

**ADDENDUM 1 – LANDSCAPING IMPROVEMENTS
(ESCROW FORM)**

1. **INCORPORATION.** This Addendum 1 is hereby incorporated into the Public Improvement Guarantee Agreement, to which it is attached, for the purpose of addressing the guarantee for landscaping improvements required, by the terms of the issuance of permits and approvals, to be completed by APPLICANT (the "Landscaping Improvements"). Terms defined in the Public Improvement Guarantee, shall have the same meaning as set forth therein, **except** the term "Public Improvement(s)" shall also include landscaping improvements as that term appears in the following sections: 3, 5, 6, 7, 8, 9, 11, 13, 19, 20, 21, and 23.

2. **EFFECT OF ADDENDUM.** The Recitals and the following enumerated sections of the Public Improvement Guarantee shall apply only to Public Improvements and not Landscaping Improvements: 10, 12, 14, 15, 16, 17, 18, and 22. The remainder of the Public Improvement Guarantee shall apply to Public and Landscaping Improvements.

**ADDITIONAL TERMS AND CONDITIONS
FOR LANDSCAPING IMPROVEMENTS**

3. **LANDSCAPING REQUIREMENTS.** APPLICANT shall install landscaping improvements pursuant to the approved final plat, site plan and construction drawings. APPLICANT shall warrant the landscaping improvements as set forth herein.

4. **ESCROW ACCOUNT.** As an independent guarantee with CITY for the purpose of insuring APPLICANT's completion and warranty of the Landscaping Improvements as set forth in "Exhibit A to Addendum 1," attached hereto and incorporated herein by reference, APPLICANT hereby assigns and sets over to CITY all its right, title, and interest in the principle of that certain Escrow Account entitled

_____, held by DEPOSITORY in the amount of
(insert name and account number of Escrow Account)

\$ _____, (the "Landscaping Guarantee"), which is 100% of the
(insert amount)

estimated cost of the Landscaping Improvements as set forth in "Exhibit A to Addendum 1," attached hereto and incorporated herein by reference. The Landscaping Guarantee shall be **in addition to**, the Public Improvement Guarantee, and shall apply only to the Landscaping Improvements.

5. **INITIAL INSPECTION AND REDUCTION.** After APPLICANT has completed the Landscaping Improvements, and the CITY has inspected and approved landscaping, the CITY may reduce the Landscaping Guarantee by fifty percent (50%) ("Initial Reduction"). Such reduction shall be approved in writing by the CITY Manager. The CITY Manager shall not approve the reduction unless installation(s) comply with supplier and manufacturer recommendations; i.e. the seed rate based on Pure Live Seed (P.L.S.) and the seed protection being appropriate for slope length, soil type, vegetation used and weather conditions.

6. **SECOND INSPECTION.** Twenty-four (24) months following the date of the Initial Reduction, the CITY shall inspect the Landscaping Improvements (the "Second Inspection"). If the CITY determines that the landscaping area has eroded, or plant material has died or has not shown growth, the APPLICANT shall replant, reseed and stabilize all substandard landscaping areas.

7. **SECOND REDUCTION and RETAINAGE.** If the CITY approves the Landscaping Improvements based upon the Second Inspection, the Landscaping Guarantee may be reduced to an amount equal to ten percent (10%) of the original amount (the "Second Reduction"). Such reduction shall be approved in writing by the CITY Manager. The 10 percent (10%) retained amount shall remain in force during the Warranty Period described herein. APPLICANT expressly agrees that, notwithstanding any partial release of the Landscaping Guarantee requested by APPLICANT or granted by CITY, an amount equal to ten percent (10%) of the original Landscaping Guarantee shall not be released for twelve (12) months following the Second Reduction.

8. **WARRANTY PERIOD and WARRANTY INSPECTION.** After approval of the Landscaping Improvements and Second Reduction, a twelve (12) month warranty period (“Warranty Period”) shall commence from the date of the Second Reduction. The APPLICANT shall replant, reseed and stabilize, as necessary, during the Warranty Period. At the end of the Warranty Period, the CITY shall inspect the Landscaping Improvements.

9. **FINAL RELEASE.** If the CITY determines that the plant material is established and growth has continued, the Retainage may be released to APPLICANT. Final release shall be approved in writing by the CITY Manager. If the CITY does not approve the Landscaping Improvements at the end of the Warranty Period, APPLICANT shall replant, reseed and stabilize all substandard landscaping areas. If any areas need to be replanted, reseeded or stabilized, the CITY may retain a portion of the Landscaping Guarantee to insure such work is done or may make written demand for remittance of the proceeds of the Landscaping Guarantee to the CITY.

10. **APPLICANT INDEMNIFICATION.** APPLICANT agrees to indemnify, defend, and save harmless CITY, its officers, employees, agents and volunteers from and against any and all liability which may arise as a result of the installation of the Landscaping Improvements prior to completion of the Warranty Period, and from and against any and all liability which may arise as a result of any Landscaping Improvements which are found to be defective during the twelve (12) month warranty period covered by this Agreement. This indemnification requirement includes indemnification for claims for attorney’s fees, court cost and litigation expenses, of whatever type and amount. With respect to APPLICANT’S agreement to defend CITY, as set forth above, CITY shall have the option to either provide its own defense, with all costs for such being borne by APPLICANT, or require that APPLICANT undertake the defense of CITY.

11. **DEMAND FOR THE USE OF PROCEEDS.** In the event the CITY determines APPLICANT is in default, CITY may expend the proceeds of the Landscaping Guarantee to complete or repair Landscaping Improvements. Prior to making demand on the Landscaping Guarantee, the CITY shall notify APPLICANT of the default and demand performance hereunder. If APPLICANT has not cured its default within the Notice Period, or in the case of a default that cannot reasonably be cured within the Notice Period of said notice, if APPLICANT has not diligently commenced to cure such default within the Notice Period and thereafter diligently pursued the cure of said default, CITY shall have the right to make demand on the Landscaping Guarantee and may cause the required Landscaping Improvements to be installed, completed or repaired using such funds. The Notice Period shall be ten (10) business days or, if the CITY reasonably determines that human safety will be threatened or irreparable property damage will occur, then such shorter period of time as the CITY may reasonably specify in its notice of default.

EXHIBIT A to Addendum 1
ESTIMATED COST OF LANDSCAPING IMPROVEMENTS