REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: January 19, 2005

SUBJECT: Improvement Guarantee for Cliffs Valley North, Phase IV – James B.

Anthony, Owner

ATTACHMENTS: 1. Application for Improvement Guarantee

2. Draft Performance Guarantee Agreement

Cost Estimates

SUMMARY OF REQUEST:

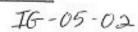
Mr. James B. Anthony, developer of Cliffs Valley North subdivision, has submitted a request for an improvement guarantee for Phase IV of that project. Cliffs Valley North is located off of US Highway 25 South at the North Carolina and South Carolina state lines. The Planning Board granted conditional approval of the Phase IV Development Plan for the subdivision on July 15, 2003. The improvement guarantee is proposed to cover road paving, road shoulder stabilization, water system construction and erosion control maintenance.

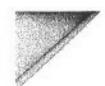
Pursuant to Sections 170-38 and 170-39 of the Henderson County Code, a developer may, in lieu of completing all of the required improvements prior to Final Plat approval, post a performance guarantee to secure the County's interest in seeing that satisfactory construction of incomplete improvements occurs. One type of permitted guarantee is an irrevocable letter of credit. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$289,352.50 to cover the cost of the improvements (\$231,482.00) as well as the required twenty-five percent (25%) contingency of \$57,870.50. The proposed completion date for the improvements is January 31, 2007.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developer must submit the irrevocable letter of credit in accordance with the terms of the Agreement. Once the County receives a letter of credit in proper form, the Agreement must be executed by the relevant parties.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

I recommend that the Board approve the improvement guarantee application for Cliffs Valley North, Phase IV, subject to the developers submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.





Henderson County APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision Cliffs Valley North Phase IV
Name of Owner James B Anthony
Address 301 Beaver Dom Rd Travelers Rest SC 29690
Phone: 8(A-371-1000
Agent Paul Foster Phone: 864-371-1060 / 864-371-104
Date of Preliminary Plan Approval by Planning Board 2003
Significant Conditions Imposed:
Type of improvement requested:
Cash on Deposit (Certified Check)
Bank Escrow Account
✓ Irrevocable Letter of Credit
Surety Performance Bond
Trust Agreement
Name of bank or bonding company NBSC (Sue Brady)
Amount of guarantee (including 25% overhead) \$289,352,50
Projected completion date 2 years (March 07) 131/07 KCS
Are cost estimates attached (with quantities and unit costs)?
lave engineering and design work been completed?
complete incomplete
have read and understand all requirements stated in Article V of the Henderson County Subdivision Ordinance regarding ubdivision improvement guarantees.
CON R
Owner's Signature Date
Submitted By Date
Received By Laren C. Sinch Date 1-10-05
paid \$200.00 1/10/05 receipt# 3201

Draft

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this	day of,
200 , by and between James B. Anthony, hereinafter referred	to as "Developer," and
the Henderson County Board of Commissioners, hereinafter re	eferred to as "Board;"

WITNESSETH:

WHEREAS, the Developer is attempting to secure approval of a Final Plat for a proposed subdivision known as Cliffs Valley North, Phase IV, located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Board conditionally approved the combined Master Plan and Development Plan for Cliffs Valley North, Phase IV, under Chapter 170 of the Henderson County Code, which is entitled Subdivision of Land, and

WHEREAS, Chapter 170 requires the completion of certain improvements prior to Final Plat approval, however Sections 170-38 and 170-39 allow the Board of Commissioners to permit the Developer to post an irrevocable letter of credit with Henderson County to guarantee the completion of said required improvements; and

WHEREAS, the Developer has requested that the Board of Commissioners approve the posting of an irrevocable letter of credit to guarantee and secure the completion of said improvements in lieu of completion of all improvements prior to said approval;

IT IS THEREFORE AGREED as follows:

- 1. The Developer will, on or before the 31st day of January, 2007, complete as required the following improvements to serve lots in Phase IV of Cliffs Valley North: road paving, road shoulder stabilization, water system construction and erosion control maintenance, as required by the Henderson County Subdivision Ordinance, as shown on the combined Master Plan and Development Plan for Cliffs Valley North, Phase IV, as conditionally approved by the Henderson County Planning Board on July 15, 2003, and as shown on the attached cost estimates prepared by Charles W. Jones, Jr., P.E., (dated January 10, 2005).
- 2. The Developer will post with Henderson County an irrevocable letter of credit guaranteeing completion of said improvements by the required date. Said letter of credit must be issued by a bank licensed to do business in North Carolina, in the amount of at least \$289,352.50 (the "Improvement Guarantee"), payable to Henderson County, and having an expiration date not earlier than 60 days after the completion date stated in Paragraph 1, above.

