

## **REQUEST FOR BOARD ACTION**

### **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**MEETING DATE:** October 19, 2005

**SUBJECT:** Request for an Extension of Improvement Guarantee for Crab Creek Valley

**ATTACHMENTS:** 1. Letter from Bob Scheiderich  
2. Draft of October 19, 2005, Performance Guarantee Agreement

#### **SUMMARY OF REQUEST:**

On May 2, 2005, the Board of Commissioners approved an application submitted by Bob Scheiderich with Southern Pride of WNC, Inc., for an improvement guarantee for the Crab Creek Valley 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 \$379,300.00. The Improvement Guarantee covered the completion of the road construction, shoulder stabilization and water system installation as required by the Henderson County Subdivision Ordinance. The agreement required that the improvements be completed by July 30, 2005.

The Planning Department received a letter from Bob Scheiderich requesting to extend the completion date on the improvement guarantee to April 3, 2006. Mr. Scheiderich's letter states that the extension is needed because, "due to weather during the summer months and delays for approval of a community well site from the State." Section 170-39 of the Subdivision Ordinance allows the Board of Commissioners, upon proof of difficulty, to grant extensions to completion dates for improvement guarantees 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 which reflects a new improvements completion date of April 3, 2006. The Performance Guarantee requires that the Irrevocable Letter of Credit expire 60 days after the completion date. The current Irrevocable Letter of Credit shows an expiration date of June 3, 2006 and is adequate to cover the requested extension. An amended Irrevocable Letter of Credit will not be needed. The new Performance Guarantee Agreement must be executed by the relevant parties if the Board approves the extension request.

#### **COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:**

The extension, if granted, would not cause the developer to exceed the two-year maximum time period for completion of the required improvements. Therefore, I recommend that the Board approve the request to extend the completion date for the improvement guarantee for Crab Creek Valley to April 3, 2006.

**SOUTHERN PRIDE OF WNC, INC.  
1194 SWEETEN CREEK ROAD  
ASHEVILLE, NC 28803  
(828) 277-5840**

September 27, 2005

Henderson County Planning Dept.  
101 East Allen Street  
Hendersonville, NC 28792

ATTN: Matt Card

RE: Extension of Improvement Guarantees

Dear Matt,

Southern Pride of WNC is requesting an extension of the Improvement Guarantees for infrastructure work at Crab Creek Valley to be completed by ~~4/30/06~~. The extension is being requested because of delays due to weather during the summer months and delays for approval of a community well site from the State.

Thank you in advance for your consideration.

Sincerely,

*Bob Scheiderich*

Bob Scheiderich

BS/eb

*me*  
*4/3/06 per BS on 10/7/05*

**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between Southern Pride of WNC, 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 May 2, 2005 (hereinafter "the original Agreement"), concerning an improvement guarantee for the subdivision known as Crab Creek Valley, located in Henderson County, North Carolina; and

**WHEREAS**, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$379,300.00 in accordance with the original Agreement; and

**WHEREAS**, the original Agreement provided that all required improvements were to completed on or before the 30<sup>th</sup> day of July, 2005; and

**WHEREAS**, the Developer has requested that the Board of Commissioners approve extending the completion date of the original agreement to April 3, 2006;

**IT IS THEREFORE AGREED** as follows:

1. The Developer will, on or before the April 3, 2006, complete as required the following improvements to serve lots in the Project: grading, road construction, water system construction and road shoulder stabilization as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for the Project conditionally approved by the Henderson County Planning Department on March 15, 2005, and as shown on the original cost estimates sealed by John B. Jeter, P.E.
2. 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.
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. 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:**  
Southern Pride of WNC, 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 \_\_\_\_\_  
COUNTY OF \_\_\_\_\_**

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 Southern Pride of WNC, 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**

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

**[NOTARIAL SEAL]**