

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: December 15, 2005

SUBJECT: Extension Request for an Improvement Guarantee for Tall Timbers

ATTACHMENTS: 1. Letter by Developer Requesting Extension
2. New Draft Performance Guarantee Agreement
3. Cost Estimates

SUMMARY OF REQUEST:

On August 1, 2005, the Board of Commissioners approved an application submitted by Jeff Donaldson, Calvin Ruby and Ken Burgess, owners of the project, for an improvement guarantee for a subdivision known as Tall Timbers. As required by the Performance Guarantee Agreement for the improvement guarantee, the developer posted with Henderson County an Irrevocable Letter of Credit for an amount of \$135,845.00. The Improvement Guarantee covered the completion of the road construction and water system installation as required by the Henderson County Subdivision Ordinance. The performance agreement required that the improvements be completed by November 30, 2005. A portion of the Irrevocable Letter of Credit of \$69,240.00, the cost of the water system, was released on October 29, 2005 which left the remaining amount of \$66,605.00.

On November 23, 2005, the Planning Department received a letter from Jeffery Donaldson requesting to extend the completion date on the improvement guarantee to April 15, 2006 (see attached letter). Section 170-39 of the Subdivision Ordinance allows the Board of Commissioners, upon proof of difficulty, to grant extensions to completion dates for improvement guarantees 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, staff has attached for the Board's consideration a draft Performance Guarantee Agreement which reflects a new improvements completion date of April 15, 2006 and requires submittal of an amendment to the Irrevocable Letter of Credit showing an expiration date not earlier than 60 days after the new improvements completion date. The new Performance Guarantee Agreement must be executed by the relevant parties if the Board approves the extension request.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

The extension, if granted, would not cause the developer to exceed the two-year maximum time period for completion of the required improvements. Therefore, I recommend that the Board approve the request to extend the completion date for the improvement guarantee for Tall Timbers to April 15, 2006, provided that an amended Irrevocable Letter of Credit is submitted in accordance with the new Performance Guarantee Agreement.

November 23, 2005

Mr. Matt Card
Henderson County Planning Dept.
101 East Allen Street
Hendersonville, NC 28792

Dear Mr. Card:

I have received a phone call from Connie Rayfield with the Henderson County Legal Dept. and she had stated that our time limit on the improvements guarantee on the paving for Tall Timbers was nearing expiration, which I did not realize. We are currently waiting for Duke Power to complete their underground service which is in process now. As soon as this underground work is complete we hope to be able to pave immediately there after. This will of course be dependent upon weather, yet we are very hopeful of getting this completed this year.

We would like to apply for an extension of time to complete the paving portion of our improvement guarantee until April 15, 2006. As stated we are hopeful of getting this completed much earlier but are not sure how much longer the paving company will keep their plant open and weather will also play a factor in whether paving can be done or not.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey S. Donaldson', written in a cursive style.

Jeffrey S. Donaldson

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 Board and the Developer entered into an Agreement on August 1, 2005 (hereinafter "the original Agreement"), concerning an improvement guarantee for a proposed subdivision known as Tall Timbers, located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$135,845.50 in accordance with the original Agreement; and

WHEREAS, on October 29, 2005 the County approved the release of a portion of the improvement guarantee reducing the total amount of the irrevocable letter of credit to \$66,605.00, and

WHEREAS, the original Agreement provided that all required improvements were to be completed on or before the 30th day of November, 2005, and

WHEREAS, the developer obtained approval of a Final Plat from Henderson County Planning Department staff on November 1, 2005, and subsequently recorded such Final Plat; and

WHEREAS, the Developer has requested that the Board of Commissioners approve extending the completion date of the original agreement to April 15, 2006;

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 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 amended 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 \$66,605.00 (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. At such time as this Agreement is fully executed and the Developer has filed an amendment to the original bond (as previously amended) as provided in Paragraph 2, above, this Agreement will supercede prior Agreements between the Board and the Developer regarding the improvement guarantee.
4. 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.
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.

THIS the ____ day of _____, 200_.

Notary Public

My Commission Expires: _____ **[NOTARIAL SEAL]**

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

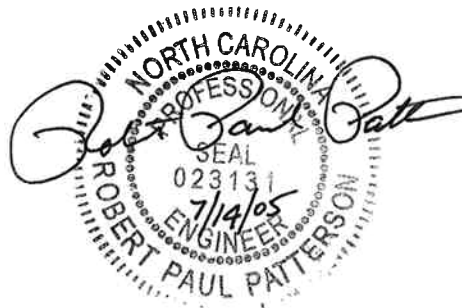
ROADWAYS:

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

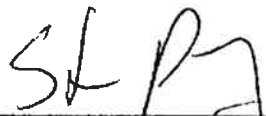
QUOTATION

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

