

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: March 9, 2005

SUBJECT: Improvement Guarantee for Pinnacle Falls, Phase I – Section 1
(Meadows)

ATTACHMENTS:

1. Letter from Luther E. Smith
2. Application for Improvement Guarantee
2. Draft Performance Guarantee Agreement
3. Cost Estimates

SUMMARY OF REQUEST:

Mr. Luther E. Smith, on behalf of Pinnacle Falls, LLC, owner and developer of Pinnacle Falls subdivision, has submitted a request for an improvement guarantee for Phase I, Section 1 (Meadows) of Pinnacle Falls. Pinnacle Falls will be located on the south side of Pinnacle Mountain Road, between Pinnacle Mountain Road and Cabin Creek Road. The Henderson County Planning Board granted conditional approval of a Development Plan for Phase I of Pinnacle Falls on February 15, 2005. The Planning Board is also considering a request for a variance from certain subdivision standards for Phase I (which will eventually require consideration by the Board of Commissioners), however, according to A.J. Ball, Manager of Pinnacle Falls, LLC, the cost estimate for the requested improvement guarantee is based upon the conditionally approved Development Plan. The improvement guarantee is proposed to cover required road and water system construction within Phase I, Section 1 (Meadows) of Pinnacle Falls.

Pursuant to Sections 170-38 and 170-39 of the Henderson County Code (the Subdivision Ordinance), a developer may, in lieu of completing all of the required improvements prior to Final Plat approval, post a performance guarantee to secure the County's interest in seeing that satisfactory construction of incomplete improvements occurs. One type of permitted guarantee is an irrevocable letter of credit. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$340,595.00 to cover the cost of the improvements (\$272,476.00) as well as the required twenty-five percent (25%) contingency (\$68,119.00). The proposed completion date for the improvements is March 1, 2007. The Subdivision Ordinance allows a developer using an improvement guarantee a maximum of two years between the time of initiation and completion of required 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 Pinnacle Falls, Phase I – Section 1 (Meadows), subject to the developer submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

Luther E. Smith & Associates, P.A.
Land Planning • Landscape Architecture
121 Third Avenue West Ste. 1, Hendersonville, NC 28792
(828) 697-2307 FAX# (828) 697-8458



18 February 2005

To: Karen Smith - Director
Henderson County Planning Department

Fr: Luther E. Smith

Re: Pinnacle Falls - Request for Guarantee

Please find attached a request for guarantee of improvements for Phase I - Section 1 (Meadows) of Pinnacle Falls, and an estimate for road and water system improvements prepared by John Jeter PE. The total guarantee amount will be \$340,595.00.

On behalf of Pinnacle Falls LLC, we request that this request be placed on the March 7, 2005 agenda for the Board of Commissioners. Please advise me if you require any additional information.

Thank you for your assistance.

A handwritten signature in black ink, appearing to read "John Jeter".

cc
A.J. Ball
John Jeter PE



Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision Pinnacle Falls

Name of Owner A.J. Ball (agent) for Pinnacle Falls, LLC

Address 419 N Main Street Hendersonville, NC 28792

Phone: 606-3030

Agent A.J. Ball Phone: _____

Date of Preliminary Plan Approval by Planning Board Master Plan approval on November 16, 2004

Significant Conditions Imposed: Phase I Development Plan approval on 2/15/05

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 _____

Amount of guarantee (including 25% overhead) \$ 340,595.00

Projected completion date March 1, 2007

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

3-1-05
Date

Submitted By Pinnacle Falls, LLC

Date 3/1/05

Received By K. Scanlan

Date 3/1/05

Check # 1202 - 3/1/05 - \$200.00

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

DRAFT

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Pinnacle Falls, 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 a proposed subdivision known as Pinnacle Falls, Phase I, Section 1 (Meadows), hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, Henderson County Planning Board conditionally approved a Development Plan for the Project, 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 1st of March, 2007, complete as required the following improvements to serve lots in the Project: grading, road construction, water system construction and road shoulder stabilization as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for the Project conditionally approved by the Henderson County Planning Department on February 15, 2005, and as shown on the attached cost estimates prepared by John B. Jeter, P.E. (sealed 2/28/05 and dated 2/14/05).
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 \$340,595.00 (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 (Acting) 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 the Project 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 Henderson County Planning Department staff and/or 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 (Acting) 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:

DRAFT

County Attorney

HENDERSON COUNTY BOARD OF COMMISSIONERS

DRAFT

BY: _____
William L. Moyer, Chairman

ATTESTED BY:

DRAFT

[OFFICIAL SEAL]

Elizabeth W. Corn, Clerk to the Board

DEVELOPER:
Pinnacle Falls, 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 _____, Manager of Pinnacle Falls, 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.

