

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** February 5, 2007

**SUBJECT:** Extension Request for the Blue Moon on Pinnacle Peak Improvement Guarantee

**ATTACHMENTS:**

1. Draft Performance Guarantee Agreement
2. Letter from Mr. Alan Rieger
3. Letter from Mr. David Huntley
4. Preliminary Opinion of Probable Costs
5. Cost Estimates from Tarheel Paving & Asphalt Co.

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

On March 15, 2006 the Board of Commissioners approved an application for an improvement guarantee for the Blue Moon on Pinnacle Peak subdivision. The improvement guarantee covered the earthwork, construction of the roads, drainage and erosion control for the entire subdivision. As required by the improvement guarantee's performance agreement the developer posted with Henderson County an irrevocable letter of credit in the amount of \$1,140,551.00. The original agreement required all improvements be completed by December 30, 2006.

The Planning Department received a letter from Mr. Alan Rieger, agent for owner, requesting to extend the completion date to May 30, 2007 because the paving could not be completed during the winter months. The applicant also requested that the Board approve a partial release of the improvement guarantee. Mr. David Huntley, surveyor, submitted a letter along with a contract from Tarheel Paving & Asphalt Company certifying that the remaining cost of the improvements for the project totaled \$161,804.00 (cost of paving and ditch work). Staff visited the project site for Blue Moon on Pinnacle Peak on January 8, 2007 and verified that the improvements except for paving were completed as required. Mr. Rieger is also requesting to deposit with the County cash or certified check instead of amending the current letter of credit.

Section 170-39 of the Subdivision Ordinance allows the Board of Commissioners to grant extensions to completion dates for a maximum of one additional year, provided that the time between initiation and completion of the improvements does not exceed two years. If the Board of Commissioners agrees to grant the requested extension and approve the reduction then County staff has attached for the Board's consideration a draft performance guarantee agreement. This agreement reflects a new completion date of May 30, 2007 and shows a reduction in the amount of the improvement guarantee. This agreement will supersede any previous performance agreements.

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

Action is needed by the Board of Commissioners to either grant or deny this request. I recommend that the Board approve the request to extend the completion date of the performance agreement to May 30, 2007. I further recommend that the Board approve the reduction in the improvement guarantee to the amount of \$202,255.00 (includes the 25% contingency) and the applicant be allowed to deposit cash or certified funds with the County in accordance with the draft performance agreement.

**Suggested Motion:** I move that the Board of Commissioners find and conclude that the extension, if granted, would not cause the developer to exceed the two-year maximum time period for completion of the required improvements. I further move that the Board allow a partial release of the improvement guarantee as shown in the attached cost estimates and that the applicant be allowed to deposit this amount in the form of cash or certified funds with the County.

**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between Sahalee, LLC, hereinafter referred to as "Developer," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

**WITNESSETH:**

**WHEREAS**, the Board and the Developer entered into an Agreement on March 15, 2006 (hereinafter "the original Agreement"), concerning an improvement guarantee for a subdivision known as Blue Moon on Pinnacle Peak, located in Henderson County, North Carolina; and

**WHEREAS**, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$1,140,551.00 in accordance with the original Agreement; and

**WHEREAS**, the Developer has requested that the Board approve extending the completion date to May 30, 2007; and

**WHEREAS**, the Developer has requested that the Board approve a partial release of the improvement guarantee leaving an amount of \$202,255.00 (cost of the remaining improvements including the 25% contingency) as shown on the attached cost estimates prepared by Tarheel Paving & Asphalt Company and certified by David Huntley on 12/28/06; and

**WHEREAS**, the Developer is requesting that the Board approve of certified funds being deposited with Henderson County in place of amending the current irrevocable letter of credit; and

