

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: December 4, 2006

SUBJECT: Extension Request for the River Stone Improvement Guarantee

ATTACHMENTS: 1. Letter from Mr. Drew Norwood
2. Draft Performance Guarantee Agreement

SUMMARY OF REQUEST:

On October 2, 2006 the Board of Commissioners approved an application for an improvement guarantee for the River Stone subdivision. The improvement guarantee was for Sections 3A and 4B of River Stone. The improvement guarantee covered the construction of the road including paving, a valley gutter system for the above mentioned sections in River Stone. 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 \$122,125.00. The original agreement required that the improvements be completed by November 30, 2006.

On November 16, 2006 the Planning Department received a letter from Mr. Drew Norwood, agent for owner, requesting to extend the completion date 90 days to February 28, 2007. Section 170-39 of the Subdivision Ordinance allows the Board of Commissioners 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 February 28, 2007 and requires submittal of an amendment to the original irrevocable letter of credit showing an expiration date not earlier than 60 days after the new improvements completion date.

BOARD ACTION REQUESTED:

Action is needed by the Board of Commissioners to either grant or deny the request to extend the completion date to February 28, 2007. I recommend that the Board approve the request to extend the completion date of the performance agreement for River Stone, Sections 3A and 4B, to February 28, 2007.

Suggested Motion: I move that the Board of Commissioners find and conclude that the extension, if granted, would not cause the developer to exceed the two-year maximum time period for completion of the required improvements and therefore approve the requested extension.



WINDSOR/AUGHTRY COMPANY

Real Estate Development, Investment and Brokerage.

November 15, 2006

Mr. Matt Card
Henderson County Planning Department
101 East Allen Street
Hendersonville, NC 28792

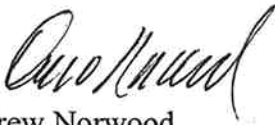
Dear Matt:

By copy of this letter, please extend the following performance agreements at Livingston Farm Subdivision 90 days:

1. Sections 3A & 4B - \$122,000
2. Sections 4A, 5A, 6A - \$634,000

Let me know if there are any questions.

Regards,



Drew Norwood
President
Residential Division



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 Board and the Developer entered into an Agreement on October 2, 2006 (hereinafter "the original Agreement"), concerning an improvement guarantee for Sections 3A and 4B of a subdivision known as River Stone, located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$122,125.00 in accordance with the original Agreement; and

WHEREAS, the original Agreement provided that all required improvements were to be completed on or before November 30, 2006; and

WHEREAS, the Developer has requested that the Board of Commissioners approve extending the completion date of the latest agreement to February 28, 2007; and

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before February 28, 2007, 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 amended irrevocable letter of credit guaranteeing completion of said improvements by the required date, and having an expiration date not earlier than 60 days after the completion date stated in Paragraph 1, above.
3. 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.

4. 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.
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