

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 5, 2007

SUBJECT: Extension Request for Improvement Guarantee for the Timberwolf Subdivision (Formerly known as Jeter Mountain Subdivision)

ATTACHMENTS: 1. Letter from Mr. Michael Hunsader
2. Draft Performance Guarantee Agreement

SUMMARY OF REQUEST:

On December 4, 2006 the Board of Commissioners approved an application for an improvement guarantee for the Jeter Mountain 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 \$134,425.00. The improvement guarantee proposed to cover the cost of fine grading and paving for all roads in the subdivision. All improvements were to be completed by January 31, 2007.

On January 4, 2007 the Planning Department received a letter from Mr. Hunsader requesting to extend the completion date to August 31, 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 August 31, 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 by the Board of Commissioners is needed to either grant or deny the extension of the completion date to August 31, 2007. I recommend that the Board approve the requested extension pursuant to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance.

Suggested Motion: I move that the requested extension would not cause the developer to exceed the two-year maximum time period for completion of the required improvements and is approved.

January 4, 2007

Henderson County, Office of the County Attorney
Attn: Matt Card, Subdivision Supervisor
213 1st Avenue East
Hendersonville, NC 28792

Dear Mr. Card,

Per the telephone conversation you had with my wife earlier this week, Jeter Mountain LLC is requesting an extension of the time allowed to complete the paving of Timberwolf subdivision on Jeter Mountain Road from January 31 to August 31, 2007. You explained that this change to our performance guarantee agreement would necessitate the approval of the Board of County Commissioners at the January 17 meeting. We have been advised by our site workers that in order to ensure a quality job, we should wait until winter is completely over before we begin the paving process. The extra time will also help should the area continue to experience copious amounts of rain.

This letter also serves to confirm that the correct name for the subdivision is indeed Timberwolf.

I have enclosed a check in the amount of \$250 for the extension fee. I appreciate your willingness to work with us on this matter. If you have any questions, or need additional information, please do not hesitate to contact me at (941) 713-0755.

Regards,



Michael T. Hunsader
Registered Agent
Jeter Mountain, LLC

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 Board and the Developer entered into an Agreement on December 4, 2006 (hereinafter "the original Agreement"), concerning an improvement guarantee for a proposed subdivision known as Timberwolf (formerly Jeter Mountain Subdivision), located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$134,425.00 in accordance with the original Agreement; and

WHEREAS, the original Agreement provided that all required improvements were to be completed on or before January 31, 2007, and

WHEREAS, the Developer has requested that the Board of Commissioners approve extending the completion date of the original agreement to August 31, 2007;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before August 31, 2007, complete as required the following improvements to serve lots 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 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 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 and the Developer has filed an amendment to the irrevocable letter of credit as provided in Paragraph 2, above, 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 irrevocable 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 use the irrevocable letter of credit 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:
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]