Lincolnton NC
Near the City. Near the Mountains. Near Perfect.

Applicant Name: BBC CLARK CREEK, LLC.

Applicant Address: 7224 JAMESON WAY, STANLET, N.C. , 28164

Applicant Phone Number: 704-607-5059

Property Owner Name: BBC CLARK CREEK, LLC.

Property Owner Address: 7224 JAMESON WAY, STANLEY, N.C. , 28164

Property Owner Phone Number: 704-607-5059

Project Name: CLARK CREEK

Describe the nature of the work being done:

NEW DEVLOPMENT.

188 Single Family Homes, 140 Townhomes, 1 Amenity Center, approximately 41.53 area of common open space. New Development to be constructed in 2 phases.

Total linear feet of improvements: 86.907 acres

Company completing the work: PRESTIGE SITEWORKS, LLC.

Anticipated start date: 7-1-2023

Anticipated completion date: 4-30-2024 (PHASE 1)

I hereby certify that all knowledge of the information provided for this application and attachments is true and correct to the best of my knowledge.

STEVEN BAILEY (President , BBC CLARK CREEK, LLC.)

Applicant's Signature  Date 1-9-24

AGREEMENT FOR COMPLETION OF IMPROVEMENTS

CITY OF LINCOLNTON

THIS AGREEMENT (the "Agreement") is made and entered into this 3rd day of JANUARY 2024, by and between BBC CLARK CREEK, LLC (Applicant) , hereinafter referred to as "Applicant," and The City of Lincolnton, a body corporate and politic, hereinafter referred to as "City;"

WITNESSETH:

WHEREAS, the Applicant has petitioned the City for approval of its final plat for a subdivision known as CLARK CREEK, LLC., as shown on said plat; and

WHEREAS, the Applicant has submitted with its petition a preliminary plat, preliminary construction plans and profiles of the roads and sidewalks (collectively referred to as the Improvements); and

WHEREAS, these documents have been reviewed by the City and have been found to be in compliance with the Lincolnton Unified Development Ordinance and approval of final plans would be in order upon completion of the Improvements; and

WHEREAS, the Applicant has requested the City pursuant to Section 153.385 of the Lincoln City Unified Development Ordinance to be permitted to enter into an agreement with the City agreeing to complete the required Improvements and otherwise comply with all the requirements of the Ordinance by no later than 1-3-2026 (two years from date of contract) and to deposit with the City a Surety (as defined below) guaranteeing the performance of this Agreement and that all required improvements shall be made in compliance with the Ordinance and all other applicable rules; and

WHEREAS, the Applicant has agreed to install the Improvements in accordance with the rules and regulations of the North Carolina Department of Transportation and the Lincolnton Code of Ordinances and to dedicate said Improvements to the public and maintain said Improvements and turn said streets over to said City of Lincolnton at the earliest point in time that they are acceptable; and

WHEREAS, the City has agreed to approve said final plat or plats upon the execution of this Agreement and (CHECK and strike AS APPLICABLE) ☐ depositing cash with the City or ☒ depositing a surety bond with the City or ☐ providing a Letter of Credit to the City acceptable to the City in an amount equal to 125 percent of the cost (as estimated by the City) of installing the required improvements;

NOW, THEREFORE, the Applicant contracts and agrees with the City, its successors and assigns, as follows:

1. That it shall install and complete all the Improvements in the above recited subdivision in accordance with the following:

   a. preliminary road construction plans and profiles on file with the Lincolnton Planning Department;

   b. all applicable rules, regulations and requirements of the North Carolina Department of Transportation and Lincolnton Code of Ordinances;

   c. those standards and specifications described in Exhibit "A", attached hereto;

and that it shall obtain construction approval of the completed roads by the City of Lincolnton by no later than 1-3-2026 (two years from the date of contract).

2. That the Applicant shall dedicate the Improvements to the public and will maintain the Improvements until said Improvements are (i) accepted by the North Carolina Department of Transportation, as applicable; (ii) accepted by a duly constituted property owners' association created for that purpose; or (iii) otherwise approved by the City.

3. That the Applicant shall turn said Improvements over to the City of Lincolnton at the earliest time in which they are acceptable.