**IT IS THEREFORE AGREED** as follows:

1. The Developer will, on or before the May 30, 2007, complete as required the following improvements to serve lots in Blue Moon on Pinnacle Peak: paving of the roads and ditch work as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Development Plan for Blue Moon on Pinnacle Peak, conditionally approved by the Henderson County Planning Board on November 21, 2005, and as shown on the attached cost estimates prepared by Tarheel Paving & Asphalt Company and certified by David Huntley on 12/28/06.
2. The Developer will provide to Henderson County for deposit at least \$202,255.00 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. At such time as this Agreement is fully executed, this Agreement will supercede prior Agreements between the Board and the Developer regarding the improvement guarantee.
4. 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.
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:**  
**Sahalee, LLC**

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

**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 \_\_\_\_\_, Manager of Sahalee, LLC, 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]**



28 December 2006

Connie Rayfield  
Office of the County Attorney  
Henderson County, NC

Re: Blue Moon on Pinnacle Peak

Dear Ms. Rayfield:

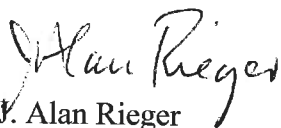
We have completed our infrastructure as proposed in our Performance Guarantee Agreement of March 15, 2006 with the exception of the final asphalt surface.

Our paving contractor, Tarheel Paving and Asphalt, has advised us that it is better to wait until Spring to pave so that the asphalt cures in warmer weather.

For that reason we seek to extend our completion date to May 30, 2007 and are enclosing herewith a certification from our surveyor, David C. Huntley as to the project status, a bid from Tarheel Paving and Asphalt and our check in the amount of \$202,255 (dollars) which represents 125% (percent) of the estimated completion cost.

Please direct any questions and/or requests of an additional nature that you might have to the undersigned

Sincerely,

  
J. Alan Rieger  
(828)699-2516

Enclosures (2)

Cc: Matt Card, Subdivision Administrator

David C. Huntley & Associates, Inc.  
675 Maple Street  
Hendersonville, NC 28792  
828-693-8077

125% is  
\$202,255

28 December 2006

Connie Rayfield  
Office of the County Attorney  
Henderson County, NC

RE: Blue Moon on Pinnacle Peak

Dear Ms. Rayfield:

Based on my professional experience as surveyor for the project, Blue Moon on Pinnacle Peak, I certify that all items listed in the "Preliminary Opinion of Probable Costs" (copy attached) have been completed except items #28 & #29.

Further, based upon a formal proposal (copy attached) of September 21, 2006, from Tarheel Paving & Asphalt Company, costs to complete this work will be approximately \$161,804.

Sincerely,

David C. Huntley, PLS L-3204  
David C. Huntley & Associates, Inc.  
Land Surveyor

**PRELIMINARY OPINION OF PROBABLE COSTS**

SEAMON, WHITESIDE & ASSOCIATES, INC.

Blue Moon on Pinnacle Peak  
Hendersonville, NC

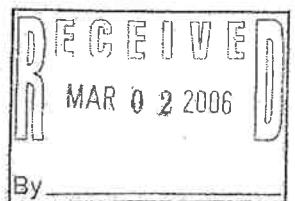
SWA Project: GR1132.00  
Prepared: 2-Mar-06  
By: JCYN/EH

This Opinion of Probable Costs has been prepared and is based on Combined-Master and Development Plan prepared by SWA, Inc. and dated 03/02/06. This cost estimate should be considered incomplete and will change following the completion of schematic design efforts.

