

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: October 2, 2006

SUBJECT: Improvement Guarantee for Eagle Pointe

ATTACHMENTS:

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

SUMMARY OF REQUEST:

Eagle Rock Properties, Inc., owner of the project, submitted an application for an improvement guarantee for Eagle Pointe major subdivision which was approved by the Board of Commissioners on September 20, 2006. The applicant has now submitted a new improvement guarantee application which reflects additional improvements that were originally anticipated to be completed by final plat approval. The applicant is now requesting to bond these improvements. The new improvement guarantee is proposed to cover the cost of road construction, public water system improvements and sewer system improvements (including pump station) for the 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 developers intend to deposit with the County a certified check in the amount of at least \$306,186.25 to cover the cost of the improvements (\$244,949.00) as well as the required twenty-five percent (25%) contingency (\$61,237.25). The proposed completion date for the improvements is August 28, 2007.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developers must submit cash on deposit (certified check) in accordance with the terms of the Agreement. Once the County receives cash on deposit (certified check) the relevant parties must execute the Agreement.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

I recommend that the Board approve the new improvement guarantee application for Eagle Pointe subject to the developers submitting to Henderson County cash on deposit (certified check) in accordance with the terms of the Performance Guarantee Agreement.

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision EaglePointe

Name of Owner EagleRock Properties, Inc.

Address 745 Orienta Avenue, Suite 1121, Altamonte Springs, FL 32701

Phone: 828.696.8455/407.830.1400

Agent Same/Owner Phone: _____

Date of Preliminary Plan Approval by Planning Board January 18, 2006

Significant Conditions Imposed: Complete/Install Asphalt Private Roads, Onsite/Offsite Water & Sewer Lines, Pump Station

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 N/A

Amount of guarantee (including 25% overhead) \$ ~~193,107.25~~ → see attached cost estimates
mc 9/20/06

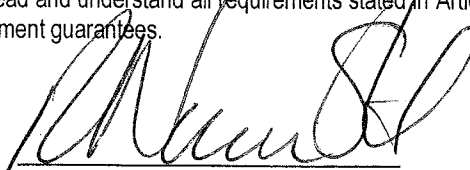
Projected completion date 8/28/07

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.


Owner's Signature

9/15/06
Date

Submitted By Jana Sue Henderson

Date 9/15/06

Received By MC

Date 9/15/06

Fee \$250.00 paid

9/15/06

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Eagle Rock Properties, Inc., 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 subdivision known as Eagle Pointe, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Department conditionally approved the Master Plan and Development Plan for the project, 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 deposit cash or certified funds 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 the 28th day of August, 2007, complete as required the following improvements to serve lots in Eagle Pointe: road construction including paving, public water system improvements and sewer system improvements (including pump station) as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for Eagle Pointe conditionally approved by the Henderson County Planning Board on January 18, 2006 and as shown on the attached cost estimates prepared by Mr. Jon Laughter, P.E. (signed and sealed on September 19, 2006).
2. The Developer will provide with Henderson County for deposit at least \$306,186.25 in cash or certified funds (the "Improvement Guarantee"), with such monies securing and guaranteeing completion of said improvements by the required date stated in Paragraph 1, above.
3. Henderson County will hold the monies in an interest-bearing account with all interest accruing to the Developer upon the condition that all required

improvements be completed by the required date. In the event that the required improvements are completed as required, the monies and all accrued interest will be returned to the Developer. 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 monies and all accrued interest shall be forfeited by the Developer and shall be 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 cash or certified funds are deposited with the County, then the Board will allow the Final Plat(s) for Eagle Pointe, 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:
Eagle Rock Properties, Inc.

BY: _____
President

ATTESTED BY:

[CORPORATE SEAL]

Secretary/Assistant Secretary

**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 NORTH CAROLINA
COUNTY OF HENDERSON**

I, _____, Notary Public for said State and County certify that _____ came before me this day and acknowledged that he/she is the Secretary/Assistant Secretary of Eagle Rock Properties, Inc., and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its President/Vice President, sealed with its corporate seal, and attested by himself/herself as its Secretary/Assistant Secretary.

THIS the _____ day of _____, 200_.

