

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** November 7, 2005

**SUBJECT:** Improvement Guarantee for Pinnacle Falls, Phase III

**ATTACHMENTS:**

1. Application for Improvement Guarantee
2. Cost Estimates
3. Draft Performance Guarantee Agreement

#### **SUMMARY OF REQUEST:**

Mr. Luther E. Smith, on behalf of Pinnacle Falls, LLC, owner and developer of Pinnacle Falls subdivision, submitted a request for an improvement guarantee for Phase III 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 Department granted conditional approval of a Development Plan for Phase III of Pinnacle Falls on October 28, 2005. The improvement guarantee is proposed to cover the road construction, road shoulder stabilization and the water distribution system improvements.

According to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance, where the required improvements have not been completed or in lieu of completing all of the required improvements in order to submit a Final Plat and also prior to Final Plat approval, the developer may post a performance guarantee for the improvements. Section 170-38 of the Henderson County Subdivision Ordinance also states that the installation of the improvements must be completed within two years of the date of approval of the improvement guarantee. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$320,250.00 to cover the cost of the improvements (\$256,200.00) as well as the required twenty-five percent (25%) contingency (\$64,050.00). The proposed completion date for the improvements is March 1, 2007.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developers 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 III, subject to the developers 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

Name of Subdivision Pinnacle Falls, Phase III

Name of Owner Pinnacle Falls, LLC

Address 419 North Main Street, Hendersonville, NC 28792

Phone: 828-698-7890

Agent A.J. Ball, Managing Member 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) \$ 320,250.00

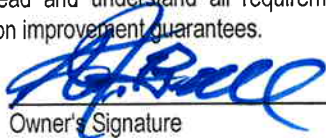
Projected completion date March 2007

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.

  
Owner's Signature

October 20, 2005  
Date

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

Date \_\_\_\_\_

Received By  \_\_\_\_\_

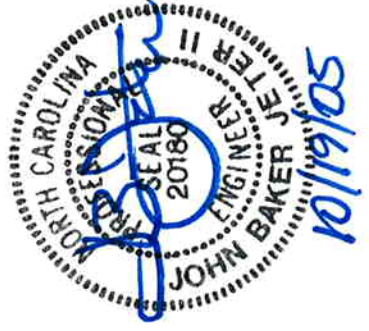
Date 10/24/05

# SUMMARY OF IMPROVEMENTS

(Use a separate sheet for each section)

Subdivision Name and Section PINNACLE FALLS ( PHASE III )

STREET NAME (Include Lot Numbers)	ROADS & DRAINAGE	WATER	SEWER	TOTAL
<u>PINNACLE MTN ROAD ( lots # 141 &amp; 142 )</u>	\$ 0.00	\$ 0.00	\$	\$ 0.00
<u>BOONE TOP ( lots # 143 &amp; 144 )</u>	\$ 0.00	\$ 0.00	\$	\$ 0.00
<u>EAGLE RIDGE ROAD ( lots # 5 - 12 )</u>	\$ 72,800.00	\$ 0.00	\$	\$ 72,800.00
<u>HUCKLEBERRY RIDGE LANE ( lots # 111 - 128 )</u>	\$ 68,250.00	\$ 22,500.00	\$	\$ 90,750.00
<u>JUNIPER BERRY LANE ( lots # 111 - 128 )</u>	\$ 72,800.00	\$ 19,850.00	\$	\$ 92,650.00
<b><u>BALANCE &amp; SUB-TOTAL</u></b>	<b>\$ 213,850.00</b>	<b>\$ 42,350.00</b>	<b>\$ 0.0</b>	<b>\$ 256,200.00</b>
Subtotal All Categories	<u>\$ 256,200.00</u>			
Overhead (25% Minimum)	<u>\$ 64,050.00</u>			
Total Guarantee Requested	<u>\$ 320,250.00</u>			



**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**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 Phase III of a proposed subdivision known as Pinnacle Falls, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

**WHEREAS**, the Henderson County Planning Department conditionally approved the Phase III Development Plan for Pinnacle Falls, 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> day of March, 2007, complete as required the following improvements to serve lots in Pinnacle Falls: grading, road construction, road shoulder stabilization and water system construction, as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for Pinnacle Falls, Phase III, as conditionally approved by the Henderson County Planning Department on October 28, 2005, and as shown on the attached cost estimates prepared by John Jeter, P.E., (dated October 19, 2005).
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 \$320,250.00 (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 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 Pinnacle Falls, Phase III, 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 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 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:**  
**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, personally came before me this day and acknowledged the due execution of the foregoing instrument.

**THIS** the \_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
**Notary Public**

**My Commission Expires:** \_\_\_\_\_

**[NOTARIAL SEAL]**