



ITEMS FOR DISCUSSION

ITEM NO. 18.

1. Items from County Manager
 - a. Discussion of New Abandoned Manufactured Homes Legislation-Patrick Davenport
2. Items from County Attorney
 - a. Settlement Agreement, Assignment of Claims, and Full and Final Release-Hampstead Pines Homeowners Association, Inc.
3. Items from County Commissioners

**SETTLEMENT AGREEMENT, ASSIGNMENT OF
CLAIMS, AND FULL AND FINAL RELEASE**

THIS SETTLEMENT AGREEMENT, ASSIGNMENT OF CLAIMS, AND FULL AND FINAL RELEASE ("Agreement") is entered into by Pender County, North Carolina ("Pender County"), Hampstead Pines Homeowners Association, Inc. ("Hampstead Pines"), and Developers Surety and Indemnity Company ("Developers Surety"), and is effective the 27th day of March, 2009.

WITNESSETH:

WHEREAS, Henderson Farms, LLC ("Henderson Farms"), developed the Hampstead Pines Subdivision in Pender County and was required to comply with Pender County's Subdivision Ordinance.

WHEREAS, the Subdivision Improvement Performance Bond, dated December, 2003, was issued in connection with the Hampstead Pines Subdivision, and Henderson Farms was the Principal, Developers Surety was the Surety, and Pender County was the Obligee.

WHEREAS, Pender County and Hampstead Pines have made claims against the Subdivision Improvement Performance Bond concerning the roads and the wastewater treatment system.

WHEREAS, Henderson Farms failed to adequately respond or correct any of the matters related to the claims by Pender County and Hampstead Pines concerning the roads and the wastewater treatment system.

WHEREAS, Pender County, Hampstead Pines, and Developers Surety now desire to settle and resolve claims against Developers Surety pursuant to the Subdivision Improvement Performance Bond in connection with the Hampstead Pines Subdivision in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the payment made pursuant to this Agreement, the mutual promises contained herein, and other valuable consideration, the receipt and sufficiency of which is acknowledged by all parties, it is agreed as follows:

AGREEMENT:

1. Payment. Developers Surety shall make a payment by joint check to Pender County and Hampstead Pines in the amount of \$90,000.00, within thirty (30) days of the full execution of this Agreement by all parties.

2. Release by Pender County. As a material inducement to Developers Surety to enter into this Agreement, and in consideration of the payment by Developers Surety, Pender County, together with its agents, employees, representatives, and

assigns, hereby remises, releases, acquits, and forever discharges Developers Surety, The Insko/Dico Group, Insko Insurance Services, Inc., and The Bond Network, as well as their agents, servants, employees, members, principals, partners, shareholders, officers, directors, managers, representatives, attorneys, insurers, successors, assigns, and parent, subsidiary, sister, and/or affiliated companies, of and from any and all claims, actions, causes of action, demands, rights, damages (actual, compensatory, punitive, or statutory), costs, losses, expenses, judgments, liabilities, attorneys' fees, or any other compensation whatsoever, presently known or unknown, at law or in equity, which were made, could have been made, or in any way arose in connection with the development of the Hampstead Pines Subdivision and/or any claims under the Subdivision Improvements Performance Bond of December, 2003. The effect of this paragraph is intended to be a general release of all claims, presently known or unknown, that Pender County may have or will have against Developers Surety and the other releasees, other than the right of specific performance of the payment required by this Agreement.

3. Release by Hampstead Pines. As a material inducement to Developers Surety to enter into this Agreement, and in consideration of the payment by Developers Surety, Hampstead Pines Homeowners Association, Inc., together with its members, agents, homeowners, representatives, attorneys, and assigns, hereby remises, releases, acquits, and forever discharges Developers Surety, The Insko/Dico Group, Insko Insurance Services, Inc., and The Bond Network, as well as their agents, servants, employees, members, principals, partners, shareholders, officers, directors, managers, representatives, attorneys, insurers, successors, assigns, and parent, subsidiary, sister, and/or affiliated companies, of and from any and all claims, actions, causes of action, demands, rights, damages (actual, compensatory, punitive, or statutory), costs, losses, expenses, judgments, liabilities, attorneys' fees, or any other compensation whatsoever, presently known or unknown, at law or in equity, which were made, could have been made, or in any way arose in connection with the development of the Hampstead Pines Subdivision and/or any claims under the Subdivision Improvements Performance Bond of December, 2003. The effect of this paragraph is intended to be a general release of all claims, presently known or unknown, that Hampstead Pines Homeowners Association, Inc. may have or will have against Developers Surety and the other releasees, other than the right of specific performance of the payment required by this Agreement.

4. Assignment by Pender County. Pender County hereby sells, assigns and sets over unto Developers Surety, its successors and assigns, all claims against Henderson Farms, LLC, and its successors, any and all rights and interest associated therewith, directly and indirectly, including but not limited to, its claims related to the development of Hampstead Pines Subdivision and its claims under the Subdivision Improvements Performance Bond. Pender County does hereby constitute and appoint Developers Surety, its successors and assigns, its true and lawful attorney irrevocable with power of substitution and revocation, for the use and at the expense of Developers Surety to ask, demand and receive payment, to adjust, settle or compromise, to bring suit, and to take all lawful ways and actions for the recovery of money due or to become due on the Pender County claims, and on payment to give full acquittance and discharge of same.

