sums in said account be released without written authorization from the City. Such amount shall represent the City's estimate of the amount necessary to ensure repair and replacement of the improvements during the period of this agreement, as established by the City, plus 20% as reserve.

2. Funds to Secure Implementation of Warranty. The City agrees to accept this Agreement in lieu of a maintenance bond to ensure the Developer's warranty that the improvements constructed in conjunction with the project either remain free from defects in materials, workmanship or installation (or, in the case of landscaping, that the landscaping survives) for a period of **two (2) years** from the date of acceptance of the installation of the improvements by the City. The Institution agrees that it shall have no duty or right to evaluate the correctness or appropriateness of any such notice or demand by the City, and shall not interplead, or in any manner, delay payment of said funds to the City.

3. Developer's Warranty. The Developer hereby warrants that in the event any of the improvements installed by the Developer pursuant to the above-referenced plans, conditions and specifications contained in the City's file fail to remain free from defects in materials, workmanship or installation, or in the case of landscaping, that the landscaping fails to survive, for a period of two (2) years from the date of acceptance of the installation of the improvements by the City, then the Developer shall either remedy the default, or forfeit the funds set aside in the escrow account for this purpose.

4. Developer's Remedy of Default. If the Developer decides to remedy the default, it shall within twenty (20) days of demand of the City: make a written commitment to the City that it will (a) remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; and (b) remedy the default.

5. Financial Institution's Release of Funds. In the event that the Developer fails to remedy the defect as provided above, then the Institution shall, upon the demand of the City, remit to the City within ten days of receipt of said demand, the amount of funds in the escrow account, or such lesser amount as may be specified in the City's demand.

6. City's Completion of corrections Under Warranty. In the event the Developer fails to satisfactorily repair, replace or correct the improvements as requested by the City, the City's employees and agents are hereby authorized to enter onto said property and perform such work. Funds obtained by the City pursuant to paragraph 5 of this Agreement may be used by the City to restore said improvements and pay any and all sums owing to contractors, laborers, materialpersons, suppliers, subcontractors or others as a result of such work for which a lien against any City property or property where the improvements are located, has arisen or may arise. Further, said funds may be used to

cover the cost of correcting any damage which may have occurred off-site due to disrepair of the project, including damage, if any, to public property. This provision shall not be construed as creating any obligation on the City, its employees, agents and representatives to perform such corrective work.

7. Inspection. The Developer shall pay all additional costs of the City incurred in the administration of this Agreement. As long as payment for such services has been made, the Director of Public Works or his/her designee shall periodically inspect said improvements while under the three-year warranty period and inspect completed improvements insofar as possible within five (5) working days after receiving written notice that the repairs have been completed. Lack of inspection within said five (5) days, however, shall not signify the City's approval.

8. Expiration. This Agreement shall remain in full force and effect for a period of two (2) years after final acceptance of the improvements by the City; the obligations secured hereby have been fully performed and formal written notice from the City has been submitted to and received by the Developer, releasing the Developer from further obligation to restore improvements.

9. Enforcement. It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this Agreement or to collect the funds in the escrow account, the prevailing party shall be entitled to collect its costs and reasonable attorneys fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorneys fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the funds set aside, but also over and above the funds in the account as a part of any recovery in any judicial proceeding.

The Institution hereby agrees that this Agreement shall be governed by the laws of the State of Washington and to be subject to the jurisdiction of the State of Washington. Venue of any litigation arising out of this Agreement shall be in King County Superior Court.

DATED this ______ day of ___________________, 200___

FINANCIAL INSTITUTION	DEVELOPER/OWNER
By: ________________________________	By ________________________________
Its ______________________________	Its ______________________________
________________________________ Business Name	________________________________ Business Name
________________________________ Business Address	________________________________ Business Address
________________________________ City/State/Zip	________________________________ City/State/Zip
________________________________ Telephone Number	________________________________ Telephone Number

CITY OF BOTHELL

By: ________________________________	City of Bothell 9654 NE 182nd Street
Its ______________________________	Bothell, Washington 98011 (425) 486-2768

Bonding Agency Notary

STATE OF WASHINGTON
County of ______________

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 and acknowledged it to be (his/her) free and voluntary act for uses and purposes mentioned in the instrument.

Dated: _________________________, 200__

Signature: ________________________________
Name Printed: ________________________________
Title: ________________________________
My appointment expires: ________________________________