

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

**Prepared by and Return to: M. Jay DeVaney
Nexsen Pruet Adams Kleemeier
701 Green Valley Road, Suite 100
Greensboro, NC 27408**

**Development Agreement by and between the County of Henderson, Seven Falls, LLC and
Mountain Development Company, LLC
Relative to the Development Known as Seven Falls Golf & River Club**

This Development Agreement (the "Agreement") is made and entered into this 15th day of May, 2008 by and between SEVEN FALLS, LLC and MOUNTAIN DEVELOPMENT COMPANY, LLC, each a North Carolina limited liability company (collectively "Developer"), and the COUNTY OF HENDERSON, a North Carolina body politic ("County").

STATEMENT OF PURPOSE

Section 153A-349.1(a)(1) of the North Carolina General Statutes provides that "large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources."

Section 153A-349.1(a)(3) of the North Carolina General Statutes provides that "because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development."

Section 153A-349.1(a)(4) of the North Carolina General Statutes provides that "because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development."

Section 153A-349.1(a)(5) of the North Carolina General Statutes provides that "because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas."

Section 153A-349.1(a)(6) of the North Carolina General Statutes provides that "to better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments."

In view of the foregoing, Section 153A-349.1(b) and 153A-349.3 of the North Carolina General Statutes expressly authorizes local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of Sections 153A-349.1 through 153A-349.13 of the North Carolina General Statutes, which procedures and requirements include approval of the development agreement by the governing body of the local government by ordinance after a duly noticed public hearing.

Section 153A-349.4 of the North Carolina General Statutes restricts the use of a development agreement to "property that contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of the application)." G.S. 153A-349.4 further provides that "development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."

Developer is the owner or has under contract certain parcels of land containing in the aggregate of approximately 1,398 acres, located in the County of Henderson, North Carolina (the "Property"), such Property being more particularly described on Exhibit A attached hereto and incorporated herein by reference.

On April 19, 2007, the Henderson County Planning Board ("Planning Board") received and reviewed a major residential, subdivision preliminary plan (the "Master Plan") that contemplates the Property to be developed as a single family residential subdivision containing approximately 700 single family lots, 164 townhomes, 24 lodge and Inn rooms, and 36 condominiums (the "Subdivision") known as "Seven Falls Golf & River Club". A copy of the Master Plan is attached hereto as Exhibit B and incorporated herein by reference. In general accordance with the Master Plan, Developer did submit preliminary development plans for the creation of a first phase of 176 units in May/June 2007. At its April meeting, Planning Board conditioned Master Plan approval upon the Developer making adequate provisions for water and sewer access and fire protection when Phase 1 is addressed. At the June 2007 meeting of the Planning Board, the Master Plan approval was amended to provide that water could be supplied by the City of Hendersonville public or community water systems and that during the first twenty-four (24) months following filing of the Declaration of Covenants, Conditions and Restrictions (the "Declaration") the Developer may provide on-site water and sewer by well and septic systems for up to forty-eight (48) units which units will be connected to the public or community water sewer systems, when such systems are completed, but in all events not later than twenty-four (24) months following the filing of the Declaration. An additional condition for approval by the Planning Board mandated the development could not have individual septic or wells permanently due to the high density of the development.

Developer desires to continue to develop the Subdivision on the Property consistent with the Master Plan and as further defined and set forth by those terms and provisions that are more particularly set out below.

County recognizes that Developer has invested a substantial amount of money in the development of the Property (in excess of \$30,000,000.00 to date with an anticipated total investment in excess of \$180,000,000.00) and that the anticipated tax base of the completed subdivision will exceed \$1,250,000,000.00.

County desires that Developer continue to develop the subdivision in general accordance with the Master Plan and that the Subdivision, including its lot sizes, density, access, and circulation, is compatible with the existing and/or permissible future uses of adjacent property; that the Subdivision will not have detrimental impacts on the safety or viability of permitted uses on adjacent properties.

County has requested and Developer has agreed to donate a site for the creation of a future fire station from a portion of the Property to be selected by Developer and to create water storage that will be connected to the City of Hendersonville public water system, thus creating additional water storage available to enhance the Hendersonville public water supply. In addition, for the, County has requested and Developer has volunteered to provide the shell of a fire substation building on the Property for the benefit of Henderson County, specifically the Etowah community and Seven Falls residents.

Accordingly, Developer and County desire to enter into this Agreement for the purposes of coordinating the construction of infrastructure that will serve the Subdivision and the community at large; confirming the phasing of the construction of the lots to be located in the Subdivision and providing assurances to Developer that it may proceed with the development of the Subdivision in general accordance with the Master Plan and that zoning and subdivision standards imposed by County will remain stable throughout the period of development.

TERMS

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the parties do hereby agree as follows:

1. Public Hearing. Pursuant to Section 153A-349.5 of the North Carolina General Statutes, County shall conduct a public hearing to consider the approval and execution of this Agreement in accordance with the procedures set out in G.S. 153A-323. The notice of public hearing shall specify, among other things, the location of the Property subject to this Agreement, the development uses proposed on the Property and a place where a copy of the Agreement can be obtained.
2. Approval of Phase 1 Plats. At a regularly scheduled meeting on June 21, 2007 (continued from May 2007), the Developer did submit and the Planning Board did approve the Phase 1 development plan containing 176 units, ("Phase 1 Plan"). The Phase 1 Plat is an approved major subdivision plat under the Subdivision Ordinance for all purposes, and Developer has recorded the Phase 1 Plat(s) in accordance with Chapter 170 of the Subdivision of Land Ordinance of Henderson County.
3. Permitted Uses. The Property may be devoted to single family residential attached and detached uses together with any incidental or accessory uses associated therewith (including a private golf club, tennis center, equestrian center, fishing instruction, and canoeing). As more particularly depicted on the Master Plan, a maximum of 900 single family units and 24 Lodge and Inn rooms including townhouses and condominiums may be developed on the Property.