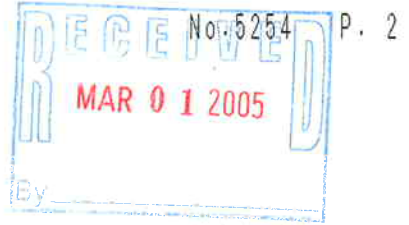
THIS the _____ day of _____, 200_.

D E P O S I T

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]



SUMMARY OF IMPROVEMENTS
 (Use a separate sheet for each section)

Subdivision Name and Section PINNACLE FALLS (PHASE 1 -- SECTION 1)

<u>STREET NAME</u> (Include Lot Numbers)	<u>ROADS & DRAINAGE</u>	<u>WATER</u>	<u>SEWER</u>	<u>TOTAL</u>
<u>PINNACLE FALLS LANE</u>	\$ 140,386.00	\$ 16,450.00	\$	\$ 156,836.00
<u>MOUNTAIN MIST LANE</u>	\$ 44,600.00	\$ 14,360.00	\$	\$ 58,960.00
<u>RED MULBERRY LANE</u>	\$ 43,940.00	\$ 12,740.00	\$	\$ 56,680.00
<u>Balance & Subtotal</u>	\$ 228,926.00	\$ 43,550.00	\$ 0.0	\$ 272,476.00
Subtotal All Categories	\$ 272,476.00			
Overhead (25% Minimum)	\$ 68,119.00			
Total Guarantee Requested	\$ 340,595.00			



**PINNACLE FALLS
(PHASE 1 - SECTION 1)**



ROAD GRADING and SITE IMPROVEMENTS
Preliminary Construction Cost Estimate

14 February 2005

NO.	ITEM	UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1.	Grading and Drainage Improvements (Residential Collector road)	LF	2,450.0	\$ 25.00	\$ 61,250.00
2.	Grading and Drainage Improvements (Residential Local road)	LF	1,945.0	20.00	38,900.00
3.	Placement and compaction of CABC (C: Aggregate Base Course; minimum compacted depth = 8-inch)	TN	2,396.0	16.00	38,336.00
4.	Placement and compaction of CABC (C: Aggregate Base Course; minimum compacted depth = 6-inch)	TN	1,285.0	16.00	20,560.00
5.	Placement and compaction of BCSC (Asphalt: Type S 9.5B ; minimum compacted depth = 1.5-inch)	SY	8,360.0	8.00	66,880.00
6.	Seeding and stabilization of disturbed areas (acres)	AC	3.0	1000.00	3,000.00
TOTAL CONSTRUCTION COST					228,926.00
CONTINGENCY (5%)					11,450.00
TOTAL PROJECT COST					\$ <u>240,376.00</u>

PINNACLE FALLS
(PHASE 1 - SECTION 1)



WATER SUPPLY and DISTRIBUTION IMPROVEMENTS
Preliminary Construction Cost Estimate

14 February 2005

NO.	ITEM	UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1.	Construct Water-supply well(s) with control system and storage	EA	1	Lump Sum	\$ 10,500.00
2.	Water-line; 4-inch (AWWA: PVC/SDR-13.5)	LF	2000	9.00	18,000.00
3.	Water-line; 2-inch (AWWA: PVC/SDR-13.5)	LF	800	6.00	4,800.00
4.	Gate valve & box; 4-inch	EA	3	500.00	1,500.00
5.	Gate valve & box; 2-inch	EA	3	350.00	1,050.00
6.	Fittings (Cast iron - MJ)	LB	750	2.00	1,500.00
7.	Air Release Valve assembly (ARV; 1-inch)	EA	2	1000.00	2,000.00
8.	Water service lateral (Single 3/4" X 5/8")	EA	10	420.00	4,200.00
TOTAL CONSTRUCTION COST					\$ 43,550.00
CONTINGENCY (5%)					\$ 2,200.00
TOTAL PROJECT COST					\$ <u>45,750.00</u>