

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this 2nd day of July, 2007, by and between Mountain Development Company, LLC, hereinafter referred to as "Developer," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

WITNESSETH:

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

WHEREAS, the Henderson County Planning Board conditionally approved the Phase I Development Plan for Seven Falls, under Chapter 170 of the Henderson County Code, which is entitled Subdivision of Land, and

WHEREAS, Chapter 170 requires the completion of certain improvements prior to Final Plat approval, however Sections 170-38 and 170-39 allow the Board of Commissioners to permit the Developer to post an irrevocable letter of credit with Henderson County to guarantee the completion of said required improvements; and

WHEREAS, the Developer has requested that the Board of Commissioners approve the posting of an irrevocable letter of credit to guarantee and secure the completion of said improvements in lieu of completion of all improvements prior to said approval;

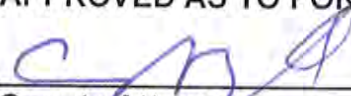
IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before June 1, 2008, complete as required the following improvements to serve lots in Phase I of Seven Falls: roadway construction which includes paving, construction of bridges, stormwater drainage, erosion control measures, road shoulder stabilization, installation of the public water system and installation of a community sewerage system, as required by the Henderson County Subdivision Ordinance, as shown on the revised Phase I Development Plan for Seven Falls signed and sealed by Mr. William Lapsley on June 21, 2007, as conditionally approved by the Henderson County Planning Board on June 21, 2007, and as shown on the attached cost estimates prepared by Mr. Lapsley, P.E., (signed and sealed on June 21, 2007).
2. The Developer will post with Henderson County an irrevocable letter of credit guaranteeing completion of said improvements by the required date. Said letter of credit must be issued by a bank licensed to do business in North Carolina, in the amount of at least \$6,333,347.00 (the "Improvement Guarantee"), payable to

- Henderson County, and having an expiration date not earlier than 60 days after the completion date stated in Paragraph 1, above.
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 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.
 5. At such time as the County Attorney has reviewed and approved this Agreement and this Agreement is fully executed, and a letter credit in the proper form is posted, then the Board will allow the Final Plat(s) for Seven Falls, Phase I, to be approved by the Subdivision Administrator, provided that any other requirements of Chapter 170 of the Henderson County Code and/or conditions imposed by the Planning Board have been satisfied.
 6. 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 2 day of July, 2007.

APPROVED AS TO FORM:



County Attorney

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY:



William L. Moyer, Chairman

ATTESTED BY:



Elizabeth W. Corn, Clerk to the Board

[OFFICIAL SEAL]



DEVELOPER:
Mountain Development Company, LLC

BY: _____
Managing Member

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON *Forsyth*

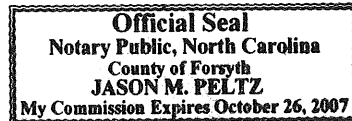
I, Jason M. Peltz, Notary Public for said County and State, certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners of Henderson County, a municipal corporation and that by authority duly given and as the act of the corporation, 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 2 day of July, 2007.

Notary Public *JMP*
Jason M. Peltz

My Commission Expires: _____

[NOTARIAL SEAL]



STATE OF NC
COUNTY OF Forsyth

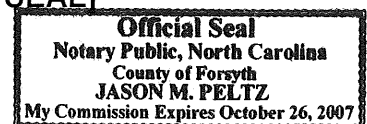
I, Jason M. Peltz, Notary Public for said State and County certify that Keith A. Vinson Manager of Mountain Development Company, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument.

THIS the 2 day of July, 2007.

Notary Public *JMP*
Jason M. Peltz

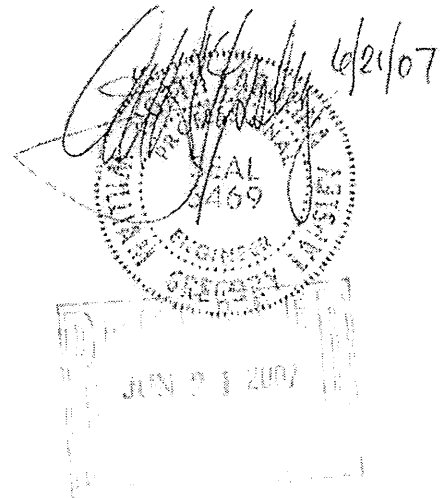
My Commission Expires: _____

[NOTARIAL SEAL]



Seven Falls Golf & River Club
Phase I - Site Improvements
Bond Guarantee Estimate
WGLA# 07108

Roadway Construction (19,200 lf)			
Clear & Grubb (100% complete)	1 LS	@	\$0.00 = \$0.00
Grading (20% complete)	1 LS	@	\$470,000.00 = \$470,000.00
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	55 EA	@	\$2,000.00 = \$110,000.00
Junction Manholes	3 EA	@	\$2,000.00 = \$6,000.00
18"Ø HDPE	4,871 LF	@	\$28.00 = \$136,388.00
24"Ø HDPE	569 LF	@	\$34.00 = \$19,346.00
30"Ø HDPE	149 LF	@	\$44.00 = \$6,556.00
36"Ø HDPE	43 LF	@	\$50.00 = \$2,150.00
Erosion Control			
Silt Fence (60% complete)	10,000 LF	@	\$3.25 = \$32,500.00
Slope Matting	85,640 SY	@	\$2.00 = \$171,280.00
Slope Drains (12"Ø)	140 LF	@	\$20.00 = \$2,800.00
Rock Inlet Protection	6 EA	@	\$150.00 = \$900.00
Gravel/Fence Inlet Protection	44 EA	@	\$150.00 = \$6,600.00
Water Bars	61 EA	@	\$50.00 = \$3,050.00
Sediment Basins - (10% complete)	35 EA	@	\$1,500.00 = \$52,500.00
Ditchline Protection	8,000 LF	@	\$5.00 = \$40,000.00
Swale Protection	9,000 LF	@	\$3.50 = \$31,500.00
Pipe Headwalls	30 EA	@	\$2,500.00 = \$75,000.00
Rip Rap Stone	2,000 TN	@	\$40.00 = \$80,000.00
Maintenance of Erosion Measures	1 LS	@	\$50,000.00 = \$50,000.00
Seed, Fertilizer & Mulch (20% complete)	48 AC	@	\$1,500.00 = \$72,000.00
Bridge Construction	5 EA	@	\$125,000.00 = \$625,000.00
Total			\$2,853,570.00
X 125%			\$3,566,962.00



William G. Lapsley, PE
June 19, 2007

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)

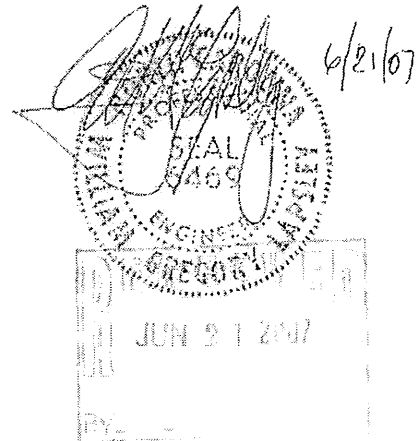
Water Storage Tank	\$200,000			
On-site Water Line	\$130,000			
				<u>\$330,000.00</u>

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



William G. Lapsley, PE
 June 19, 2007



IRREVOCABLE STANDBY LETTER OF CREDIT

July 2, 2007

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 ****\$6,333,347.00**** 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 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.

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 resented 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****