5. Assignment by Hampstead Pines Homeowners Association, Inc. Hampstead Pines Homeowners Association, Inc. hereby sells, assigns and sets over unto Developers Surety, its successors and assigns, all claims against Henderson Farms, LLC, and its successors, any and all rights and interest associated therewith, directly and indirectly, including but not limited to, its claims related to the development of Hampstead Pines Subdivision and its claims under the Subdivision Improvements Performance Bond. Hampstead Pines Homeowners Association, Inc. does hereby constitute and appoint Developers Surety, its successors and assigns, its true and lawful attorney irrevocable with power of substitution and revocation, for the use and at the expense of Developers Surety to ask, demand and receive payment, to adjust, settle or compromise, to bring suit, and to take all lawful ways and actions for the recovery of money due or to become due on the Hampstead Pines Homeowners Association, Inc. claims, and on payment to give full acquittance and discharge of same. Notwithstanding the above, this assignment by Hampstead Pines Homeowners Association, Inc. does not include any potential claims against the engineer(s) concerning the Hampstead Pines Subdivision and all such potential claims against the engineer(s) remain with Hampstead Pines Homeowners Association, Inc.

6. Recovery By Developers Surety. Developers Surety may pursue Henderson Farms and others to recover the amounts it has paid, the expenses and attorney fees it has incurred concerning the Subdivision Improvements Performance Bond, and the expenses and attorneys fees incurred in pursuing Henderson Farms and others for indemnity (the "Loss"). If Developers Surety recovers by Judgment from Henderson farms more than its Loss, the excess will be transferred to Hampstead Pines. However, Developers Surety can settle for any amount with Henderson Farms and/or others in its sole discretion, and has no duty or obligation to seek recovery greater than its Loss. Furthermore, Developers Surety has no duty or obligation to Hampstead Pines to seek a Judgment against Henderson Farms or to take any action for the benefit of Hampstead Pines to recover money.

7. Return of Bond by Pender County. Within twenty (20) days of the payment by Developers Surety, Pender County will return to Developers Surety the original Subdivision Improvements Performance Bond, dated December 1, 2003, and designated at Bond Number 893226S. Furthermore, Pender County acknowledges that Developers Surety's obligations under the Subdivision Improvements Performance Bond have been fully fulfilled and fully satisfied.

8. Execution of Ancillary Documents. As a further material inducement to the parties to enter into this Agreement, the parties agree to execute such other and further documents as may be necessary to carry out the terms and intent of this Agreement.

9. Reservation of Claims Against Henderson Farms, LLC. By entering into and executing this Agreement, Developers Surety does not waive and does not release its claims against Henderson Farms, LLC, or against the Indemnitors of the Subdivision Improvements Performance Bond; and Developers Surety expressly reserves all rights and claims against Henderson Farms, LLC and the Indemnitors of the Subdivision

Improvements Performance Bond pursuant to the Indemnity Agreement executed in favor of Developers Surety.

10. Representations by Pender County. Pender County, for purposes of inducing the payment herein, knowing that Developers Surety relies upon said representations and warranties, does hereby represent and warrant that:

(a) No part of Pender County's claims have been assigned, transferred, released, or discharged, and that Pender County has full and exclusive right, title, and interest in and to its claims; and

(b) Pender County is relying solely on its own judgment and belief as to the adequacy of the consideration paid and that this Agreement is being executed without reliance upon any statement or representation made by Developers Surety or any one acting on behalf of Developers Surety; and

(c) Pender County has carefully read and fully understands this Agreement, has voluntarily executed same, and represents that the undersigned has the authority and capacity to execute same on behalf of Pender County.

11. Representations by Hampstead Pines Homeowners Association, Inc. Hampstead Pines Homeowners Association, Inc. for purposes of inducing the payment herein, knowing that Developers Surety relies upon said representations and warranties, does hereby represent and warrant that:

(a) No part of Hampstead Pines Homeowners Association, Inc.'s claims have been assigned, transferred, released, or discharged, and that Hampstead Pines Homeowners Association, Inc. has full and exclusive right, title, and interest in and to its claims; and

(b) Hampstead Pines Homeowners Association, Inc. is relying solely on its own judgment and belief as to the adequacy of the consideration paid and that this Agreement is being executed without reliance upon any statement or representation made by Developers Surety or any one acting on behalf of Developers Surety; and

(c) Hampstead Pines Homeowners Association, Inc. has carefully read and fully understands this Agreement, has voluntarily executed same, and represents that the undersigned has the authority and capacity to execute same on behalf of Hampstead Pines Homeowners Association, Inc.

12. Successors. This Agreement shall be binding upon the parties to this Agreement, as well as their successors in interest and assigns.

13. Choice of Law. This Agreement shall be construed in accordance with the laws of the State of North Carolina.

14. Preparation of Agreement. This Agreement is the product of the negotiation of all parties hereto. For convenience, it has been drafted in substantial part by counsel for one of the parties hereto, but this Agreement shall be deemed to have been drafted by all parties jointly, and any ambiguity herein shall not be construed for or against any party by virtue of the identity of the draftsman.

[SIGNATURES ON NEXT PAGE]

Executed by:

PENDER COUNTY:

By: _____
Signature

Printed Name

Title

Date

HAMPSTEAD PINES HOMEOWNERS ASSOCIATION, INC.:

By: _____
Signature

Printed Name

Title

Date

DEVELOPERS SURETY AND INDEMNITY COMPANY:

By: _____
Signature

Printed Name

Title

Date