

ASSIGNMENT OF BANK ACCOUNT FOR SECURITY PURPOSES

_____ (“Developer”) hereby assigns to the CITY OF LYNDEN (“City”) for security purposes only, the sum of _____ Dollars and _____ Cents (\$ _____), which is deposited in _____ Account, No. _____, in the name of _____ (“Account”) at _____, _____ Branch (“Bank”). This Assignment shall be on the following terms and conditions:

1. This Assignment shall not relate to any interest which accrues on the Account, and said interest may be withdrawn by the Developer at any time.

2. This Assignment is security for performance of work by the Developer under the Agreement to Construct Improvements, dated _____, in connection with the Developer’s project known as _____ located at _____.

3. In the event that the Developer defaults or fails to timely perform on any obligation imposed by the Agreement to Construct Improvements, as determined by the City in its sole discretion, a written notice shall be sent to the Developer requiring performance to be complete within thirty (30) days after the date of mailing of said notice. If the performance is not complete as required by the notice, the City shall have the right to proceed with the work itself, including to select and retain contractors for the work, and shall charge all costs of labor, materials, engineering, taxes, incidental costs and expenses and a twenty-five percent (25%) administrative overhead fee to the Account. The City shall thereupon send an invoice for its charges to the Developer and to the Bank, and within ten (10) days of receipt of said invoice, the Bank shall pay the same to the City from the funds held in the Account. If the funds in the Account are insufficient and a deficiency remains, the Developer shall be responsible for the same and shall immediately pay said deficiency, in full, directly to the City. Any delinquency in the Developer’s obligation shall accrue interest at the rate of twelve percent (12%) per annum.

4. Upon completion of the obligation referred to above, the Developer may apply to the City for a release of any remaining funds held in the Account. If the City finds in its sole discretion that the work has been satisfactorily completed, it shall immediately notify the Bank, in writing, that the remaining balance of the funds in the Account may be released to the Developer. Upon said funds being released, this Assignment shall terminate and no party shall have any further obligations hereunder.

5. This Assignment is irrevocable without the written consent of the City and shall continue in effect until the obligations secured hereby are completed to the satisfaction of the City. The funds in the Account shall be held exclusively for the benefit of the City and shall not be subject to further assignment or encumbrance of the Developer or attachment by any creditors of the Developer.

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6. Should any disputes arise between the City and the Developer regarding the terms of this Assignment, the Bank shall have the option to hold all matters in a pending status until the dispute is resolved, or to join in or commence a court action and deposit the assigned funds into the registry of the Whatcom County Superior Court. Any litigation concerning this Assignment shall be commenced in Whatcom County Superior Court. In the event of any such litigation, the City and the Developer shall indemnify and hold the Bank harmless from any costs or attorney's fees incurred in connection with the same.

7. Time is of the essence of in this Assignment. If litigation is filed to enforce any term herein, the prevailing party, as between the City and the Developer, shall be entitled to judgment for court costs and reasonable attorney's fees incurred therein.

8. Notices required or sent pursuant to this Assignment shall be sent by first class mail postage pre-paid to the parties hereto at the following addresses:

CITY	DEVELOPER	BANK
<u>City of Lynden</u>	_____	_____
<u>Public Works Director</u>	_____	_____
<u>300 4th Street</u>	_____	_____
<u>Lynden, WA 98264</u>	_____	_____

Each party hereto shall be responsible for providing written notice to the other parties of any change in address.

9. This Assignment is binding upon the parties, their heirs, executors, administrators, successors and assigns.

DATED this _____ day of _____, 20____.

DEVELOPER:

Name: _____
Title: _____

BANK:

Name: _____
Title: _____

