

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: April 19, 2006

SUBJECT: Improvement Guarantee for Cloven Cliffs

ATTACHMENTS:

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

SUMMARY OF REQUEST:

Mr. Robert L. Bruner, property owner, submitted a request for an improvement guarantee for Phase II of the Cloven Cliffs major subdivision. The project site for Phase II of Cloven Cliffs is located on 42 acres of land off Little Creek Road. A total of 10 lots are proposed in Phase II. The Henderson County Planning Board granted conditional approval of a Master Plan and Phase II Development Plan for Cloven Cliffs on March 21, 2006. The improvement guarantee is proposed to cover grading, drainage, construction of the roads which includes paving and shoulder stabilization for Phase II.

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 \$215,250.00 to cover the cost of the improvements (\$172,200.00) as well as the required twenty-five percent (25%) contingency (\$43,050). April 17, 2008 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 Phase II of the Cloven Cliffs subject to the developer submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the Performance Guarantee Agreement.

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision Cloven Cliffs (Phase II)

Name of Owner Robert L. Bruner

Address 1017 Little Creek Rd, Hendersonville, NC
28792 Phone: 828 808-9018

Agent R. L. Bruner Phone: 828 808 9018

Date of Preliminary Plan Approval by Planning Board March 21, 2006

Significant Conditions Imposed: n/a

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 Home Trust Bank

Amount of guarantee (including 25% overhead) \$ ~~215,000~~ \$215,250

Projected completion date ~~9-1-07~~ 4-17-08

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.

Robert L. Bruner
Owner's Signature

4-4-06
Date

Submitted By Robert L. Bruner

Date 4-6-06

Received By Anthony Payne
\$250.00 paid MC

Date 4-6-06
4/6/06

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200__, by and between Mr. Robert L. Bruner, 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 II of a proposed major subdivision known as Cloven Cliffs, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Board conditionally approved the Master Plan and Phase II Development Plan for Cloven Cliffs, 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 April 17, 2008, complete as required the following improvements to serve lots in Phase II of Cloven Cliffs: grading, drainage, construction of the roads which includes paving and shoulder stabilization as required by the Henderson County Subdivision Ordinance, as shown on the Master Plan and Phase II Development Plan for Cloven Cliffs, conditionally approved by the Henderson County Planning Board on March 21, 2006, and as shown on the attached cost estimate summary prepared by Mr. Fulton Clinkscales, Jr., (signed and sealed on April 6, 2006) which is based on cost estimates provided by Wayne Nix & Sons, Inc. and Hipp Asphalt Paving.
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 \$215,250.00 (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 Cloven Cliffs, 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 Department 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:

BY: _____
Robert L. Bruner

**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]**

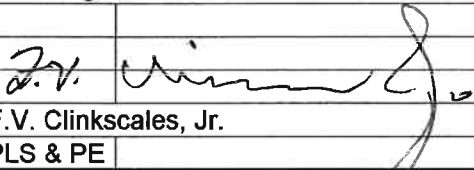
STATE OF _____
COUNTY OF _____

I, _____, Notary Public for said State and County certify that _____, Robert L. Bruner 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]**

CLOVEN CLIFFS PHASE II			April 6, 2006		
Project: CLOVEN CLIFFS II					
Robert L. Bruner owner/agent					
Compiled by Freeland-Clinkscales & Assoc. Inc. of NC, (828)697-6539					
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
Grading, Drainage, Paving					
1	Erosion Control	LF	0	\$ -	\$ -
2	Silt Fence	LF	0	\$ -	\$ -
3	Grading and 4-6" Aggregate Base Course	LF	3000' +/-	\$ 28.00	\$ 84,000.00
4	2" Bitum. Surface Course (1-2)	SF	48000+/-	\$ 1.83	\$ 88,000.00
5	Seed and Mulch	BAG	3	\$ 66.66	\$ 200.00
CONTINGENCIES 25%					\$ 43,050.00
TOTAL ESTIMATE					\$ 215,250.00
Per grading contractor, disturbed land will not exceed 1 acre at any given time.					
These estimates were provided by reputable contractors.					
These figures do not include a rock clause.					
					
F.V. Clinkscales, Jr.					
PLS & PE					



WAYNE NIX & SONS, INC.

1310 N. Ridge Road
Hendersonville, NC 28792

#0415

828/685-3659

INVOICE

DATE 04/03/06

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RL Bruner
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Estimated cost of road const.
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TERMS:	CUSTOMERS ORDER NO.	WEIGHT	SHIPPED VIA
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QUANTITY		DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
	SHIPPED				
		Build road to spec. of Less than 18% grade. Approximately 3000' Haul and gravel road 4"-6" depth. Install culverts in needed areas. \$28.00 per foot x 3000' (Not to exceed 1 acre of disturbed land)			84,000.00
		<u>BIG Rock clause</u> If rock cannot be moved with machine, It will be owners expense to remove it out of way of road. Drilling & blasting may be required.			

Hipp Asphalt Paving

1289 Ozone Drive
Saluda N.C. 28773
(828)740-9276

PROPOSAL AND ACCEPTANCE

000026

PROPOSAL SUBMITTED TO R.L. BRUNER		PHONE	DATE 4/4/06
PROJECT		JOB NAME	
CITY, STATE AND ZIP CODE		JOB LOCATION Little Creek Rd	
ARCHITECT 625-1061	DATE OF PLANS	JOB PHONE	

I hereby submit specifications and estimates for:

Grade and condition your gravel app. 48,000 sq. ft.
Pave with 2" I 2 Asphalt

We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

Completion of Job

dollars \$ **88,000.00**

Payment to be made as follows:

All material is guaranteed to be as specified. All work to be completed in a workman-like manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature **Lloyd Hipp**
Note: This proposal may be withdrawn by us if not accepted within **90** days.

Acceptance of Proposal - the above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____
Signature _____

Date of Acceptance _____