

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: April 3, 2006

SUBJECT: Improvement Guarantee for Phase III of Sunset Ridge

ATTACHMENTS:

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

SUMMARY OF REQUEST:

Dan Ducote with Dan Ducote Enterprises, Inc., owner, submitted a request for an improvement guarantee for Phase III of the Sunset Ridge major subdivision. Phase III is proposed to have a total of 19 lots on 12.4 acres of land. The Henderson County Planning Board granted conditional approval of a revised Master Plan and Phase II and Phase III Development Plan on May 17, 2005. The improvement guarantee for Phase III is proposed to cover construction of the roads which includes paving and the installation of sewer and water distribution systems.

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 and for 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 improvement guarantee approval date. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$128,425.00 to cover the cost of the improvements (\$102,740.00) as well as the required twenty-five percent (25%) contingency (\$25,685.00). May 19, 2006 is the proposed completion date of the improvements.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developers 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 Sunset Ridge subject to the developer submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

APPENDIX B

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision SUNset Ridge - Phase III

Name of Owner DAN L. Ducote for DAN Ducote Enterprises, Inc.

Address P.O. Box 364 Etowah, N.C. 28729

Phone: Office: 891-1000 - Home 891-4119 - Cell 243-8772

Agent DAN Ducote Phone: Same as Above

Date of Preliminary Plan Approval by Planning Board _____

Significant Conditions Imposed: NONE

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 Mountain 1st Bank & Trust → Vince Rees ^{cell #} 674-2651

Amount of guarantee (including 25% overhead) \$ 130,000.00 "President" 697-3102
Direct Number

Projected completion date MAY 19th 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 stated in Article V of the Henderson County Subdivision Ordinance regarding subdivision improvement guarantees.

Dan L. Ducote
Owner's Signature

March 21st, 2006
Date

Submitted By _____

Date 3/21/06

Received By MC

Date 3/21/06

Fee Paid
\$250.00

3/23/06

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200___, by and between Dan Ducote Enterprises, 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 Phase III of a proposed subdivision known as Sunset Ridge, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Board conditionally approved the Development Plan for Phase III of Sunset Ridge, 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 May 19, 2006, complete as required the following improvements to serve lots in Phase III of Sunset Ridge: construction of the roads which includes paving and the installation of sewer and water distribution systems as required by the Henderson County Subdivision Ordinance, as shown on the revised Combined Master Plan and Phase III Development Plan for Sunset Ridge, conditionally approved by the Henderson County Planning Board on May 17, 2005, and as shown on the attached cost estimates prepared by Jon Laughter, P.E., (signed and sealed on March 23, 2006).
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 \$128,425.00 (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 of credit in the proper form is posted, then the Board will allow the Final Plat(s) for Phase III of Sunset Ridge 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 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:

Dan Ducote Enterprises, Inc.

BY: _____

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 NORTH CAROLINA
COUNTY OF HENDERSON**

I, _____, Notary Public for said State and County certify that _____ came before me this day and acknowledged that he/she is the Secretary/Assistant Secretary of Dan Ducote Enterprises, Inc., and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its President/Vice President, sealed with its corporate seal, and attested by himself/herself as its Secretary/Assistant Secretary.

THIS the ____ day of _____, 2002.

Notary Public

My Commission Expires: _____ **[NOTARIAL SEAL]**



Laughter, Austin Associates, P.A.
 131 Fourth Avenue East
 Hendersonville, NC 28792
 Phone: 828-692-9089

Jon H. Laughter, P.E., PLS - Donald J. Austin, PLS

SUNSET RIDGE PHASE III					
LAA Job No. 04-296			MAR 21, 2006		
Project: SUNSET RIDGE III					
DAN L. DUCOTE CONSTRUCTION, INC. 828 891-1000					
<i>Prepared by Laughter, Austin and Associates, PA 828 692-9089</i>					
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
Grading, Drainage, Paving, Water Main Extension, and Restoration					
1	Grading	LF	0		\$ -
2	Silt Fence	LF	0		\$ -
3	Erosion Control	LS	0		\$ -
4	8" Aggregate Base Course	SY	2,400	\$ 6.25	\$ 15,000.00
5	2" Bitum. Surface Course (I-2)	SY	2,400	\$ 8.00	\$ 19,200.00
6	Seed & Mulch	SY	0		\$ -
7	Precast Concrete Drop Inlet Box & Grate	EA	0		\$ -
8	15" Driveway Pipe	LF	0		\$ -
9	18" Culvert Pipe	LF	0		\$ -
10	No.67 Bedding Material	TNS	0		\$ -
ON-SITE WATER					
11	6" DIAMETER C-900 DR-18	LF	1,300	\$ 11.00	\$ 14,300.00
12	FORE FYDRANT ASSEMBLY	EA	2	\$ 1,350.00	\$ 2,700.00
13	6" VALVE	EA	2	\$ 525.00	\$ 1,050.00
14	FITTINGS	LBS	4	\$ 400.00	\$ 1,480.00
15	AIR VALVE	EA	2	\$ 900.00	\$ 1,800.00
16	WATRER STOBBS	EA	19	\$ 185.00	\$ 3,515.00
17	COPPER WATER SERVICE	EA	6	\$ 600.00	\$ 3,600.00
GRAVITY SEWER MAIN (HARRY'S DITCHING)					
18	8" PVC 0-10' DEEP	LF	640	\$ 19.00	\$ 12,160.00
19	8" DIP 0-10' DEEP	LF	420	\$ 24.00	\$ 10,080.00
20	MANHOLE	EA	6	\$ 1,400.00	\$ 8,400.00
21	4" SEWER LATERALS	EA	15	\$ 175.00	\$ 2,625.00
22	4" DIAMETER SEWER SERVICE PIPE	LF	450	\$ 8.00	\$ 3,600.00
23	CLEAN STONE	TN	170	\$ 19.00	\$ 3,230.00
21	PUMP STATION NOT REQUIRED				
CONTENGENCIES 25%					\$ 25,685.00
TOTAL ESTIMATE					\$ 128,425.00