

## **REQUEST FOR BOARD ACTION**

### **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**MEETING DATE:** November 7, 2005

**SUBJECT:** Improvement Guarantee for Carriage Park (Section 19, Phase II)

**ATTACHMENTS:** 1. Draft Performance Guarantee Agreement

#### **SUMMARY OF REQUEST:**

Carriage Park Association, LLC, owner of the project, submitted an application for an improvement guarantee for Section 19, Phase II, in the Carriage Park planned unit development. Section 19, Phase II, is proposed to have a total of 7 single-family dwelling units on 7.03 acres of land. Section 19, Phase II, was conditionally approved by the Planning Board on June 21, 2005. The improvement guarantee is proposed to cover the water distribution system and sewer system for this section of Carriage Park.

The developer intends on using a Bank Escrow Account with the amount of at least \$71,177.50 to cover the cost of the improvements (\$56,942.00) as well as the required twenty-five percent (25%) contingency (\$14,235.50). The proposed completion date for the improvements is November 30, 2005.

On October 19, 2005 the Board of Commissioners approved the improvement guarantee application. At the time of approval, a Performance Guarantee Agreement had not been drafted because it was unclear if one was needed. A draft Performance Guarantee Agreement has been drafted for the Board's consideration at this meeting. If the Board approves of the draft Performance Guarantee Agreement, then a Bank Escrow Agreement, in accordance with the Performance Agreement, shall be submitted to Henderson County with an expiration date of no less than 60 days after the completion date and that covers 125% of the cost of the improvements.

#### **COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:**

I recommend that the Board approve the Performance Guarantee Agreement, subject to the developer submitting to Henderson County a Bank Escrow Agreement in accordance with the terms of the draft Performance Guarantee Agreement.

**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between Carriage Park Association, 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 Section 19, Phase II, of the Carriage Park Planned Unit Development, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

**WHEREAS**, the Henderson County Planning Board conditionally approved the Section 19, Phase II, Development Plan for Carriage Park, under Special Use Permit #SP-93-13, under Chapter 200 of the Henderson County Code, which is entitled Zoning, and 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 use a Bank Escrow Account with Henderson County to guarantee the completion of said required improvements; and

**WHEREAS**, the Developer has requested that the Board of Commissioners approve the use of a Bank Escrow Account 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 November 30, 2005, complete as required the following improvements which will serve Section 19, Phase II, of Carriage Park: water distribution and sewer system, as required by the Special Use Permit #SP-93-13, as conditionally approved by the Henderson County Planning Board on June 21, 2005, and as shown on the attached cost estimates prepared by Paul Patterson, P.E., (sealed and dated September 27, 2005).
2. The Developer will post with Henderson County a Bank Escrow Account Agreement guaranteeing completion of said improvements by the required date. Said Agreement must be issued in the amount of at least \$71,177.50.00 (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 Bank Escrow Account Agreement will be released to the Developer. 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 that the amount in paragraph 2, in the Bank Escrow

Account shall be forfeited by the Developer and shall be used by Henderson County 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 Bank Escrow Account Agreement is set up with Henderson County and approved by the County Attorney, then the Board will allow the Final Plat(s) for Carriage Park Section 19, Phase II, to be approved by the Subdivision Administrator, provided that any other requirements of Chapter 170 and Chapter 200 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 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 OF CARRIAGE PARK:**  
Carriage Park Association, LLC

BY: \_\_\_\_\_  
President/Vice President

**ATTESTED BY:**

**[CORPORATE SEAL]**

\_\_\_\_\_  
**Secretary/Assistant Secretary**

**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 \_\_\_\_\_, Manager of Carriage Park Association, LLC, 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]**