- (a) The only uses that this Agreement purports to allow are those established in the Project Narrative received by the Henderson County Planning Department on March 5, 2007. This Narrative is attached as Exhibit C and incorporated by reference.
- (b) Quadraplexes as proposed by the Developer in the Master Plan are permitted under this Agreement but only to the extent included in the Master Plan.
- (c) Mixed Use development as proposed by the Developer in the Master Plan in the Village section of the subdivision are permitted under this Agreement but only to the extent included in the Master Plan and Project Narrative.

4. Open Space: The current Subdivision Ordinance states that “open space” is to be defined as “land that is generally left in its natural state and not developed”, all in a manner acceptable to the Office of the County Attorney of Henderson County. For the purpose of this agreement and this agreement only, all pervious surfaces located within the proposed golf course and golf practice facility shall be included in the computation for open space for the Seven Falls development. All land within proposed rights-of-way, fee simple lots, parking areas and drives, the foot print of any heated structure, or within the commercial parcel shall not be considered open space. Said land shall also not count toward the minimum requirements for open space as provided for below.

- (1) The entire Seven Falls development shall include no less than 20 % open space.
- (2) The Golf Course and golf practice facility shall be owned and maintained by the Developer with a right of first offer to the Seven Falls Club Members. The remaining open space shall be permanently dedicated to the property owners (or the Seven Falls Club Members) of the Subdivision and ultimately conveyed to the Property Owner’s Association of the Subdivision in such a way that it can never be voluntarily divided, or used in a way inconsistent with the definition of “Open Space” contained herein.
- (3) The Developer shall submit an instrument or instruments setting forth a plan for permanent care and maintenance of open space and buffers which would be legally enforceable; that the Applicant create a homeowners’ association and submit bylaws and rules and regulations governing the association. The Office of the County Attorney must review the Declaration of Covenants and Restrictions for Seven Falls Golf & River Club, the Bylaws of the Property Owner’s Association as to form, and approve the same as preserving in perpetuity the open space and buffers, and reasonably providing for their permanent care and maintenance.
- (4) The Developer shall provide a survey of all known cemeteries within the Seven Falls Development. Said survey shall show the external boundaries of each cemetery. The Developer shall provide permanent restrictive covenants to provide for the permanent preservation and maintenance of the cemeteries. Such restrictive covenants shall also provide that the public shall have daily access to the cemeteries. Such restrictive covenants are to be approved by the Planning Director and County Attorney prior to recording at the Henderson County Register of Deeds.

The survey and restrictive covenants shall be provided to the County within 90 days of the effective date of this agreement. The restrictive covenants shall be recorded with the Henderson County Register of Deeds within 30 days of approval by the Planning Director and County Attorney.

5. Pedestrian Facilities. It is intended that reasonable pedestrian access is provided for larger subdivisions to promote healthy and safe walking environments in the neighborhoods of Henderson County. To this end, Developer agrees to provide one (1) linear foot of sidewalk or walking trail for every two (2) linear feet of improved or newly proposed roadway. The total length of trails will be approximately 23,000 linear feet in the common areas, roadways, and golf course.

6. Setback Requirements. All single family units must have a minimum setback as established in the Declaration. All structures in the development, including commercial structures, must have a minimum fifty (50) foot setback from any adjacent property that is not part of the development. There is no internal setback requirement for non-residential buildings.

7. Bridge and Culvert Requirements. All culverts and bridges in the development must meet NCDOT standards and Henderson County Code requirements. In addition, the Developer must supply plans and certifications for all project bridges prepared by a NC registered professional engineer.

8. Development of the Property. The Property and the Subdivision shall be developed in general accordance with the Master Plan, Project Narrative, conditions for Master Plan approval established by the Planning Board, and the terms of this Agreement including but not limited to the size, placement and configuration of the lots, common open space, streets, and other improvements planned for the Subdivision. Any minor changes to the Master Plan must be reviewed by the Planning Director who may approve the changes administratively but may with good cause, refer significant variations to the Planning Board. Minor deviations or amendments to the Master Plan may be necessary from time to time due to various circumstances (including, but not limited to, engineering issues, topographical concerns, and public safety) which deviations or amendments shall not be considered an amendment to this Agreement and shall not trigger the approval procedure set forth in Paragraph 17 of this Agreement.

9. Development Schedule. In addition to the 176 units comprising Phase 1 approved on June 21, 2007, Developer shall submit to the Planning Director applications from time to time for major subdivisions totaling 900 according to the following schedule:

Minimum Number of Units Submitted for Subdivision Approval Completed By Year

(Must be submitted and approved by 12/31 of completion year)

<u>Minimum Number</u>	<u>Year</u>
150	Year 1: 2008
250	Year 3: 2010
350	Year 5: 2012
450	Year 8: 2015
550	Year 10: 2017

Developer must complete the infrastructure of each phase within two (2) years of phase development plan approval. The phases for the subdivision are included in Exhibit D. The Planning Board may, for just cause, grant extensions of development plan approval for a maximum of one year. Only one extension may be granted for each phase.

10. Required Right-of-Ways. Developer must provide in the restrictive covenants for Seven Falls an easement giving property owners and their guests legal access to all lots and units. The final plat must have a notation on it to this effect. This provision in the restrictive covenants must be approved by the Henderson County Attorney's Office before approval of the final plat.

11. Protected Ridge Ordinance. Developer must comply with North Carolina law governing development on protected ridges. Should Henderson County create standards differing from the state regulations, Developer must only comply with the state regulations provided Developer guarantees any and all structures built on an elevation of over 2400 feet as determined by the Mountain Ridge Protection Act will have a height limit of thirty-five (35) feet.

12. Post-construction Stormwater Control Requirements. This development shall be subject to the requirements of the North Carolina Phase II Post-construction stormwater control requirements as enacted and enforced by the N.C. Department of Environment and Natural Resources effective July 1, 2007. The developer, and their successors, shall seek and secure the appropriate approvals from the State.

