

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** September 6, 2005

**SUBJECT:** Improvement Guarantee for Mountain Meadows

**ATTACHMENTS:**

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

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

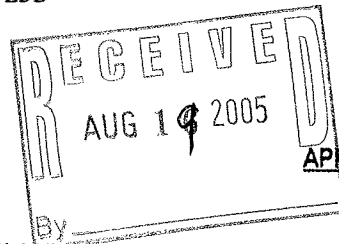
Jeff Donaldson and Ken Burgess, owners of the project, submitted an application for an improvement guarantee for Mountain Meadows major subdivision. Mountain Meadows is a 42-lot major subdivision located off of Oleta Road. Mountain Meadows was conditionally approved by the Planning Board on November 18, 2003. Jeff Donaldson has indicated that all improvements, except for the improvements to be bonded, are complete. The attached improvement guarantee application is proposed to cover the remaining road construction improvements.

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 \$62,740.00 to cover the cost of the improvements (\$50,192.00) as well as the required twenty-five percent (25%) contingency (\$12,548.00). The proposed completion date for the improvements is April 15, 2006.

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 Mountain Meadows, subject to the developers submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.



APPENDIX 8

Henderson County APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision Mountain Meadows

Name of Owner Jeff Donaldson / Ken 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 Mtn First

Amount of guarantee (including 25% overhead) \$ 62,740.00

Projected completion date April 15, 2006

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

8/19/05  
Date

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

Date \_\_\_\_\_

Received By a. Radcliff

Date 8/19/05 - Check # 1619

**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 a major subdivision known as Mountain Meadows, 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 Phase I 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 April 15, 2006, complete as required the following improvements to serve all lots in the Project: road construction as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for the Project conditionally approved by the Planning Board on November 18, 2003, and as shown on the attached cost estimates prepared by APAC-Atlantic, Inc. (dated April 11, 2005).
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 \$62,740.00 (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 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]

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:** Mountain Meadows 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	4300	SY	\$ 11.84	\$ 50,192.00

**TOTAL BID \$ 50,192.00**

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