

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** September 20, 2006

**SUBJECT:** Improvement Guarantee for Eagle Pointe

**ATTACHMENTS:**

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

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

Eagle Rock Properties, Inc., owner of the project, submitted an application for an improvement guarantee for a major subdivision titled Eagle Pointe. Eagle Pointe was conditionally approved by the Planning Board on January 18, 2006. The improvement guarantee is proposed to cover the cost of graveling and paving of the roads in the subdivision.

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 developers intend to deposit with the County a certified check in the amount of at least \$116,185.00 to cover the cost of the improvements (\$92,948.00) as well as the required twenty-five percent (25%) contingency (\$23,237.00). The proposed completion date for the improvements is August 28, 2007.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developers must submit cash on deposit (certified check) in accordance with the terms of the Agreement. Once the County receives cash on deposit (certified check) 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 Eagle Pointe subject to the developers submitting to Henderson County cash on deposit (certified check) in accordance with the terms of the 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 Eagle Rock Properties, 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 proposed subdivision known as Eagle Pointe, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

**WHEREAS**, the Henderson County Planning Department conditionally approved the Master Plan and Development Plan for the project, 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 deposit cash or certified funds 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 28th day of August, 2007, complete as required the following improvements to serve lots in Eagle Pointe: paving and graveling of the roads, as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for Eagle Pointe conditionally approved by the Henderson County Planning Board on January 18, 2006 and as shown on the attached cost estimates prepared by Mr. Jon Laughter, P.E. (signed and sealed on August 23, 2006).
2. The Developer will provide with Henderson County for deposit at least \$116,185.00 in cash or certified funds (the "Improvement Guarantee"), with such monies securing and guaranteeing completion of said improvements by the required date stated in Paragraph 1, above.
3. Henderson County will hold the monies in an interest-bearing account with all interest accruing to the Developer upon the condition that all required improvements be completed by the required date. In the event that the required

improvements are completed as required, the monies and all accrued interest will be returned 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 the monies and all accrued interest 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 cash or certified funds are deposited with the County, then the Board will allow the Final Plat(s) for Eagle Pointe, 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:**  
**Eagle Rock Properties, 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 Eagle Rock Properties, 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 \_\_\_\_\_, 200\_.

\_\_\_\_\_  
**Notary Public**

Henderson County  
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision EAGLEPOINTE

Name of Owner EAGLE ROCK PROPERTIES, INC.

Address 745 ORIENTA AVENUE, SUITE 1121, ALTAMONTE SPRINGS,  
FL 32701 Phone: 828.696.8455 / 407.830.1400

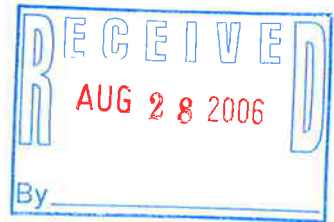
Agent SAME / OWNER Phone: ✓

Date of Preliminary Plan Approval by Planning Board JAN, 18, 2006

Significant Conditions Imposed: INSTALL ASPHALT PRIVATE ROADS

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 N/A

Amount of guarantee (including 25% overhead) \$ 116,185.00

Projected completion date 8/28/2007

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

8/28/06  
Date

Submitted By \_\_\_\_\_

Date \_\_\_\_\_

Received By AP

Date 8/28/06

Fee paid \$250.00

8/28/06

eaglepoint.XLS					
<b>REQUEST BY OWNER TO BOND SUBDIVISION IMPROVEMENTS</b>					
LAA Job No. 05-331			18-Aug-06		
<b>Project: EAGLE POINT SUBDIVISION</b>					
DANA RUCKER 828 329-3611					
Prepared by Laughter, Austin and Associates, PA 828 692-9089					
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL
<b>Grading, Drainage, Paving, Water Main Extension, and Restoration</b>					
1	Grading	LF	0		\$ -
2	Silt Fence	LF	0		\$ -
3	Erosion Control	LS	0		\$ -
4	8" Aggregate Base Course (TAR HEEL)	SY	4,892		\$ 34,244.00
5	2" Bitum. Surface Course (I-2) (TAR HEEL)	SY	4,892		\$ 58,704.00
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		\$ -
TOTAL BASE AND PAVING ESTIMATE					\$ 92,948.00
TOTAL PLUS 25%					\$ 116,185.00