13. Law in Effect at Time of the Agreement Governs the Development of the Subdivision. Developer shall have a vested right to develop the Property and the Subdivision in general accordance with the Master Plan, the terms of this Agreement and the Subdivision and Zoning Ordinances as they exist and were applied as of April 1, 2007 during the entire term of this Agreement. Developer shall only have vested rights for the uses specified in the Project Narrative and Master Plan as clarified by this Agreement. No vested rights are granted regarding any environmental ordinances including but not limited to any Stormwater Ordinance, Sedimentation and Erosion Ordinance, Watershed Protection Ordinance, or similar ordinances hereafter adopted by Henderson County. In addition, the project will still be subject to an Adequate Public Facilities Ordinance should the County adopt such an Ordinance during the term of this Agreement. Pursuant to G.S. 153A-349.7 and except as provided in G.S. 153A-344.1(e), County may not apply subsequently adopted Subdivision or Zoning Ordinances to the Property or the Subdivision during the term of this Agreement without the written consent of Developer. This Agreement does not abrogate any rights preserved by G.S. 153A-344 or G.S. 153A-344.1, or that may vest pursuant to common law or otherwise in the absence of this Agreement.

14. Term. The term of this Agreement shall commence on March 1, 2008 and expire on February 28, 2013 provided, however, so long as Developer has met the minimum number of units submitted for approval as set forth in Section 9 and has provided the public facilities set forth in Section 16, the term of this Agreement shall be automatically renewed for an additional period of five (5) years to expire on February 28, 2018, unless sooner terminated by the mutual consent of the parties hereto or their successors in interest, or unless extended by the mutual

consent of the parties hereto or their successors in interest. However, the covenants and restrictions shall continue as herein provided to run with the land.

15. Local Development Permits. In accordance with G.S. 153A-349.6(a)(6), the following is a description or list of the local development permits approved or needed to be approved for the development of the Subdivision:

- (a) Erosion and Sediment Control Permit (NCDENR – Land Quality), and any successor or other organization enforcing any laws in effect regarding erosion and sediment control
- (b) Water Supply & Distribution System Permit (NCDENR – Public Water Supply), and any successor or other organization enforcing any laws in effect regarding public water supply and distribution systems.
- (c) Sanitary Sewer Collection System Permit (NCDENR – Division of Water Quality), and any successor or other organization enforcing any laws in effect regarding public sanitary sewer collection systems.
- (d) Wastewater Treatment System Permit (NCDENR –Division of Water Quality), and any successor or other organization enforcing any laws in effect regarding wastewater treatment systems.
- (e) NCDOT Street Access Permit, and any successor or other organization enforcing any laws in effect regarding access to NCDOT maintained roads.
- (f) Stream or Wetland Impacts (US Army Corps of Engineers& NCDENR), and any successor or other organization enforcing any laws in effect regarding streams and wetland areas.
- (g) Subdivision approvals (Henderson County)
- (h) Building Permits (Henderson County)
- (i) All other local, state or federal permits required for this development

The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve Developer of the necessity of complying with the law governing federal, any state or local jurisdiction the local permitting requirements, conditions, terms or restrictions.

16. Public Facilities. As to the public facilities serving the Subdivision, the parties agree as follows:

- (a) Water shall be furnished by either the City of Hendersonville, any successor to the water system of the City of Hendersonville, or by a community water system approved by NCDENR and provided by Developer.

- (b) Developer shall within twelve (12) months of the date hereof convey to Etowah-Horseshoe Fire & Rescue Department, Inc., a parcel of not less than 1.5 acres and not more than 2.0 acres (“the parcel”) for the location of fire substation to serve the Seven Falls Golf & River Club development (“the Development”) and the neighboring community. The parcel shall be located outside the entrance gate of the Development as agreed between the parties and Etowah-Horseshoe Fire & Rescue Department, Inc. The agreement of Etowah-Horseshoe Fire & Rescue Department, Inc., required in this paragraph may not be unreasonably withheld.
- (c) Etowah-Horseshoe Fire & Rescue Department, Inc. shall provide Developer plans and specifications for the fire department substation within thirty (30) days following the execution of this Agreement. Developer shall, within twelve (12) months of the date hereof complete construction of a fire department substation on the parcel (of a design reasonably similar to other substations located within the County and in the vicinity, such design to be approved by the parties and Etowah-Horseshoe Fire & Rescue Department, Inc.). As intended herein, construction of the substation to be “complete” means that the substation will be ready for (i) the immediate location of appropriate fire-fighting equipment (to be provided by Etowah-Horseshoe Fire & Rescue Department, Inc., and not by the parties) and (ii) normal operation as a fire substation. Should construction not be complete within thirty days of the date required, Developer shall pay to County the sum of One Hundred Dollars (\$100.00) per day from the date by which construction was to be complete until the construction is complete.

17. Water and Sewer Lines.

- (a) The Subdivision, including both residential and commercial structures, must be served by a community sewer and public or community water system. These systems must be provided before any units may be sold or leased with the exception of clause (e) within this provision as stated below.
- (b) Developer, at its sole cost and expense shall engineer, design, permit, construct and install the water and sewer lines to be located within the Subdivision (the “Internal Water and Sewer Lines”). The Internal Water and Sewer Lines shall be engineered, designed, constructed and installed in accordance with all applicable federal, state, and local laws, regulations and policies, including but not limited to, those regulations promulgated by the North Carolina Department of Environment and Natural Resources (NCDENR). Said water and sewer lines must be constructed so that they may be connected to the public water system and the County sewer system in the future. The City of Hendersonville must approve the water line design and County must approve the sewer line design.
- (c) Developer agrees to sell the sewer lines to the County of Henderson for one dollar (\$1.00) at such time in the future as the County establishes or participates in a public sewer system. This sewer system cannot be conveyed to any other entity without permission of the County. The developer will not have to extend their sewer system in order to connect to any future sewer system established by the

County. This provision will be preserved and recorded as part of the Seven Falls Homeowner's Association covenants and restrictions before the recordation of the first final plat.

