

## **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  
3. 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.

IG-05-02

Henderson County  
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision Cliffs Valley North Phase IVName of Owner James B AnthonyAddress 301 Beaver Dam Rd Travelers Rest SC 29690Phone: 864-371-1000Agent Paul Foster Phone: 864-371-1060 / 864-371-1044Date of Preliminary Plan Approval by Planning Board Aug 2003

Significant Conditions Imposed: \_\_\_\_\_

Type of improvement requested:

☐ Cash on Deposit (Certified Check)☐ Bank Escrow Account☒ Irrevocable Letter of Credit☐ Surety Performance Bond☐ Trust AgreementName of bank or bonding company NBSL (Sue Brady)Amount of guarantee (including 25% overhead) \$289,352.50Projected completion date 2 years (March 07) 11/31/07 KCSAre cost estimates attached (with quantities and unit costs)? ☒ yes ☐ no Partial

Have engineering and design work been completed?

☐ complete ☒ partially complete ☐ incomplete

I have read and understand all requirements stated in Article V of the Henderson County Subdivision Ordinance regarding subdivision improvement guarantees.

Owner's Signature [Signature]1-10-05  
Date

Submitted By \_\_\_\_\_

Date \_\_\_\_\_

Received By Haren C SmithDate 1-10-05paid \$200.00 1/10/05 receipt # 3201

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 referred 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 31<sup>st</sup> 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.

**IN WITNESS WHEREOF**, the Board has, by appropriate action, caused this Agreement to be reviewed for approval by the (Assistant) County Attorney and executed by its Chairman or other authorized member and attested by the Clerk, and the Developer has caused this Agreement to be properly executed, this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**APPROVED AS TO FORM:**

\_\_\_\_\_  
County Attorney

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

BY: \_\_\_\_\_  
William L. Moyer, Chairman

**ATTESTED BY:**

[OFFICIAL SEAL]

\_\_\_\_\_  
Elizabeth W. Corn, Clerk to the Board

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.

**IN WITNESS WHEREOF**, the Board has, by appropriate action, caused this Agreement to be reviewed for approval by the (Assistant) County Attorney and executed by its Chairman or other authorized member and attested by the Clerk, and the Developer has caused this Agreement to be properly executed, this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**APPROVED AS TO FORM:**

\_\_\_\_\_  
County Attorney

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

BY: \_\_\_\_\_  
William L. Moyer, Chairman

**ATTESTED BY:**

[OFFICIAL SEAL]

\_\_\_\_\_  
Elizabeth W. Corn, Clerk to the Board

**DEVELOPER:**  
**James B. Anthony**

**BY:** \_\_\_\_\_

**STATE OF NORTH CAROLINA**  
**COUNTY OF HENDERSON**

I, \_\_\_\_\_, Notary Public for said County and State, certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners of Henderson County, a municipal corporation and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by the Chairman of the Board of Commissioners, sealed with its corporate seal, and attested by her as its Clerk.

**THIS** the \_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
**Notary Public**

**My Commission Expires:** \_\_\_\_\_

**[NOTARIAL SEAL]**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, Notary Public for said State and County certify  
that James B. Anthony personally came before me this day and acknowledged the due  
execution of the foregoing instrument.

THIS the \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]



**PROJECT: Stone Tract (Corbin Mountain)**

DATE: 01/05/05

	Quantity	Unit	Unit cost	Item total
<b>Roads and Lots</b>				
grassing & straw	2,660	lf	\$2.20	\$5,852.00
Asphalt Pavement (18' wide w/ ditch)	2,660	lf	\$28.00	\$74,480.00
subtotals	2,660	lf		\$80,332.00

<b>Water System</b>				
WaterLine Installation	2660	lf	\$25.00	\$66,500.00
Booster Pump	1	ls	\$60,000.00	\$60,000.00
10% Contingency	1	ls	\$12,650.00	\$12,650.00
subtotals	2,660	lf		\$139,150.00

<b>Erosion Control Maintenance</b>				
Cost to maintain exist. Erosion control	6	month	\$2,000.00	\$12,000.00
subtotals	2,660	lf		\$12,000.00

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:

1)



2)

Seal:



1-10-05

Signed: