

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: January 19, 2005

SUBJECT: Request for Extension of Improvement Guarantee for a Portion of Riverwind, Phase IV

ATTACHMENTS:

1. Memo from G. Thomas Jones, III, P.E.
2. Original Performance Guarantee Agreement
3. Draft of Performance Guarantee Agreement for Extension

SUMMARY OF REQUEST:

On November 1, 2004, the Board of Commissioners approved an application submitted by Carrollwood Development, LLC, (Developer), for an improvement guarantee for a portion of the proposed Phase IV of Riverwind subdivision. The improvement guarantee covers the grading and construction of roads and the installation of water and sewer system improvements to serve lots 1-5, 32 and 46-49 in Phase IV of the development.

As required by the Performance Guarantee Agreement for the improvement guarantee, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$212,500.00 that includes the cost of the remaining improvements as well as the required twenty-five percent (25%) contingency. The proposed completion date for the improvements was January 15, 2005.

The Planning Department has received notification from G. Thomas Jones, P.E., of William G. Lapsley & Associates (agent for the Developer), requesting that the County extend the completion date for the improvements specified in the original Agreement until April 15, 2005. 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. The memorandum from Mr. Jones notes that all of the required improvements have been completed except for the paving of the roads.

In addition to the request for the extension of the improvements completion deadline, the Developer would also like to have the flexibility to convert the improvement guarantee from an irrevocable letter of credit to another financing method. The Developer will probably be requesting a partial release of the letter of credit in an amount equal to the cost of the improvements that have already been completed. In the event that such a reduction is requested, the Developer believes it would be easier to then post a certified check or cash, for example, rather than post an amended letter of credit, to cover the cost of the remaining work under the improvement guarantee.

If the Board of Commissioners agrees to extend the completion date and allow for a change in the form of the improvement guarantee at a later date, staff has attached for the Board's consideration a draft Performance Guarantee Agreement. The draft

Agreement reflects a new improvements completion date of April 15, 2005, and requires submittal of an amendment to the irrevocable letter of credit showing an expiration date not earlier than 60 days after such new improvements completion date. It also allows for the replacement of the letter of credit with some other equivalent, permitted form of improvement guarantee provided the Developer notifies the Planning Department in writing of its desire to do so and such new form of improvement guarantee is approved by the (Acting) County Attorney. The new Performance Guarantee Agreement must be executed by the relevant parties if the Board approves this 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 lots 1-5, 32 and 46-49 in Riverwind, Phase IV, and allow the substitution of the letter of credit with some other acceptable form of improvement guarantee, both in accordance with the terms the draft Performance Guarantee Agreement.

WILLIAM G. LAPSLEY & ASSOCIATES, P.A.
Consulting Engineers & Land Planners



P.O. Box 546
1635 Asheville Highway
Hendersonville, NC 28791
(828) 697-7334 - Fax (828) 697-7383
www.wgla.com



TRANSMITTAL

TO:	Karen Smith	FROM:	G. Thomas Jones III, PE <i>GTJ</i>
COMPANY:	Henderson County Planning	DATE:	1/10/2005
FAX NUMBER:	697-4533	TOTAL NO. OF PAGES INCLUDING COVER:	
PHONE NUMBER:		WGIA PROJECT NUMBER:	
RE:	Riverwind Section IV	YOUR REFERENCE NUMBER:	

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS

Karen,

Per our conversation, the owners (Carrollwood Development) would like to request a time extension for the improvements to serve Lots 1-5, 32, 46-59. The grading, water, and sewer have been completed, but the roads have not yet been paved. To ensure that there is period warm enough to pave the area, we would like to request a completion date of April 15, 2005.

Also, since the majority of the work is complete to serve these lots, please allow flexibility of financing the guarantee for the remainder of the work.

Please let me know if you have any questions. We will be mailing a check in the amount of \$250 for the fee.

Thank you,
Tom

cc: Gary Queen, Carrollwood Development

THIS MESSAGE IS CONFIDENTIAL AND IS INTENDED SOLELY FOR THE ADDRESSEE ABOVE NAMED. IF YOU ARE NOT THE INTENDED RECIPIENT OR THE PERSON RESPONSIBLE FOR DELIVERY TO THE INTENDED RECIPIENT, YOU ARE ADVISED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, YOU ARE REQUESTED TO PLEASE NOTIFY THE SENDER BY TELEPHONE COLLECT AND TO RETURN THE ORIGINAL MESSAGE TO THE SENDER BY U.S. MAIL.