- (d) Developer agrees to convey all water lines constructed within each Phase to the water system supplying water to the Subdivision (in a form acceptable to such system) upon the completion of each Phase. This provision will be preserved and recorded as part of the Seven Falls Property Owner's Association covenants and restrictions.
- (e) During the first twenty-four (24) months of the developing the project, the Developer may provide onsite water and sewer services for no more than forty-eight (48) units. These units must be connected to the permanent water and sewer systems as soon as the systems have been constructed but no later than twenty-four (24) months after filing of the Declaration.
- (f) Developer shall create a water storage facility at Developers expense, storing no less than a two-hundred thousand gallon tank (200,000 gallon) in one or more water storage tanks to be located at Developers discretion on the Property which will at a future date, become part of the City of Hendersonville public water system or a community water system approved by NCDENR. Developer at such time as the City of Hendersonville agrees to extend its public water system to the Seven Falls development (at the City's expense), agrees that the water storage tanks and distribution lines will be conveyed to the City of Hendersonville system at the cost of one-dollar (\$1.00). This provision will be preserved and recorded as part of the Seven Falls Property Owner's Association covenants and restrictions. Provided the City of Hendersonville agrees to provide public water, this water storage facility will be conveyed to the City of Hendersonville within twenty-four (24) months of the date of this Agreement.

18. Amendment. The terms of this Agreement may be amended by the mutual consent of the parties hereto or their successors in interest. A major modification of the terms of this Agreement shall follow the same procedures as required for the initial approval of this Agreement. Minor deviations from the Master Plan shall not be considered to be an amendment to this Agreement. Minor deviations shall include, but not be limited to, the relocation or reconfiguration of lots and roads due to engineering issues, topography, and terrain. Any minor changes to the Master Plan must be reviewed by the Planning Director who may approve the changes administratively but may with good cause, refer variations to the Planning Board.

19. Recordation/Binding Effect. Within fourteen (14) days after County enters into this Agreement, Developer shall record this Agreement in the Henderson County Public Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties hereto.

20. Periodic Review.

- (a) Pursuant to Section 153A-349.8, the Planning Director or other County designee shall conduct a periodic review, (the "Periodic Review") at least every 12 months,

at which time Developer shall be required to demonstrate good faith compliance with the terms of this Agreement.

- (b) If as a result of the Periodic Review, County finds and determines that Developer has committed a material breach of the terms or conditions of the Agreement, County shall serve notice in writing, within a reasonable time after the Periodic Review, upon Developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing Developer a reasonable time in which to cure the material breach.
- (c) If Developer fails to cure the material breach within the time given, then County may unilaterally terminate or modify the Agreement; provided the notice of termination or modification may be appealed to the Board of Adjustment in the manner provided by G.S. 153A-345(b).

21. Default. The failure of Developer or County to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting party to pursue such remedies as allowed under applicable law, provided, however, that no termination of this Agreement may be declared by County absent its according to Developer the notice and opportunity to cure set out in G.S. 153A-349.8. The parties to this Agreement recognize that, in addition to other remedies that may be available, County has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance with the terms of this Agreement. Subject to the terms of this Agreement, in the event that Developer or any user on the subject property violates the rules, policies, regulations or ordinances of County or violates the terms of this Agreement, County may, without seeking an injunction and after ten (10) days' notice to correct the violation, take such actions as shall be deemed appropriate under law until such conditions have been honored by the Developer. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement; or to obtain any remedies consistent with the purpose of the Agreement. Legal actions shall be instituted in the Superior Court of the County of Henderson, State of North Carolina, or in the Federal District Court for the Western District of North Carolina, and the parties hereto subject to the personal jurisdiction of such courts without application of any conflicts of laws provisions of any jurisdiction.

22. Notices. Any notice, demand, request, consent, approval or communication which a signatory party is required to or may give to another signatory party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such party may from time to time direct by written notice given in the manner herein prescribed, and such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimiles or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. All notices demands, requests, consents, approvals or communications to the parties shall be addressed to:

County at: Planning Director
Henderson County Planning Department
213 1st Avenue East
Hendersonville, North Carolina 28792

With a copy to: County Attorney
213 1st Avenue East
Hendersonville, North Carolina 28792

Developer at: Seven Falls, LLC
32 Orange Street
Asheville, North Carolina 28801

With a copy to: Nexsen Pruet Adams Kleemeier
Attn: M. Jay DeVaney
701 Green Valley Road, Suite 100
Greensboro, North Carolina 27408

Or at such future addresses as County or Developer shall specify in a written notice to the other party in compliance with this Section.

23. Entire Agreement. This Agreement sets forth, and incorporates by reference all of the agreements, conditions and understandings between County and Developer relative to the Property and the Subdivision and there are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein.

24. Construction. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.

25. Assignment. After notice to County, Developer may assign its rights and responsibilities hereunder to subsequent land owners of all or any portion of the Property, provided that no assignment as to a portion of the Property will relieve Developer of responsibility with respect to the remaining portion of the Property without the written consent of County.

26. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.

27. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

28. Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action; provided, however, each party shall retain the right to pursue its own independent legal defense.

29. Agreements to Run with the Land. This Agreement shall be recorded in the Henderson County Registry. The Agreements, covenants and restrictions contained herein shall be deemed to be a lien upon, binding upon and run with the land and shall be binding upon and an obligation of all successors in the ownership of the Property beyond the term hereof in perpetuity.

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

Developer:

SEVEN FALLS, LLC

By: _____
Keith A. Vinson, Manager

MOUNTAIN DEVELOPMENT COMPANY, LLC

By: _____
Keith A. Vinson, Manager

County:

HENDERSON COUNTY

By: _____
Steve Wyatt County Manager

STATE OF NORTH CAROLINA

COUNTY OF Henderson

I, Sarah L. Dodson, a Notary Public of the County and State aforesaid, certify that **Keith A. Vinson**, personally and voluntarily came before me this day and acknowledged that he is Manager of SEVEN FALLS, LLC, a North Carolina limited liability company, and that he, as Manager, being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official seal this the 8 day of May, 2008

Sarah L. Dodson
NOTARY PUBLIC

Name typed/printed: Sarah L. Dodson

My commission expires: 2-11-2013

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, Sarah L. Dodson, a Notary Public of the County and State aforesaid, certify that **Keith A. Vinson**, personally and voluntarily came before me this day and acknowledged that he is Manager of Mountain Development Company, LLC, a North Carolina limited liability company, and that he, as Chief Executive Officer, being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official seal this the 8 day of May, 2008.

