

## **REQUEST FOR BOARD ACTION**

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

**MEETING DATE:** June 5, 2006

**SUBJECT:** Extension Request for the Mountain Meadows Improvement Guarantee

**ATTACHMENTS:** 1. Letter from Mr. Jeffrey Donaldson  
2. Draft Performance Guarantee Agreement

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

On September 6, 2005 the Board of Commissioners approved an application for an improvement guarantee for the Mountain Meadows 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 \$62,740.00. The improvement guarantee covered the remaining cost of road construction and shoulder stabilization for the project. The original agreement required that the improvements be completed by April 15, 2006.

On May 16, 2006 the Planning Department received a letter from Mr. Donaldson requesting to extend the completion date for 90 days making a new completion date of July 15, 2006. 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 July 15, 2006 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.

#### **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 of the improvement guarantee for Mountain Meadows to July 15, 2006.

May 16, 2006

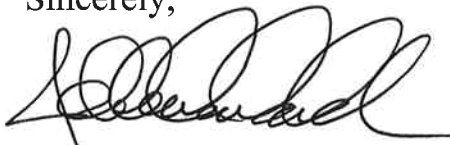
Mr. Matt Card  
Henderson County Planning Dept.  
101 East Allen Street  
Hendersonville, NC 28792

Dear Mr. Card:

Please accept this letter as a request to extend the current improvements guarantee on the Mountain Meadows Development on Oleta Road for an additional sixty ~~(60)~~<sup>90</sup> days. Mr. Crowe with Mountain First Bank has submitted paperwork to extend this line of credit for the time frame necessary and has worked with the county legal department in accomplishing this.

Current plans are to pave this road the week of May 22<sup>nd</sup> with hopes of completion of the paving and seeding by mid June. Should you have any questions please feel free to call me at anytime.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey S. Donaldson', with a stylized, cursive script.

Jeffrey S. Donaldson

**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_, by and between Mr. Jeffery S. Donaldson and Mr. Kenneth Burgess hereinafter referred to as "Developers," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

**WITNESSETH:**

**WHEREAS**, the Board and the Developers entered into an Agreement on September 6, 2005 (hereinafter "the original Agreement"), concerning an improvement guarantee for the subdivision known as Mountain Meadows, located in Henderson County, North Carolina; and

**WHEREAS**, the Developers posted with Henderson County an irrevocable letter of credit in the amount of \$62,740.00 in accordance with the original Agreement; and

**WHEREAS**, the County Manager approved a partial release of the improvement guarantee reducing the amount of the irrevocable letter of credit to \$37,500.00; and

**WHEREAS**, the original Agreement provided that all required improvements were to be completed on or before April 15, 2006; and

**WHEREAS**, the Developers have requested that the Board of Commissioners approve extending the completion date of the latest agreement to July 15, 2006;

**IT IS THEREFORE AGREED** as follows:

1. The Developers will, on or before the July 15, 2006, complete as required the following improvements to serve all lots in the Project: road construction as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for the Project conditionally approved by the Planning Board on November 18, 2003, and as shown on the attached cost estimates prepared by APAC-Atlantic, Inc. (dated April 11, 2005).
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, this Agreement will supercede prior Agreements between the Board and the Developers regarding the improvement guarantee.

4. 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 Developers 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.
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 Developers 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 Developers have 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**

**DEVELOPERS:**  
**Jeffery S. Donaldson and Kenneth Burgess**

BY: \_\_\_\_\_

**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 \_\_\_\_\_, Jeffery S. Donaldson and Kenneth Burgess, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

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

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

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

**[NOTARIAL SEAL]**