

**SILVER LAKE WATER DISTRICT
SNOHOMISH COUNTY, WASHINGTON
RESOLUTION NO. 578**

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE SILVER LAKE WATER DISTRICT, SNOHOMISH COUNTY, WASHINGTON, ESTABLISHING CRITERIA TO DETERMINE WHETHER THE DISTRICT MAY ARRANGE FOR CONTRACTUAL GUARANTEES BY DEVELOPERS THAT EXTENSION IMPROVEMENTS WILL BE COMPLETED AND TO PROVIDE LETTER NOTICE TO SNOHOMISH COUNTY OF SUCH GUARANTEES TO ALLOW DEVELOPERS TO SEEK FINAL SUBDIVISION APPROVAL AND RECORDING FROM SNOHOMISH COUNTY PRIOR TO FINAL COMPLETION OF EXTENSION IMPROVEMENTS BY THE DEVELOPER.

WHEREAS, Snohomish County code allows the County Council to decide final subdivision is complete when, inter alia, all required improvements are completed or arrangements or contracts have been entered into to guarantee that such required improvements will be completed; and

WHEREAS, developers have requested that the District inform Snohomish County that the developer has entered into a contract with the District to guarantee that water and/or sewer extension improvements required by the District will be completed; and

WHEREAS, the Board of Commissioners desires to provide for criteria for determining when the District may arrange for guarantee by the developer that necessary and required water and sewer improvements will be completed and provide letter notice to Snohomish County of such arrangement; now, therefore

BE IT RESOLVED, by the Board of Commissioners of Silver Lake Water District, Snohomish County, Washington, as follows:

1. Upon written request by a developer for the District to enter into an arrangement for developer guarantee that all water and sewer extension improvements will be completed in order to facilitate developer's efforts to allow for approval and recording of the final plat with Snohomish County, District staff shall consider the following criteria to determine support of developer's request before the Board of Commissioners:

GENERAL

- a. All offsite water and sewer extension work must be installed, tested, and restoration approved by Silver Lake Water District (SLWD) and the County/City;
- b. All on and offsite easements and other documents pertaining to real property rights involving SLWD must be provided and recorded.
- c. All outstanding fees relating to the plat's extension agreement with SLWD owed to the SLWD must be paid in full.
- d. A cash pledge agreement in the form acceptable to the SLWD must be provided in the amount of 150 percent of the cost of construction for the remaining sewer and water extension improvements.
- e. All sewer facilities downstream of the plat's sewer extension necessary to serve Developer's extension must be completed, accepted and operated by the SLWD.
- f. The plat/development must be graded to final grade, the first lift of asphalt in place, and the landscaped areas graded to subgrade.

SEWER

- a. All main line and side sewer pipe must be installed.
- b. All sewer pipe must be pressure tested, mandrelled, TV inspected, and monitored and reviewed by the SLWD. (A second set of tests may be required prior to final acceptance of the project.)
- c. All manholes must be clean, channeled, and adjusted to grade.

WATER

- a. All water mains, services, and appurtenances must be installed.
- b. All water mains must be tested, disinfected, and placed into normal service by the SLWD. (A second pressure test is required after the services are adjusted to proper grade if this has not occurred.)
- c. All valves and fire hydrants must be operational and adjusted to grade.

2. Should the District Board of Commissioners determine to enter into an arrangement with the developer for the developer to guarantee by contract that all water and sewer extension improvements will be completed to facilitate developer's efforts to obtain final approval and recording of developer's final plat with Snohomish County, the developer shall be required to execute an amendment to the developer extension agreement between the District and developer in substantially the form attached hereto as **Exhibit "A"** providing the terms and conditions for the developer to obtain a District letter to Snohomish County not protesting final approval of the subdivision by Snohomish County Council.

ADOPTED by the Board of Commissioners of Silver Lake Water District, Snohomish County, Washington, at a special open public meeting thereof held on the 15th day of June, 2004.



President and Commissioner

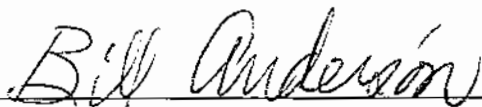


Secretary and Commissioner



Commissioner

I CERTIFY the above to be a true and correct copy of Resolution No. _____ adopted by the Board of Commissioners of the Silver Lake Water District this 15th day of June, 2004 as said Resolution appears in the records of the Silver Lake Water District.