Sarah L. Dodson
NOTARY PUBLIC

Name typed/printed: Sarah L. Dodson

My commission expires: 2-11-2013

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

I, Avalina B. Merrill, a Notary Public of the County and State aforesaid, certify that **Steve Wyatt**, personally and voluntarily came before me this day and acknowledged that she/he is County Manager of HENDERSON COUNTY, and that she/he, as County Manager, being authorized to do so, executed the foregoing on behalf of the County.

Witness my hand and official seal this the 15th day of May, 2008

Avalina B. Merrill

NOTARY PUBLIC

Name typed/printed: Avalina B. Merrill

My commission expires; April 29, 2009

EXHIBIT A

Property Description

Lying and being in Henderson County and being those 1398 acres, more or less as described by the following Henderson County Land Records Parcels:

Parcels currently owned by Seven Falls, LLC or Mountain Land Development Co., LLC

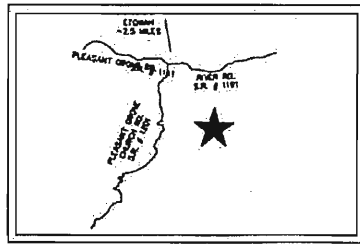
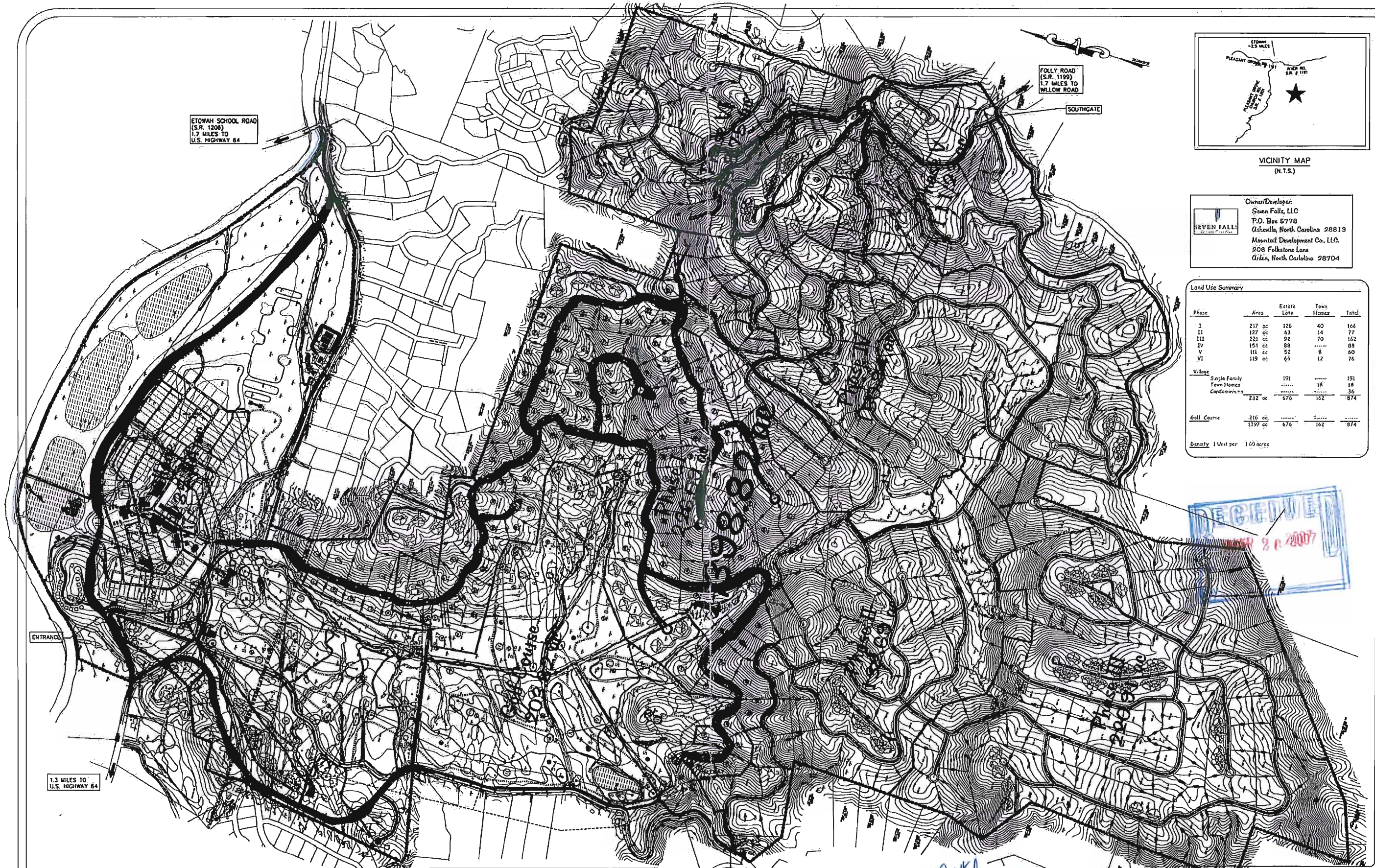
9528-92-5631	9528-72-7552	9528-81-2803	9528-71-4607
9528-82-2259	9528-61-9654	9528-61-5884	9528-61-8120
9528-82-0255	9528-60-8532	9528-80-0455	9528-70-7141
9528-33-0047	9528-50-8340	9527-69-4830	9527-96-2819
9528-51-7177	9527-88-5823	9528-73-1034	9528-62-3072
9528-82-0687	9528-70-8301	9528-70-7191	9528-61-0790
9528-73-5017	9528-73-0252	9528-72-0687	9528-71-7504
9528-71-7921	9528-71-8561	9528-62-4876	9527-66-2317

Parcels currently owned by others to be acquired by Seven Falls, LLC –

	<u>NAME</u>	<u>DEED BOOK/PAGE</u>
9527-84-7308	Hyder	956/099
9528-71-9809	Mills	946/045
9537-17-2260	Nicholson	909/473
9537-28-6359	Nicholson	909/473
9537-06-1544	Nicholson	909/473
9537-25-9910	Nicholson	909/473
9537-36-6275	Nicholson	909/473
9528-51-6570	Pridmore	603/551

EXHIBIT B

Master Plan



VICINITY MAP
(N.T.S.)

