

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** December 4, 2006

**SUBJECT:** Improvement Guarantee for Jeter Mountain Subdivision

**ATTACHMENTS:**

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

**SUMMARY OF REQUEST:**

Jeter Mountain, LLC, owner of the project, submitted an application for an improvement guarantee for the Jeter Mountain Subdivision. Jeter Mountain Subdivision is a 37-lot major subdivision off of Jeter Mountain Road. The Planning Board approved the Combined Master Plan and Development Plan on March 21, 2006. The improvement guarantee is proposed to cover the cost of fine grading and paving for all roads in the subdivision.

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 prior to Final Plat approval, the developer may post a performance guarantee for the improvements. Section 170-38 of the Henderson County Subdivision Ordinance states that the installation of the improvements must be completed within two years of the date of approval of the original improvement guarantee application. The developers intend to deposit with the County an irrevocable letter of credit in the amount of at least \$134,425.00 to cover the cost of the improvements (\$107,540.00) as well as the required twenty-five percent (25%) contingency (\$26,885.00). The proposed completion date for the improvements is January 31, 2007.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developers 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 application for an improvement guarantee. 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 be approved.

Henderson County  
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision TIMBERBROOK a.k.a JETER MOUNTAIN SUBD

Name of Owner JETER MOUNTAIN LLC

Address 6320 205 St. E BRADENTON, FL 34211

Phone: \_\_\_\_\_

Agent Jon Laughter Phone: 828 692-9089

Date of Preliminary Plan Approval by Planning Board April 10, 2006

Significant Conditions Imposed: \_\_\_\_\_

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 RABUN COUNTY BANK

Amount of guarantee (including 25% overhead) \$ \_\_\_\_\_ \$135,000.00

Projected completion date estimated Jan 2007 January 31, 2007 per JL on 11/20/06 <sup>MC</sup>

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.

Mike Hunsader  
Mike Hunsader  
Owner's Signature

Nov 16, 2006  
Date

Submitted By JHL

Date Nov 16, 2006

Received By MC

Date 11/17/06

\$ 250.00 fee

11/17/06



**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between Jeter Mountain, 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 one or more Final Plats for a proposed subdivision known as Jeter Mountain Subdivision, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

**WHEREAS**, the Henderson County Planning Board conditionally approved the Combined Master Plan and Development Plan for Jeter Mountain Subdivision, 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 January 31, 2007 complete as required the following improvements to serve lots in Jeter Mountain Subdivision: paving of the roads as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Development Plan for the Jeter Mountain Subdivision, conditionally approved by the Henderson County Planning Board on March 21, 2006, and as shown on the attached cost estimates prepared by Mr. Jon Laughter, P.E., (signed and sealed on November 15, 2006).
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 \$134,425.00 (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 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 Jeter Mountain Subdivision, 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 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:**  
**Jeter Mountain, 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 Jeter Mountain, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument.

**THIS** the \_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
**Notary Public**

**My Commission Expires:** \_\_\_\_\_

**[NOTARIAL SEAL]**

JETER MOUNTAIN LLC  
ENGINEERS ESTIMATE FOR COMPLETION OF STREET IMPROVEMENTS

NOVEMBER 16, 2006

JETER MOUNTAIN					
<b>REQUEST BY OWNER TO BOND SUBDIVISION STREET IMPROVEMENTS</b>					
LAA JOB NO. 05-306					
<b>PROJECT JETER MOUNTAIN SUBD aka TIMBERBROOK</b>					
JETER MOUNTAIN LLC, Trish Hunsader					
PREPARED BY: LAUGHTER, AUSTIN AND ASSOCIATES, PA					
692-9089					
ITEM	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL
1	<b>ROADS</b>				
	a. Fine Grading/ PAVING	sq yd	11,320.00	\$ 9.50	\$ 107,540.00
			-		\$ -
			-		\$ -
			-		\$ -
					\$ -
					\$ -
					\$ -
					\$ -
	<b>TOTAL ROAD</b>				<b>\$ 107,540.00</b>
2	<b>EROSION CONTROL Completed</b>				
		LS			\$ -
		SY			\$ -
		EA			\$ -
		LS			\$ -
		SY			\$ -
		EA			\$ -
	<b>TOTAL EROSION CONTROL</b>				<b>\$ -</b>
3					
		LF			\$ -
		LF			\$ -
		EA			\$ -
		EA			\$ -
		EA			\$ -
		EA			\$ -
		EA			\$ -
		EA			\$ -



Laughter, Austin and Associates, P.A.  
131 Fourth Avenue East, Hendersonville, NC 28792



