

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** October 18, 2006

**SUBJECT:** Improvement Guarantee for the Green Mountain Vistas Major Subdivision

**ATTACHMENTS:**

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

### **SUMMARY OF REQUEST:**

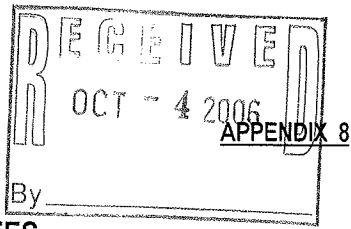
Mr. Hunter Marks (of Luther E. Smith and Associates, P.A.) on behalf of Phoenix Housing Group, owner, submitted a request for an improvement guarantee for the Green Mountain Vistas major subdivision. Green Mountain Vistas is located on approximately 29 acres of land off Green Mountain Road, between Kyles Creek Road and Trail Creek Road. On September 19, 2006 the Henderson County Planning Board and Planning Department granted conditional subdivision approval for the proposed development. The improvement guarantee is proposed to cover the construction of roads, erosion control measures, and drainage improvements for the entire 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 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 \$434,870.69 to cover the cost of the improvements (\$347,896.55) as well as the required twenty-five percent (25%) contingency (\$86,974.14). October 1, 2007 is the proposed completion date for the improvements.

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



Henderson County  
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision Green Mountain Vistas

Name of Owner Phoenix Housing Group

Address 6080 Asheville Hwy., Hendersonville, NC 28791

Phone: 828-687-2883

Agent Mike Taylor Phone: 828-687-2883

Date of Preliminary Plan Approval by Planning Board September 19, 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 BB & T

Amount of guarantee (including 25% overhead) \$ 434,870.69

Projected completion date ~~MARCH 2007~~ October 1, 2007 per HM on 10/4/06 <sup>AMC</sup>

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

10-4-06  
Date

Submitted By LUTHER E. SMITH: ASSOC., P.A.

Date 10/4/06

Received By Michael Taylor  
Check # 297

Date 10/4/06

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**PERFORMANCE GUARANTEE AGREEMENT**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between Phoenix Housing Group, 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 Green Mountain Vistas, 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 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 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 1<sup>st</sup> day of October, 2007, complete as required the following improvements to serve lots in Green Mountain Vistas: land clearing, grading, storm drainage, erosion control and road construction including paving, as required by the Henderson County Subdivision Ordinance, as shown on the revised Master Plan and Development Plan for Green Mountain Vistas conditionally approved by the Henderson County Planning Board on September 19, 2006, and as shown on the attached cost estimates prepared by Luther E. Smith & Associates, P.A. and Fairview Excavating, LLC (dated October 4, 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 \$434,870.69 (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 credit in the proper form is posted, then the Board will allow the Final Plat(s) for Green Mountain Vistas, 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:**  
**Phoenix Housing Group, 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]**

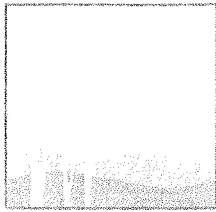
**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

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 Phoenix Housing Group, 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.

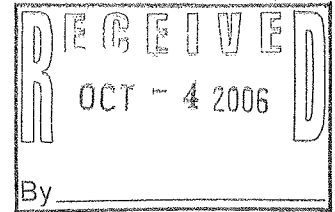
**THIS** the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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

DRAFT



LUTHER E. SMITH & ASSOCIATES, P.A.



October 4, 2006

Anthony Prinz  
Henderson County Planning Dept.  
101 East Allen Street  
Hendersonville, NC 28792

Re: Improvement Guarantee – Green Mountain Vistas

Dear Anthony,

Attached is an Improvement Guarantee request for ‘Green Mountain Vistas’, a residential subdivision located on Green Mountain Road (SR 1572). This Guarantee covers final construction of the roads (including paving) as follows:

1. Mobilization, Clearing	\$42,750.00
2. Grading	\$116,652.25
3. Storm Drainage	\$34,000.00
4. Erosion Control	\$47,692.50
5. Paving	<u>\$106,801.80</u>
Total	\$347,896.55
25% contingency	<u>\$86,974.14</u>
Total Guarantee amount	<u>\$434,870.69</u>

Please contact me if you require additional information. The client requests this matter be placed on the Commissioners Agenda at the earliest date.

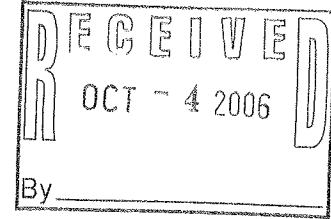
Thank you for your attention.

Sincerely,

A. Hunter Marks, RLA, ASLA

cc: Mike Taylor  
Doug Meadows

**FAIRVIEW EXCAVATING, LLC**  
410 Mills Gap Road  
Fletcher, N. C. 28732  
(828) 687-0699



**Estimate #460**

October 4, 2006  
Southern Showcase Housing  
6080 Asheville Hwy.  
Hendersonville, NC 28791  
Attn: Mike Taylor

**JOB ESTIMATE**

**Job: Green Mountain Vistas  
Hendersonville, NC**

<b>1) Mobilization, Clearing</b>	<b>\$ 42,750.00</b>
<b>2) Grading</b>	<b>116,652.25</b>
<b>3) Storm Drain</b>	<b>34,000.00</b>
<b>4) Erosion Control</b>	<b>47,692.50</b>
<b>5) Paving, Curb</b>	<b><u>106,801.80</u></b>

**TOTAL                      \$347,897.05**

*Grading figure includes stripping, on site cut/fill, dispose of excess material on site, and finegrading.*

*This quote is based on plans for the above mentioned project, dated 8/21/2006, by Luther E. Smith & Associates, P.A. The quote is good for thirty (30) days from 10/4/2006.*

*The following items are excluded from our scope of work: construction survey, permits, fees, bonds, testing, rock excavation, undercut/replace unsuitable soils, select backfill materials.*

**Unit Prices:**

*Rock Excavation (each location):*

*1 CY - 100 CY = \$100.00/CY*

*101CY - 500 CY = \$50.00/CY*

*Over 500 CY = \$35.00/CY*

*Trench Rock = \$150.00/CY*

*Undercut/replace unsuitable soil (waste unsuitable material on site, secure replacement material from on site source = \$12.00/CY)*



*Asphalt prices are based on the NC DOT Asphalt Cement Index of \$411.07/Ton for the current month. If the monthly Asphalt Cement Index increases by more than 5% during the life of the project, there will be a corresponding Asphalt Adjustment charged for the tonnage placed during that month. Paving operations are not guaranteed from November 15<sup>th</sup> through April 1<sup>st</sup>.*

*Excess excavated material is priced to be wasted on site for the use of the construction of house pads.*

*As an alternate to the paving price, we can offer the placement of a binder course on all road grades steeper than 15%, to give a lump sum price for paving at \$134,555.40. This would increase the lump sum total for the entire project to \$375,650.65. If the binder course is not used, any additional cost to restore the stone base at time of application of asphalt coat will be passed on to the owner.*

*Clearing cost does not include the additional clearing of any individual lots. The price to clear lots can be negotiated as the job begins.*

