

Modified Improvement Guarantee Performance Agreement (utilizing original bonding instrument and expiration date) as a result of partial releases for Phase I and expansion of the original instrument to cover improvements in Phase IB.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

PERFORMANCE GUARANTEE AGREEMENT

THIS AGREEMENT made and entered into this 30th day of April, 2008, by and between Mountain Development Company, LLC represented by its authorized agent, hereinafter referred to as the "Developer", and Henderson County through its Planning Department, hereinafter referred to as "County,"

WITNESSETH:

WHEREAS, the Developer is seeking approval of one or more Final Plats of the proposed subdivision known as Seven Falls, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, Henderson County conditionally approved the Master Plan and Phase I Development Plan for the Project under Chapter 170 of the Henderson County Code, which is entitled Subdivision of Land which was in effect at the time of the conditional approval; and

WHEREAS, Henderson County conditionally approved the Phase I-B Development Plan for the Project under Chapter 200A, the Land Development Code; and

WHEREAS, Section §200A-87 of the Henderson County Land Development Code requires the completion of certain improvements prior to Final Plat approval, and Section §200A-88 allows the Developer to post an improvement guarantee with Henderson County to ensure the completion of said improvements;

WHEREAS, to post said guarantee, the Developer has submitted an application for review by the Subdivision Administrator as required by §200A-87, which must be approved by the Planning Director.

WHEREAS, The Developer has submitted proof of guarantee, through a form acceptable to the County under §200A-87 to secure the completion of said requirements in lieu of finishing all improvements prior to said approval;

WHEREAS, the Developer has submitted a guarantee in the form of irrevocable letter of credit to the County to secure the completion of said improvements in lieu of completion of all improvements prior to said approval;

WHEREAS, §200A-88 requires the Developer to sign a performance agreement and authorizes the Henderson County Planning Director to approve improvement guarantees and thus execute performance agreements on behalf of the County upon approval by the Office of the County Attorney as to form;

NOW THEREFORE for valuable consideration and mutual promises exchanged between the parties the Developer and the County agree as follows:

1. **Application.** The Subdivision Administrator has reviewed the improvement guarantee application, hereinafter referred to as the "Application", submitted by the Developer on April 30, 2008. The Developer certifies the information to be true, reliable and that all submitted information has been verified by a professional. The Application shall be attached to this Agreement and its terms incorporated by reference.
2. **Schedule.** The Developer will complete the required improvements on or before June 1, 2008. Developer understands an extension of one year may be granted to the Developer by the Planning Director at the request of the Developer and upon execution of an extension performance agreement. Developer acknowledges that in no case can completions of improvements exceed 2 years.
3. **Required Improvements.** Developer agrees to make the following: roadway construction which includes paving, construction of bridges, stormwater drainage, erosion control measures, road shoulder stabilization, installing of the public water system and installation of a community sewerage system, as shown on the revised Phase 1 Development Plan for Seven Falls signed and sealed by Mr. William Lapsley on June 21, 2007, Phase I-B Development Plan for Seven Falls signed and sealed by Mr. William Lapsley on April 30, 2008, and on the attached cost estimates prepared by William Lapsley, dated April 29, 2008. The Phase I Development Plan was conditionally approved by the Henderson County Planning Board on June 21, 2007 and Phase I-B was administratively approved on April 29, 2008. The required improvements will be done to any and all local, state, federal standards. Henderson County staff may inspect improvements as appropriate.
4. **Guarantee.** Proof of guarantee in the form of irrevocable letter of credit must be submitted by the developer. This proof will be verified by the County Planning Department and of the Office of the County Attorney to ensure the validity of the document and the amount. The Letter of Credit from the National Bank of South Carolina dated February 25, 2008 shall serve as evidence of the availability of \$4,963,875.00.
5. **Amount of Guarantee.** The Developer will post with Henderson County an irrevocable letter of credit in the amount of \$4,963,875 guaranteeing completion of said improvements by the required date. This amount equals 125% of the costs of the improvements as represented to the County by the Developer. If the Developer does not complete the improvements or obtain an extension, the County has the power to collect the money from the letter of credit for the unfinished improvements.

6. **Novation.** The Developer understands and agrees that this Performance Agreement shall take the place of the Performance Agreement signed July 2, 2007 and the Developer must make all the required improvements for Phase I and I-B of the development. The Developer further understands that the deadline for the requirements shall be June 1, 2008 with the possibility of one one-year extension as stated above.
7. **Final Plat Approval.** Upon the execution of this Agreement, submission of sufficient proof of guarantee and completion of the conditions of Master Plan and/or Development Plan approval, Compliance with §200A-87 and §200A-88 of the Henderson County Land Development Code, the Subdivision Administrator shall approve the final plat(s) for the project.
8. **Release of Funds.** The Planning Director 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 Planning Director has the discretion to require the Developer to provide, at the Developer's expense, an independent verification of the remaining work.

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed this the 30th day of April, 2008.

