

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: March 12, 2007

SUBJECT: Improvement Guarantee for Hillcrest Crossing (Formerly Edneyville Inn Subdivision)

ATTACHMENTS:

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

SUMMARY OF REQUEST:

Edney Inn Development Company LLC, owner and developer, submitted an application for an improvement guarantee for Hillcrest Crossing. Hillcrest Crossing is a 31-lot major subdivision located off of U.S. Hwy 64 (Chimney Rock Road). The attached improvement guarantee application is proposed to cover road construction which includes paving, drainage, erosion control and water system improvements.

The developer intends on using a Bank Escrow Account with the amount of at least \$755,034.00 to cover the cost of the improvements (\$604,027.20) as well as the required twenty-five percent (25%) contingency (\$151,006.80). The proposed completion date for the improvements is October 1, 2008.

A draft Performance Guarantee Agreement has been drafted for the Board's consideration at this meeting. If the Board approves of the draft Performance Guarantee Agreement, then a Bank Escrow Agreement, in accordance with the Performance Agreement, shall be submitted to Henderson County with an expiration date of no less than 60 days after the completion date and that covers 125% of the cost of the improvements.

BOARD ACTION REQUESTED:

Action by the Board of Commissioners is needed to either grant or deny the improvement guarantee application for Hillcrest Crossing. 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.

SUBDIVISION OF LAND

170 Attachment 8

Henderson County, NC

Appendix 8

Application for Improvement Guarantees

Name of Subdivision: HILLCREST CROSSING
Name of Owner: EDNEY INN DEVELOPMENT CO, LLC ROBERT HUTCHKISS
Address: PO BOX 4399 NORTH MYRTLE BEACH, SC 29597
Phone: 843-997-3111
Agent: CLIFFORD DALTON Phone: 828-685 7625
Date of Preliminary Plan Approval by Planning Board: September 18, 2006
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: CAROLINA FIRST
Amount of guarantee (including 25% overhead): \$ 755,043.00
Projected completion date: OCTOBER 1, 2008
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.

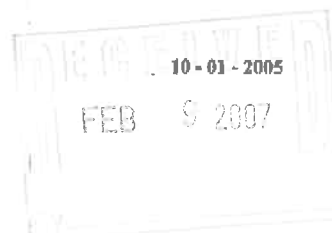
Robert W. Finner 2/8/07
Owner's Signature Date

Submitted By GARY W. FIRMENDER Date 2/8/07

Received By MC Date 2/9/07

Fee Paid \$250.00

170 Attachment 8:1



**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

PERFORMANCE GUARANTEE AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Edney Inn Development Company, 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 a proposed major subdivision known as Hillcrest Crossing (formerly known as Edneyville Inn Subdivision), 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 Development Plan for Hillcrest Crossing, 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 use a Bank Escrow Account Agreement with Henderson County to guarantee the completion of said required improvements; and

WHEREAS, the Developer has requested that the Board of Commissioners approve the use of a Bank Escrow Account 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 1 October 2008 complete as required the following improvements to serve lots in Hillcrest Crossing: road construction which includes paving, drainage, erosion control and water system improvements as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Development Plan for the Hillcrest Crossing, conditionally approved by the Henderson County Planning Board on October 17, 2006, and as shown on the attached cost estimates prepared by Mr. Jon Laughter, P.E., (signed and sealed on February 7, 2007).
2. The Developer will submit to Henderson County a Bank Escrow Account Agreement guaranteeing completion of said improvements by the required date. Said Agreement must be in the amount of at least \$755,034.00 (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. Said Agreement must be approved by the County Attorney's Office

3. In the event that the required improvements are completed as required, the Bank Escrow Agreement 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 funds in the Bank Escrow Account shall be forfeited by the Developer and used by Henderson County 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 Bank Escrow Account Agreement in proper form is approved by the County Attorney, then the Board will allow the Final Plat(s) for Hillcrest Crossing, 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:
Edney Inn Development Company, 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 Edney Inn Development Company, 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]**

IMPROVEMENTS
EDNEY INN DEVELOPMENT
% CLIFFORD DALTON
70 LEDBETTER ROAD
HENDERSONVILLE, NC 28792

NOVEMBER 16, 2006

EDNEY INN SUBDIVISION						
		16-Nov-06				
EM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL	EST. TO COMPLETE
	Grading, Drainage, Paving, Water Main Extension, and Restoration					
1	Grading, GRUBING, DRAINAGE	LF	3,135	\$ 40.00	\$ 125,400.00	
2	Silt Fence	LF	1,000	\$ 3.50	\$ 3,500.00	\$ -
3	Erosion Control	LS	1	\$ 12,400.00	\$ 12,400.00	\$ -
4	8" Aggregate Base Course	SY	11,070	\$ 10.00	\$ 110,700.00	
5	2" Bitum. Surface Course (I-2)	SY	11,070	\$ 11.00	\$ 121,770.00	
6	Seed & Mulch	SY	28,420	\$ 1.16	\$ 32,967.20	
7	Precast Concrete Drop Inlet Box & Grate	EA	2	\$ 350.00	\$ 700.00	
8	18" Cross Pipe	LF			\$ -	
9	24" Cross Pipe	LF	120		\$ -	\$ -
10	Water Main					
11	6" Diameter C900 PVC	LF	2,340	\$ 18.00	\$ 42,120.00	
12	Valves	EA	17	\$ 550.00	\$ 9,350.00	
13	2" PVC C200	LF	920	\$ 11.00	\$ 10,120.00	
14	2" GV & BOX	EA	4	\$ 250.00	\$ 1,000.00	
13	Fire Hydrant Assembly	EA	5	\$ 1,300.00	\$ 6,500.00	
14	Pump Building w/Tank and Controls	LS	1	\$ 127,500.00	\$ 127,500.00	
TOTAL ESTIMATE TO COMPLETE					\$ 604,027.20	\$ -
CONTINGENCIES 25%					\$ 151,006.80	\$ -
TOTAL ESTIMATE					\$ 755,034.00	\$ -



Prepared by Jon H Laughter
Laughter, Austin and Associates, P.A.
828-692-9089

LAA Job No. 06-275
16-NOV-2006