

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 6 February 2017
SUBJECT: Termination of Seven Falls development agreement
PRESENTER: Charles Russell Burrell
ATTACHMENT(S): Proposed termination agreement

SUMMARY OF REQUEST:

The holder of the deed of trust of the unsold property in the "Seven Falls Golf and River Club" development seeks the County's execution of a document affirming the termination of the existing development agreement. This development agreement was breached by the original developer, and as a result of the loss of permits, failures to act, and other violations of the law by the developer expired on or before February 28, 2013.

Planning staff have discussed this proposed termination agreement with your County Attorney, and are in agreement that attempting to continue the development agreement in effect would be impossible, due to the loss of permits by the developer. Any further development of the subject property would require commencement of a whole new process through the County's regular zoning and subdivision laws.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the agreement.

If the Board is so inclined, the following motion is suggested:

I move that the Board accept the proposed termination agreement.

Prepared By and Return To:
Van Winkle Law Firm (KRS)
PO Box 7376
Asheville, NC 28802

TERMINATION OF DEVELOPMENT AGREEMENT

THIS TERMINATION OF DEVELOPMENT AGREEMENT is made this _____ day of _____, 201__, by and between McElrath Carolina Investments, LLC, a North Carolina limited liability company ("McElrath"), and the County of Henderson, a North Carolina body politic (the "County").

RECITALS:

WHEREAS, Seven Falls, LLC and Mountain Development Company, LLC (collectively the "Developer") entered into that certain Development Agreement with the County dated May 15, 2008 and recorded in Book 1390, at Page 304 of the Henderson County, North Carolina Register of Deeds (the "Development Agreement").

WHEREAS, the property subject to the Development Agreement is described in the Development Agreement and is shown on Exhibit A thereof (the "Property").

WHEREAS, the Development Agreement sets forth, among other things, certain requirements for the development of the Property as a single family residential subdivision containing approximately 700 single family lots, 164 townhomes, 24 lodge and Inn rooms, and 36 condominiums known as "Seven Falls Golf & River Club" (collectively the "Subdivision").

WHEREAS, the Property, including the declarant rights of the Developer, were pledged as collateral for certain loans of the Developer.

WHEREAS, the Developer defaulted under the Development Agreement and the loans secured by the Property.

WHEREAS, the Subdivision was never completed.

WHEREAS, McElrath, as the holder of a deed of trust on the remaining Property, subsequently foreclosed its deed of trust and now owns the remaining Property and holds the declarant rights for the purpose of transferring such declarant rights to another person or entity as set forth in that certain Request for Transfer of All Special Declarant Rights and Declaration of Intention to Hold Special Declarant Rights Solely for Transfer to Another Person or Entity dated July 8, 2016 and recorded in Book 2857, at Page 15 of the Henderson County, North Carolina Register of Deeds.

WHEREAS, the Development Agreement, if it was in effect, would run with the land and be binding on successors in the ownership of the Property, per the terms of the Development Agreement.

WHEREAS, the County and McElrath are desirous of confirming that the Development Agreement, in accordance with its terms, expired and terminated on February 28, 2013 and due to the fact that the Subdivision was never completed such that there are no Development Agreement benefits and burdens to run with the land.

WHEREAS, the parties agree that any future development of the Property, if such development meets the statutory standards for a development agreement, would require a new development agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein set forth and for Ten and no/100 (\$10.00) Dollars and other good and valuable consideration, the receipt of which is acknowledged, the parties hereto mutually agree as follows:

1. That the Development Agreement has been and is hereby confirmed to have expired and is terminated and of no further force and effect, and neither the County nor McElrath, nor any successors in interest, shall have any further obligation or liability to the other under the terms of the Development Agreement.
2. This Agreement may be executed in one or more counterparts, each of which shall be considered an original and all of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

SIGNATURE AND NOTARY ACKNOWLEDGEMENTS FOLLOW

McElrath:

McElrath Carolina Investments, LLC

By: _____ (SEAL)

Name: _____

Its: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: _____

as _____ of McElrath Carolina Investments,
LLC

Date: _____

Notary Public

PLACE NOTARY SEAL INSIDE THIS BOX ONLY!

(Printed Name of Notary)

My Commission Expires: _____

County:

Henderson County

By: _____ (SEAL)

Name: _____

Its: County Manager

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: _____
as County Manager of Henderson County

Date: _____

Notary Public

(Printed Name of Notary)

My Commission Expires: _____

PLACE NOTARY SEAL INSIDE THIS BOX ONLY!