

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: January 2, 2007

SUBJECT: Improvement Guarantee for Haywood Park Estates

ATTACHMENTS:

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

SUMMARY OF REQUEST:

Mr. Luther E. Smith on behalf of the Castle Garden Villas, LLP, submitted an improvement guarantee application for the Haywood Park Estates minor subdivision. Haywood Park Estates was approved by the Planning Department on November 27, 2006. The improvement guarantee is proposed to cover the cost of road construction which includes paving, drainage, shoulder stabilization and installation of the water supply system.

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 \$110,604.00 to cover the cost of the improvements (\$88,483.00) as well as the required twenty-five percent (25%) contingency (\$22,121.00). The proposed completion date for the improvements is December 30, 2007.

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.

BOARD ACTION REQUESTED:

Action by the Board of Commissioners is needed to either grant or deny the improvement guarantee application for Haywood Park Estates. I recommend that the Board approve the improvement guarantee application pursuant to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance.

Suggested Motion: I move that the Board of Commissioners find and conclude that the request for an improvement guarantee complies with the provisions of the Subdivision Ordinance and is approved.

APPENDIX 8

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES



Name of Subdivision Haywood Park Estates

Name of Owner Castle Garden Villas, LLP, Judith Berson Levinson - Co-Trustee

Address 900 Bay Drive PH 1, Miami Beach, FL 33141

Phone: 305-796-7380

Agent _____ Phone: _____

Date of Preliminary Plan Approval by Planning Board 11/27/06

Significant Conditions Imposed: N/A

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 WACHOVIA

Amount of guarantee (including 25% overhead) \$ 110,604.00

Projected completion date DECEMBER 2007 12/30/07 per LS 12/13/06

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

11/14/06
Date

Submitted By _____

Date _____

Received By Check # 403 \$250.00

Date 12/12/06
[Signature]

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Castle Garden Villas, LLP, 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 Plat(s) for a proposed minor subdivision known as Haywood Park Estates, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Department conditionally approved the Development Plan for Haywood Park Estates, 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 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 December 30, 2007, complete as required the following improvements to serve lots in Haywood Park Estates: road construction which includes paving, drainage, shoulder stabilization and installation of the water supply system as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for Haywood Park Estates as conditionally approved by the Henderson County Planning Department on November 27, 2006, and as shown on the attached cost estimates prepared by Mr. Luther E. Smith, landscape architect for the project (signed and sealed on December 12, 2006).
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 \$110,604.00 (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 Haywood Park Estates 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:
Castle Garden Villas, LLP

BY: _____
Manager/Partner

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 _____, Manager/Partner of Castle Garden Villas, LLP, 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]



HAYWOOD PARK ESTATES

Construction Estimate - Improvements Guarantee

1. Construction of 902 l.f. road	
Grading, drainage & erosion control	\$37,900.00
6" ABC stone base w/2" 9.5 B asphalt	\$34,200.00
Seeding & stabilization .57 ac @ 1900/ac	\$ 1,083.00
2. Installation of water supply	\$15,300.00
500 l.f. - 6" PVC 12 @ \$12/l.f. = 6,000.00	
400 l.f. - 2" PVC 6 @ \$6/l.f. = 2,400.00	
1 - Hydrant 1,300.00 each = 1,300.00	
Misc - tap, fittings, etc. LS = 5,600.00	
Estimated cost of construction	\$88,483.00
Contingency 25%	\$22,121.00
Proposed Guarantee Amount	\$110,604.00

