

## **REQUEST FOR BOARD ACTION**

### **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**MEETING DATE:** March 15, 2006

**SUBJECT:** Improvement Guarantee for Blue Moon on Pinnacle Peak

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

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

Mr. Alan Rieger on behalf of Sahalee, LLC, owner, submitted a request for an improvement guarantee for the Blue Moon on Pinnacle Peak subdivision. Blue Moon on Pinnacle Peak is located on 130 acres of land off Pinnacle Mountain Road. The Henderson County Planning Board granted conditional approval of the Combined Master Plan and Development Plan for Blue Moon on Pinnacle Peak on November 21, 2005. The improvement guarantee is proposed to cover the earthwork, construction of the roads, drainage and erosion control for the entire subdivision.

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 and for 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 improvement guarantee approval date. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$1,140,551.00 to cover the cost of the improvements (\$912,441.28) as well as the required twenty-five percent (25%) contingency (\$228,110.00). December 30, 2006 is the proposed completion date for the improvements.

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 Blue Moon on Pinnacle Peak, 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

Name of Subdivision BLUE MOON ON PINNACLE PEAK

Name of Owner SAHALEE, LLC

Address P.O. BOX 1251 (HENDERSONVILLE) FLAT ROCK NC 28731

Phone: (828) 693-0240

Agent ALAN RIEGER Phone: (828) 699-2516

Date of Preliminary Plan Approval by Planning Board NOVEMBER 2005

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 CAROLINA FIRST

Amount of guarantee (including 25% overhead) \$ ~~285~~ 1,140,551

Projected completion date DECEMBER 2006 ← 12/30/06 per AR on March 7, 2006

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.

Alan Rieger  
Owner's Signature

3/2/06  
Date

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

Date \_\_\_\_\_

Received By 3/2/06

Date 3/2/06

Fee \$250.00  
Paid MC



**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by and between Sahalee, 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 Blue Moon on Pinnacle Peak, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

**WHEREAS**, the Henderson County Planning Board conditionally approved the Combined Master Plan and Development Plan for Blue Moon on Pinnacle Peak, 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 30th day of December, 2006, complete as required the following improvements to serve lots in Blue Moon on Pinnacle Peak: earthwork, construction of the roads, drainage and erosion control measures as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Development Plan for Blue Moon on Pinnacle Peak, conditionally approved by the Henderson County Planning Board on November 21, 2005, and as shown on the attached cost estimates prepared by John Darrohn, P.E., (signed and sealed on March 2, 2006).
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 \$1,140,551.00 (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 Blue Moon on Pinnacle Peak, 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:**  
**Sahalee, 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 Sahalee, 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]**

**PRELIMINARY OPINION OF PROBABLE COSTS**

SEAMON, WHITESIDE & ASSOCIATES, INC.

**Blue Moon on Pinnacle Peak**  
Hendersonville, NC

SWA Project: GR1132.00  
Prepared: 2-Mar-06  
By: JD/YN/EH

This Opinion of Probable Costs has been prepared and is based on Combined Master and Development Plan prepared by SWA, Inc. and dated 03/02/06. This cost estimate should be considered incomplete and will change following the completion of schematic design efforts.

NO.	ITEM	QTY.	UNIT	COST	EXTENSION
<b>A. MOBILIZATION, CLEARING &amp; EROSION CONTROL</b>					
1	Mobilization (Approx. 6% of subtotal)	1	LS	\$47,605.00	\$47,605.00
2	Clearing and Grubbing	12	AC	\$3,000.00	\$36,000.00
3	Stripping (±1' deep)	2533	CY	\$1.50	\$3,799.50
4	Silt Fence	7133	LF	\$5.00	\$35,665.00
5	Temp. Construction Entrance (6' thick)	2	EA	\$2,000.00	\$4,000.00
6	Inlet Protection	2	EA	\$150.00	\$300.00
7	Seed Disturbed Area	8.73	AC	\$2,000.00	\$17,460.00
	<b>Total Mobilization, Clearing &amp; Erosion Control</b>				<b>\$144,829.50</b>
<b>B. EARTHWORK</b>					
8	Excavation (adjusted +20%)	40850	CY	\$2.75	\$112,337.50
9	Backfill (adjusted -15%)	11950	CY	\$3.75	\$44,812.50
10	Rough Grade Roadway	15197.6	SY	\$1.00	\$15,197.60
11	Fine Grade Roadway	15197.6	SY	\$2.25	\$34,194.60
	<b>Total Earthwork</b>				<b>\$206,542.20</b>
<b>C. STORM DRAINAGE</b>					
12	12" Class III RCP	195	LF	\$16.50	\$3,217.50
13	15" Class III RCP	89	LF	\$18.00	\$1,602.00
14	18" Class III RCP	122	LF	\$20.00	\$2,440.00
15	24" Class III RCP	174	LF	\$28.00	\$4,872.00
16	36" Class III RCP	128	LF	\$35.00	\$4,480.00
17	Catch basins	2	EA	\$1,700.00	\$3,400.00
18	12" Flared end section	4	EA	\$550.00	\$2,200.00
19	15" Flared end section	2	EA	\$600.00	\$1,200.00
20	18" Flared end section	3	EA	\$650.00	\$1,950.00
21	24" Flared end section	2	EA	\$750.00	\$1,500.00
22	36" Flared end section	2	EA	\$850.00	\$1,700.00
23	Headwall (Stone-faced)	29	EA	\$1,500.00	\$43,500.00
24	Rip-rap	26	TON	\$55.00	\$1,430.00
25	Stone check dam	80	EA	\$1,000.00	\$80,000.00
26	Vegetative matting	6000	SY	\$2.75	\$16,500.00
	<b>Total Storm Drainage</b>				<b>\$169,991.50</b>
<b>D. GENERAL CONSTRUCTION</b>					
27	Stone Base Course (9")	15200	SY	\$9.50	\$144,400.00
28	Asphalt Surface Course (3")	15200	SY	\$6.25	\$95,000.00
29	Re-work existing ditch in ROW	8166	LF	\$4.00	\$32,664.00
	<b>Total General Construction</b>				<b>\$272,064.00</b>
	<b>SUBTOTAL ALL AREAS</b>				<b>\$793,427.20</b>
	<b>COST FACTOR</b>		15%		<b>\$119,014.08</b>
	<b>GRAND TOTAL ALL AREAS</b>				<b>\$912,441.28</b>

