

Improvement Guarantee Performance Agreement
(extension of Phase I IGPA (includes Phase IB)
and including Phase IIA). Surety bond used as
instrument.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

PERFORMANCE GUARANTEE

THIS AGREEMENT made and entered into this 22 day of July, 2008, 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 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 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 Developer posted with Henderson County an irrevocable letter of credit in the amount of \$6,333,347.00 pursuant to the terms of the original agreement for Phase I and the last partial release granted by the County left an amount of \$4,963,875.00; and

WHEREAS, pursuant to Henderson County Code Chapter 200A-88, the Developer is requesting that the Planning Department approve of an extension of the original agreement for Phase I to June 1, 2009; and

WHEREAS, the Developer is requesting the Planning Department approve of adding Phase II(a) improvements and associated costs to the original agreement; and

WHEREAS, the Developer is requesting to bond an amount of no less than \$5,946,124.00 to cover the cost of Phase I and Phase II(a); and

WHEREAS, the Developer is requesting the Planning Department approve the use of a performance surety bond in place of the current irrevocable letter of credit;

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, 2009, complete as required the following Improvements to serve units in Phase I 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 July 14, 2008, 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 \$5,946,124.00 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 letter or credit. Said bond must guarantee completion of the improvements by the required date, and have an expiration date not earlier than 60 days after the completion date stated above. The improvements detailed in this Agreement must take place on or before June 1, 2009 and thus the surety performance bond must not expired prior to August 1, 2009.
4. **Extensions.** The completion date for Phase I and for Phase II(a) is June 1, 2009. The performance guarantee agreement for Phase I is not eligible for a second extension pursuant to §200A-88 of the Henderson County Land Development Code. The performance guarantee agreement for Phase II(a) may be extended for a maximum of one additional year (§200A-88 LDC).
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.

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed this the ____ day of _____, 200__.

APPROVED AS TO FORM:

Sarah Grace Fumbo
Office of County Attorney

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

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

**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 23 day of July, 2008

Kathleen R. Scanlan
Notary Public

My Commission Expires: 10/24/2010

[NOTARIAL SEAL]

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

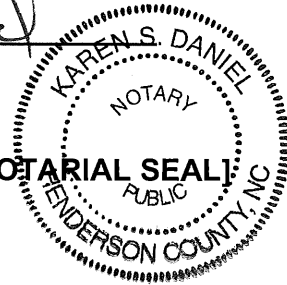
I, Karen S. Daniel, Notary Public for said State and County certify that Keith Vinson, Manager of Seven Falls, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument.

THIS the 21st day of July, 2008

Karen S. Daniel
Notary Public

My Commission Expires: May 28, 2012

[NOTARIAL SEAL]



#1017266

Subdivision Performance Bond

KNOW ALL MEN BY THESE PRESENTS, that we Seven Falls, LLC located at 39 Pleasant Grove Church Road, Hendersonville, NC 28739, hereinafter referred to as the Principal, and Lexon Insurance Company located at 10002 Shelbyville Road, Suite 100, Louisville, KY 40223 as Surety, are held and firmly bound unto the Henderson County Board of Commissioners as Obligee, in the penal sum of Six Million & no/100 Dollars (\$6,000,000.00), to the payment of which sums, well and truly to be made, we the Principal and the Surety bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally firmly by these presents.

SIGNED, SEALED, AND DATED THIS 17th day of July, 2008.

WHEREAS, Henderson County, requires that the developer of any land Subdivision guarantees to the Henderson County Board of Commissioners the installation of the necessary improvements to be made in said land subdivision as described in the Performance Guarantee, Subdivision development plan approval, and the Land Development Code; and

WHEREAS, The Principal has entered into a Performance Agreement with Henderson County guaranteeing subdivision improvements as required by the Land Development Code as shown on the Development Plan of the Seven Falls Phase I and 2(a) approved on or about June 21, 2007 and September 21, 2007 respectively by the Henderson County Planning Board and/or Henderson County Planning Staff. These improvements are delineated in the Performance Agreement which is attached to this agreement as an Appendix.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal shall well and faithfully construct the said improvements in good and workmanlike manner and shall do and perform the things agreed by it to be done and performed in accordance with the said Performance Guarantee Agreement, the this obligation shall be void or otherwise the same shall remain in full force and effect it being expressly understood and agreed that the liability of the Surety for any and all claims herein shall in no event be in excess of the penal amount of this obligation as herein above stated. In the event the Principal does not construct the said improvements or if these improvements are constructed in a poor and not workmanlike manner, the Surety shall provide the above penal amount of this obligation to the Obligee.

This bond shall expire July 17, 2009.

Seven Falls, LLC

By: _____

Lexon Insurance Company

By: _____

John D. Weisbrot, Attorney-In-Fact

Lexon Insurance Company

LX - U15097

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.

"OFFICIAL SEAL"
MAUREEN K. AYE
Notary Public, State of Illinois
My Commission Expires 09/21/09

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 17 Day of July, 2008



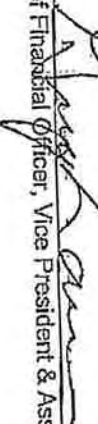
Donald D. Buchanan
Donald D. Buchanan
Secretary

LEXON INSURANCE COMPANY
FINANCIAL STATEMENTS
AS OF DECEMBER 31, 2007

ASSETS		LIABILITIES	
Bonds	\$37,540,369	Reserve for Losses and Loss Expense	\$9,385,540
Money Market &/or Stocks	0	Reserve for Unearned Premiums	27,936,840
Cash and Short-Term Investments	28,601,341	Reserve for Other Expenses	122,053
Agents Balances &/or Uncollected Premiums	5,183,905	Reserve for Taxes, Licenses, and Fees	246,065
Investment Income Due & Accrued	419,173	Reserve for Current Federal Income Taxes	0
Funds Held or Deposited with Reinsurance Companies	0	<i>Ceded Reinsurance Premiums Payable</i>	336,191
Receivable from Parent, Subsidiaries and Affiliates	0	<i>Funds Held Under Reinsurance Treaty</i>	0
Reinsurance Recoverable on Loss Payments	0	Reserve for Unauthorized Reinsurance	0
Other Assets	5,724,036	Payable to Parent, Subsidiaries and Affiliates	94,903
		Other Liabilities	1,973,689
		Total Liabilities	\$40,095,281
		<u>POLICYHOLDERS' SURPLUS</u>	
		Capital Stock & Paid In Surplus	\$17,976,076
		Surplus	19,397,467
		Total Policyholder Surplus	\$37,373,543
Total Assets	<u>\$77,468,824</u>	Total Liabilities and Policyholder Surplus	<u>\$77,468,824</u>

CERTIFICATE

I certify that the above financial statements to the best of my knowledge are a true and accurate reflection of the financial condition of the Company as of December 31, 2007. Additionally, I certify that the above financial statements are in agreement with the Statutory Financial Statements filed with the Texas Department of Insurance as of the same date.


Chief Financial Officer, Vice President & Assistant Treasurer