

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: May 19, 2006

SUBJECT: Improvement Guarantee for Phase I of Blacksmith Run

ATTACHMENTS:

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

SUMMARY OF REQUEST:

Blacksmith Mountain, LLC, owner, submitted a request for an improvement guarantee for Phase I of the Blacksmith Run major subdivision. Blacksmith Run is located on 82.04 acres of land off US Hwy 64 (Chimney Rock Road). The Henderson County Planning Board granted conditional approval of the Combined Master Plan and Development Plan for Blacksmith Run on December 21, 2004. The improvement guarantee is proposed to cover the installation of the wastewater treatment plant. The engineer for Blacksmith Run, Brooks and Medlock Engineering, have also certified that all other improvements in Phase I which include the water distribution system, sewer collection system, drainage and construction of the roads will be finished before approval of a final plat for this phase of the subdivision. Staff will also verify that these improvements are complete as required before a final plat is approved.

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 and for 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 improvement guarantee approval date. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$386,063.00.00 to cover the cost of the improvements (\$308,850.00) as well as the required twenty-five percent (25%) contingency (\$77,213.00). December 30, 2006 is the proposed completion date for the improvements.

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 Phase I of Blacksmith Run, subject to the developer submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

APPENDIX 8

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision Vista at Blacksmith Run

Name of Owner Blacksmith Run, LLC

Address 525 N Main Street, Hendersonville, NC 28792

Phone: 828-698-2400

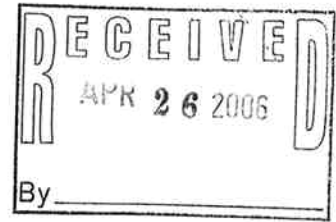
Agent Ed Nunez Phone: 828-698-2400

Date of Preliminary Plan Approval by Planning Board 11/22/04

Significant Conditions Imposed: NA

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) \$ 386,063

Projected completion date ~~12/06~~ 12/30/06 EN

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.

[Signature]
Owner's Signature Managing Member

4/25-06
Date

Submitted By [Signature]

Date 4/26/06

Received By MC

Date 4/26/06

Fee: \$250.00 paid
MC

4/26/06

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Blacksmith Mountain, 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 Plat(s) for Phase I of a proposed subdivision known as Blacksmith Run, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Board conditionally approved the Combined Master Plan and Development Plan for Blacksmith Run, 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 30th day of December, 2006, complete as required the following improvements to serve lots in Phase I of Blacksmith Run: installation of the wastewater treatment plant as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Development Plan for Blacksmith Run, conditionally approved by the Henderson County Planning Board on December 21, 2004, and as shown on the attached cost estimates prepared by Edward Medlock, P.E., (signed and sealed on April 24, 2006).
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 \$386,063.00 (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 Phase I of Blacksmith Run, to be approved by the Subdivision Administrator, provided that any other requirements of Chapter 170 of the Henderson County Code have been met, all other required infrastructure improvements have been made and 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:
Blacksmith Mountain, LLC

BY: _____
Managing Member

**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 _____, 200__.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

**STATE OF _____
COUNTY OF _____**

I, _____, Notary Public for said State and County certify that _____, Manager of Blacksmith Mountain, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument.

THIS the ____ day of _____, 200__.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

Engineer's Opinion of Cost

PROJECT: Blacksmith Run Subdivision - Phase 1

DATE: 04-24-06

Task	Contract Amount	% Complete	Costs Remaining
WWTP	308,850	0.00%	308,850
<u>Includes:</u>			
RPB 90000 gpd WWTP	212,500		
Site Installation	12,500		
Trojan UV Filter	15,250		
Flow Meter	4,750		
Sewer Outfall to Creek	5,175		
WWTP Site Improvements	58,675		
TOTAL			\$ 308,850.00
			X 125%
TOTAL (125%) Bond Amount			\$ 386,063.00

Notes:

Cost shown are based upon actual contracts initiated with legitimate and qualified contractors performing the work. Percent complete is based upon physical inspection, measurement of materials installed and stored on site for installation. Costs are based upon the work performed and under contract at the time of this report and do not forecast any additional services or work that MAY be encountered during the construction process.

