

## 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 June 5, 2006 the Board of Commissioners approved an application for an improvement guarantee for the River Stone subdivision. The improvement guarantee was for Sections 4A, 5A, and 6A (approximately 60 lots) of River Stone. The improvement guarantee covered the onsite water and sewer distribution systems and construction of the roads which included paving, a valley gutter system and drainage 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 \$1,159,512.50. The original agreement required that the improvements be completed by December 15, 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 March 15, 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 March 15, 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 March 15, 2007. I recommend that the Board approve the request to extend the completion date of the performance agreement for River Stone, Sections 4A, 5A and 6A, to March 15, 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

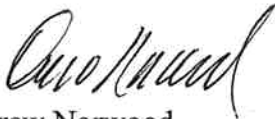
Dear Matt:

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 June 5, 2006 (hereinafter "the original Agreement"), concerning an improvement guarantee for Sections 4A, 5A and 6A 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 \$1,159,512.50 in accordance with the original Agreement; and

**WHEREAS**, the County Manager's Office approved a partial release of the improvement guarantee reducing the amount of the irrevocable letter of credit to \$634,306.25; and

**WHEREAS**, the original Agreement provided that all required improvements were to be completed on or before December 15, 2006; and

**WHEREAS**, the Developer have requested that the Board of Commissioners approve extending the completion date of the latest agreement to March 15, 2007; and

**IT IS THEREFORE AGREED** as follows:

1. The Developer will, on or before March 15, 2007, complete as required the following improvements to serve lots in Sections 4A, 5A and 6A in the Project: offsite water line extension, onsite water and sewer distribution systems and road construction for said Sections (which includes paving, a valley gutter system and drainage) 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 5/19/06).
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\_\_.

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**Notary Public**