- 3. In the event that the required improvements are completed as required, the letter of credit will be released. In the event that the improvements are not completed as required, then the Developer shall be in breach of this Agreement and the Improvement Guarantee and the County shall call the letter of credit and use the funds to complete the required improvements.
- 4. At such time as the (Assistant) County Attorney has reviewed and approved this Agreement and this Agreement is fully executed, and a letter credit in the proper form is posted, then the Board will allow the Final Plat(s) for Cliffs Valley North, Phase IV, to be approved by the Subdivision Administrator, provided that any other requirements of Chapter 170 of the Henderson County Code and/or conditions imposed by the Planning Board have been satisfied.
- 5. The County Manager shall have the authority to approve the release of portions of the Improvement Guarantee as work progresses, provided the amount remaining under the Improvement Guarantee meets or exceeds 125% of the cost of the remaining improvements. The County Manager has the discretion to require the Developer to provide, at the Developer's expense, an independent verification of the remaining work.

Agreement to be reviewe by its Chairman or other	EREOF, the Board has, by appropriate action, caused this d for approval by the (Assistant) County Attorney and executed authorized member and attested by the Clerk, and the is Agreement to be properly executed, this the day of
APPROVED AS TO FOR	RM:
Cour	ity Attorney
	HENDERSON COUNTY BOARD OF COMMISSIONERS
	BY: William L. Moyer, Chairman
ATTESTED BY:	[OFFICIAL SEAL]
Flizabeth W. Corn. Cler	k to the Board

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- 4. At such time as the (Assistant) County Attorney has reviewed and approved this Agreement and this Agreement is fully executed, and a letter credit in the proper form is posted, then the Board will allow the Final Plat(s) for Cliffs Valley North, Phase IV, to be approved by the Subdivision Administrator, provided that any other requirements of Chapter 170 of the Henderson County Code and/or conditions imposed by the Planning Board have been satisfied.
- 5. The County Manager shall have the authority to approve the release of portions of the Improvement Guarantee as work progresses, provided the amount remaining under the Improvement Guarantee meets or exceeds 125% of the cost of the remaining improvements. The County Manager has the discretion to require the Developer to provide, at the Developer's expense, an independent verification of the remaining work.

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	/ELOPER: nes B. Anthony
BY:	
STATE OF NORTH CAROLINA COUNTY OF HENDERSON	A
is the Clerk to the Board of Cor corporation and that by authorit foregoing instrument was signe	, Notary Public for said County and State, certify ally came before me this day and acknowledged that she nmissioners of Henderson County, a municipal by duly given and as the act of the corporation, the doing its name by the Chairman of the Board of corporate seal, and attested by her as its Clerk.
THIS the day of	, 200
	Notary Public
My Commission Expires:	[NOTARIAL SEAL]

STATE OF			
I, that James B. Ant execution of the fo	hony personally	, Notary Public for said State and County ce came before me this day and acknowledged th ent.	rtify e due
THIS the	day of	, 200	
	Notary	Public	
My Commission	Evnires:	INOTARIAL SEALL	

9.4.			DATE:	01/05/05
	Quantity	Unit	Unit cost	Item total
Roads and Lots	38			
grassing & straw	2,660) If	\$2.20	\$5,852.00
Asphalt Pavement (18' wide w/ ditch)	2,660) If	\$28.00	\$74,480.00
subtotals	2,660) If		\$80,332.00
Water System				
WaterLine Installation	2660	If	\$25,00	\$86,500.00
Booster Pump	1	Is	\$60,000.00	\$60,000.00
10% Contingency	1	Is	\$12,650.00	\$12,650.00
subtotals	2,660	If		\$139,150.00
Erosion Control Maintenance	18			
Cost to maintain exist. Erosion control	6	month	\$2,000.00	\$12,000.00
subtotals	2,660	If		\$12,000.00
1.0			Subtotal =	\$231,482.00
			25% increase for Bond =	\$57,870.50
			Total =	\$289,352.50

All new roads have been graded and temporary grassed. 4 inches of stone have been placed on all graded roads. 2 inches of additional stone shall be added once paving starts

The engineering cost estimate is based on the survey data prepared by Lindsey and Associates, and field measurements. This estimate includes all cost associated with installing water lines and pavings roads.

NOTES:

2)

Signed:

Seal:

1-10-05