Secretary of the Silver Lake Water District

EXHIBIT "A"

AGREEMENT

THIS AGREEMENT ("Agreement") is made this ____ day of _____, 200_, between the Silver Lake Water District, a municipal corporation ("District"), and _____ ("Developer") for the purposes set forth herein.

SECTION 1: RECITALS

1.01 The District and the Developer are parties to a developer extension agreement dated the ____ day of _____, 200__ ("Extension Agreement") regarding the construction of certain water and/or sewer extension improvements ("Extension Improvements") for the project known as _____ ("Project" or "Plat") referenced therein. The installation of the Extension Improvements is close to completion and Developer represents that the Extension Improvements will be completed for acceptance by the District within sixty (60) days of the date of this Agreement.

1.02 Developer now desires that Snohomish County (the "County") accept and sign the final plat ("Final Plat") for the Project for recording. Acceptance of the Final Plat by the County pursuant to Snohomish County Code 30.41A.650(1) is conditioned upon the completion of all of the Plat improvements to the County's satisfaction, including the Extension Improvements, or evidence that contracts have been entered into to guarantee that the plat improvements will be completed. The Developer has offered to contract with the District to provide cash funds to guarantee the completion of the Extension Improvements and has requested that the District provide the County with a letter that the District has no objection to the County's acceptance and recording of the Final Plat pending completion of the Extension Improvements and the Extension Agreement.

1.03 The District will accept, hold and utilize such cash related to the completion of the Extension Improvements and the Extension Agreement and will provide a letter to the County that the District has no objection to the County's acceptance and recording of the Final Plat pursuant to the terms and conditions set forth below.

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

SECTION 2: CASH PERFORMANCE GUARANTEE

2.01 The Developer shall provide the District cash funds ("Funds") in the amount of U.S. \$_____ to guarantee the Developer's installation of the Extension Improvements and the completion of the Extension Agreement and shall execute and deliver to the District the "Cash Performance and Pledge of Monies Agreement" in the form attached hereto as Exhibit "A" and incorporated herein by this reference ("Cash Performance Agreement"). The District shall be authorized to disburse or utilize the Funds for the completion of the Extension Improvements and the Developer's obligations under the Extension Agreement as provided in the Cash Performance Agreement and the Extension Agreement.

SECTION 3: FINAL PLAT RECORDING AND NOTICE TO FUTURE LOT OWNERS

3.01 The District shall provide the County with a letter stating that: (1) the Developer has entered into a contract with the District to guarantee the completion of the Extension Improvements and the Extension Agreement; (2) the District has no objection to the County's acceptance and recording of the Final Plat; (3) the District's position not objecting to the County's final acceptance and recording of the Final Plat does not and will not constitute the District's final acceptance of the Extension Improvements and the Extension Agreement; and (4) no side sewer connections will be allowed and no water meters will be issued by the District for any lots in the Project created by the County's acceptance and recording of the Final Plat until the Extension Improvements and the Extension Agreement are completed by the Developer and granted final acceptance by the District.

3.02 As a further condition of the District's agreement to provide a letter to the County as provided in Section 3.01 above, Developer shall also include a provision in the purchase and sale agreement providing for the sale of any of the lots ("Lot" or "Lots") created by the final acceptance and recording of the Final Plat that water and sewer utility service is not available to the Lot(s) unless and until the Developer completes and the District grants final acceptance to the Extension Improvements and the Extension Agreement.

SECTION 4: GENERAL PROVISIONS

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

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

4.03 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. The Developer agrees to pay the cost of all such services as a condition of the District's agreement herein.

SILVER LAKE WATER DISTRICT

("District")

("Developer")

By _____
Its _____

By _____
Its _____

CASH PERFORMANCE AND PLEDGE OF MONIES AGREEMENT

THIS AGREEMENT ("Agreement") is made this ____ day of _____, 200_ between the Silver Lake Water District, a municipal corporation ("District"), and _____ ("Developer") for the purposes set forth herein.

SECTION 1: RECITALS

1.01 The District and the Developer are parties to a developer extension agreement dated the ____ day of _____, 200__ ("Extension Agreement") regarding the construction of certain water and/or sewer extension improvements ("Extension Improvements") for the project known as _____ ("Project") referenced therein.

1.02 Pursuant to Section 7, Page 5, "Performance Guarantee" of the Extension Agreement, the Developer is required to furnish the District with a performance guarantee of a type and in a form as determined by the District to guarantee the installation of the Extension Improvements and the performance of the Developer's obligations and duties under the Extension Agreement. Pursuant to such provision, the Developer desires to furnish the District with cash as the required performance guarantee.

