

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: August 1, 2005

SUBJECT: Request for an Extension of Improvement Guarantee for Willow Place

ATTACHMENTS:

1. Letter from Charles Fisher
2. November 1, 2004 (Original) Performance Guarantee Agreement
3. Draft August 1, 2005 Performance Guarantee Agreement

SUMMARY OF REQUEST:

On November 1, 2004, the Board of Commissioners approved an application submitted by Charles Fisher for an improvement guarantee for a subdivision known as Willow Place. As required by the Performance Guarantee Agreement for the improvement guarantee, the developer posted with Henderson County an Irrevocable Letter of Credit for an amount of \$78,872.50. The Improvement Guarantee covered the completion of the road construction and water system installation as required by the Henderson County Subdivision Ordinance. The agreement required that the improvements be completed by June 30, 2005.

The Planning Department received a letter from Charles Fisher requesting to extend the completion date on the improvement guarantee. Mr. Fisher's letter states that the extension is needed because, "the inclement weather we have been experiencing in the past 6 months, we have been unable to pave Willow Circle." Section 170-39 of the Subdivision Ordinance allows the Board of Commissioners, upon proof of difficulty, to grant extensions to completion dates for improvement guarantees for a maximum of one additional year, provided that the time between initiation and completion of the improvements does not exceed two years.

If the Board of Commissioners agrees to grant the requested extension, staff has attached for the Board's consideration a draft Performance Guarantee Agreement which reflects a new improvements completion date of December 30, 2005, and requires submittal of an amendment to the Irrevocable Letter of Credit showing an expiration date not earlier than 60 days after the new improvements completion date. The new Performance Guarantee Agreement must be executed by the relevant parties if the Board approves the extension request.

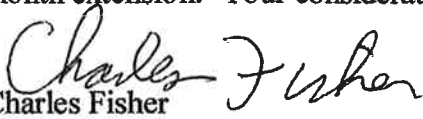
COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

The extension, if granted, would not cause the developer to exceed the two-year maximum time period for completion of the required improvements. Therefore, I recommend that the Board approve the request to extend the completion date for the improvement guarantee for Willow Place to December 30, 2005, provided that an amended Irrevocable Letter of Credit is submitted in accordance with the Performance Guarantee Agreement.

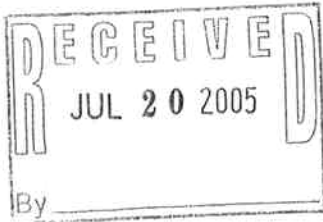
To: Henderson County Planning Director

Re: Willow Place (Willow Place Circle)

This letter is in regards to the above stated subdivision. Due to the inclement weather we have been experiencing in the past 6 months, we have been unable to pave Willow Circle. We are in the process of obtaining a paving contractor at this time and are requesting a 6 month extension. Your consideration in this matter will be greatly appreciated.


Charles Fisher

CK # 1273AR



STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this 1st day of November, 2004, by and between Charles M. Fisher, Sr., 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 Willow Place located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Board conditionally approved the combined Master Plan and Development Plan for Willow Place 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 30th day of June, 2005, complete as required the following improvements to serve the lots in Willow Place: road construction and water system installation, as required by the Henderson County Subdivision Ordinance, as shown on the combined Master Plan and Development Plan for Willow Place conditionally approved by the Henderson County Planning Board on June 15, 2004, and as shown on the attached cost estimates submitted by Carolina Paving Sealing and Grading (dated October 28, 2004) and by Harry's Ditching Service, Inc. (dated September 16, 2004).
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 \$78,872.50 (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 Willow Place 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 1st day of December, 2004.

APPROVED AS TO FORM:



County Attorney

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: 

Grady Hawkins, Chairman

ATTESTED BY:

[OFFICIAL SEAL]



Elizabeth W. Corn, Clerk to the Board

DEVELOPER:
Charles M. Fisher, Sr.

BY: Charles M Fisher Sr.

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

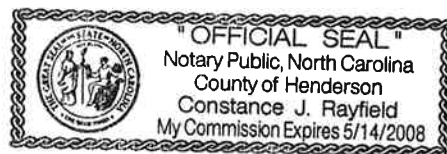
I, Constance J. Rayfield, Notary Public for said County and State, certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners of Henderson County, a municipal corporation and that by authority duly given and as the act of the 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 1st day of December, 2004.

Constance J. Rayfield
Notary Public

My Commission Expires: 5/14/08

[NOTARIAL SEAL]



STATE OF North Carolina
COUNTY OF Henderson

I, Donna Fisher Blythe, Notary Public for said State and County certify that Charles M Fisher Sr, Charles M. Fisher, Sr., personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

THIS the 4 day of November, 2004.

