

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: July 20, 2005

SUBJECT: Improvement Guarantee for Leoni's Mountain Lake Homes

ATTACHMENTS:

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

SUMMARY OF REQUEST:

Todd Leoni submitted on behalf of Camp Riley, Inc., owner of Leoni's Mountain Lake Homes, an application for an improvement guarantee for the Leoni's Mountain Lake Homes Planned Unit Development. Leoni's Mountain Lake Homes is a 26-lot Planned Unit Development located on 12 acres of land that is adjacent to Lake Osceola. Leoni's Mountain Lake Homes was approved by the Board of Commissioners under Special Use Permit # SP-04-01 on November 10, 2004. The improvement guarantee is proposed to cover the construction of the roads which includes the installation of a sidewalk, the water distribution system improvements and seeding and stabilization of disturbed areas, for the entire Planned Unit Development.

According to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance, where the required improvements have not been completed or in lieu of completing all of the required improvements in order to submit a Final Plat and also prior to Final Plat approval, the developer may post a performance guarantee for the improvements. Section 170-38 of the Henderson County Subdivision Ordinance also states that the installation of the improvements must be completed within two years of the date of approval of the improvement guarantee. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$82,219.00 to cover the cost of the improvements (\$65,775.00) as well as the required twenty-five percent (25%) contingency (\$16,444.00). The proposed completion date for the improvements is June 30, 2006.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developer must submit an irrevocable letter of credit in accordance with the terms of the Agreement. Once the County receives a letter of credit 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 Leoni's Mountain Lake Homes, subject to the developer 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 LEONI'S MOUNTAIN LAKE HOMES

Name of Owner CAMP RILEY, INC.

Address C/O Leoni Real Estate Corp., P.O. Box 381703, Miami, FL 33238

Phone: 305-756-1177

Agent _____ Phone: _____

Date of Preliminary Plan Approval by Planning Board October 2004

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 Carolina First Bank

Amount of guarantee (including 25% overhead) \$ 82,219.00

Projected completion date June 30, 2006 me per TL on 7/13/05

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 stated in Article V of the Henderson County Subdivision Ordinance regarding subdivision improvement guarantees.

[Signature]
Owner's Signature

7/6/05
Date

Submitted By Camp Riley

Date 7/6/05 check

Received By u u

Date 7/6/05 #1010
\$250⁰⁰

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Camp Riley, Inc., 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 a Planned Unit Development known as Leoni's Mountain Lake Homes, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, Henderson County Board of Commissioners approved Leoni's Mountain Lake Homes Planned Unit Development under Special Use Permit # SP-04-01, under Chapter 200 of the Henderson County Code, which is entitled Zoning, and 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 June 30, 2006, complete as required the following improvements to serve lots in the Project: grading, road construction, installation of sidewalks, water system construction and road shoulder stabilization as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for the Project approved under Special Use Permit # SP-04-01 by the Henderson County Board of Commissioners on November 10, 2005, and as shown on the attached cost estimates prepared by John B. Jeter, P.E. (sealed 7/5/05 and dated 7/5/05).
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 \$82,219.00 (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 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 the Project to be approved by the Subdivision Administrator, provided that all requirements of Chapter 170 of the Henderson County Code, Chapter 200 of the Henderson County Code and Special Use Permit # SP-04-01 are met.
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 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:
Camp Riley, Inc.

BY: _____
President / Vice President

**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 _____, Owner of Camp Riley, Inc., 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]

LEON'S MOUNTAIN LAKE HOMES

PROJECT IMPROVEMENTS COST ESTIMATE

5 July 2005

1. Placement of 2452 sy of type S 9.5B asphalt pavement (1.5 -inch compacted); 250 tons	\$ 15,000.00
2. Conditioning and placement of 2725 sy of type C stone base (ABC) (8 -inch compacted); 1237 tons	\$ 18,900.00
3. Placement of 715 sy of 5' concrete sidewalk	\$ 3,235.00
4. Water distribution system	\$ 27,440.00
5. Seeding and stabilization of disturbed areas – 1.0 acre	\$ 1,200.00
Total Improvements Cost	\$ 65,775.00
Contingency 25 %	\$ 16,444.00
Total Guarantee Request	\$ 82,219.00



LEON'S MOUNTAIN LAKE HOMES

WATER DISTRIBUTION IMPROVEMENTS

Preliminary Construction Cost Estimate

5 July 2005

NO.	ITEM	UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1.	Connect to Existing 6-inch Water-line (C900/DR-18) at existing 6" X 6" X 6" tee w/6 -inch valve	EA	1	500.00	\$ 500.00
2.	Connect to Existing 2-inch Water-line (PVC/SDR-21) w/ 6" X 6" X 6" tee and 6 -inch valves (2)	EA	1	1500.00	1,500.00
3.	Water-line; 6-inch (AWWA: C900/DR-18)	LF	1250	12.00	15,000.00
4.	Fire hydrants (3-way, 4'-0" bury)	EA	1	1200.00	1,200.00
5.	Gate valve & box; 6-inch	EA	3	550.00	1,650.00
6.	Fittings (Cast iron - MJ)	LB	330	2.00	660.00
7.	Air Release Valve assembly (ARV; 1-inch)	EA	1	1000.00	1,000.00
8.	Water service lateral (Dual 3/4" X 5/8")	EA	11	420.00	4,620.00
TOTAL CONSTRUCTION COST					\$ 26,130.00
CONTINGENCY (5%)					\$ 1,310.00
TOTAL PROJECT COST					\$ <u>27,440.00</u>



OWEN PAVING

Fletcher, NC

~~687-8827~~ • 687-8827

674-1323

fax to (305) 757-5406

ESTIMATE SHEET

DATE: 4/20/05

NAME Mtn. Lake Village (Todd Leoni)
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____ TELEPHONE 692-2519
 FAX _____

18' x 1226' ROAD

20' x 1226' GRAVEL BASE

ESTIMATE BASED ON CURRENT STONE/ASPHALT
 PRICES ANY INCREASES IN THOSE PRICES WILL BE
 PASSED ON TO YOU. ANY QUESTIONS PLEASE CALL ME.

THANK YOU!
Shane Owen
 674-1323

	TOTALS
PREP WORK <u>WET, FINE GRADE, CONDITION</u>	
<u>STONE BASE w/8-TON ROLLER</u>	
<u>1.00 / PER SQ YD.</u>	2,750.00
STONE TO BE ADDED <u>8" OF COMPACTED ABC</u>	
<u>ROAD BOND 1237 TONS</u>	16,150.00
ASPHALT TYPE & THICKNESS <u>9.5B ASPHALT 2"</u>	
<u>COMPACTED TO 1 1/2" (250 TONS)</u>	15,000.00
MISCELLANEOUS _____	
<u>TOTAL ESTIMATE:</u>	<u>\$33,900.00</u>
TOTAL ESTIMATE _____	