

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** July 2, 2007

**SUBJECT:** Improvement Guarantee Application for Seven Falls, Phase I

**ATTACHMENTS:**

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

#### **SUMMARY OF REQUEST:**

Mr. William Lapsley, agent for the owner Mountain Development Company, LLC, submitted an improvement guarantee application for Phase I of the Seven Falls major subdivision. Phase I will have a total of 126 single-family residential lots and 38 townhome units on approximately 226 acres of land off Pleasant Grove Road. The Planning Board conditionally approved the Phase I Development Plan for Seven Falls on June 21, 2007.

The attached improvement guarantee application is proposed to cover roadway construction which includes paving, construction of bridges, stormwater drainage, erosion control measures, installation of a public water system and installation of a community sewerage system for all lots in Phase I of Seven Falls. The developer intends to post with the County an irrevocable letter of credit in the amount of at least (\$6,333,347.00) to cover the cost of the improvements (\$5,067,470.00) as well as the required twenty-five percent (25%) contingency (\$1,266,867.00). June 1, 2008 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 developers 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.

#### **BOARD ACTION REQUESTED:**

Action by the Board of Commissioners is needed to either grant or deny the improvement guarantee application for Phase I of Seven Falls. I recommend that the Board approve the improvement guarantee application pursuant to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance.

**Suggested Motion:** I move that the Board of Commissioners find and conclude that the request for improvement guarantee complies with the provisions of the Subdivision Ordinance and is approved.

Henderson County  
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision SEVEN FALLS - PHASE I  
Name of Owner MOUNTAIN DEVELOPMENT CO. LLC  
Address 32 ORANGE STREET, ASHEVILLE, N.C. 28801  
Phone: 828-243-9779 (KEITH VINSON)  
Agent William G. Lapsley PE Phone: 687-7177  
Date of Preliminary Plan Approval by Planning Board May 17, 2007  
Significant Conditions Imposed: See attached letter from County Planning

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 National Bank of South Carolina

Amount of guarantee (including 25% overhead) \$ \_\_\_\_\_

Projected completion date June 1, 2008

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.

Owner's Signature \_\_\_\_\_

Date \_\_\_\_\_

Submitted By Keith Vinson Member Manager

Date 5/18/07

Received By K. Scanlan  
Check # 29649  
\$250.00

Date 5/24/07

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, 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 \_\_\_\_\_ 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:**  
**Mountain Development Company, 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 Mountain Development Company, 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]**

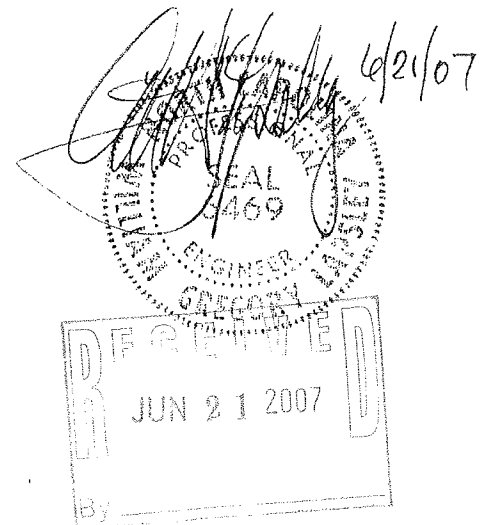
**Seven Falls Golf & River Club**

**Phase I - Site Improvements**

**Bond Guarantee Estimate**

WGLA# 07108

Roadway Construction (19,200 lf)			
Clear & Grubb (100% complete)	<u>1</u> LS	@	<u>\$0.00 = \$0.00</u>
Grading (20% complete)	<u>1</u> LS	@	<u>\$470,000.00 = \$470,000.00</u>
Stone Base (8"CABC) (5% complete)	<u>20,000</u> TN	@	<u>\$26.00 = \$520,000.00</u>
Pavement - Surface Course (1 1/2")	<u>42,500</u> SY	@	<u>\$8.00 = \$340,000.00</u>
Stormwater Drainage			
Open Throat Drop Inlets	<u>55</u> EA	@	<u>\$2,000.00 = \$110,000.00</u>
Junction Manholes	<u>3</u> EA	@	<u>\$2,000.00 = \$6,000.00</u>
18"Ø HDPE	<u>4,871</u> LF	@	<u>\$28.00 = \$136,388.00</u>
24"Ø HDPE	<u>569</u> LF	@	<u>\$34.00 = \$19,346.00</u>
30"Ø HDPE	<u>149</u> LF	@	<u>\$44.00 = \$6,556.00</u>
36"Ø HDPE	<u>43</u> LF	@	<u>\$50.00 = \$2,150.00</u>
Erosion Control			
Silt Fence (60% complete)	<u>10,000</u> LF	@	<u>\$3.25 = \$32,500.00</u>
Slope Matting	<u>85,640</u> SY	@	<u>\$2.00 = \$171,280.00</u>
Slope Drains (12"Ø)	<u>140</u> LF	@	<u>\$20.00 = \$2,800.00</u>
Rock Inlet Protection	<u>6</u> EA	@	<u>\$150.00 = \$900.00</u>
Gravel/Fence Inlet Protection	<u>44</u> EA	@	<u>\$150.00 = \$6,600.00</u>
Water Bars	<u>61</u> EA	@	<u>\$50.00 = \$3,050.00</u>
Sediment Basins - (10% complete)	<u>35</u> EA	@	<u>\$1,500.00 = \$52,500.00</u>
Ditchline Protection	<u>8,000</u> LF	@	<u>\$5.00 = \$40,000.00</u>
Swale Protection	<u>9,000</u> LF	@	<u>\$3.50 = \$31,500.00</u>
Pipe Headwalls	<u>30</u> EA	@	<u>\$2,500.00 = \$75,000.00</u>
Rip Rap Stone	<u>2,000</u> TN	@	<u>\$40.00 = \$80,000.00</u>
Maintenance of Erosion Measures	<u>1</u> LS	@	<u>\$50,000.00 = \$50,000.00</u>
Seed, Fertilizer & Mulch (20% complete)	<u>48</u> AC	@	<u>\$1,500.00 = \$72,000.00</u>
Bridge Construction	<u>5</u> EA	@	<u>\$125,000.00 = \$625,000.00</u>
			<u><b>Total</b></u>
			<u><b>\$2,853,570.00</b></u>
			<u><b>X 125%</b></u>
			<u><b>\$3,566,962.00</b></u>



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)

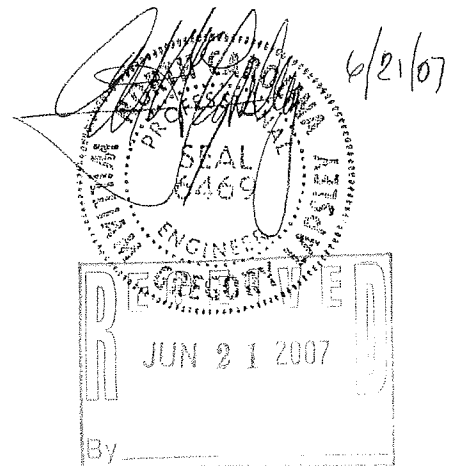
Water Storage Tank	\$200,000			
On-site Water Line	\$130,000			
				<u>\$330,000.00</u>

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