

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: December 15, 2005

SUBJECT: Improvement Guarantee for Grand Highlands at Bearwallow Mountain

ATTACHMENTS:

1. Application for Improvement Guarantee
2. Draft Performance Guarantee Agreement
3. Cost Estimates

SUMMARY OF REQUEST:

Melrose Design Group, PA, agent for Summerset, Inc., developer, submitted an application for an improvement guarantee for a subdivision named Grand Highlands at Bearwallow Mountain. Grand Highlands at Bearwallow Mountain is a 99-lot major subdivision located off of Bearwallow Mountain Road. The subdivision was conditionally approved by the Planning Board on April 19, 2005. According to the developer, the grading, graveling and shoulder stabilization of the roads are complete. The attached improvement guarantee application is proposed to cover the remaining road construction improvements for the subdivision.

According to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance, where the required improvements have not been completed or in lieu of completing all of the required improvements in order to submit a Final Plat and also prior to Final Plat approval, the developer may post a performance guarantee for the improvements. Section 170-38 of the Henderson County Subdivision Ordinance also states that the installation of the improvements must be completed within two years of the date of approval of the improvement guarantee. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$457,500.00 to cover the cost of the improvements (\$366,000.00) as well as the required twenty-five percent (25%) contingency (\$91,500.00). The proposed completion date for the improvements is August 1, 2007.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developer must submit an irrevocable letter of credit in accordance with the terms of the Agreement. Once the County receives a letter of credit in proper form, the relevant parties must execute the Agreement.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

I recommend that the Board approve the improvement guarantee application for Grand Highlands at Bearwallow Mountain subject to the developers submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the Performance Guarantee Agreement.

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision Grand Highlands at Bearwallow Mountain (Formerly Somerset at Bearwallow Mountain)

Name of Owner Summerset, Inc. (Formerly Westside Land & Timber Co., Inc.)

Address 210 Birchtree Drive

Greenwood, SC 29649 Phone: 864-942-0034

Agent Scott C. Shirley Phone: 864-942-0034

Date of Preliminary Plan Approval by Planning Board 4/19/2005

Significant Conditions Imposed: Fire Protection

Type of improvement requested:

Cash on Deposit (Certified Check)

Bank Escrow Account

Irrevocable Letter of Credit

Surety Performance Bond

Trust Agreement

Name of bank or bonding company Carolina First

Amount of guarantee (including 25% overhead) \$ 457,500.00

Projected completion date August 01, 2007

Are cost estimates attached (with quantities and unit costs)? yes no

Have engineering and design work been completed?

complete partially complete incomplete

I have read and understand all requirements stated in Article V of the Henderson County Subdivision Ordinance regarding subdivision improvement guarantees.

Scott Shirley - President
Owner's Signature

11/25/05
Date

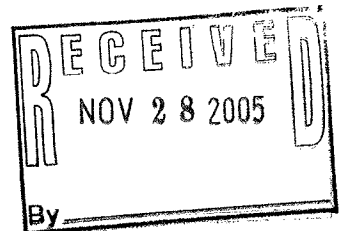
Submitted By _____

Date _____

Received By MC 11/28/05

Date _____

\$250.00 paid



STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Summerset, Inc., 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 Grand Highlands at Bearwallow Mountain, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Department conditionally approved the Master Plan and Development Plan for the project, 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 the 1st day of August, 2007, complete as required the following improvements to serve lots in Grand Highlands at Bearwallow Mountain: paving of the roads, as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for Grand Highlands at Bearwallow Mountain as conditionally approved by the Henderson County Planning Department on April 19, 2005, and as shown on the attached cost estimates prepared by Melrose Design Group, PA, (dated November 28, 2005).
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 \$457,500.00 (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.

3. 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.
4. 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 Grand Highlands at Bearwallow Mountain, 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.
5. 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 _____ day of _____, 200_.

APPROVED AS TO FORM:

County Attorney

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
William L. Moyer, Chairman

ATTESTED BY:

[OFFICIAL SEAL]

Elizabeth W. Corn, Clerk to the Board

DEVELOPER:
Summerset, Inc.

BY: _____
President

ATTESTED BY:

[CORPORATE SEAL]

Secretary/Assistant Secretary

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

I, _____, 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 ____ day of _____, 2002.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

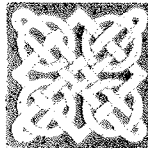
**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

I, _____, Notary Public for said State and County certify that _____ came before me this day and acknowledged that he/she is the Secretary/Assistant Secretary of Summerset, Inc., 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 _____ day of _____, 2002.

Notary Public

DRAFT



MELROSE DESIGN GROUP, PA

LANDSCAPE ARCHITECTURE • LAND PLANNING • ENVIRONMENTAL DESIGN

Mr. Matt Card
Henderson County Planning Department
101 East Allen Street
Hendersonville, North Carolina 28792

November 28, 2005

Dear Mr. Card,

On behalf of Westside Land and Timber Co., Inc. and Summerset Land Group, Inc., I am pleased to submit the attached Estimate of Probable Construction Cost for Roadway Completion for the proposed subdivision, Grand Highlands, formerly Summerset at Bear Wallow Mountain. As you are aware, the Combined Masterplan and Development Plan for Grand Highlands was conditionally approved by the Henderson County Planning Board on April 19, 2005.

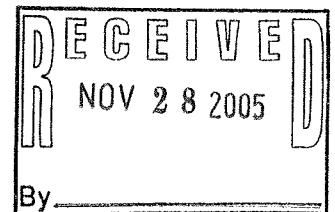
The attached estimate of probable construction cost is provided as supporting documentation for the financial bonding mechanism required by Henderson County for completion of the roadways subsequent to recording of the Final Plat and transfer of property ownership. Please note that the roads at Grand Highlands to date have been graded, stabilized and prepared with compacted ABC stone to a minimum depth of 4". Road construction will be completed at a later date with the addition of 2" of compacted ABC stone and a 2" thick asphalt surface course.

Thank you for your time and attention to this project. Please feel free to contact me with any questions.

Sincerely,

Andy Otten, RLA

Cc: Scott Shirley – President, Westside Land and Timber Co., Inc.
MDG file



Grand Highlands

**Opinion of Probable Construction Cost for Roadway Completion
in Henderson County**

Prepared by Melrose Design Group
November 28, 2005

Item	Quantity	Unit	Unit Cost	Total
Road Paving - Henderson County				
Final stone dressing (2" compacted abc stone)	30,500	sy	\$ 12.00	\$ 366,000.00
2" asphalt coarse				

SUBTOTAL \$ 366,000.00
Henderson County Contingency 25% \$ 91,500.00

TOTAL \$ 457,500.00

Notes:

1. In providing opinions of probable construction cost, the Client and regulatory agencies understand that Melrose Design Group, PA has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that Melrose Design Group's opinions of probable construction costs are made on the basis of Melrose Design Group's professional judgement and experience. Melrose Design Group, PA makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from Melrose Design Group's opinion of probable construction cost. Melrose Design Group, PA suggests that the Client and regulatory agencies independently employ a professional cost estimator for greater reliability and precision.
2. This is a preliminary opinion of probable construction costs for initial discussion purposes only and is not intended to represent final construction costs.
3. All unit costs include mobilization, installation, and contractor overhead/profit.



[Handwritten Signature]

