

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: January 2, 2007

SUBJECT: Improvement Guarantee for Shuey Knolls, Phase II

ATTACHMENTS:

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

SUMMARY OF REQUEST:

Henderson County Habitat for Humanity, owner and developer, submitted an application for a second improvement guarantee for Shuey Knolls. Shuey Knolls is a 103-lot major subdivision located off of U.S. Hwy 64 (Chimney Rock Road). The Board of Commissioners approved an application for an improvement guarantee for Phase I of Shuey Knolls on September 6, 2005. The attached improvement guarantee application is proposed to cover road construction which includes paving, drainage, shoulder stabilization and water system improvements in Phase II.

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 \$153,532.63 to cover the cost of the improvements (\$122,826.10) as well as the required twenty-five percent (25%) contingency (\$30,706.53). The proposed completion date for the improvements is June 30, 2007.

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.

BOARD ACTION REQUESTED:

Action by the Board of Commissioners is needed to either grant or deny the improvement guarantee application for Phase II of Shuey Knolls. 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.

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision Shuey Knolls

Name of Owner Henderson County Habitat for Humanity

Address 1111 Keith St., Hendersonville, NC 28792

Phone: 828-694-0340

Agent Lee Fears Phone: 828-606-8404

Date of Preliminary Plan Approval by Planning Board June 21, 2006

Significant Conditions Imposed: See attached

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 Carolina First

Amount of guarantee (including 25% overhead) \$ 194,000.-

Projected completion date ~~June 2007~~ June 30, 2007

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.

Lee Fears
Owner's Signature

Nov. 14, 2006
Date

Submitted By Lee Fears

Date Nov. 14, 2006

Received By 11/20/06 - Check # 5516 by K. Scanlan \$250.00

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Henderson County Habitat for Humanity, 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 Phase II of a major subdivision known as Shuey Knolls, 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 Development Plan for Shuey Knolls, 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 June 30, 2007, complete as required the following improvements to serve lots in Phase II: paving, drainage, shoulder stabilization and water system improvements as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for the Project conditionally approved by the Planning Board on July 15, 2003, and as shown on the attached cost estimates prepared by Laughter, Austin and Associates, PA.
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 \$153,532.63 (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 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:
Henderson County Habitat for Humanity

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 _____ 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]

Schedule of Prices
Henderson County Habitat For Humanity
Shuey Knolls Subdivision, Phase 1

LAA Job No. 04-428

Item No.	Item Description	Estimated Quantities	Unit	Unit Price	Total Cost
WATER					
1	Grading	1446	LF		0
2	6" Dia. AWWA C900, DR18, PC150 PVC	2,892	LF	18.5	53502
3	6" MJ Gate Valves & Valve Box	4	EA	650	2600
4	6"X6"X6" TEE	2	EA	1800	3600
5	Fire Hydrant Assembly W/6" GV & Hyd. Tee	2	EA	2200	4400
6	Dual-Action Automatic Air Release Valve in Valve Box & lid	1	EA	1400	1400
9	Culvert Pipe	150	EA	18	2700
10	Service Lateral Type K w/ Standard Tap	300	LF	20	6000
11	Service Lateral Type K w/ "Y" Tap	200	LF		0
12	Contingency - Rock Excavation	5	CY		0
13	Class B Concrete (Blocking)	5	CY		0
14	Seed & Mulch – Surface Restoration	1000	SY	0.4	400
PAVING					
15	Pavement – Station 0+58.74 to Station 18+90.85; 1 1/2" I-2 ACSC*	2,892	SY	7.75	22413
16	8 inch Aggregate Base Course, No. 7 Stone	2,892	SY	8.55	24726.6
17	Centerline Paint Marking	1,446	LF	0.75	1084.5
TOTAL					122826.1
TOTAL PLUS .25					153532.625
*ACSC= Asphalt Concrete Surface Course					
The unit prices on the items in this contract are for furnishing, installing, complete, in-place, and accepted.					

Laughter, Austin and Associates, PA
131 Fourth Ave. East
Hendersonville, NC 28792
828.692.9089