

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: October 2, 2006

SUBJECT: Improvement Guarantee for River Stone

ATTACHMENTS:

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

SUMMARY OF REQUEST:

Mr. Drew Norwood submitted on behalf of Windsor Aughtry Company Inc., an improvement guarantee application for Sections 3-A and 4-B of River Stone. River Stone is a 524-lot Planned Unit Development located on approximately 175 acres of land off of Butler Bridge Road and North Rugby Road. River Stone was approved by the Board of Commissioners under Special Use Permit # SP-05-01 on November 30, 2005. The improvement guarantee is proposed to cover the construction of the road, including paving and a valley gutter system for the above mentioned sections in River Stone. River Stone currently has an improvement guarantee in place with the County for Sections 4-A, 5A, and 6A, approved by the Board of Commissioners on June 5, 2006.

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 \$122,125.00 to cover the cost of the improvements (\$97,700.00) as well as the required twenty-five percent (25%) contingency (\$24,425.00). The proposed completion date for the improvements is November 30, 2006.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developer 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 River Stone, subject to the developer submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the Performance Guarantee Agreement.

SUBDIVISION OF LAND

170 Attachment 8

Henderson County, NC

Appendix 8

Application for Improvement Guarantees

Name of Subdivision: Riverstone PUD - Sections 3A + 4B
Name of Owner: Windsor-Aughtry Company, Inc.
Address: POB 16449, Greenville, SC 29606
Phone: 864-271-9855

Agent: _____ Phone: _____

Date of Preliminary Plan Approval by Planning Board: 9/20/05

Significant Conditions imposed: Special Use Permit

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: Suntrust

Amount of guarantee (including 25% overhead): \$ ~~100,250.00~~ 122,125.00

Projected completion date: November 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] _____ Date 9/12/06

Submitted By _____ Date _____

Received By me \$250.00 fee paid Date 9/14/06

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200___, by and between Windsor Aughtry Company 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 Sections within a Planned Unit Development known as River Stone, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, Henderson County Board of Commissioners approved River Stone Planned Unit Development under Special Use Permit # SP-05-01, under Chapter 200 of the Henderson County Code, which is entitled Zoning, and;

WHEREAS, Henderson County Planning Board approved the Combined Master Plan and Development Plan for River Stone 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 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 Developer has requested that the Board 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 November 30, 2006, complete as required the following improvements to serve lots in Sections 3A and 4B in the Project: construction of the road including paving, a valley gutter system as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Development Plan for the Project, as approved under Special Use Permit # SP-05-01 by the Henderson County Board of Commissioners on November 30, 2005, and as shown on the attached cost estimates prepared by Donald Hunley, P.E. (signed and sealed 9/20/06).
2. The Developer 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 \$122,125.00 (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 Developer 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, Chapter 200 of the Henderson County Code and Special Use Permit # SP-05-01 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 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:
Windsor Aughtry Company, Inc.

BY: _____
President / Vice 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 Windsor Aughtry Company, 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

PROJECT COST ESTIMATE : ON-SITE

RIVERSTONE SUBDIVISION - SECTIONS 3A & 4B

WGLA #04180 - Site Improvements Remaining

Road System (2000 LF of Local Roads)

Stone Base (CABC)	2,400.0	TN @	\$18.00 =	\$43,200.00
Pavement (2" I-2)	2,500.0	SY @	\$7.00 =	\$17,500.00
Valley Curb	4,000.0	LF @	\$9.25 =	\$37,000.00

Total Estimated Construction Cost \$97,700.00

Contingency 25% \$24,425.00

TOTAL AMOUNT \$122,125.00

ENGINEER: DONALD L. HUNLEY, P.E.

William G. Lapsley & Associates, PA
Post Office Box 548
Hendersonville, NC 28793

DATE 9/20/6