4. That the Applicant shall furnish to the City of Lincolnton (CHECK and strike AS APPLICABLE) ☐ cash or ☒ a surety bond payable to the City of Lincolnton or ☐ a Letter of Credit made payable to the City of Lincolnton in a form and issued by a financial institution acceptable to the City, in its sole discretion (collectively or alternatively, the Surety Bond and Letter of Credit shall be referred to as the "Surety"). The Surety shall be in an amount equal to 125 percent of the cost (as estimated by the engineer and approved by the City) of installation and dedication of all Improvements required by this Agreement and the Unified Development Ordinance. A copy of said Surety is attached to this Agreement as Exhibit "B," and incorporated herein by reference thereto.

5. That the Applicant agrees to and shall indemnify and hold the City harmless from any costs, liability, demands of any kind, sort or nature for the construction, installation and completion of the above recited Improvements.

6. That the Applicant warrants that it is the owner of the CLARK CREEK subdivision as above recited; that it has legal right to enter into this Agreement; and that it shall faithfully perform and complete the terms of this Agreement by no later than 1-3-2026 (two years from the date of contract).

7. That a breach by Applicant of any provisions of this Agreement shall entitle City, in addition to any other remedies it may hold, to immediately declare a default in this Agreement and/or call due, draw upon or make a claim on the Surety in the amount which City deems necessary, in its sole and absolute discretionary authority, to remedy all damages, reparations and costs (including, but not limited to, City's attorney's fees and court costs) arising from Applicant's breach of this Agreement. Such damages, reparations and costs shall include by way of illustration, but not be limited to, the following:

a. The costs of completing and dedicating the improvements as required by this Agreement;

b. The costs of indemnifying the City from any claims arising as a result of Applicant's breach of this Agreement; and

c. The additional manpower, legal and court costs incurred as a result of Applicant's breach of this Agreement.

8. Notices. All notices, demands, and requests which may be given or which are required to be given by either party to the other, shall be in writing and shall be deemed effective when either: (1) personally delivered to the intended recipient; (2) sent by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below or (3) delivered in person to the address set forth below for the party to which the notice was given. Notices shall be effective on the date of delivery or receipt or, if delivery is not accepted, on the earlier of the date that delivery is refused or three (3) days after the date the notice is mailed. For purposes of this Agreement, the addresses of the parties for all notices are as follows (unless changes by similar notice in writing are given by the particular person whose address is to be changed):

If to City:

City of Lincolnton
ATTN: City Attorney
P.O. Box 617
Lincolnton, NC 28093

If to Applicant:

Applicant name and address:
7224 JAMESON WAY, STANLEY, NORTH CAROLINA, 28164

9. Voluntary Agreement. The Applicant and City warrant and represent that they are represented by legal counsel of their choice; have investigated fully their alternatives to

the execution and performance of this Agreement; have had ample time to review this Agreement and consult with their counsel; are fully aware of the terms contained in this Agreement; and have knowingly, voluntarily and without coercion or duress of any kind entered into this Agreement and the documents executed in connection with this Agreement. Accordingly, this Agreement shall not be construed against either party as having drafted the Agreement.

10. CONSENT TO JURISDICTION; EXCLUSIVE VENUE. THE PARTIES HERETO AGREE TO JURISDICTION AND VENUE FOR ANY DISPUTE ARISING FROM, THIS AGREEMENT IN THE SUPERIOR COURT OF LINCOLN CITY, NORTH CAROLINA.

11. Indulgence Not Waiver. The City's indulgence in any other departure from the terms of this Agreement shall not prejudice City's right to demand strict compliance with this Agreement.

12. Amendment and Waiver in Writing. No provision of this Agreement can be amended or waived, except by a statement in writing signed by the party against which enforcement of the amendment or waiver is sought.

13. Severability. Should any provision of this Agreement be invalid or unenforceable for any reason, the remaining provisions hereof shall remain in full effect.

14. APPLICABLE LAW. THE VALIDITY, CONSTRUCTION AND ENFORCEMENT OF THIS AGREEMENT SHALL BE DETERMINED ACCORDING TO THE SUBSTANTIVE LAWS OF NORTH CAROLINA WITHOUT REGARD TO CONFLICTS PRINCIPLES.