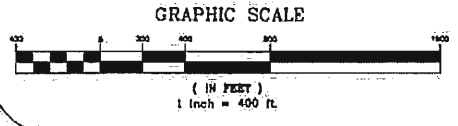
Owner/Developer:
 Seven Falls, LLC
 P.O. Box 5778
 Asheville, North Carolina 28813
 Mountain Development Co., LLC
 208 Folkstone Lane
 Aiden, North Carolina 28704

Land Use Summary

Phase	Area	Estofe Lots	Town Homes	Total
I	217 ac	126	40	166
II	127 ac	63	14	77
III	231 ac	92	70	162
IV	154 ac	88	-----	88
V	111 ac	52	8	60
VI	119 ac	64	12	76
Village				
Single Family		191	-----	191
Town Homes		-----	18	18
Condominiums		-----	36	36
	232 ac	676	162	838
Golf Course				
	216 ac	-----	-----	-----
	1397 ac	676	162	838

Density: 1 Unit per 160 acres

1.3 MILES TO
U.S. HIGHWAY 64

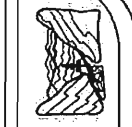


Land Surveyor:
 Ed Holmes and Associates
 P.O. Box 17935
 374 Old County Home Road
 Asheville, North Carolina 28808
 828-225-8582
 www.edholmesurveying.com

Topographic Map:
 Spatial Data, Inc.
 1008 Hutton Lane, Suite 103
 High Point, North Carolina 27628
 336-841-1247
 www.spatialde.com

5/20/07
 WILLIAM G. LAPSLEY & ASSOCIATES P.A.
 Consulting Engineers & Land Planners
 1806 Asheville Highway
 Parkettes, North Carolina 28704
 Hendersonville, North Carolina 28753
 828-697-7024 Fax 828-697-7023

date: 8/06
 job: 07108
 drawn: KHC



WILLIAM G. LAPSLEY & ASSOCIATES P.A.
 CONSULTING ENGINEERS & LAND PLANNERS
 HENDERSONVILLE, NORTH CAROLINA

SEVEN FALLS
 GOLF & RIVER CLUB
 HENDERSON COUNTY
 NORTH CAROLINA

MASTER
 DEVELOPMENT PLAN

EXHIBIT C

Narrative

**PROJECT NARRATIVE
SEVEN FALLS GOLF & RIVER CLUB**



Project Description

The Seven Falls Golf & River Club is a planned residential golf course community located near Etowah, North Carolina. The development will encompass approximately 1,400 acres of land that includes 38 individual parcels to be acquired by the developer.

Existing Land Uses

The parcels included in this development are currently a mixed use of farmland, pasture land, dairy farm, creamery, industrial (plastics) plant, single family residential (including mobile home units) and woodland areas. Some of the woodland areas have been timbered in recent years.

Proposed Land Uses

The proposed development will include a mixture of land uses including:

Club Services	Golf Clubhouse (w/dining) Wellness Center Swim Club Tennis Center Golf Snack Shop Golf Learning Center
Community Services	General Store Chapel Bike Shop Sports Bar Inn (24 room) Nature Center River Outfitter Kids Activity Center Sales Center
Residential	Single Family Homesites (0.2 ac. to 2 acres+) Townhomes – Fourplex Units Duplex Units Condominiums – Single Family above community & club service buildings.

A land use summary table is shown on the Master Plan.

Development Schedule

The scope of this proposed project is such that a 10 year build-out schedule is anticipated. The tentative site development schedule is as follows.

	<u>Start Date</u>	<u>Completion Date</u>
Phase I	6/2007	6/2008
Village	12/2007	12/2008
Phase II	6/2008	6/2009
Phase III	6/2009	6/2010
Phase IV	6/2010	6/2011
Phase V	6/2011	6/2012
Phase VI	6/2012	6/2013

Building Descriptions

There are a variety of proposed buildings to be constructed within this development – briefly described as follows:

Single Family Residential

Village Lots – These will be two (2) story units varying in size from 1,400 to 3,000sf. constructed on a small 0.20 ac. Lot. Attached is a typical lot plan w/ setbacks.

Estate Lost - These will be large homes (1-3 story) varying in size from 2,500 sf to 10,000sf. Constructed on large lots varying in size from 1.0 – 3.0 acres. Attached is a typical lot plan w/setbacks.

Condominium Units – These will be single family units constructed on the 2nd Floor above the various community/club service buildings. The units will vary in size from 1,200 sf to 3,000 sf.

Multi-family Residential

Fourplex Units – These will be large single family homes constructed with common walls. The size will vary from 2700 sf to 3433 sf. Attached is a typical floor plan of the building. The buildings will be clustered at various locations within the development as shown on the Master Plan.

Duplex Units – These will be large single family homes constructed with a common wall (2 units per building). The size will be 3,433 sf. Attached is a typical floor plan of the building. The buildings will be clustered at various locations within the development as shown on the Master Plan.

