

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** January 2, 2007

**SUBJECT:** Improvement Guarantee for Mountain Meadows

**ATTACHMENTS:**

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

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

Mr. Jeff Donaldson, owner and developer, submitted an application for an improvement guarantee for Phase II of the Mountain Meadows major subdivision. Mountain Meadows is a 42-lot major subdivision located off of Oleta Road. On September 6, 2005 the Board of Commissioners approved an improvement guarantee application for Phase I of Mountain Meadows. Phase II was conditionally approved by the Planning Department on December 13, 2006. Mr. Donaldson has indicated that all improvements, except for the improvements to be bonded, will be completed before final plat approval. The attached improvement guarantee application is proposed to cover paving of the roads within 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 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 post with the County an irrevocable letter of credit in the amount of at least \$38,206.25 to cover the cost of the improvements (\$30,565.00) as well as the required twenty-five percent (25%) contingency (\$7,641.25). The proposed completion date for the improvements is July 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 Phase II improvement guarantee application for Mountain Meadows. 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 Mountain Meadows, Phase II

Name of Owner Jeff Donaldson / Kenneth Burgess

Address 2968 Chimney Rock Rd Hendersonville, NC 28792  
Phone: (828) 685-8602

Agent n/a Phone: n/a

Date of Preliminary Plan Approval by Planning Board \_\_\_\_\_

Significant Conditions Imposed: \_\_\_\_\_

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 First

Amount of guarantee (including 25% overhead) \$ 38,206.25

Projected completion date July 1, 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

12/12/06  
Date

Submitted By Jeff Donaldson

Date \_\_\_\_\_

Received By MC

Date 12/15/06

Fee \$ 250.00 paid

12/15/06

**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between Jeffery S. Donaldson and Kenneth Burgess, hereinafter referred to as "Developers," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

**WITNESSETH:**

**WHEREAS**, the Developers are attempting to secure approval of one or more Final Plats for Phase II of a major subdivision known as Mountain Meadows, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

**WHEREAS**, Henderson County Planning Department conditionally approved the Phase II Development Plan for Mountain Meadows, 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 Developers have 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 Developers will, on or before July 1, 2007, complete as required the following improvements to serve lots in Phase II: paving of the roads as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for Phase II conditionally approved by the Planning Department on December 20, 2006, and as shown on the attached cost estimates prepared by Stott Paving Inc., (dated October 9, 2006) and certified by Mr. Paul Patterson, engineer for the project (signed and sealed on December 15, 2006).
2. The Developers 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 \$38,206.25 (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 Developers 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 Developers to provide, at the Developers' 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 Developers have 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:**  
**Jeffery S. Donaldson and Kenneth Burgess**

**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 \_\_\_\_\_, Jeffery S. Donaldson and Kenneth Burgess, 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]**

# PATTERSON & PATTERSON

PAUL PATTERSON

WILLIAM PATTERSON

PROFESSIONAL ENGINEER/LAND SURVEYOR

PROFESSIONAL LAND SURVEYOR

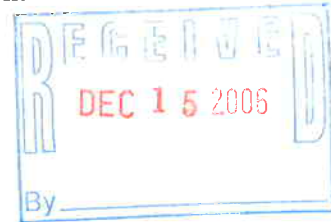
P.O. BOX 1189

HENDERSONVILLE, NC 28793-1189

1-828-692-6629 (TEL & FAX)

## Memorandum

To: Matt Card, Planner @ Henderson County Planning Department  
From: Paul Patterson, P.E./P.L.S.  
Date: December 15, 2006  
Re: Bond for Mountain Meadows Phase II Subdivision



Mr. Card,

I have attached herewith a copy of the estimated cost for infrastructure improvements for Mountain Meadows Subdivision Phase II. The proposed infrastructure improvements include Roadway Paving (excluding stone base). The estimate was based on a recent bid provided to Mr. Jeff Donaldson, co-developer of the aforementioned subdivision. This work will be bonded, via a letter of credit from Mountain First, in order to record a plat for said Subdivision. The estimate is as follows:

ITEM	ESTIMATED COST
Paving (without stone base)	\$ 30,565.00
Subtotal:	\$ 30,565.00
25% Contingency:	\$ 7,641.25
Bond Amount:	\$ 38,206.25

It is the intention of the developer to have the roadway graveled and the shoulders grassed after the underground power is installed. Therefore, since the developer wants to record a plat of the aforementioned subdivision prior to paving, a bond will be required. The proposed graveled roadway and grassed shoulders will be inspected and approved by a Henderson County Official prior to plat recordation and bonding.

I believe that this fulfills the requirements for infrastructure improvements for Mountain Meadows Subdivision, Phase II. Should you have any question and/or comments, please do not hesitate to call. Thanks in advance for your assistance in this matter.

Sincerely,

Paul Patterson, PE/PLS



Cc: File 06-12-78-ENG  
Jeff Donaldson

## PROPOSAL

### STOTT PAVING INC.

144 Hampton Street, Columbus, North Carolina 28722

Phone: (828) 894-5036 Fax: (828) 894-6358

<http://stottpaving.homestead.com>

Date: October 9, 2006  
Submitted To: Jeff Donaldson  
Phone: 828-685-8602  
Fax: 828-685-9627  
Job Site: Mountain Meadows Ph. 2  
Attn: Jeff

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We hereby propose to furnish the necessary materials, equipment and labor for the construction of the following work at the price listed:

**STONE 3388 sy.**

1. Fine grade sub-grade
2. Haul and apply 1490 ton of ABC stone for base
3. Fine grade stone, wet and compact to 8"  
At \$9.10 per sy. TOATAL \$30,830.00

**PAVING 3214 sy.**

1. Haul and apply 345 ton of S9.5B asphalt to a compacted depth of 2"  
At \$9.51 per sy. TOTAL \$30,565.00

Price for complete job; **\$61,395.00 (ONE YEAR WARRNTY)**. Payment for said work shall be made in the following manner: Due on completion unless prior arrangements are made. All materials furnished and labor performed shall be in accordance to standard specifications and practices. Any alteration or deviation from above proposal involving extra cost will become an extra charge over and above the estimate. Please note that **Stott Paving, Inc.** will not be responsible for any damage to asphalt caused by trees being to close to the area that has been paved.

Authorized Signature:   
Chris Stott / Mark Culbreth

**Note: We may withdraw this proposal if not accepted within 30 days.**  
The prices quoted are based on the North Carolina Department of Transportation Asphalt Cement Index of \$408.93 for the current month. If the monthly Asphalt Cement Index increases above the stated price during the life of the project, there will be a corresponding Asphalt Adjustment charged for the tonnage placed during that month.

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**Acceptance of Proposal**

**The above proposal is hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.**

**Date:** \_\_\_\_\_ **Signature:** \_\_\_\_\_