APPROVED AS TO FORM:

Sarah Grace Zamboni
Office of County Attorney

HENDERSON COUNTY
BY: [Signature]
Anthony Starr, Henderson County Planning Director

DEVELOPER:
Mountain Development Company, LLC

BY: _____
Managing Member

ATTESTED BY:

[CORPORATE SEAL]

SEAL
Mountain Development
Company LLC

Secretary/Assistant Secretary

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

I, Kathleen R. Scanlan, Notary Public for said County and State, certify that Anthony Starr personally came before me this day and acknowledged that he is the Planning Director for 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 himself as Planning Director

THIS the 30th day of April, 2008

Kathleen R. Scanlan
Notary Public

My Commission Expires: 10/24/2010

[NOTARIAL SEAL]

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

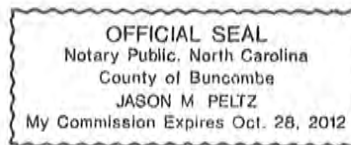
I, Jason M. Peltz, Notary Public for said State and County certify that Keith Wilson came before me this day and acknowledged that he/she is the Secretary/Assistant Secretary of Mountain Development Company, LLC., and that by authority duly given and as the act of the corporation the foregoing instrument 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 30 day of April, 2008

Jason M. Peltz
Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]



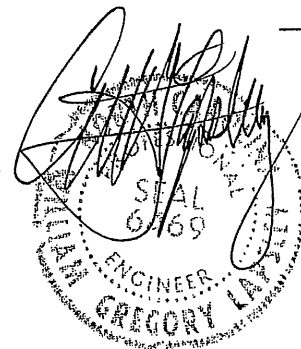
Seven Falls Golf & River Club

Phase I - Site Improvements

Bond Guarantee Estimate -

WGLA# 06149

Roadway Construction (19,200 lf)			
Clear & Grubb (100% complete)	1 LS	@	\$0.00 = \$0.00
Grading (80% complete)	1 LS	@	\$80,000.00 = \$80,000.00
Stone Base (8"CABC) (5% complete)	20,000 TN	@	\$26.00 = \$520,000.00
Pavement - Surface Course (1 1/2")	42,500 SY	@	\$8.00 = \$340,000.00
Stormwater Drainage			
Open Throat Drop Inlets (50% complete)	25 EA	@	\$2,000.00 = \$50,000.00
Junction Manholes	3 EA	@	\$2,000.00 = \$6,000.00
18"Ø HDPE (95% complete)	250 LF	@	\$28.00 = \$7,000.00
24"Ø HDPE (30% complete)	284 LF	@	\$34.00 = \$9,656.00
30"Ø HDPE	100 LF	@	\$44.00 = \$4,400.00
36"Ø HDPE	43 LF	@	\$50.00 = \$2,150.00
Erosion Control			
Silt Fence (100% complete)	0 LF	@	\$3.25 = \$0.00
Slope Matting (100% complete)	0 SY	@	\$2.00 = \$0.00
Slope Drains (12"Ø) (100% complete)	0 LF	@	\$20.00 = \$0.00
Rock Inlet Protection (50% complete)	4 EA	@	\$150.00 = \$600.00
Gravel/Fence Inlet Protection (50% complete)	22 EA	@	\$150.00 = \$3,300.00
Water Bars (100% complete)	0 EA	@	\$50.00 = \$0.00
Sediment Basins - (90% complete)	5 EA	@	\$1,500.00 = \$7,500.00
Ditchline Protection (80% complete)	2,400 LF	@	\$5.00 = \$12,000.00
Swale Protection (80% complete)	2,700 LF	@	\$3.50 = \$9,450.00
Pipe Headwalls	10 EA	@	\$2,500.00 = \$25,000.00
Rip Rap Stone (80% complete)	400 TN	@	\$40.00 = \$16,000.00
Maintenance of Erosion Measures (50% complete)	1 LS	@	\$25,000.00 = \$25,000.00
Seed, Fertilizer & Mulch (80% complete)	10 AC	@	\$1,500.00 = \$15,000.00
Bridge Construction (30% complete)	1 LS	@	\$625,000.00 = \$437,500.00
Total			\$1,570,556.00
X 125%			\$1,963,195.00



Seven Falls Golf & River Club - Phse 1
Bond Guarantee Estimate - Page 2

Water Distribution System

8"Ø Water Line (DIP)	3,600 LF	@	\$22.00 =	\$79,200.00
6"Ø Water Line (DIP)	9,700 LF	@	\$18.00 =	\$174,600.00
8"Ø GV & Box	10 EA	@	\$850.00 =	\$8,500.00
6"Ø GV & Box	30 EA	@	\$600.00 =	\$18,000.00
Fittings	21,000 LB	@	\$3.00 =	\$63,000.00
Fire Hydrants	20 EA	@	\$2,000.00 =	\$40,000.00
Air Release Valve	21 EA	@	\$800.00 =	\$16,800.00
Service Connections	126 EA	@	\$700.00 =	\$88,200.00
Blow-offs	7 EA	@	\$600.00 =	\$4,200.00

