

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: August 1, 2005

SUBJECT: Improvement Guarantee for Tall Timbers

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

SUMMARY OF REQUEST:

Jeff Donaldson, Calvin Ruby and Ken Burgess, owners of the project, submitted an application for an improvement guarantee for Tall Timbers major subdivision. Tall Timbers is a 20-lot major subdivision located directly off of U.S. Hwy 64 East (Chimney Rock Road). Tall Timbers was conditionally approved by the Planning Board on April 19, 2005. The improvement guarantee is proposed to cover the construction of the road, the water distribution system improvements and the road shoulder stabilization for the entire subdivision.

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 \$135,845.00 to cover the cost of the improvements (\$108,676.00) as well as the required twenty-five percent (25%) contingency (\$27,169.00). The proposed completion date for the improvements is November 30, 2005.

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.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

I recommend that the Board approve the improvement guarantee application for Tall Timbers, subject to the developers submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

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, Calvin L. Ruby 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 a major subdivision known as Tall Timbers, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, Henderson County Planning Board conditionally approved the Combined Master Plan and Development Plan for Tall Timbers, 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 November 30, 2005, complete as required the following improvements to serve all lots in the Project: road construction, water system construction and road shoulder stabilization as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for the Project conditionally approved by the Planning Board on April 19, 2005, and as shown on the attached cost estimates prepared by Paul Patterson, P.E. (sealed 7/14/05 and dated 7/14/05).
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 \$135,845.00 (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 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, Calvin L. Ruby 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, Calvin L. Ruby 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]

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision: Tall Timbers Subdivision

Name of Owners: Jeff Donaldson, Calvin Ruby, & Ken Burgess

c/o Jeff Donaldson

Address: 2968 Chimney Rock Road, Hendersonville, NC 28792

Phone: 828-685-8602

Agent: Paul Patterson, PE/PLS Phone: 692-6629

Date of Preliminary Plan Approval by Planning Board: Major Subdivision

Significant Conditions Imposed: Public Water to be installed

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: Home Trust

Amount of guarantee (including 25% overhead) \$ 135,845.00

Project completion date: November 2005 November 30, 2005 per JP on 7/26/05
ame

Are cost estimates attached (with quantities and unit costs)? yes no
(Cost Estimate for Water Extension based on most recent bids by local Contractors)

Have engineering and design work been completed?

complete partially complete incomplete

I have read and understand all requirements in Article V of the Henderson County Subdivision Ordinance regarding subdivision improvement guarantees.


Owner's Signature

7/14/05
Date

Submitted By: Jeff Donaldson

Date: _____

Received By: _____

Date: _____

TALL TIMBERS SUBD.

ESTIMATE

WATER:

Item Description:	Quantity	Unit Cost	
6" CL350 D.I.	100 l.f.	15.00	\$1,500.00
6" DR18 C900 PVC	1708 l.f.	11.50	\$19,642.00
Fire Hyd. & Assembly	2 ea	2100.00	\$4,200.00
6" Gate Valves	3 ea	600.00	\$1,800.00
6"x6"x6" Tee	1 ea	600.00	\$600.00
Automatic Air Release Valve	2 ea	900.00	\$1,800.00
Misc. Fittings	1 ls	1000.00	\$1,000.00
Lateral (Dual)	7 ls	650.00	\$4,550.00
Lateral (Single)	2 ea	400.00	\$800.00
16"x16"x6" T.S. & Valve	1 ea	3500.00	\$3,500.00
		Subtotal:	\$39,392.00
COH Installed Meter/Tap (Water):	4 ea	500.00	\$2,000.00
COH Impact Fees (Water):	20 ea	700.00	\$14,000.00

ROADWAYS:

Item Description:	Quantity	Unit Cost	
Stone & Paving of Roads (6" CBAC & 2" S9.5B)	4400 SY	12.11	\$53,284.00

TALL TIMBERS SUBD.

(TABULATED ESTIMATE)

Item Description:	Cost	
Sewer	\$39,392.00	
Misc. COH Fees	\$16,000.00	
Roadways	\$53,284.00	
	Subtotal:	\$108,676.00
25% Contingency	\$27,169.00	
TOTAL ESTIMATED CONSTRUCTION BOND:	\$135,845.00	





APAC-Atlantic, Inc.

A subsidiary of Ashland Paving And Construction, Inc.
Asheville Division
Foothills Branch
P.O. Box 1540, Rutherfordton, NC 28139
Tel: 828 286-3319, Fax: 828 286-0161

QUOTATION

To: Apple Country Real Estate
Attention: Jeff Donaldson
Project: Tall Timbers Subdivision
Date: Apr 11, 2005

ITEM NUMBER	DESCRIPTION	ESTIMATED QUANTITY	U/M	UNIT PRICE	EXTENSION
1	place and compact 6" ABC and pave with 2" S9.5B	4400	SY	\$ 12.11	\$ 53,284.00

TOTAL BID \$ 53,284.00

This quotation is valid for 30 days.

We have made no allowance for engineering or staking.

This quotation assumes grading by others will be within 0.10'

We have included one mobilization per crew. Any additional will be an additional charge.

Steven P. Long, Estimator
APAC- ATLANTIC, INC.
Asheville Division