Donna Fisher Blythe
Notary Public

My Commission Expires: 3-4-06



received
10/29/04



CAROLINA PAVING SEALING AND GRADING

**5195 OLD HAYWOOD ROAD
FLETCHER, N.C. 28732**

**828-891-3413
FAX: 828-891-7617**

Proposal # 2221868

PROPOSAL SUBMITTED TO:

Charles Fisher

Location:

DATE:

October 28, 2004

PHONE NO.:

[828] 693-5517

WORK NO.:

[828]

FAX:

[828] 693-5792

Cell No. :

[828]

We hereby submit specifications and estimates, subject to all terms and conditions as set forth as follows:

Fine grade, stone base provided by customers, compact stone base, and pave 24,624 sq.ft. [1368x18], using 2" of 9.5 super pave asphalt, compacted to 1.5" for the price of \$20,973.00.

WE PROPOSE hereby to furnish material and labor- complete in accordance with stated specifications, for the sum of

Twenty Thousand Nine Hundred Seventy Three And No 100's--DOLLARS [20973.00]

PAYMENT TO BE MADE AS FOLLOWS:

10% deposit [**\$2097.30**] and balance of [**\$18875.70**] to be paid in full upon completion of job and no later than five (5) business days after completion of job, unless other arrangements are made prior to work, and agreed upon in writing. Past due balances will be charged interest at the highest legal rate allowable. Customer agrees to pay all cost of collection, including any reasonable attorney fees.

Please see page 2 for Terms, conditions and signatures for acceptance of contract, which becomes part of page 1, this agreement, by mention of this reference.

Harry's Ditching Service, Inc. 15 Flat Hill Ln Penrose, NC 28766 828-692-5206

Quotation

Date: September 16, 2004
 Job Number: Willow Place Waterline

TO:
 Charne Fisher

Received
 10/29/04

ITEM NO.	QTY	DESCRIPTION	UNIT	UNIT PRICE	TOTAL	
1	2	8x6 Tap	Ea			
2	2350	6" C-900 DR-18	LF	1,760.00	3,520.00	
3	3	6" Valve	Ea	10.50	24,675.00	
4	2	Fire Hydrant	Ea	580.00	1,740.00	
5	140	2" PVC Water SDR-13.5	LF	1,400.00	2,800.00	
6	1	2" Valve	Ea	6.00	840.00	
7	500	Fittings (CIW)	Lb	350.00	350.00	
8	1	2" Flush Hydrant	Ea	3.30	1,650.00	
9	1	Air Valve	Ea	450.00	450.00	
10	8	Dual Stubouts	Ea	900.00	900.00	
11	4	Single Stubouts	Ea	500.00	4,000.00	
				300.00	1,200.00	
					Subtotal	42,125.00
					Tax	
					Total	42,125.00

- Notes:
- Quantities based on provided bid sheet.
 - Final cost determined by actual installation at unit prices.
 - Undiggable rock not included.
 - Select backfill not included.
 - No bonds/fees included.
 - Pricing good for 30 days (pipe prices change monthly).

Submitted by William Allman, President

William Allman 9/16/04

Tax rate: _____ %

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Charles M. Fisher, Sr., hereinafter referred to as "Developer," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

WITNESSETH:

WHEREAS, the Board and the Developer entered into an Agreement on November 1, 2004 (hereinafter "the original Agreement"), concerning an improvement guarantee for a portion of a proposed subdivision known as Willow Place, located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$78,872.50 in accordance with the original Agreement; and

WHEREAS, the original Agreement provided that all required improvements were to be completed on or before the 30th day of June, 2005, and

WHEREAS, the developer obtained approval of a Final Plat of lots 14 – 20 from Henderson County Planning Department staff on December 10, 2004, and subsequently recorded such Final Plat; and

WHEREAS, the Developer has requested that the Board of Commissioners approve extending the completion date of the original agreement to December 30, 2005;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before the 30th day of December, 2005, complete as required the following improvements to serve lots in Willow Place: road construction and water system installation, as required by the Henderson County Subdivision Ordinance, as shown on the combined Master Plan and Development Plan for Willow Place, as conditionally approved by the Henderson County Planning Board on June 15, 2004, and as shown on the original cost estimates submitted by Carolina Paving Sealing and Grading (dated October 28, 2004) and by Harry's Ditching Service, Inc. (dated September 16, 2004).
2. The Developer will post with Henderson County an amended irrevocable letter of credit guaranteeing completion of said improvements, and having an expiration date not earlier than 60 days after the completion date stated in Paragraph 1, above.

3. At such time as this Agreement is fully executed and the Developer has filed an amendment to the original bond (as previously amended) as provided in Paragraph 2, above, this Agreement will supercede prior Agreements between the Board and the Developer regarding the improvement guarantee for Phase I.
4. 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.
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:

Charles M. Fisher Sr.

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 Charles M. Fisher Sr., 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]