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this 1st day of November, 2004, by and between Carrollwood Development, LLC, 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 a Final Plat for a portion of a proposed subdivision known as Riverwind, Phase IV, located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Board conditionally approved the Master Plan and the Development Plan for Riverwind, Phase IV, 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:

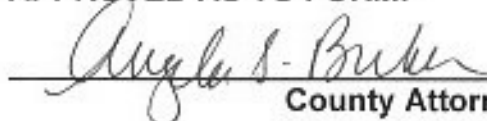
1. The Developer will, on or before the 15th day of January, 2005, complete as required the following improvements to serve lots 1 through 5, 32, and 46 through 49 in Riverwind, Phase IV (area illustrated on the attached plans): road construction (including, but not limited to, grading, installation of gravel and asphalt, shoulder stabilization work, etc.); water system installation and sewer system installation, including improvements related to the wastewater treatment plant, as required by the Henderson County Subdivision Ordinance, as shown on the Master Plan and the Phase IV Development Plan for Riverwind conditionally approved by the Henderson County Planning Board on January 20, 2004, and as shown on the attached cost estimate prepared by G. Thomas Jones, III, P.E., and dated 10/26/04.
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 bank licensed to do business in North Carolina, in the

amount of at least \$212,240.00 (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 (Assistant) 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 lots 1 through 5, 32 and 46 through 49 of Phase IV of Riverwind 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 (Assistant) 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 1st day of December, 2004

APPROVED AS TO FORM:


County Attorney

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: 
Grady Hawkins, Chairman

ATTESTED BY:

[OFFICIAL SEAL]

Elizabeth W. Corn
Elizabeth W. Corn, Clerk to the Board

DEVELOPER:
Carrollwood Development, LLC

BY: [Signature]
Manager

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

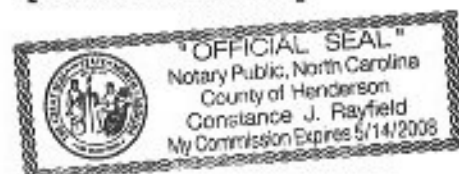
I, Constance J. Rayfield, Notary Public for said County and State, certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners of Henderson County, a municipal corporation and that by authority duly given and as the act of the 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 1st day of December, 2004.

Constance J. Rayfield
Notary Public

My Commission Expires: 5/14/08

[NOTARIAL SEAL]



STATE OF FLORIDA
COUNTY OF PINELLAS

I, STACEY GONZALEZ, Notary Public for said State and County certify that GARY QUEEN, Manager of Carrollwood Development, LLC, a limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

THIS the 4th day of November, 2004

Stacey Gonzalez
Notary Public

My Commission Expires: 10/9/08

[NOTARIAL SEAL]



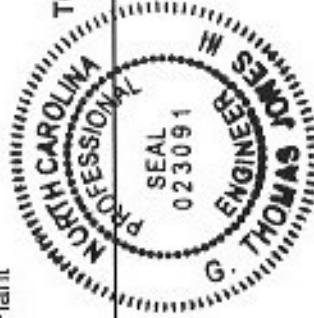
ESTIMATE TO BOND LOTS #1-5, 32, 46-49

RIVERWIND SECTION IV

WGLA #03123

ITEM	UNITS	QTY.	UNIT PRICE	TOTAL PRICE
GRADING/EROSION CONTROL				
1 Fine Grading	LS	1	\$5,000.00 =	\$5,000.00
2 Aggregate Base Course (ABC)	TN	350	\$13.50 =	\$4,725.00
3 3" - Asphalt Surf. Course (\$9.5B)	SY	1080	\$9.90 =	\$10,692.00
4 Seeding	AC	3	\$1,200.00 =	\$3,600.00
SUBTOTAL GRADING (No. 1 through 4)				\$24,017.00
WATER				
5 Tie to Existing Water Lines	LS	1	\$500.00 =	\$500.00
6 6" Water Line (DIP/CL 350)	LF	420	\$16.00 =	\$6,720.00
7 Fire Hydrant	EA	1	\$1,550.00 =	\$1,550.00
8 6" GV & Box	EA	2	\$525.00 =	\$1,050.00
9 2" GV & Box	EA	1	\$350.00 =	\$350.00
10 Ductile Iron Pipe Fittings	EA	3	\$150.00 =	\$450.00
11 Water Services	EA	10	\$385.00 =	\$3,850.00
SUBTOTAL WATER (No. 5 through 11)				\$14,470.00
SEWER				
12 8" Diam Gravity Sewer Line (DIP/CL350)	LF	150	\$56.50 =	\$8,475.00
13 8" Diam Gravity Sewer Line	LF	1300	\$23.50 =	\$30,550.00
14 Stone Bedding	TN	170	\$17.00 =	\$2,890.00
15 4' Diameter Manholes (All depths)	EA	7	\$1,770.00 =	\$12,390.00
16 Service Laterals (4" PVC/SCH 40)	EA	10	\$700.00 =	\$7,000.00
SUBTOTAL SEWER (No. 12 through 16)				\$61,305.00
17 Closeout of Wastewater Treatment Plant	LS	1	\$70,000.00	\$70,000.00
TOTAL				\$169,792.00
125% of Total				\$212,240.00

Received
10/26/04



G. Thomas Jones
10/26/04

Riverwind IV

1" = 100'

TEMPORARY CUL-DE-SAC

MAPLEWOOD SUBDIVISION

WILLIAM G. LAPSLEY & ASSOCIATES, P.A.

