

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

Improvement Guarantee Performance
Agreement extending approval for Phase I
(including Phase IA and IB) and Phase IIA,
approved by the Board of Commissioners.
Surety bond continuation as instrument.

PERFORMANCE GUARANTEE

THIS AGREEMENT made and entered into this 20 day of July, 2009, by and between Seven Falls, LLC, represented by its authorized agent, hereinafter referred to as "Developer," and Henderson County through its Planning Department, hereinafter referred to as "County;"

WITNESSETH:

WHEREAS, the Developer has sought approval of one or more Final Plats for Phase I (including I(a) and I(b)) and Phase II(a) of the Seven Falls Golf & River Club major subdivision, hereinafter referred to as "Project," located in Henderson County, North Carolina; and

WHEREAS, Henderson County conditionally approved the Phase I Development Plan on June 21, 2007 for the project under Chapter 170 of the Henderson County Code, which is entitled Subdivision of Land; the Phase II Development Plan (including Phase IIa and IIb) for the project was approved by the Henderson County Planning Department on September 21, 2007 under the Henderson County 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, the County and the Developer originally entered into an Agreement for Phase I of the Project on July 2, 2007 (hereinafter "the original Agreement"), concerning an improvement guarantee for the major subdivision known as Seven Falls Golf & River Club, located in Henderson County, North Carolina; and

WHEREAS, the County and the Developer originally entered into an extension of the Agreement for Phase I with the addition of improvements for Phase II(a) of the Project on July 22, 2008 (hereinafter "the extended Agreement"), concerning an improvement guarantee for the major subdivision known as Seven Falls Golf & River Club, located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County a surety bond in the amount of \$6,000,000.00 pursuant to the terms of the extended agreement for Phase I (including I(a) and I(b)) and Phase II(a), without any releases being granted by the County; and

WHEREAS, pursuant to Henderson County Code Chapter 200A-88, the Developer is requesting that the Planning Department, as authorized by the Board of Commissioners, approve of an extension of the extended agreement for Phases I (including I(a) and I(b)) and II(a) to June 1, 2010; and

WHEREAS, the Developer is requesting to bond an amount of no less than \$5,926,374.00 to cover the cost of Phase I (including I(a) and I(b)) and Phase II(a); and

WHEREAS, the Developer is requesting the Planning Department approve the use of a performance surety bond;

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

- 1. Required Improvements.** The Developer will, on or before June 1, 2010, complete as required the following Improvements to serve units in Phase I (including I(a) and I(b)) and Phase II(a) of the Seven Falls Golf and River Club: clearing and grubbing, roadway grading, roadway paving and roadway stone base, all stormwater drainage improvements, seeding, all erosion control measures, construction of bridges, installation of the water distribution system including the water storage tank and installation of the sewer distribution system including the wastewater treatment plant as shown in the attached cost estimates prepared by Mr. William Lapsley signed and sealed on May 21, 2009, as shown on the latest version of the Phase I Development Plan originally approved by the Planning Board on June 21, 2007 and the Phase II Development Plan approved by the Planning Department on September 21, 2007 and as shown on the attached Master Plan. The required improvements will be done to any and all local, state, federal standards. Henderson County staff may inspect improvements as appropriate.
- 2. Guarantee.** The Developer must provide to Henderson County a performance surety bond covering Phase I and Phase II(a) in the amount of at least \$5,926,374.00 with such bond securing and guaranteeing completion of said improvements by the required date stated in Paragraph 1, above. The performance surety bond 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. Upon execution of this Performance Agreement and receipt of acceptable documentation verify the performance bond, the Planning Department shall release the standing letter of credit.
- 3. Expiration Date.** A surety performance bond in proper form shall be submitted to the County, prior to the expiration of the original surety bond. Said bond must guarantee completion of the improvements by the required date, and have an expiration date not earlier than 45 days after the completion date stated above. The improvements detailed in this Agreement must take place on or before June 1, 2010 and thus the surety performance bond must not expire prior to July 15, 2010.
- 4. Extensions.** The completion date for Phase I (including I(a) and I(b)) and for Phase II(a) is June 1, 2010. The performance guarantee agreement for Phase I (including I(a) and I(b)) and Phase II(a) is not eligible for another extension pursuant to §200A-88 of the Henderson County Land Development Code unless approved by the Board of Commissioners (§200A-88 LDC). Any extension requests must be made and granted prior to the expiration of this Agreement.

