

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** January 2, 2007

**SUBJECT:** Improvement Guarantee for Cobblestone Village

**ATTACHMENTS:**

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

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

Mr. Brian Ely, owner and developer, submitted an improvement guarantee application for the Cobblestone Village major subdivision. Cobblestone Village was conditionally approved by the Planning Board on June 20, 2006. The improvement guarantee application is proposed to cover the cost of paving roads within a portion (Phase I) of Cobblestone Village.

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 developer intends to post with the County an irrevocable letter of credit in the amount of at least \$138,635.00 to cover the cost of the improvements (\$110,908.00) as well as the required twenty-five percent (25%) contingency (\$27,727.00). The proposed completion date for the improvements is August 1, 2007.

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.

#### **BOARD ACTION REQUESTED:**

Action by the Board of Commissioners is needed to either grant or deny the improvement guarantee application for Phase I of Cobblestone Village. I recommend that the Board approve the improvement guarantee application pursuant to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance.

**Suggested Motion:** I move that the Board of Commissioners find and conclude that the request for an improvement guarantee complies with the provisions of the Subdivision Ordinance and is approved.

Henderson County  
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision Cobblestone Village

Name of Owner Brian Ely

Address 101 Pinnacle Peak Lane Flat Rock, N.C. 28731

Phone: 699-9111

Agent \_\_\_\_\_ Phone: \_\_\_\_\_

Date of Preliminary Plan Approval by Planning Board June 20<sup>th</sup> 2006

Significant Conditions Imposed: Dry hydrant, Turnarounds

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 1<sup>st</sup> Bank

Amount of guarantee (including 25% overhead) \$ 138,635.<sup>00</sup>

Projected completion date August 1<sup>st</sup> 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

12-13-06  
Date

Submitted By Brian Ely

Date 12/14/06

Received By MC

Date 12/14/06

\$250.00 fee paid

12/14/06

**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between Mr. Brian Ely, 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 I of a major subdivision known as Cobblestone Village, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

**WHEREAS**, Henderson County Planning Board conditionally approved the Master Plan and Development Plan for Cobblestone Village, 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 August 1, 2007, complete as required the following improvements to serve lots in Phase I: paving of roads as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for the Project conditionally approved by the Planning Board on June 20, 2006 and as shown on the attached cost estimates prepared by Trace and Company dated December 13, 2006 and certified by the engineer for the project, Mr. Douglas Dunko, P.E. on December 14, 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 \$138,635.00 (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 credit in the proper form is posted, then the Board will allow the Final Plat(s) for the Project to be approved by the Subdivision Administrator, provided that all requirements of Chapter 170 of the Henderson County Code are met.
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:**  
**Mr. Brian Ely**

**BY:** \_\_\_\_\_

**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 \_\_\_\_\_ (Brian Ely) personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

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

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

**My Commission Expires:** \_\_\_\_\_

**[NOTARIAL SEAL]**

December 14, 2006

Mr. Matt Card  
Planner  
Henderson County Planning Department  
101 E. Allen St.  
Hendersonville, North Carolina 28792

**Re: Pavement Guarantee  
Phase I - Cobblestone Village Subdivision  
Flat Rock, North Carolina**



Dear Mr. Card,

Attached is a cost estimate provided by Trace and Company, Inc. for the asphalt pavement requirements for Phase I of Cobblestone Village Subdivision. The estimate meets the design requirements and appears reasonable to the best of our knowledge.

If you have any questions or need further information, feel free to contact us. Your assistance is greatly appreciated.

Sincerely,

**Thomas S. McCanless, E.I.**  
Site Development Principal

**Douglas R. Dunko, P.E.**  
Senior Geotechnical Engineer

Cc: Mr. Brian Ely  
Flat Rock Valley, LLC





PO Box 1028 Mt. Home, NC 28758  
 Office: (828) 692-5664 Fax: (828) 693-9499

**PROPOSAL and CONTRACT**

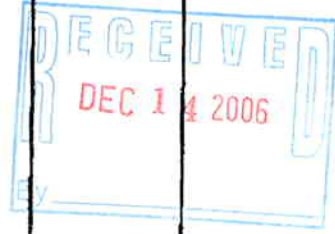
Cobble Stone Village

Date: December 13, 2006

Brian Elli  
Asphalt Paving

Trace and Company, hereinafter called the Company, offers to furnish all labor, materials and equipment required for the performance of the following work:

ITEM NUMBER	DESCRIPTION	ESTIMATED QUANTITY	U/M	UNIT PRICE	EXTENSION
1	Condition existing ABC stone and pave with 2" of H-Bindor asphalt followed by tack coat and 1.5" of asphalt surface.  <i>PHASE I</i>	7869	SY		\$110,908.00
	<b>Note:</b> Price based on 7869 SY Additional setup and paving extra.				



Unless a lump sum price is to be paid for the foregoing work and is clearly so stated it is understood and agreed that the quantities referred to above are estimates only and that payment shall be made at the stated unit prices on the actual quantities of work performed by the Company as determined upon completion of the work.

If the foregoing meets with your acceptance, kindly sign and return the attached copy of our proposal. Upon its receipt, it is understood the foregoing, including the terms and conditions set forth in the attached, will constitute the full and complete agreement between us.

This proposal expires thirty (30) days from the date thereof, but may be accepted at any later date at the sole option of the Company. Net completion. Asphalt depth will be average specified amount.

ACCEPTED:

Trace and Company

\*Firm Name: Flat Rock Valley LLC

Estimator: Matthew Lawter

\*Authorized By: [Signature]

Date: 12-12-06

Due to energy crisis we are no longer able to obtain prices and availability of materials. This contract is based upon current prices and availability of materials. In the event we cannot obtain fuel or materials at these prices we reserve the right to cancel or negotiate this contract.

\*Should the price of asphalt increase above the stated amount of \$ \_\_\_\_\_ per ton, it will be passed along to the Firm Name and Authorized Signature listed above.\*

**Terms and Conditions**

Due to fluctuation in material cost, this quote is good for 30 days.

Payment due within 15 days of receipt of invoice for work performed.

Due to the placement and conditioning of ABC stone on soft or wet sub-grade; soft spots or mud will appear through the stone mat and reflect in the asphalt surface.

Trace and Company can not be held responsible for cracking and or deterioration of of the stone base or asphalt surface. Undercut can be performed at owners expense.

Due to the placement, shoveling, raking and hand work in asphalt surface the owner will notice shadowing, pebbles and some minor heat cracks. With traffic and over time it will become unnoticeable. The texture will also very and become unnoticeable.

Trace and Company suggests 1.5" asphalt overlays in most applications. The liquid asphalt tack applied on drive or roadway will appear on non-overlaid areas but will weather and dissipate over time with automotive traffic and weathering.

The owner is advised that tire marks may appear due to stationary turning of tires on new asphalt surfaces or areas that are exposed to the sun for long amounts of time.

Trace and Company strives to excel in work performance and outstanding finish product.

If you have any questions pertaining to your proposal, contract or information pertaining to your job feel free to give me a call at 692-5664 or (matt@traceandcompany.com)

Thank You, Matthew Lawter.

**All past due balances (over 30 days) will incur a late charge of 1.5% per month.**

