

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** April 20, 2005

**SUBJECT:** Improvement Guarantee for Pinnacle Falls, Phase I – Sections 2 and 3

**ATTACHMENTS:**

1. 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, Sections 2 and 3, 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 Board of Commissioners will be considering a request for a variance from certain road standards for portions of Pinnacle Falls Lane in Phase I, however, as was the case for the improvement guarantee for Phase I, Section 1, the cost estimate for the requested improvement guarantee is based upon the conditionally approved Development Plan (which does not reflect the variance). The improvement guarantee is proposed to cover required road and water system construction costs.

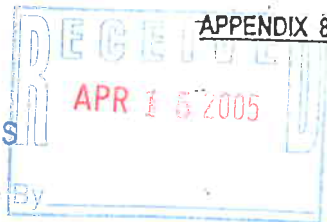
Pursuant to Sections 170-38 and 170-39 of the Henderson County Code (the Subdivision Ordinance), a developer may, in lieu of completing all of the required improvements prior to Final Plat approval, post a performance guarantee to secure the County's interest in seeing that satisfactory construction 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 \$564,318.00 to cover the cost of the improvements (\$451,454.40) as well as the required twenty-five percent (25%) contingency (\$112,863.60). 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 – Sections 2 and 3, subject to the developer submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

Henderson County  
APPLICATION FOR IMPROVEMENT GUARANTEES



APPENDIX 8 2005-1105  
IG-05-03

Name of Subdivision Pinnacle Falls - Sections 2 and 3

Name of Owner Pinnacle Falls, LLC

Address 419 North Main Street, Hendersonville, NC 28792

Phone: 828-698-7890

Agent A. J. Ball, Managing Mbr Phone: 828-698-7890

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

Significant Conditions Imposed: \_\_\_\_\_

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 First Citizens Bank

Amount of guarantee (including 25% overhead) \$ 564,318.00

Projected completion date March 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] April 14, 2005  
Owner's Signature Date

Submitted By \_\_\_\_\_ Date \_\_\_\_\_

Received By Karen C. Smith Date 4/15/05

Paid \$200.00 fee on 4/12/05. Check # 6458. Receipt # 3307

**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**THIS AGREEMENT** made and entered into this       DRAFT       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, Sections 2 and 3, 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 1<sup>st</sup> 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 sealed by John B. Jeter, P.E.
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 \$564,318.00 (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**

DRAFT

**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\_.

**DRAFT**

\_\_\_\_\_  
**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 – SECTIONS 2 & 3 )

STREET NAME (Include Lot Numbers.)	ROADS & DRAINAGE	WATER	SEWER	TOTAL
<u>PINNACLE FALLS LANE</u>	\$ 312,724.00	\$ 55,910.40	\$	\$ 368,634.40
<u>MAGNOLIA BRANCH DRIVE</u>	\$ 19,570.00	\$ 9,139.20	\$	\$ 28,709.20
<u>COPPER COVE ROAD</u>	\$ 4,710.55	\$ 3,051.30	\$	\$ 7,761.85
<u>JUNIPER BERRY LANE</u>	\$ 13,880.00	\$ 0.00	\$	\$ 13,880.00
<u>DOGWOOD BRANCH ROAD</u>	\$ 26,725.45	\$ 5,743.50	\$	\$ 32,468.95
<u>Balance &amp; Subtotal</u>	<u>\$ 377,610.00</u>	<u>\$ 73,844.40</u>	<u>\$ 0.0</u>	<u>\$ 451,454.40</u>

Subtotal All Categories	<u>\$ 451,454.40</u>
Overhead (25% Minimum)	<u>\$ 112,863.60</u>
Total Guarantee Requested	<u>\$ 564,318.00</u>





**PINNACLE FALLS**  
**( PHASE 1 - SECTIONS 2 & 3 )**

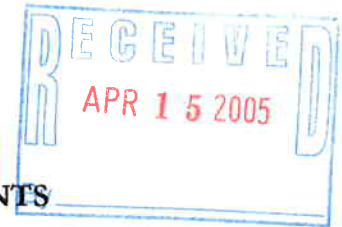


**WATER SUPPLY and DISTRIBUTION IMPROVEMENTS**  
Preliminary Construction Cost Estimate

14 April 2005

<b>NO.</b>	<b>ITEM</b>	<b>UNITS</b>	<b>QUANTITY</b>	<b>UNIT PRICE</b>	<b>TOTAL PRICE</b>
1.	Water-line; 4-inch ( AWWA: PVC/SDR-13.5)	LF	5350	9.00	48,150.00
2.	Water-line; 2-inch ( AWWA: PVC/SDR-13.5)	LF	1254	6.00	7,524.00
3.	Gate valve & box, 4-inch	EA	5	500.00	3,500.00
4.	Gate valve & box; 2-inch	EA	4	350.00	1,400.00
5.	Fittings ( Cast iron - MJ)	LB	927	2.00	1,854.00
6.	Air Release Valve assembly ( ARV; 1-inch )	EA	3	1000.00	3,000.00
7.	Water service lateral ( Single 3/4" X 5/8" )	EA	20	420.00	8,400.00
<b>TOTAL CONSTRUCTION COST</b>					<b>\$ 70,328.00</b>
CONTINGENCY ( 5% )					\$ 3,516.40
<b>TOTAL PROJECT COST</b>					<b>\$ 73,844.40</b>

**PINNACLE FALLS**  
**( PHASE 1 - SECTIONS 2 & 3 )**



**ROAD GRADING and SITE IMPROVEMENTS**  
Preliminary Construction Cost Estimate

14 April 2005

<b>NO.</b>	<b>ITEM</b>	<b>UNITS</b>	<b>QUANTITY</b>	<b>UNIT PRICE</b>	<b>TOTAL PRICE</b>
1.	Grading & drainage improvements (Residential collector road)	LF	5,350.0	25.00	133,750.00
2.	Grading & drainage improvements (Residential local road)	LF	674.0	20.00	13,480.00
3.	Grading & drainage improvements (Limited local residential road)	LF	350.0	16.00	5,600.00
4.	Grading & drainage improvements (Local residential one way street)	LF	580.0	13.00	7,540.00
5.	Placement and compaction of CABC ( C: Aggregate Base Course; minimum compacted depth = 8-inch)	TN	5,230.0	16.00	83,680.00
6.	Placement and compaction of CABC ( C: Aggregate Base Course; minimum compacted depth = 6-inch)	TN	950.0	16.00	15,200.00
7.	Placement and compaction of BCSC ( Asphalt: Type S 9.5B ; minimum compacted depth = 1.5-inch)	SY	13,220.0	8.00	105,760.00
8.	Seeding and stabilization of disturbed areas ( acres)	AC	12.6	1000.00	12,600.00
<b>TOTAL CONSTRUCTION COST</b>					<b>377,610.00</b>
CONTINGENCY ( 5%)					18,880.50
<b>TOTAL PROJECT COST</b>					<b>\$ 396,490.50</b>