

**ADDENDUM 2 – NONPUBLIC IMPROVEMENTS  
(ESCROW FORM)**

1. **INCORPORATION.** This Addendum 2 is hereby incorporated into the Public Improvement Guarantee Agreement, to which it is attached, for the purpose of addressing the guarantee for nonpublic improvements required, by the terms of the issuance of permits and approvals, to be completed by APPLICANT (the "Nonpublic Improvements"). Terms defined in the Public Improvement Guarantee, shall have the same meaning as set forth therein, **except** the following: (a) the term "Public Improvement(s)" shall also include nonpublic 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 Nonpublic Improvements: 10, 12, 14, 15, 16, 17, 18, and 22. The remainder of the Public Improvement Guarantee shall apply to Public and Nonpublic Improvements.

**ADDITIONAL TERMS AND CONDITIONS  
FOR NONPUBLIC IMPROVEMENTS**

3. **NONPUBLIC REQUIREMENTS.** APPLICANT shall install Nonpublic Improvements pursuant to the approved final plat, site plan and construction drawings.

4. **ESCROW ACCOUNT.** As an independent guarantee with CITY for the purpose of insuring APPLICANT's completion and warranty of the Nonpublic Improvements as set forth in "Exhibit A to Addendum 2," 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 "Nonpublic Improvement Guarantee"), which is 100% of the (insert amount)

estimated cost of the Nonpublic Improvements as set forth in "Exhibit A to Addendum 2," attached hereto and incorporated herein by reference. The Nonpublic Improvement Guarantee shall be **in addition to**, the Public Improvement Guarantee, and shall apply only to the Nonpublic Improvements.

5. **INSPECTION AND RELEASE.** After APPLICANT has completed the Nonpublic Improvements, and the CITY has inspected and approved the Nonpublic Improvements, the CITY may release the Nonpublic Improvement Guarantee. Such release shall be approved in writing by the CITY Manager. The CITY Manager shall not approve the release unless installation(s) comply with CITY standards.

If the CITY does not approve the Nonpublic Improvements, APPLICANT shall complete and repair all substandard Nonpublic Improvements. If any areas need to be completed or repaired, the CITY may retain a portion of the Nonpublic Improvement Guarantee to insure such work is done or may make written demand for remittance of the proceeds of the Nonpublic Improvement Guarantee to the CITY.

6. **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 Nonpublic Improvements, and from and against any and all liability which may arise as a result of any Nonpublic Improvements which are found to be defective upon inspection. 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.

7. **DEMAND FOR THE USE OF PROCEEDS.** In the event the CITY determines APPLICANT is in default, CITY may make demand on the Nonpublic Improvement Guarantee to complete or repair Nonpublic

Improvements. Prior to making such demand, 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 Nonpublic Improvement Guarantee. At the CITY's sole discretion, the CITY may cause the required Nonpublic Improvements to be installed, completed or repaired using such funds, or retain such funds for future payment to the person or entity who causes the Nonpublic Improvements to be installed, completed or repaired. 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 2  
ESTIMATED COST OF NONPUBLIC IMPROVEMENTS