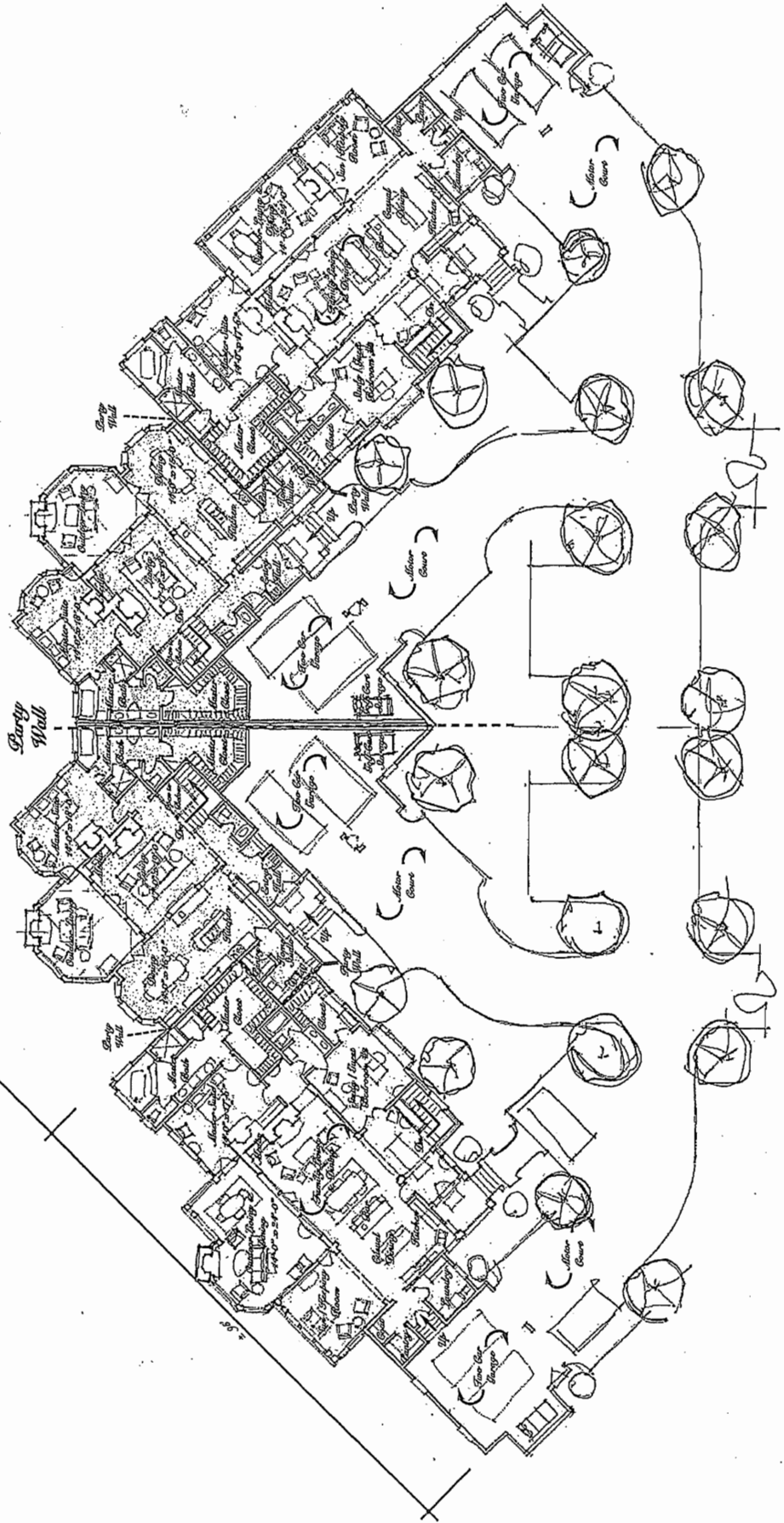
Club Service Buildings –

Golf Clubhouse –	3 story/30,000 sq ft.
Wellness Center –	2 story/10,000 sq ft
Swim Club –	1 story / 4,500 sq ft.
Tennis Center	2 story / 2,500 sq. ft.
Golf Snack Shop -	1 story / 1,500 sq ft.
Golf Learning Center	1 story / 2,000 sq ft.

Community Service Buildings

General Store	2 story / 3,500 sq ft
Chapel	1 story / 1,500 sq ft
Bike Shop	2 story / 2,000 sq ft
Sports Bar	2 story / 6,000 sq ft.
Inn	2 story / 24,000 sq ft.
Nature Center	1 story / 1,500 sq ft.
River Outfitter	1 story / 4,000 sq ft.
KidsActivityCenter	1 story / 2,500 sq ft.

4 UNIT BUILDING MAIN LEVEL FLOORPLANS



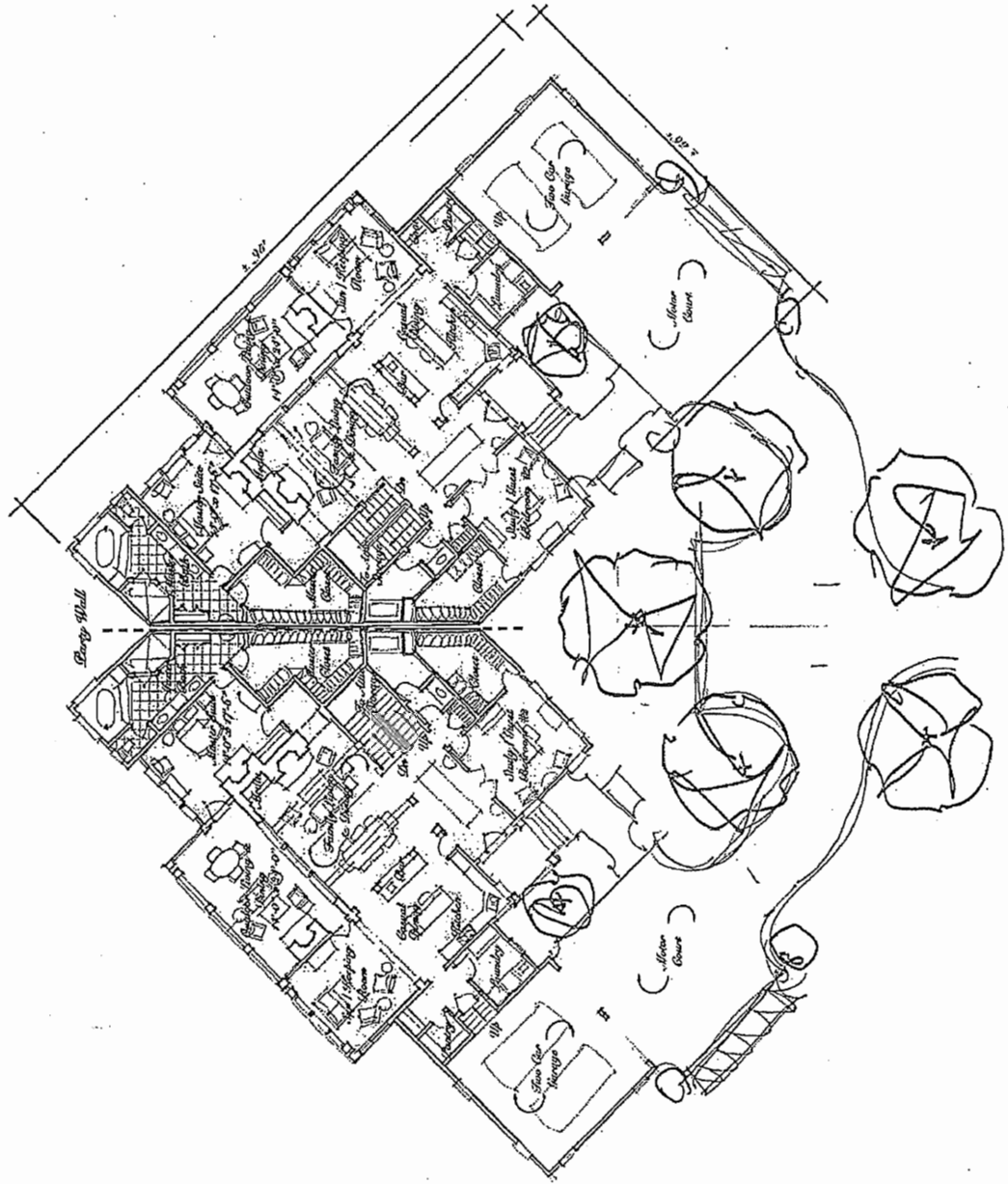
PLAN "AL"

