Form – Security for Maintenance/Warranty – Assignment of _____ Account for Security Purposes

Amount $_____

ASSIGNMENT OF _____ ACCOUNT FOR SECURITY PURPOSES

_____ (hereinafter referred to as "developer") hereby assigns to the CITY OF MARYSVILLE for security purposes only, the sum of:

_____

(written amount)

($_____) which is deposited with, or held by _____ (Bank or Institution) at _____Branch in account number #_____ (the "account"). 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 This assignment shall not relate to any interest which accrues on the account, and said interest may be withdrawn by the developer at any time.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 maintenance and warranty of work by the developer related to the following:

Project
(Site Address / Name of Development)

_____

Description of maintenance and warranty:
("work and improvements")

_____

_____

_____

Duration of Obligation:
("obligation")

_____

3. The developer shall well and timely monitor, report, maintain and warrant, repair and replace the work and improvements to the satisfaction of the City, or at the option of the City, indemnify City for all loss that City may sustain by reason of any failure to monitor or report, or by reason of defective materials or workmanship for the duration of the obligation from and after acceptance of said work and improvements by the City.

4. If City shall grant acceptance of some work and improvements, but not all work and improvements at the same time, this obligation shall become effective as to each such improvement as to each improvement as and when that improvement is accepted and shall remains in effect for the stated duration for each improvement from the date of its acceptance.

5. If required monitoring, reporting, maintaining, repair and replacement in accordance with warranty does not occur in accordance with City standards, then the surety or party bound shall within thirty (30) days of demand from the City, make a written commitment to the City that it will either:

a. Remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to City; or

b. Tender to the City within an additional fifteen (15) days the amount necessary, as determined in good faith by the City, for the City to remedy the default, up to the total amount of the security. Said estimate shall include reasonable City administrative overhead costs, legal costs and attorney's fees

Upon completion of performance under either of the options above, Bank or Institution shall have fulfilled its obligations under this Assignment, except that if option (b) above is selected by the developer, Bank or Institution, and the City's costs exceed the estimate, Bank or Institution shall pay the City such excess up to the maximum amount of the account. Under option (b) City shall notify developer, Bank or Institution of the actual cost of the remedy. In the event the City's estimate exceeded the City's actual costs (including administrative overhead costs, legal costs and attorneys fees) the City shall return such excess to Bank or Institution without interest.

6. Notwithstanding recovery from or forfeiture of the account by City, the developer shall be responsible for monitoring, reporting, maintenance and warranty, repair and replacement of improvements in accordance with City Code and standards and to the City's satisfaction, and in the event the account is insufficient for the satisfactory performance of the obligation of developer, on invoice from City to developer, developer shall immediately pay any deficiency, to City in full. Any delinquency in the developer's obligation shall accrue interest at the rate of 12% per annum.

7. Upon expiration of the maintenance and warranty obligation, developer may apply to the City for a release of all funds still held in the assigned account. If the City Engineer, or his designee, finds that the maintenance and warranty obligation has been satisfactorily completed to City Code and standards, he/she shall immediately notify the Bank/Institution, in writing, that the balance of the funds assigned may be released to the developer. Upon said funds being released, this Assignment shall terminate and no party shall have any further obligation hereunder, except that developer shall be responsible in accordance with the requirements of City Code.

8. This Assignment is irrevocable without the written consent of the City. The assigned funds 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. All amounts deposited in the above referenced account which are assigned to the City, unless applied in accordance with paragraph 5 shall remain in the account until released as provided in paragraph 7. Partial disbursements or release of funds to the developer or otherwise as developer's performance progresses shall not be made except in special circumstances as permitted by the City.

9. Should any disputes arise between the City and developer regarding the terms of this Assignment, the Bank/Institution 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 court. In the event of any litigation regarding the terms of the Assignment or performance under the Assignment, the prevailing party shall be entitled to recover legal costs and reasonable attorneys fees.

10. In the event of any ambiguity concerning the obligation herein, this Assignment and Security for maintenance and warranty shall be construed, interpreted and enforced in accordance with the intent and the provisions of Chapter 19.51 Marysville Municipal Code.

IN WITNESS WHEREOF, the signature of the developer, the Bank/Institution are hereto affixed binding them to this obligation this _____day of _____, _____.

DEVELOPER

_____

BANK/INSTITUTION:

_____

ACCEPTED BY THE CITY OF MARYSVILLE

BY:_____

Title_____