1.03 The District will accept, hold and disburse such cash as the performance guarantee as set forth below.

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

SECTION 2: CASH PERFORMANCE GUARANTEE

2.01 The Developer shall provide the District cash funds ("Funds") in the amount of U.S. _____ to guarantee the Developer's installation of the Extension Improvements and completion of the Extension Agreement as referenced in paragraph 1.02 above.

2.02 The District shall hold and deposit the Funds in an interest-bearing deposit account in _____ Bank ("Bank"), such account to be in the sole name of the District. District shall have the right to direct the Bank regarding the disposition of the Funds pursuant to this Agreement without the Developer's consent.

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

a. If the Extension Improvements are completed by the Developer and given final acceptance by the District within twelve (12) months of the date of the District's acceptance of the Plans for the Project, the District shall disburse the Funds less charges for District administrative and other costs referenced in this Agreement to the Developer within thirty (30) days of such determination by the District; or

b. If the Extension Improvements are not completed by the Developer and given final acceptance by the District within twelve (12) months of the date of the District's acceptance of the Plans for the Project, the District shall have the right to use the Funds to complete the installation of the Extension Improvements to the District's satisfaction and specifications referenced in the Plans and the Extension Agreement; in such event, the District shall return any unused Funds thereon to the Developer within thirty (30) days of the completion and acceptance of the Extension Improvements by the District.

SECTION 3: PLEDGE AND SECURITY AGREEMENT

3.01 Developer hereby grants to the District, its successors and assigns, a security interest in the Funds pursuant to Chapter 62A.9A RCW, including RCW 62A.9A-312, 313 and 314, and as such statutes may be amended and revised, which Funds will be delivered to the District and placed in the District's possession and control. Developer further grants to the District a security interest in all proceeds of the Funds, whether in the form of profits, dividends, accrued interest or otherwise.

3.02 For purposes of the security interest granted herein, 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 and control of the Funds by the District.

3.03 Developer warrants that, except as provided for herein, 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. Developer shall 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 Developer assign any interest in the Funds

to any other person or entity without the District's written consent, such consent to be in the District's sole discretion.

3.04 Developer agrees to repay to the District all sums including, but not limited to, legal fees and costs which the District may 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 Bank or any governmental entity with respect to the Funds. The sums agreed to be paid herein shall be secured by this Agreement.

3.05 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 placed by law, equity or contract to the District to seek reimbursement of additional damages incurred and/or to enforce the provisions of the Extension Agreement and this Agreement, should the Funds be insufficient to discharge the Developer's obligations to the District.

SECTION 4: GENERAL PROVISIONS

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

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

4.03 In the event that this Agreement or any obligation secured by it is referred to an attorney to protect or defend the priority of the District's interest in the Funds, or for collection or realization procedures, Developer agrees to pay the District's reasonable attorneys' fees and costs incurred by the District and such fees and costs shall be secured by this Agreement

4.04 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. The Developer agrees to pay the cost of such services as a condition of the District's agreement herein.

4.05 This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The State of Washington shall also be the jurisdiction for the Bank for the purposes of this Agreement pursuant to RCW 62A.9A-304(b). Venue for any action arising out of or relating to this Agreement shall lie in Snohomish County Superior Court.

SILVER LAKE WATER DISTRICT
("District")

("Developer")

By _____
Its _____

By _____
Its _____

_____ BANK hereby consents and agrees that it is the agent of SILVER LAKE WATER DISTRICT ("District") for purposes of possession by SILVER LAKE WATER DISTRICT of the Funds in the amount of _____ Dollars (\$_____), which funds the District has a security interest in pursuant to this Agreement and Chapter 62A.9A RCW.

DATED this _____ day of _____, 200_____.

_____ BANK ("BANK")
_____ 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 _____ signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the _____ of _____

_____ BANK to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____

(Print Name)

Notary Public in and for the State of

Washington.

Commission Expires: _____

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 _____ signed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the _____ of _____ to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____

(Print Name)

Notary Public in and for the State of Washington.

Commission Expires: _____

STATE OF WASHINGTON)

) ss:

COUNTY SNOHOMISH)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that _____ signed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the _____ of Silver

Lake Water District to be the free and voluntary act of such entity for the uses and purposes mentioned in the instrument.

DATED: _____

NAME: _____
(Print Name)

Notary Public in and for the State of Washington.

Commission Expires: _____