5. **Supersede Agreements.** At such time as this Agreement is fully executed, this Agreement will supersede prior Agreements between the Planning Department and the Developer regarding the improvement guarantee.
6. **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.
7. **Failure to Complete Improvements.** In the event that the developer does not complete the required improvements or obtain an extension by the expiration date of this Agreement, the full amount of the surety bond will be executed and collected to ensure the improvements are constructed. Failure to complete the necessary requirements prior to the expiration date and calling the bond may affect the developer's opportunity to obtain improvement guarantees on future phases of the development.

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed this the 20 day of July, 2009.

APPROVED AS TO FORM:

Sarah Grace Fambon
Office of County Attorney

BY: Anthony Starr HENDERSON COUNTY
Anthony Starr, AICP, Henderson County Planning Director

BY: [Signature] DEVELOPER:
Seven Falls, LLC.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

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 20th day of JULY, 2009

Kathleen R. Scanlan
Notary Public

My Commission Expires: 10/24/2010

[NOTARIAL SEAL]

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

KATHLEEN R. SCANLAN, Notary Public for said State and County certify that KEITH VINSON, Manager of Seven Falls, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument.

THIS the 20th day of July, 2009.

Kathleen R. Scanlan
Notary Public

My Commission Expires: 10/24/2010

[NOTARIAL SEAL]

LEXON INSURANCE COMPANY

Continuation Certificate

Bond Number	Bond Description	Effective Date	Expiration Date
1017266	Subdivision	7/17/09	7/17/10

Principal:

Seven Falls, LLC
39 Pleasant Grove Church Road
Hendersonville, NC 28739

Obligee:

Henderson County
213 1st Street
Hendersonville, NC 28792

Seven Falls Golf & River Club - Phase 1 & 2

THIS BOND CONTINUES IN FORCE TO THE ABOVE EXPIRATION DATE CONDITIONED AND PROVIDED THAT THE LOSSES OR RECOVERIES ON IT AND ALL ENDORSEMENTS SHALL NEVER EXCEED THE PENALTY SET FORTH IN THE BOND AND WHETHER THE LOSSES OR RECOVERIES ARE WITHIN THE FIRST AND/OR SUBSEQUENT OR WITHIN ANY EXTENSION OR RENEWAL PERIOD, PRESENT, PAST OR FUTURE. ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

SIGNED AND DATED THIS 6th DAY OF July, 2009.

Lexon Insurance Company



John D. Weisbrot, Attorney-in-fact

Agent:

JW Bond Consultants, Inc.
6023A Kellers Church Road
Pipersville, PA 18947
215-766-1990

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that **LEXON INSURANCE COMPANY**, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: **John D. Weisbrot, Patricia A. Tinsman *******

its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **LEXON INSURANCE COMPANY** on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$ 6,000,000 00 Six million dollars ***** dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Vice President, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **LEXON INSURANCE COMPANY** has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 2nd day of July, 2003.

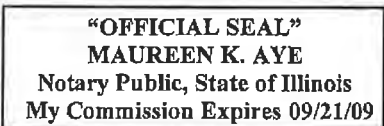


LEXON INSURANCE COMPANY

BY *David E. Campbell*
David E. Campbell
President

ACKNOWLEDGEMENT

On this 2nd day of July, 2003, before me, personally came David E. Campbell to me known, who being duly sworn, did depose and say that he is the President of **LEXON INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



Maureen K. Aye
Maureen K. Aye
Notary Public

CERTIFICATE

I, the undersigned, Secretary of **LEXON INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Lombard, Illinois this 6th Day of JULY, 2009.



Donald D. Buchanan
Donald D. Buchanan
Secretary

“WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.”