NO.	ITEM	QTY.	UNIT	COST	EXTENSION
<b>A. MOBILIZATION, CLEARING &amp; EROSION CONTROL</b>					
1	Mobilization (Approx. 6% of subtotal)	1	LS	\$47,605.00	\$47,605.00
2	Clearing and Grubbing	12	AC	\$3,000.00	\$36,000.00
3	Stripping (±1' deep)	2533	CY	\$1.50	\$3,799.50
4	Silt Fence	7133	LF	\$5.00	\$35,665.00
5	Temp. Construction Entrance (6" thick)	2	EA	\$2,000.00	\$4,000.00
6	Inlet Protection	2	EA	\$150.00	\$300.00
7	Seed Disturbed Area	8.73	AC	\$2,000.00	\$17,460.00
	<i>Total Mobilization, Clearing &amp; Erosion Control</i>				<u>\$144,829.50</u>
<b>B. EARTHWORK</b>					
8	Excavation (adjusted +20%)	40050	CY	\$2.75	\$112,337.50
9	Backfill (adjusted +15%)	17950	CY	\$3.75	\$44,812.50
10	Rough Grade Roadway	15197.6	SY	\$1.00	\$15,197.60
11	Fine Grade Roadway	15197.6	SY	\$2.25	\$34,194.60
	<i>Total Earthwork</i>				<u>\$206,542.20</u>
<b>C. STORM DRAINAGE</b>					
12	12" Class III RCP	195	LF	\$16.50	\$3,217.50
13	15" Class III RCP	89	LF	\$18.00	\$1,602.00
14	18" Class III RCP	122	LF	\$20.00	\$2,440.00
15	24" Class III RCP	174	LF	\$28.00	\$4,872.00
16	36" Class III RCP	128	LF	\$35.00	\$4,480.00
17	Catch basins	2	EA	\$1,700.00	\$3,400.00
18	12" Flared end section	4	EA	\$550.00	\$2,200.00
19	15" Flared end section	2	EA	\$600.00	\$1,200.00
20	18" Flared end section	3	EA	\$650.00	\$1,950.00
21	24" Flared end section	2	EA	\$750.00	\$1,500.00
22	36" Flared end section	2	EA	\$850.00	\$1,700.00
23	Headwall (Stone-faced)	29	EA	\$1,500.00	\$43,500.00
24	Rip-rap	26	TON	\$55.00	\$1,430.00
25	Stone check dam	80	EA	\$1,000.00	\$80,000.00
26	Vegetative matting	6000	SY	\$2.75	\$16,500.00
	<i>Total Storm Drainage</i>				<u>\$169,991.50</u>
<b>D. GENERAL CONSTRUCTION</b>					
27	Stone Base Course (9")	15200	SY	\$9.50	\$144,400.00
28	Asphalt Surface Course (3")	15200	SY	\$6.25	\$95,000.00
29	Re-work existing ditch in ROW	8166	LF	\$4.00	\$32,664.00
	<i>Total General Construction</i>				<u>\$272,064.00</u>
<b>SUBTOTAL ALL AREAS</b>					<b>\$793,427.20</b>
<b>COST FACTOR</b>					<b>15%</b>
<b>GRAND TOTAL ALL AREAS</b>					<b>\$912,441.28</b>



COPY



# TARHEEL

PAVING & ASPHALT CO.

1310 North Main Street  
Hendersonville, NC 28792  
(828) 693-8741  
Fax. No. • (828) 693-3680

COPY

## PROPOSAL and CONTRACT

Sept. 21, 2006

Mr. Alan Rieger  
199 Gateway Drive  
Hendersonville, NC 28739  
693-0240

TARHEEL Paving Company, hereinafter called the Company, offers to furnish all labor, materials and equipment required for the performance of the following described work.

Description of Work and Price:

**Option #1 RE: BLUE MOON ON PINNACLE**

We propose to grade existing stone base, wet and condition, then pave with 2" of 9.5B type hot mix compacted. Approx. 16,377 s/y.

**Total: \$9.88 PER S/Y**

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 on the reverse side hereof, will constitute the full and complete agreement between us.

Due to instability of Petroleum Market, prices on material will not be guaranteed for any period of time, and as such are subject to change. Prices may be accepted at any later date at the sole option of the Company. **Net completion, unless otherwise stated all payments are due upon completion.** Asphalt depth will be average specified amount. Please read the conditions on the reverse side.

Very truly yours,

ACCEPTED:

\_\_\_\_\_  
FIRM NAME

BY \_\_\_\_\_  
NAME AND TITLE

BY \_\_\_\_\_  
INDIVIDUAL NAME AND TITLE

DATE \_\_\_\_\_

**TARHEEL**  
PAVING & ASPHALT CO.

BY \_\_\_\_\_

Due to the energy crisis we are no longer able to obtain prices or commitments on future deliveries of fuel and 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 renegotiate this contract.