PLAN "BL"

PLAN "BR"

PLAN "AR"

2 UNIT BUILDING MAIN LEVEL FLOORPLANS

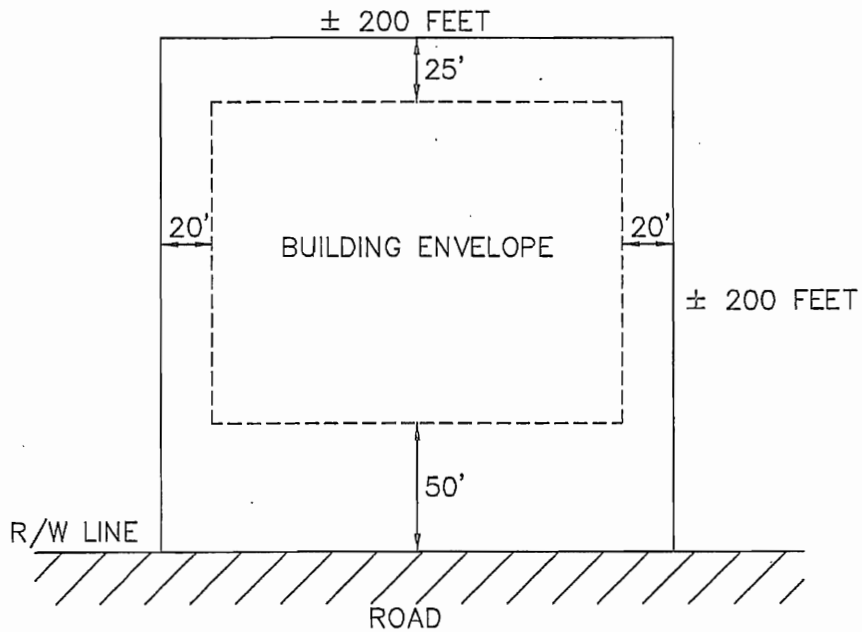


PLAN "AL"

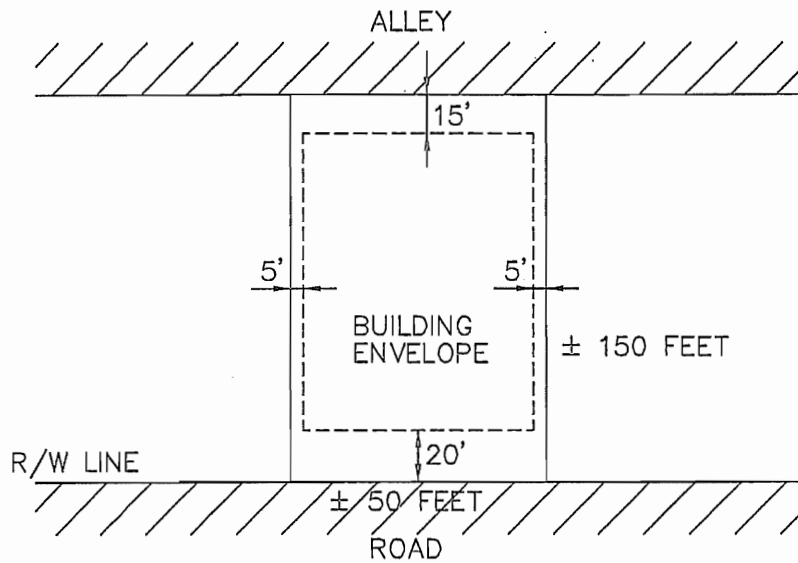
HEATED SQUARE FOOTAGE	
Main Level	2,413 sq.ft.
Upper Level	1,020 sq.ft.
Total	3,433 sq.ft.

PLAN "AR"

HEATED SQUARE FOOTAGE	
Main Level	2,413 sq.ft.
Upper Level	1,020 sq.ft.
Total	3,433 sq.ft.



TYPICAL ESTATE LOT
N.T.S.



TYPICAL VILLAGE LOT
N.T.S.

SEVEN FALLS GOLF & RIVER CLUB
SINGLE FAMILY RESIDENTIAL HOMESITES

EXHIBIT D

Phases for Subdivision by Number of Units and Time Period

<u>Minimum Number of Units Submitted for Subdivision Approval</u>		<u>Time Period</u>
Phase 1 & 2	253	4/1/2007 to 12/31/2008
Phase 3A	Village 414	1/1/2009 to 12/31/2010
Phase 4	88	1/1/2010 to 12/31/2012
Phase 5	65	1/1/2012 to 12/31/2014
Phase 6	81	1/1/2014 to 12/31/2016
Total	900	

EXHIBIT E

Proposed Plan for Fire Substation Shell

Exhibit E

Etowah Fire Sub-station

54 X 83