Subtotal \$492,500.00

Sanitary Sewer System

8"Ø Gravity Sewer Line	22,500 LF	@	\$25.00 =	\$562,500.00
4"Ø Manholes	106 EA	@	\$1,800.00 =	\$190,800.00
Stabilization Stone	3,500 TN	@	\$18.00 =	\$63,000.00
4"Ø Service Connections	62 EA	@	\$600.00 =	\$37,200.00
3"Ø Sewer Force Main (PVC)	8,300 LF	@	\$15.00 =	\$124,500.00
1½"Ø Service Connections	64 EA	@	\$600.00 =	\$38,400.00

Subtotal \$1,016,400.00

Water Supply (Contribution to City of Hendersonville Project)

Water Storage Tank	\$200,000
On-site Water Line	\$130,000

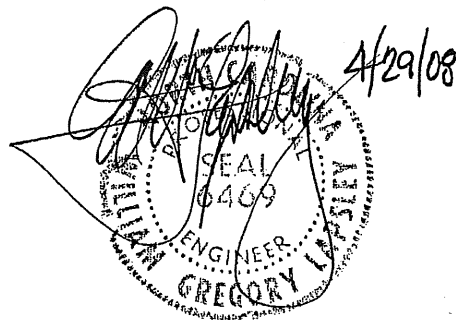
\$330,000.00

Wastewater Treatment Plant (Phase I)

Phase I (75,000 gpd) @ \$5.00 /gallon \$375,000.00

Subtotal \$705,000.00

TOTAL \$2,213,900.00
x125% \$2,767,375.00



Seven Falls Golf & River Club

Preliminary Project Cost Estimate

Phase IB - Subdivision

WGLA# 06149

Road Improvements (2,800 lf)

Clear & Grubb	<u>3.2</u> AC	@	<u>\$2,000.00</u> =	<u>\$6,400.00</u>
Grading	<u>1</u> LS	@	<u>\$35,000.00</u> =	<u>\$35,000.00</u>
Stone Base	<u>3,000</u> TN	@	<u>\$18.00</u> =	<u>\$54,000.00</u>
Pavement	<u>6,000</u> SY	@	<u>\$8.00</u> =	<u>\$48,000.00</u>
Stormwater Drainage				
18"Ø Culvert	<u>150</u> LF	@	<u>\$30.00</u> =	<u>\$4,500.00</u>
30"Ø Culvert	<u>50</u> LF	@	<u>\$40.00</u> =	<u>\$2,000.00</u>
Erosion Control				
Mud Matt	<u>1</u> EA	@	<u>\$800.00</u> =	<u>\$800.00</u>
Silt Fence	<u>800</u> LF	@	<u>\$4.00</u> =	<u>\$3,200.00</u>
Seed, Fertilizer & Mulch	<u>3.2</u> AC	@	<u>\$2,500.00</u> =	<u>\$8,000.00</u>

Total Construction

\$161,900.00

X125%

\$202,375.00





APR 30 2008

IRREVOCABLE STANDBY LETTER OF CREDIT

February 25, 2008

BENEFICIARY

Henderson County
100 North King Street
Hendersonville, N.C. 28792

APPLICANT

Mt. Development Co. LLC
32 Orange Street
Asheville, NC 28801

Ladies and Gentlemen:

We hereby issue our Irrevocable Standby Letter of Credit No. ****2591**** in favor of ****Henderson County North Carolina**** ("Beneficiary") in the aggregate amount of ****\$4,963,875.00**** for the account of ****Mountain Development Co. LLC**** ("Customer"). Funds under this Credit are available upon presentation of your drafts on us at site, and Beneficiaries signed statement purportedly signed by an authorized official certifying that:

The amount drawn is due to the default or failure to perform by Customer with respect to ****complete as required the following improvements to serve lots in Phase I and Phase I-B of Seven Falls: roadway construction which includes paving, construction of bridges, storm water drainage, erosion control measures, road shoulder stabilization, installation of the public water system and installation of a community sewerage system, as required****. The Performance Guarantee Agreement was dated July 2, 2007 and subsequent performance Agreement dated April 30, 2008.

Drafts drawn under this Letter of Credit must bear the phrase "Drawn under The National Bank of South Carolina Irrevocable Credit No. ****2591**** dated ****July 2, 2007****". We agree with you that drafts drawn under and in accordance with the terms of this Letter of Credit will be duly honored when presented at this bank on or before ****July 31, 2008****, at which time this Credit expires. Documents to be forwarded to The National Bank of South Carolina, Attn: ****Kimberly Mode****, ****150 E. Henry Street Spartanburg, SC 29306****.

This Irrevocable Standby Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 (the "Uniform Customs"). As to matters not governed by Uniform Customer, this Irrevocable Standby Letter of Credit shall be governed and construed in accordance with the laws of the State of South Carolina.

**THE NATIONAL BANK OF SOUTH CAROLINA A PROVIDER OF SYNOVUS
FINANCIAL SERVICES**

By: 

****Kimberly L. Mode****
****Vice President****

Post Office Box 610 / Spartanburg, South Carolina 29304-0610 / (864) 591-6000
www.NationalBankSC.com

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