Work for other infrastructure items including water distribution, sewer collection, storm drainage and roadways shall be certified complete and in place to the issuance of approval for a final plat for recording the applicable section or phase of the development.

I hereby certify the above is accurate and reflects the cost of record to the date indicated.

Edward K. Medlock

Engineer of Record

04/24/06

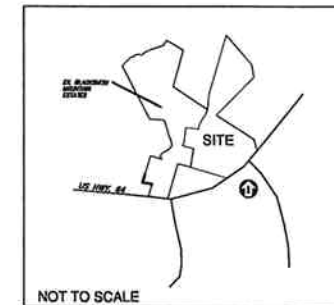
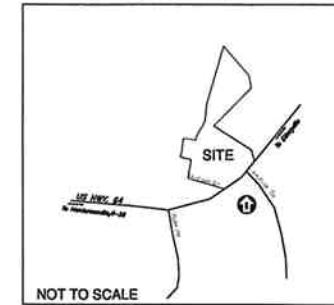


(Seal)



PROJECT SUMMARY

TOTAL PROJECT AREA:	82.04 ACRES
TRACT #1	47.47 ACRES
TRACT #2	34.57 ACRES
PIN #:	9691-72-5426 9691-70-2560
EXISTING ZONING:	OPEN USE
NO. OF LOTS PROPOSED:	188
PROPOSED USE:	SINGLE FAMILY RESIDENCE
MAX. HEIGHT:	35'
MAX. LOT SIZE:	1.14 ACRES
MIN. LOT SIZE:	0.23 ACRES
TOWNSHIP:	BLUE RIDGE
FIRE DISTRICT:	EDNEYVILLE
DISTANCE TO NEAREST HYDRANT:	46'
DISTANCE TO PUBLIC WATER:	46'
WATER SOURCE:	CITY OF HENDERSONVILLE
SEWER SOURCE:	PRIVATE COMMUNITY
TRASH:	INDIVIDUAL
ROAD TYPE:	PRIVATE
LENGTH OF ROADS:	11,826 LF (TOTAL)
WATERSHED:	FRENCH BROAD



No.	REVISIONS/SUBMISSIONS	Date
1.	ISSUED FOR REVIEW - HENDERSON CO.	04-18-06

PRELIMINARY

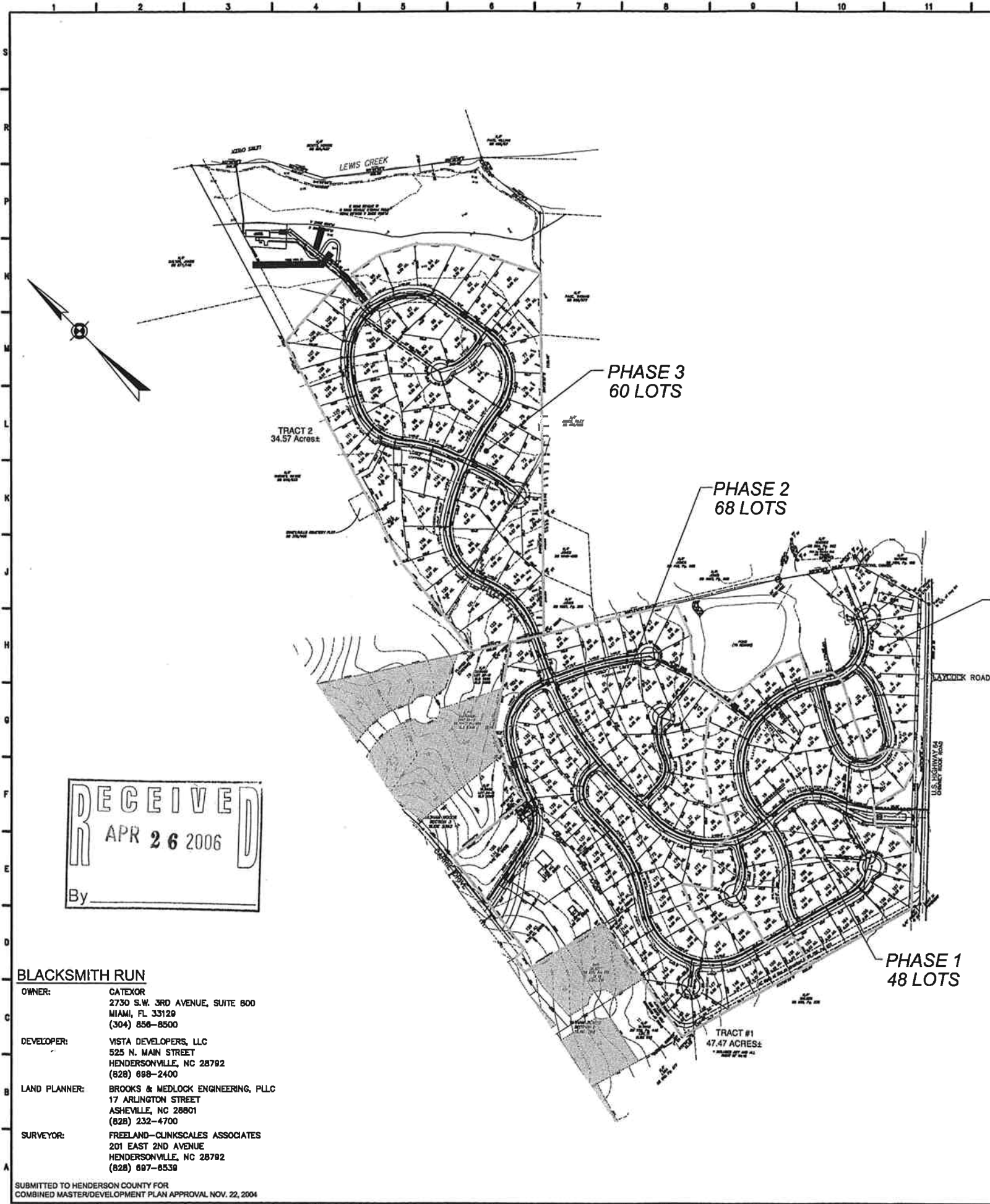
Designed:	E.J.K.
Drawn:	N.E.D.
Checked:	E.J.K.
Reviewed:	E.J.K.
Scale:	AS NOTED
Date:	04-06-06