Consulting Engineers & Land Planners

1635 Asheville Highway

Post Office Box 546

Hendersonville, North Carolina 28793

828-607-7334 Fax 828-697-7333

PROGRESS DRAWINGS

DATE 10/26/04

NOT FOR CONSTRUCTION

40' R/W

AMES E. JONES

731/893

F:\USERS\TOM\PROJECTS\Riverwind IV\03123phaseIVa-color.dwg, 10/26/2004 3:12:13 PM, 1:10'



received
10/26/04

GRAPHIC SCALE

(IN FEET)

Note:
Lots subject to change



VICTORY MAF

WILLIAM G LAPSLEY & ASSOCIATES P.A.
CONSULTING ENGINEERS & LAND PLANNERS
HENDERSONVILLE, NORTH CAROLINA

RIVERWIND SECTION IV
ETOWAH COMMUNITY
HENDERSON COUNTY,
NORTH CAROLINA

MASTER
PLAN

sheet
1 of 1

Revisions	

date:1/04
job: 03123
drawn: ABL



WILLIAM G. LAPOLEY & ASSOCIATES P.A.
Consulting Engineers & Land Planners
1846 Ashville Highway
P.O. Box 200
Henderson County, North Carolina 28530
404-437-2000

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Carrollwood Development, LLC, hereinafter referred to as "Developer," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

WITNESSETH:

WHEREAS, the Board and the Developer entered into an Agreement on or about the 1st day of November, 2004 ("Original Agreement"), concerning an improvement guarantee for a portion of a proposed subdivision known as Riverwind, Phase IV, located in Henderson County, North Carolina; and

WHEREAS, the Developer filed with Henderson County an irrevocable standby letter of credit issued by Carolina First Bank (Number 04-945) in the amount of \$212,500.00 ("original letter of credit") to serve as the improvement guarantee in accordance with the Original Agreement; and

WHEREAS, the Original Agreement provided that all required improvements were to be completed on or before January 15, 2005, and

WHEREAS, the Developer has requested that the Board extend the completion date for the required improvements to April 15, 2005; and

WHEREAS, the Developer has completed certain required improvements and anticipates requesting a partial release of the improvement guarantee in accordance with the Original Agreement; and

WHEREAS, the Developer has requested that, in the event that such a partial release of the improvement guarantee is approved in the future by the County Manager, the Developer have the ability to post cash or a certified check with Henderson County for the balance of the improvement guarantee in lieu of providing an amendment to the original letter of credit reflecting the partial release;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before April 15, 2005, complete as required the following improvements to serve lots 1 through 5, 32, and 46 through 49 in Riverwind, Phase IV: road construction (including, but not limited to, grading, installation of gravel and asphalt, shoulder stabilization work, etc.); water system installation and sewer system installation, including improvements related to the wastewater treatment plant, as required by the Henderson County Subdivision Ordinance, as shown on the Master Plan and the Phase IV Development Plan for

Riverwind conditionally approved by the Henderson County Planning Board on January 20, 2004, and as shown as shown in the cost estimate and other documents attached to the Original Agreement.

2. In the event that the Developer does not request a partial release of the improvement guarantee prior to the expiration of the original letter of credit, the Developer shall file with Henderson County an amendment to the original letter of credit which indicates that said amended letter of credit will expire no sooner than 60 days after the new completion date of April 15, 2005. In the event that the remaining required improvements are completed as required, the amended letter of credit will be released. In the event that such improvements are not completed as required, then the Developer shall be in breach of this Agreement and the improvement guarantee and Henderson County shall call the amended letter of credit and use the funds to complete the remaining required improvements. The Developer shall be required to reimburse to the County any amounts expended to complete the remaining required improvements that exceed the improvement guarantee.
3. In the event that the Developer requests a partial release of the improvement guarantee either prior to the expiration of the original letter of credit or after the submittal of an amended letter of credit as described in Paragraph 2, above, the Developer shall have the option of depositing with Henderson County cash or a certified check in lieu of the original letter of credit (or amended letter of credit, if applicable) provided: the Developer notifies the Henderson County Planning Department in writing of its desire to do so; the (Assistant) County Attorney approves such new form of improvement guarantee; and the amount remaining under the improvement guarantee meets or exceeds 125% of the cost of the remaining required improvements. 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. The Developer shall be required to reimburse to the County any amounts expended to complete the required improvements that exceed the improvement guarantee.
4. At such time as this Agreement is fully executed and the Developer has either filed an amendment to the original letter of credit as provided in Paragraph 2, above, or substituted cash or a certified check for the letter of credit (original or amended) as provided in Paragraph 3, above, the Developer will be released from its obligation to complete the required improvements by January 15, 2005.

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 required 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 (Assistant) 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:
Carrollwood Development, LLC

BY: _____
Manager

**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 of Carrollwood Development, LLC, a limited liability company, 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]**