15. Any dispute arising out of this Agreement shall be filed in the Superior Court for Lincoln County, North Carolina.

IN WITNESS WHEREOF, BBC Clark Creek, LLC (applicant), has caused this instrument to be signed by its President (title of person signing for applicant) and the City of Lincolnton has caused this instrument to be signed in accordance with a resolution passed by the Lincolnton City Council on the 3rd day of January, 2024.

President
Name and title (Developer/Property Owner)
Steven Bailey

ATTEST:

NORTH CAROLINA
Lincoln COUNTY

I, Elizabeth A Brown, a Notary Public for said County and State, do hereby certify that Steven Bailey personally appeared before me this day and acknowledged that he/she is the President of BBC Clark Creek (developer/construction company/property owner).

Witness my hand and notarial seal, this 3 day of January, 2024.

Notary Public

My Commission Expires: 6/23/27

Elizabeth A Brown
NOTARY PUBLIC
Lincoln County
North Carolina
My Commission Expires June 23, 2027

_____
City Manager

NORTH CAROLINA
LINCOLN COUNTY

I, _____, a Notary Public for said County and State, do hereby certify that Ritchie Haynes, personally appeared before me this day and acknowledged that he is the City Manager for The City of Lincolnton.

Witness my hand and notarial seal, this _____ day of _____, 202___.

_____
Notary Public

My Commission Expires: _____

NORTH CAROLINA
LINCOLN COUNTY

This the _____ day of _____, 2023, personally came before me, Daphne Ingram, City Clerk to the Lincolnton City Council, North Carolina, who being by me duly sworn says that she knows the common seal of the County of Lincoln, North Carolina and is acquainted with Ritchie Haynes who is the City Manager of the City of Lincolnton, North Carolina, and that she, the said Daphne Ingram, is the City Clerk to the Lincolnton City Council, North Carolina and saw the City Manager sign the foregoing instrument and affix said seal to said instrument and that she, the said Daphne Ingram, signed her name in attestation of said instrument in the presence of said City Manager of Lincoln County, North Carolina.

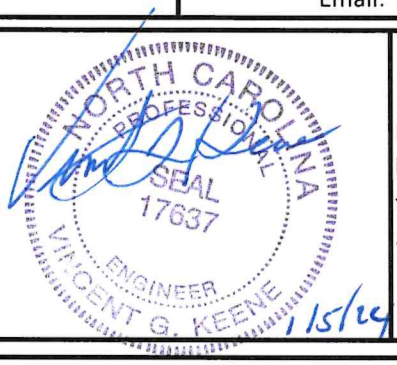
_____
Notary Public

My Commission Expires: _____

Date of Estimate	1/5/2024

Bond/Letter of Credit Cost Estimate

Project & Phase:	Clark Creek Landing Phase I
Company:	Yarbrough-Williams & Houle, Inc.
Engineer:	Vincent G. Keene
Address:	P.O. Box 1198 Pineville, NC 28134
Phone:	704-556-1990
Email:	vincek@y-wh.com



I, Vincent G. Keene, PE, a Registered Licensed Professional do hereby certify that I have personally supervised the measurement thereof and that the quantities expressed herein represent an accurate measurement of work to be completed on this project.

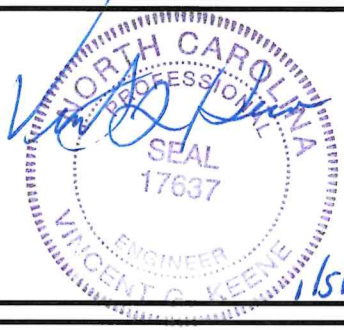
DESCRIPTION	QUANT.	UNIT	UNIT PRICE incl. Materials and Labor	TOTAL COST
Roadway				
1" Final Asphalt Surface Course	12,051	SY	$12.10	$145,817.10
5' Wide Sidewalk w/ ADA Ramps	50,280	SF	$9.50	$477,660.00
Drainage				
San. Sewer				
Site Work				
Miscellaneous Items				
Street Trees	205	EA	$150.00	$30,750.00
Other Project Specific Items Required *(add as required)*				