BROOKS & MEDLOCK
ENGINEERING, PLLC
17 ARLINGTON STREET
ASHEVILLE, N.C. 28801
Phone: 1-828-232-4700
Fax: 1-828-232-1331

BLACKSMITH RUN
RESIDENTIAL SUBDIVISION
EDNEYVILLE, NC
NORTH CAROLINA
HENDERSON COUNTY

Sheet No.: **P-1**
Project No.: **114304**

Drawing Title:
PHASING PLAN



RECEIVED
APR 26 2006
By _____

BLACKSMITH RUN
OWNER: CATEXOR
2730 S.W. 3RD AVENUE, SUITE 800
MIAMI, FL 33129
(304) 856-8500
DEVELOPER: VISTA DEVELOPERS, LLC
525 N. MAIN STREET
HENDERSONVILLE, NC 28792
(828) 698-2400
LAND PLANNER: BROOKS & MEDLOCK ENGINEERING, PLLC
17 ARLINGTON STREET
ASHEVILLE, NC 28801
(828) 232-4700
SURVEYOR: FREELAND-CLINKSCALES ASSOCIATES
201 EAST 2ND AVENUE
HENDERSONVILLE, NC 28792
(828) 697-6539

SUBMITTED TO HENDERSON COUNTY FOR
COMBINED MASTER/DEVELOPMENT PLAN APPROVAL NOV. 22, 2004

NOTES:
PORTIONS OF THE SITE ARE WITHIN THE 100-YEAR FLOOD PLAIN.
THIS PROJECT IS LOCATED WITHIN 1/2 MILE OF THE EDNEYVILLE,
FRUITLAND AND CLEAR CREEK AGRICULTURAL DISTRICTS.
ROAD AND DRIVE CONSTRUCTION TO ADHERE TO THE REQUIREMENTS
DEFINED BY THE HENDERSON COUNTY SUBDIVISION ORDINANCE AND
NCDOT SUBDIVISION ROAD STANDARDS AS APPLICABLE.
SEE SHT. MDP-2 FOR STORM SEWER CHART.

SCALE: 1"=200'
0 100 200 400

**PROGRESS DRAWINGS - NOT FOR CONSTRUCTION
FOR REVIEW PURPOSES ONLY**

