

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: August 14, 2007

SUBJECT: Improvement Guarantee Extensions

ATTACHMENTS:

1. Extension Request for Summit Springs
2. Draft Performance Guarantee Agreement for Summit Springs
3. Extension Request for Grand Highlands at Bearwallow Mountain
4. Draft Performance Guarantee Agreement for Grand Highlands
5. Extension Request for The Homestead at Mills River, Phase III
6. Draft Performance Guarantee Agreement for The Homestead at Mills River

SUMMARY OF REQUEST:

Mr. Jeff Cosgrove, owner and developer of Summit Springs, is requesting an extension of the improvement guarantee completion date for Phase I of Summit Springs. Mr. Cosgrove is requesting a two (2) month extension which makes a completion date of September 30, 2007. If the extension is approved, the developer must amend the irrevocable letter of credit in accordance with the terms of the attached Performance Agreement.

Mr. Dean Anderson, owner, has requested an extension of the completion date for the Grand Highlands at Bearwallow Mountain subdivision improvement guarantee. The improvement guarantee covered the construction of the roads which included paving for the original 99 lots approved by the Planning Board on April 19, 2005. Mr. Anderson has requested to extend the improvement guarantee to December 14, 2007 which is the maximum allowed by the Subdivision Ordinance. If the extension is approved, the owner must amend the irrevocable letter of credit in accordance with the terms of the attached Performance Agreement.

Mr. Scott McElrath, owner, has requested an extension of the completion date for The Homestead at Mills River subdivision improvement guarantee. Mr. McElrath has requested that the completion date be extended to October 30, 2007. If the extension is approved, the surety performance bond, which expires on October 30, 2007, must be amended so that it expires no earlier than December 30, 2007.

BOARD ACTION REQUESTED:

Action by the Board of Commissioners is needed to either grant or deny the extension requests. I recommend that the Board approve the requests 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 to extend the completion dates for Summit Springs, Grand Highlands at Bearwallow Mountain and The Homestead at Mills River, as provided for in the attached draft Performance Guarantee Agreements, complies with the provisions of the Subdivision Ordinance and is approved.

SUMMIT SPRINGS LLC.

**245 Terrace Mt. Drive
Hendersonville, NC 28739**

July 20, 2007

Mr. Matt Card, Director
Henderson County Planning Department
213 First Avenue East
Hendersonville, NC 28792

RE: Summit Springs Residential Community

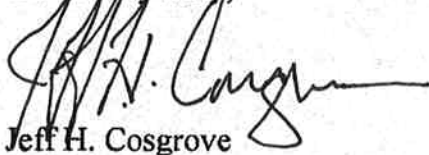
Dear Mr. Card:

On March 14, 2007, we submitted an Application for Improvement Guarantees to assure the completion of a portion of the Summit Springs community water lines and roads. Through our bank, Mountain 1st Bank & Trust, we deposited \$415,208.75 into an escrow account with Henderson County, so as to enable us to plat the first three lots and begin the construction of houses. These lots are #'s 134, 135 and 136.

Because of delays in getting final approval from NCDENR, which we expect to have in hand next week, we seek a two month extension of the escrow agreement. By mid-August, we expect to have the final City of Hendersonville approval on the above, after which we immediately will begin work, and expect completion of all utilities in the designated portion of the community roads by August 31.

Your cooperation in the above would be most appreciated.

Yours very truly,


Jeff H. Cosgrove

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Jeffery H. Cosgrove, hereinafter referred to as "Developer," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

WITNESSETH:

WHEREAS, the Board and the Developer entered into an Agreement on April 2, 2007 (hereinafter "the original Agreement"), concerning an improvement guarantee for the subdivision known as Summit Springs, located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$415,208.75 in accordance with the original Agreement; and

WHEREAS, the Developer has requested that the Board of Commissioners approve extending the completion date of the latest agreement to September 30, 2007;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before September 30, 2007, complete as required the following improvements to serve lots in Phase I of Summit Springs: road construction including paving, on-site water distribution system and off-site water line extension as required by the Henderson County Subdivision Ordinance, as shown on the Master Plan and Development Plan for the Project conditionally approved by the Planning Board on June 20, 2006 and as shown on the attached cost estimates prepared by Chad Cabe and certified by Marvin Mercer, P.E. (signed and sealed on March 14, 2007).
2. The Developer will post with Henderson County an amended irrevocable letter of credit guaranteeing completion of said improvements by the required date, and having an expiration date not earlier than 60 days after the completion date stated in Paragraph 1, above.
3. At such time as this Agreement is fully executed, this Agreement will supercede prior Agreements between the Board and the Developers regarding the improvement guarantee.
4. 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:
Jeffery H. Cosgrove

