

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: April 3, 2006

SUBJECT: Improvement Guarantee for Gladiola Pines

ATTACHMENTS:

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

SUMMARY OF REQUEST:

Dean Pistor with Gladiola Pines, LLC, owner, submitted a request for an improvement guarantee for the Gladiola Pines minor subdivision. The project site for Gladiola Pines is located on 15 acres of land off Jeter Mountain Road. A total of 10 lots are proposed. The Henderson County Planning Department granted conditional approval of the Development Plan for Gladiola Pines on November 15, 2005. The improvement guarantee is proposed to cover the earthwork, erosion control, drainage and construction of the roads which includes paving 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 \$273,399.00 to cover the cost of the improvements (\$218,719.28) as well as the required twenty-five percent (25%) contingency (\$54,680). July 15, 2006 is the proposed completion date of 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 Gladiola Pines subject to the developer submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

APPENDIX 8

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision GLADIOLA PINES

Name of Owner GLADIOLA PINES, LLC / DEAN PISTOR

Address 6 EAST CHESTNUT STREET ASHEVILLE, NC 28801

Phone: 828 251 2900

Agent BETH BOONE Phone: 828 231-3697

Date of Preliminary Plan Approval by Planning Board 11/15/05

Significant Conditions Imposed: ATTACHMENT PROVIDED WITH ORIGINAL SUBMITTAL

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) \$ 273,400.00

Projected completion date JULY 15, 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.

[Signature]
Owner's Signature

3/21/06
Date

Submitted By BETH BOONE

Date 3/21/06

Received By MC

Date 3/22/06

Fee Paid \$250.00 3/7/06

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200___, by and between Gladiola Pines, 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 Gladiola Pines, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Department conditionally approved the Development Plan for Gladiola Pines, 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 15th day of July, 2006, complete as required the following improvements to serve lots in Gladiola Pines: earthwork, erosion control measures, drainage and construction of the roads which includes paving for the entire subdivision as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for Gladiola Pines, conditionally approved by the Henderson County Planning Department on November 15, 2005, and as shown on the attached cost estimates prepared by John Yurko (signed and sealed on March 17, 2006) which is based on contracts between Falcon Development of NC, Inc. and the Developer.
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 \$273,399.00 (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 of credit in the proper form is posted, then the Board will allow the Final Plat(s) for Gladiola Pines, 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 Department 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:
Gladiola Pines, LLC

BY: _____
Managing Member

**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 Gladiola Pines, 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]**

DESIGN & ARCHITECTURE, PA
12 CHURCH ST. SUITE 27
ASHEVILLE, NC 28801

PHONE
FAX
E-MAIL

828 254 0550
828 254 5599
mail@yda-online.com

Y U R K O



March 17, 2006

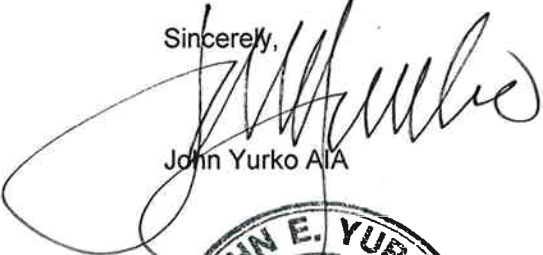
Re: Gladiola Pines Subdivision

To Whom It May Concern:

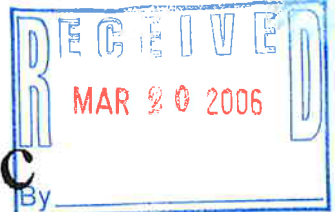
We have reviewed the site plans and cost estimate for the construction of the cul-de-sac roadway for the above noted project. To the best of our ability to verify estimated site construction costs, the cost estimate submitted by Falcon Development of NC, Inc. appears to be reasonable, given current sitework unit costs.

Given the highly volatile nature of building materials, fuel prices, etc., my certification of this estimate expires in 60 days.

Sincerely,


John Yurko AIA





Falcon Development of NC, Inc

30 Hendersonville Road Asheville, N.C. 28803 828-274-3055 Fax 828-274-7789

PROJECT TOTALS REPORT

Between the Contractor: **Falcon Development**

**30 Hendersonville Rd
(828) 274-3055**

And the Client:

**Dean Pistor
6 E. Chestnut St.
Asheville, NC 28801**

For the Project:

Gladiola Pines	
Project Address:	Hendersonville North Carolina

GENERAL CONDITIONS

Project Management	\$3,000.00
Survey	\$4,000.00
Subtotal	\$7,000.00

ROAD CLEARING AND GRADING

Clearing	\$26,250.00
Strip Topsoil	\$14,250.00
Grading	\$49,900.00
Fine Grading	\$6,000.00
Storm Water Pipe	\$6,867.00
Erosion Control	\$28,430.00
Subtotal	\$131,697.00

ROAD PAVING

Paving	\$42,840.00
Subtotal	\$42,840.00

COMPANY OVERHEAD & MARGIN

Company Overhead	\$10,935.96
Company Margin	\$21,871.93
Contingency	\$4,374.39
Subtotal	\$37,182.28

GRAND TOTAL:

\$218,719.28

