

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: March 15, 2006

SUBJECT: Request for an Extension of Crab Creek Valley's Improvement Guarantee

ATTACHMENTS: 1. Letter from Bob Scheiderich
2. Draft of March 15, 2006, Performance Guarantee Agreement

SUMMARY OF REQUEST:

On May 2, 2005, the Board of Commissioners approved an application submitted by Bob Scheiderich with Southern Pride of WNC, Inc., for an improvement guarantee for the Crab Creek Valley subdivision. As required by the performance guarantee agreement for the improvement guarantee, the developer posted with Henderson County an irrevocable letter of credit for an amount of \$379,300.00. The improvement guarantee covered the road construction, shoulder stabilization and water system installation as required by the Henderson County Subdivision Ordinance. The original agreement required that the improvements be completed by July 30, 2005. On October 18, 2005, at the request of the developer, the Board of Commissioners approved extending the completion date to April 3, 2006.

The Planning Department received another letter from Bob Scheiderich on March 1, 2006 requesting to extend the completion date to June 30, 2006. Mr. Scheiderich's letter states that the extension is needed because of delays due to weather and approval of a community well site from the State (see attached letter). Also in the attached letter is a request to release a portion of the improvement guarantee. According to the performance agreement, the County Manager has the authority to release portions of the improvement guarantee. This request will be done separate from the request to extend the completion date and will not need approval from the Board of Commissioners.

Section 170-39 of the Subdivision Ordinance allows the Board of Commissioners, upon proof of difficulty, to grant extensions to completion dates for a maximum of one additional year, provided that the time between initiation and completion of the improvements does not exceed two years. If the Board of Commissioners agrees to grant the requested extension, staff has attached for the Board's consideration, a draft performance guarantee agreement. This agreement reflects a new completion date of June 30, 2006 and requires submittal of an amendment to the irrevocable letter of credit showing an expiration date not earlier than 60 days after the new improvements completion date.

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 Crab Creek Valley to June 30, 2006.

**SOUTHERN PRIDE OF WNC, INC.
 1194 SWEETEN CREEK ROAD
 ASHEVILLE, NC 28803
 (828) 277-5840**

March 1, 2006

Henderson County Planning Dept.
 101 East Allen Street
 Hendersonville, NC 28792

ATTN: Matt Card

RE: Extension of Improvement Guarantees

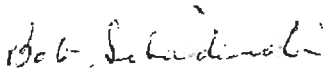
Dear Matt,

Southern Pride of WNC is requesting an extension of the Improvement Guarantees for infrastructure work at Crab Creek Valley to be completed by **June 30, 2006**. The extension is being requested because of delays due to weather, and delays for approval of a community well site from the State. We are also requesting a release from the guarantee equal to the amount of work completed.

Attached is an itemized list of work completed by Young & McQueen. In addition to this list, a well has been dug and we are waiting for State approval on the water line system.

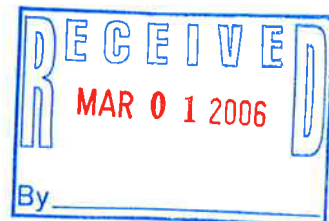
If you have any questions, please feel free to contact me at the above number or my cell phone number (828) 329-4941. Your attention to this request is greatly appreciated.

Sincerely,



Bob Scheiderich

BS/eb



STATE OF NORTH CAROLINA
COUNTY OF HENDERSON
PERFORMANCE GUARANTEE AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Southern Pride of WNC, Inc., 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 May 2, 2005 (hereinafter "the original Agreement"), concerning an improvement guarantee for the subdivision known as Crab Creek Valley, located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$379,300.00 in accordance with the original Agreement; and

WHEREAS, the original Agreement provided that all required improvements were to completed on or before the 30th day of July, 2005; and

WHEREAS, an extension was granted on October 19, 2005 by the Board of Commissioners extending the completion date of the original agreement to April 3, 2006;

WHEREAS, the Developer has requested that the Board of Commissioners approve extending the completion date of the latest agreement to June 30, 2006;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before the June 30, 2006, complete as required the following improvements to serve lots in the Project: grading, road construction, water system construction and road shoulder stabilization as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for the Project conditionally approved by the Henderson County Planning Department on March 15, 2005, and as shown on the original cost estimates sealed by John B. Jeter, P.E.
2. At such time as this Agreement is fully executed, this Agreement will supercede prior Agreements between the Board and the Developer regarding the improvement guarantee.
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. 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:
Southern Pride of WNC, 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 _____
COUNTY OF _____**

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 Southern Pride of WNC, 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

My Commission Expires: _____ **[NOTARIAL SEAL]**