

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 5, 2007

SUBJECT: Extension Request for the River Stone Improvement Guarantee

ATTACHMENTS:

1. Letter from Mr. Drew Norwood
2. Draft Performance Guarantee Agreement
3. Cost Estimates

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 construction of the roads 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 December 4, 2006 the Board of Commissioners approved an extension to the completion date for the improvement guarantee to February 28, 2007. On January 4, 2007 the Planning Department received a letter from Mr. Drew Norwood, owner, requesting to extend the completion date again to July 31, 2007 because the paving could not be completed during the winter months. The applicant also submitted a letter on December 22, 2006 requesting a partial release of the improvement guarantee. Mr. Don Hunley, engineer for the project, submitted certified cost estimates with this letter which shows that \$9,625.00 worth of improvements remain for these sections. Mr. Norwood is also requesting that he deposit with the County the \$9,625.00, via cash or certified check, instead of amending the current letter of credit.

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 and approve the reduction then staff has attached for the Board's consideration, a draft performance guarantee agreement. This agreement reflects a new completion date of July 31, 2007, reduces the amount of the improvement guarantee to \$9,625.00 and will supersede any previous performance agreements.

BOARD ACTION REQUESTED:

Action is needed by the Board of Commissioners to either grant or deny this request. I recommend that the Board approve the request to extend the completion date of the performance agreement to July 31, 2007. I further recommend that the Board approve the reduction of the improvement guarantee to the amount of \$9,625.00 and that the applicant be allowed to deposit cash or certified funds with the County in accordance with the draft performance agreement.

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. I further move that the applicant be allowed a partial release of the improvement guarantee as shown in the attached cost estimates and that the applicant be allowed to deposit cash or certified funds with the County.



WINDSOR/AUGHTRY COMPANY

Real Estate Development, Investment and Brokerage.

1/04/07

January 4, 2007

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

Dear Mr. Matt:

Please accept this request that the performance guarantee for sections 3A and 3B at River Stone subdivision be extended to July 31, 2007. Enclosed is a check for \$250.00 as required.

If you have any questions, please call me at 864-271-9855.

Sincerely,

Drew Norwood
President
Residential Division

Enclosure

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, on December 4, 2006 the Board and Developer entered into a second Agreement which extended the completion date to February 28, 2007; and

WHEREAS, the Developer has requested that the Board approve extending the completion date to July 31, 2007; and

WHEREAS, the Developer has requested that the Board approve a partial release of the improvement guarantee leaving an amount of \$9,625.00 (cost of the remaining improvements including the 25% contingency) as shown on the attached cost estimates prepared by Donald Hunley, P.E. (signed and sealed 12/8/06); and

WHEREAS, the Developer is requesting that the Board approve of certified funds being deposited with Henderson County in place of amending the current irrevocable letter of credit; and

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before July 31, 2007, complete as required the following improvements to serve lots in Sections 3A and 4B in the Project: paving of the roads 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 12/8/06).
2. The Developer will provide to Henderson County for deposit at least \$9,625.00 in cash or certified funds (the "Improvement Guarantee"), with such monies

securing and guaranteeing completion of said improvements by the required 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. 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.
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

PROJECT COST ESTIMATE - ON-SITE
RIVERSTONE SUBDIVISION - SECTIONS 3A & 4
WGLA #04180 - Site Improvements Revised

Road System (400 LF Remaining)
Pavement (2" I-2)

1,100.0 SY @ \$7.00 = \$7,700.00

Total Estimated Construction Cost \$7,700.00

Contingency 25% \$1,925.00

TOTAL AMOUNT \$9,625.00

ENGINEER: DONALD L. HUNLEY, P.E.

William G. Lapsley & Associates, PA
Post Office Box 546
Hendersonville, NC 28793

DATE 12/18/06

