

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: May 2, 2005

SUBJECT: Improvement Guarantee for White Oak Village, Phases 1 through 4

ATTACHMENTS:

1. Application for Improvement Guarantee
2. Draft Performance Guarantee Agreement
3. Cost Estimate

SUMMARY OF REQUEST:

VGC Properties, LLC, developer of White Oak Village subdivision, has submitted a request for an improvement guarantee for Phases 1 through 4 of the project. White Oak Village is being developed on Zeb Corn Road. A portion of the subdivision is the former White Oak manufactured home park. The Henderson County Planning Board granted conditional approval of a Master Plan and a Development Plan for Phase I of the project on December 21, 2004. Henderson County Planning Department staff conditionally approved Development Plans for Phases 2, 3 and 4 of the project on April 28, 2005. The improvement guarantee is proposed to cover installation of public sewer improvements (and related remaining engineering fees) as well as storm drainage improvements.

Pursuant to Sections 170-38 and 170-39 of the Henderson County Code (the Subdivision Ordinance), 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 a surety performance bond. The developer intends to post with the County a surety performance bond in the amount of at least \$535,375.00 to cover the cost of the improvements (\$428,300.00) as well as the required twenty-five percent (25%) contingency (\$107,075.00). The proposed completion date for the improvements is January 1, 2006. The Subdivision Ordinance allows a developer using an improvement guarantee a maximum of two years between the time of initiation and completion of required improvements.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developer must submit a surety performance bond in accordance with the terms of the Agreement. Once the County receives a bond in proper form, the relevant parties must execute the Agreement.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

I recommend that the Board approve the improvement guarantee application for White Oak Village subdivision, subject to the developer submitting to Henderson County a surety performance bond in accordance with the terms of the draft Performance Guarantee Agreement.

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision: White Oak Village - Phases 1 thru 4

Name of Owner: VGC Properties, LLC

Address: 210 N. Main Street, Hendersonville, NC 28792

Phone: 828-775-7477

Agent: Paul Patterson Phone: 692-6629
Howard George Phone: 775-7477 (Cell)

Date of Preliminary Plan Approval by Planning Board: Major Subdivision

Significant Conditions Imposed: Public Sewer to be installed

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: _____

Amount of guarantee (including 25% overhead) \$ 535,375.00

Project completion date: ~~October 2005~~ Jan 2006

Are cost estimates attached (with quantities and unit costs)? yes no

Have engineering and design work been completed?

complete

partially complete

incomplete

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


Owner's Signature

4/28/05
Date

Submitted By: 
Date: _____

Date: _____

Received By: K. Scudlan

Date: 4/28/05

Paid \$20000 Check # 2040

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

DRAFT

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between VGC Properties, LLC, 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 one or more Final Plats for Phases 1 through 4 of a proposed subdivision known as White Oak Village, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, under Chapter 170 of the Henderson County Code, which is entitled Subdivision of Land, the Henderson County Planning Board conditionally approved a Master Plan and a Development Plan for Phase I of the Project and Henderson County Planning Department staff conditionally approved Development Plans for Phases 2, 3 and 4 of the Project; 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 a surety performance bond 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 a surety performance bond 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 1st of January, 2006, complete as required the following improvements to serve lots in the Project: installation of public sewer system improvements (and related remaining engineering fees) and storm drainage improvements as required by the Henderson County Subdivision Ordinance, as shown on the Development Plans for the Project conditionally approved by the Henderson County Planning Department on December 21, 2005 (Phase 1) and conditionally approved by Henderson County Planning Department staff on April 28, 2005 (Phases 2, 3 and 4) and as shown on the attached cost estimate prepared by Robert Paul Patterson, P.E., (sealed 4/28/05).
2. The Developer will post with Henderson County a surety bond guaranteeing completion of said improvements by the required date. Said surety performance

bond must be issued by licensed bonding company in the amount of at least \$535,375.00 (the "Improvement Guarantee"), payable to Henderson County, and it must have 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 surety bond 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 Developer shall forfeit the Improvement Guarantee and the surety bond and the bonding company shall pay the funds to Henderson County, which shall 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 surety bond in the proper form is posted, then the Board will allow the Final Plats of White Oak Village, Phases 1 through 4, 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 and/or Planning Department staff 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 (Acting) 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:
DRAFT

County Attorney

HENDERSON COUNTY BOARD OF COMMISSIONERS

DRAFT
BY: _____
William L. Moyer, Chairman

ATTESTED BY:

[OFFICIAL SEAL]

DRAFT

Elizabeth W. Corn, Clerk to the Board

**DEVELOPER:
VGC Properties, LLC**

**BY: _____
Manager**

DRAFT

**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__.

DRAFT

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

STATE OF _____
COUNTY OF _____

I, _____, Notary Public for said State and County certify that _____, Manager of White Oak Village, LLC, a limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

THIS the _____ day of _____, 200____.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

WHITE OAK SUBD.
ESTIMATE

SEWER:	(PHASE 1 THRU 4)		
Item Description:	Quantity	Unit Cost	
Manholes (0'-12')	32 ea	2000.00	\$64,000.00
Laterals (New)	28 ea	375.00	\$10,500.00
Pipe Bedding	904 tns	19.50	\$17,637.00
2" SDR13.5 PVC	1044 lf	8.50	\$8,874.00
Sewer Lift Station	1 ls	85000.00	\$85,000.00
Tie into Existing Force Main	1 ea	1500.00	\$1,500.00
Misc. Fittings	1 ls	1000.00	\$1,000.00
8" CL350 D.I./8" SDR35 PVC	5858 l.f.	20.50	\$120,089.00
Tie to Existing MH	0 ea	1000.00	\$0.00
Open Cut Roads	11 ea	800.00	\$8,800.00
Extra Long Laterals (New)	3 ea	1200.00	\$3,600.00
Crush & Fill - Laterals	56 ea	1250.00	\$70,000.00
		Subtotal:	\$391,000.00
ENGINEERING FEES (Sewer System):			\$30,000.00
COH Impact Fees (Sewer):	1 ls	8400.00	\$8,400.00

STORM DRAINAGE	Quantity	Unit Cost	Cost
Item Description:			
Pipe Removal/Replacement	5 ea	1100.00	\$5,500.00
Pipe Removal @ Old Pond	1 ls	1800.00	\$1,800.00
		Subtotal:	\$7,300.00

WHITE OAK SUBD.
(TABULATED ESTIMATE)

Item Description:	Cost
Sewer	\$391,000.00
Storm Drainage	\$7,300.00
Engineering Fees	\$30,000.00
	Subtotal:
	\$428,300.00
25% Contingency	\$107,075.00
TOTAL ESTIMATED CONSTRUCTION BOND:	\$535,375.00