BY: _____

**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 _____, Jeffery H. Cosgrove personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

THIS the ____ day of _____, 200_.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

July 23, 2007

Matt Card, Planner
Henderson County Planning Department
213 1st Avenue East
Hendersonville, NC 28792

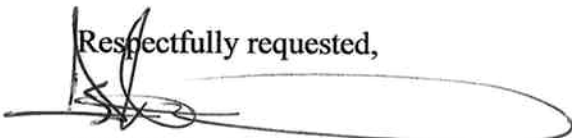
Dear Matt,

I hereby respectfully request the extension of the Improvements Agreement for Grand Highlands at Bearwallow Mountain from its original expiration until December 14, 2007. I will need this extra time to complete the paving that is currently bonded by a Letter of Credit issued by Carolina First Bank. I have made a written request for that extension and it appears that it will be forthcoming within a few days.

I will contact you not later than Monday July 30th to deliver the new Letter of Credit and or update you as to the status of the extended Letter of Credit. I have asked that they make the extension of the letter of credit at least sixty days beyond the new expiration of our requested extension.

Please call me if you feel that I might do anything further to assure you of this extension. If you care to confirm my request with the bank, you may contact Lutrelle O'Cain at Carolina First Bank directly at 693-1597.

Respectfully requested,



Dean I. Anderson
President

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 Board and the Developer entered into an Agreement on December 15, 2005 (hereinafter "the original Agreement"), concerning an improvement guarantee for the subdivision known as Grand Highlands at Bear Wallow Mountain, located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$457,500.00 in accordance with the original Agreement; and

WHEREAS, the Developer has requested that the Board of Commissioners approve extending the completion date of the latest agreement to December 14, 2007;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before December 14, 2007, complete as required the following improvements to serve the 99 lots originally approved by the Planning Board and Planning Department for the Grand Highlands at Bear Wallow Mountain: paving of the roads, as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for Grand Highlands at Bear Wallow Mountain as conditionally approved by the Henderson County Planning Board 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 amended irrevocable letter of credit guaranteeing completion of said improvements by the required date, and having an expiration date not earlier than 60 days after the completion date stated in Paragraph 1, above.
3. At such time as this Agreement is fully executed, this Agreement will supercede prior Agreements between the Board and the Developers regarding the improvement guarantee.
4. 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 (Dean Anderson)

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 _____, 200__.

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 _____, 200__.

Notary Public

June 15, 2007

Matt Card
Henderson County Planning Department
213 1st Ave E
Hendersonville, NC 28792

Dear Matt,

Due to circumstances beyond my control I need to extend the performance agreement from August 1st 2007 to October 30th 2007. If you need anything from me I can be reached at 828-606-4313. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "S. E. McElrath". The signature is written in dark ink and is positioned below the word "Sincerely,".

Scott E. McElrath

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between The Homestead at Mills River, LLC, and River Oaks Joint Ventures, LLC, hereinafter referred to as "Developers," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

WITNESSETH:

WHEREAS, the Board and the Developers entered into an Agreement on September 20, 2006 (hereinafter "the original Agreement"), concerning an improvement guarantee for Phase III of the subdivision known as The Homestead at Mills River, located in Henderson County, North Carolina; and

WHEREAS, the Developers posted with Henderson County a surety performance bond in the amount of \$985,108.75 in accordance with the original Agreement; and

WHEREAS, the Developers have requested that the Board of Commissioners approve extending the completion date of the latest agreement to October 30, 2007;

IT IS THEREFORE AGREED as follows:

1. The Developers will, on or before October 30, 2007, complete as required the following improvements to serve lots in Phase III of The Homestead at Mills River: earthwork, erosion control, storm drainage, paving and installation of curb and gutter, as shown on the Phase III Development Plan conditionally approved by the Planning Board on May 16, 2006 and as shown on the attached cost estimate prepared by Mr. Perry Davis, P.E. (signed and sealed on August 8, 2006);
2. The Developers will post with Henderson County an amendment to the surety performance bond guaranteeing completion of said improvements by the required date, and having an expiration date not earlier than 60 days after the completion date stated in Paragraph 1, above.
3. At such time as this Agreement is fully executed, this Agreement will supercede prior Agreements between the Board and the Developers regarding the improvement guarantee.
4. 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 Developers to provide, at the Developers' 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 Developers have 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

DEVELOPERS:

The Homestead at Mills River, LLC

BY: _____
Manager

River Oaks Joint Ventures, LLC

BY: _____
Manager

**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 _____, Manger of The Homestead at Mills River, LLC, a limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

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 _____, Manger of River Oaks Joint Venture, LLC, a limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

THIS the _____ day of _____, 200_.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]