

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** February 21, 2007

**SUBJECT:** Improvement Guarantee for Soapstone Creek Estates

**ATTACHMENTS:**

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

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

Mr. Timothy Phillips with Soapstone Creek Estates, LLC, owner and developer, submitted an improvement guarantee application for Phase II and Phase III of the Soapstone Creek Estates major subdivision. These phases of Soapstone Creek Estates were conditionally approved by the Planning Board on January 18, 2007. The improvement guarantee application is proposed to cover the cost of completing and paving the roads within Phase II and Phase III.

On August 18, 2004 the County approved an improvement guarantee application for Phase I of Soapstone Creek Estates. The developer failed to complete the improvements as required and therefore violated the terms of the performance agreement. This caused the County to file a lawsuit against the developer. Subsequently the developer brought the subdivision into compliance and Phase I was completed as required.

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 obtain Final Plat approval, the developer may post an improvement 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 \$67,500.00 to cover the cost of the improvements (\$54,000.00) as well as the required twenty-five percent (25%) contingency (\$13,500.00). The Developer has requested the full two years allowed by the Subdivision Ordinance and has a proposed completion date for the improvements of February 1, 2009.

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 II and Phase II of Soapstone Creek Estates. 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 be approved.

Henderson County  
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision SOAPSTONE CREEK ESTATES

Name of Owner SOAPSTONE CREEK ESTATES LLC.

Address 878 CASCADE LAKE Rd Pisgah Forest, NC. 28768

Phone: 828 862 8505

Agent Tim Phillips Phone: 828.507.9099

Date of Preliminary Plan Approval by Planning Board JANUARY 18, 2007

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 Blue Ridge Savings Bank

Amount of guarantee (including 25% overhead) \$ 67,000<sup>00</sup>

Projected completion date Feb. 1, 2009

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.

Tim Phillips  
Owner's Signature

1/26/07  
Date

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

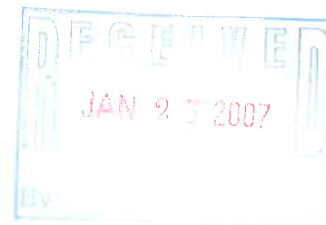
Date \_\_\_\_\_

Received By ME

Date 1/26/07

\$250.00 fee paid

1/26/07



STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

PERFORMANCE GUARANTEE AGREEMENT

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between Mr. Tim Phillips with Soapstone Creek Estates, LLC 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 II and Phase III of a proposed subdivision known as Soapstone Creek Estates, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

**WHEREAS**, the Henderson County Planning Board conditionally approved the Combined Master Plan and Phase II and Phase III Development Plan for Soapstone Creek Estates, 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 February 1, 2009, complete as required the following improvements to serve lots in Phase II and Phase III of Soapstone Creek Estates: paving of the roads as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Phase II and Phase III Development Plan for Soapstone Creek Estates, conditionally approved by the Henderson County Planning Board on January 18, 2007 and as shown on the attached cost estimates prepared by Meany Asphalt & Construction and certified by Mr. Mark Corn, P.L.S. (signed and sealed on January 26, 2007).
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 \$67,500.00 (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 by the date specified in paragraph 1, 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 Phase II and Phase III of Soapstone Creek Estates to be approved by the Subdivision Administrator, provided that any other requirements of Chapter 170 of the Henderson County Code are completed, all conditions imposed by the Planning Board have been satisfied and all other required improvements including seeding and stabilization of disturbed areas are done.
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:**  
**Soapstone Creek Estates, LLC**

**BY:** \_\_\_\_\_  
**Mr. Tim Phillips, 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 \_\_\_\_\_, Tim Phillips, Manager of Soapstone Creek Estates, 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]**



January 26, 2007

Henderson County Planning Department  
101 East Allen Street  
Hendersonville, NC 28792

Re: Soapstone Creek Estates Estimate

To Whom It May Concern:

The estimate by Meany Asphalt and Construction for the road paving at Soapstone Creek Estates for **\$54,000.00** (Fifty four thousand dollars) appears to be adequate.

If you need any additional information or have any questions, please feel free to give me a call.

Sincerely,

Mark A. Corn  
PLS - L-4154



Meany Asphalt & Construction

2101 Everett Road  
Pisgah Forest, NC 28768

# Estimate

|           |            |
|-----------|------------|
| Date      | Estimate # |
| 1/12/2007 | 5          |

|                       |
|-----------------------|
| <b>Name / Address</b> |
| Tim Phillips          |

|  |     |       | Project     |
|--|-----|-------|-------------|
| Description  | Qty | Rate  | Total       |
| Subdivision in Mills River<br><br>Paving Approx 2180 ft of road paved 18 ft. wide with two 70 ft. Culdesac. Total of 5214 sq yds. Price is to come in after stone is set up by outside party. Price includes compacting stone to state specs. Paving with S9.5B hot mix to a compacted thickness of 2". Approx cost 600 tons @ 90.00 | 600 | 90.00 | 54,000.00   |
| <b>Total</b>   |     |       | \$54,000.00 |