Notary Public

EAGLE POINTE
Engineer's Estimate

March 2, 2006
LAA Job # 05-331

ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
EAGLEPOINT. XLS					
REQUEST BY OWNER TO BOND SUBDIVISION IMPROVEMENTS					
LAA JOB NO. 05-331					
PROJECT: EAGLE POINT SUBDIVISION					
DANA RUCKER 882 329-3611					
PREPARED BY: LAUGHTER, AUSTIN AND ASSOCIATES, PA					
692-9089					
1	ROADS				
	a. Grading	LF	1,878.00	\$ 18.00	\$ -
	b. 8" Aggregate Base Course	SY	4,892	\$ 8.55	\$ 34,244.00
	c. 1.5" Asphalt Surface Course	SY	4,892	\$ 7.75	\$ 58,704.00
	d. Curb & Gutter	LF	-	\$ 18.00	\$ -
	e. 5' Concrete Sidewalk (One Side Only)	SY	-	\$ 24.00	\$ -
	f. Drainage	LS	-		\$ -
		18" CMP LF	120		\$ -
		24" CMP LF	410		\$ -
	g. Concrete D/W Entrance	EA			\$ -
	TOTAL ROAD E				\$ 92,948.00
2	EROSION CONTROL				
	a. Rock Dam	LS	1		\$ -
	b. Class 'B' Rip Rap	SY	24		\$ -
	c. Inlet Protection	EA	4		\$ -
	d. Entrance mat	LS	1		\$ -
	e. Seed & Mulch	SY	11,535	\$ 0.40	\$ -
	f. Gravel Filter Berm	EA	8		\$ -
	TOTAL EROSION CONTROL				\$ -
3	WATER LINE				
	a. 8-inch diameter Main	LF	2,603		\$ -
	b. 2-inch diameter Main	LF	940		\$ -
	c. Tapping Assembly w/ 8-inch Valve	EA	1	\$ 4,000.00	
	d. 8-inch x 8-inch Tee	EA	2		\$ -
	e. 8-inch x 6-inch Tee	EA	1		\$ -
	f. 8-inch x 6-inch Cross	EA	2		\$ -
	g. 8-inch Gate Valves w/ Box	EA	1		\$ -

SEP 19 2006

EAGLE POINTE
Engineer's Estimate

March 2, 2006
LAA Job # 05-331

	h. 6-inch Gate Valves w/ Box	EA	3	\$ 600.00	
	i. 2-inch Gate Valves w/ Box	EA	5		\$ -
	j. 8-inch x 2-inch Reducer	EA	2		\$ -
	k. 6-inch x 2-inch Reducer	EA	1		\$ -
	l. Fire Hydrants	EA	3	\$ 2,200.00	
	m. 2-inch Blow-off Valves	EA	3		\$ -
	n. 8-inch Plugs	EA	2		\$ -
	o. Water Laterals	EA	52	\$ 400.00	
	p. Road Bore (12-3/4" Steel Encasement)	LF	40		\$ -
	TOTAL WATERLINE				\$ 51,170.00
4	SANITARY SEWER LINE				
	a. 8" PVC Gravity Sewer	LF	2,564	\$ 63.00	
	b. Sanitary Manhole	EA	24	\$ 1,500.00	
	c. 3" DIP Sanitary Forcemain	LF	1,276		\$ 21,692.00
	d. Road Bore (8" Steel Encasement)	LF	40		\$ -
	e. 4" Sanitary Lateral	EA	52	\$ 1,000.00	\$ 27,300.00
	SUBTOTAL SANITARY SEWER				\$ 48,992.00
5	Package Duplex Pump Station				\$ -
	a. 4 ft diameter concrete sump w/ frame and lid, vent, hoist mount, electric hoist, etc.	1	EA		\$ -
	b. Non-clog Pump - 3 HP - 3" dia. discharge 230/1/60 w/ apputenances	2	EA		\$ -
	c. Manhole type Valve Box w/ metal frame and lid	1	EA		\$ -
	d. 3 inch non-rising stem gate valves	2	EA		\$ -
	e. 3 inch diameter back flow preventers (2 ea), coupling (2 ea), tee, nipples, etc.	1	LS		\$ -
	f. Grading, seeding and mulch pump station site.	1	LS		\$ -
	g. Driveway Compacted Stone (No. 57)	295	SY		\$ -
	h. Six feet high Chain Link Security Fence, Black coated Galv. fabric, 20'x15' w/two 6' gates & 3 runs barb at top of fence.	1	LS		\$ -
	i. Security Light - mounted on fence post	2	Ea		\$ -
	SUBTOTAL SANITARY PUMP STATION				\$ 51,839.00
	TOTAL SANITARY SEWER				
	TOTAL IMPROVEMENT COSTS				\$ 244,949.00
5	CONTINGENCY (25%)				\$ 61,237.25
	TOTAL ESTIMATE TO COMPLETE IMPROVEMENTS				\$ 306,186.25