Construction Subtotal	$654,227.10
Contingency - 25% (NC Statutes)	$163,556.78
BOND TOTAL	**$817,783.88**

Date of Estimate	1/5/2024

Bond/Letter of Credit Cost Estimate

Project & Phase:	Clark Creek Landing Phase 2
Company:	Yarbrough-Williams & Houle, Inc.
Engineer:	Vincent G. Keene
Address:	P.O. Box 1198 Pineville, NC 28134
Phone:	704-556-1990
Email:	vincek@y-wh.com



I, Vincent G. Keene, PE, a Registered Licensed Professional do hereby certify that I have personally supervised the measurement therof and that the quantities expressed herein represent an accurate measurement of work to be completed on this project.

DESCRIPTION	QUANT.	UNIT	UNIT PRICE incl. Materials and Labor	TOTAL COST
Roadway				
1" Final Asphalt Surface Course	10,564	SY	$12.10	$127,824.40
5' Wide Sidewalk w/ ADA Ramps	42,100	SF	$9.50	$399,950.00
Drainage				
Site Work				
Miscellaneous Items				
Street Trees	179	EA	$150.00	$26,850.00
Other Project Specific Items Required ***(add as required)***				

Construction Subtotal	$554,624.40
Contingency - 25% (NC Statutes)	$138,656.10
BOND TOTAL	**$693,280.50**

Date of Estimate	1/5/2024

Bond/Letter of Credit Cost Estimate

Project & Phase:	Clark Creek Landing Wet Pond Conversion
Company:	Yarbrough-Williams & Houle, Inc.
Engineer:	Vincent G. Keene
Address:	P.O. Box 1198 Pineville, NC 28134
Phone:	704-556-1990
Email:	vincek@y-wh.com



I, Vincent G. Keene, PE, a Registered Licensed Professional do hereby certify that I have personally supervised the measurement therof and that the quantities expressed herein represent an accurate measurement of work to be completed on this project.

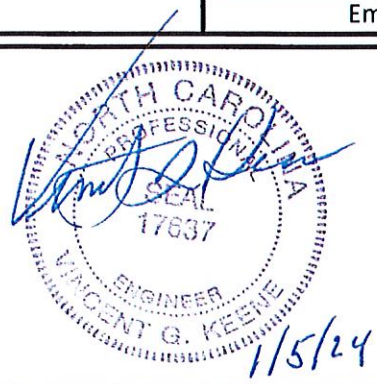
DESCRIPTION	QUANT.	UNIT	UNIT PRICE incl. Materials and Labor	TOTAL COST
Roadway				
Drainage				
Site Work				
Miscellaneous Items				
Wet Pond Conversion from Erosion Control Basin	1	LS	$150,000.00	$150,000.00
Other Project Specific Items Required *(add as required)*				

Construction Subtotal	$150,000.00
Contingency - 25% (NC Statutes)	$37,500.00
BOND TOTAL	**$187,500.00**

Date of Estimate	1/5/2024

Bond/Letter of Credit Cost Estimate

Project & Phase:	Clark Creek Landing - Offsite Sidewalk
Company:	Yarbrough-Williams & Houle, Inc.
Engineer:	Vincent G. Keene
Address:	P.O. Box 1198 Pineville, NC 28134
Phone:	704-556-1990
Email:	vincek@y-wh.com



I, Vincent G. Keene, PE, a Registered Licensed Professional do hereby certify that I have personally supervised the measurement therof and that the quantities expressed herein represent an accurate measurement of work to be completed on this project.

DESCRIPTION	QUANT.	UNIT	UNIT PRICE incl. Materials and Labor	TOTAL COST
Roadway				
5' Wide Sidewalk on Startown Rd / Clark Creek Rd	10,764	SF	$9.50	$102,258.00
w/ ADA Ramps				
Drainage				
Site Work				
Miscellaneous Items				
Other Project Specific Items Required *(add as required)*				

Construction Subtotal	$102,258.00
Contingency - 25% (NC Statutes)	$25,564.50
BOND TOTAL	**$127,822.50**