

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: April 2, 2007

SUBJECT: Improvement Guarantee Application and Extensions

ATTACHMENTS:

1. Application for Summit Springs Improvement Guarantee
2. Draft Performance Guarantee Agreement for Summit Springs
3. Cost Estimates for Summit Springs
4. Extension Letter for Blacksmith Run
5. Draft Performance Guarantee Agreement for Blacksmith Run
6. Extension Letter for Pinnacle Falls
7. Draft Performance Guarantee Agreement for Pinnacle Falls Phase II
8. Draft Performance Guarantee Agreement for Pinnacle Falls Phase III

SUMMARY OF REQUEST:

Mr. Jeff Cosgrove and Mr. Jim Armour, owner and developers, submitted an improvement guarantee application for the Summit Springs major subdivision. Summit Springs is a 174 single-family lot subdivision located off of Interchange Drive. The attached improvement guarantee application is proposed to cover road construction which includes paving, the off-site water line extension and on-site water system improvements for lots 147-149 (Phase I). The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$415,208.75 to cover the cost of the improvements (\$332,167.00) as well as the required twenty-five percent (25%) contingency (\$83,041.75). July 31, 2007 is the proposed completion date of the improvements.

Mr. Norman Divers agent for owner has requested a second extension for the Blacksmith Run subdivision improvement guarantee. The last extension required that the developer install a wastewater treatment plant by April 7, 2007. Mr. Divers has requested to extend the improvement guarantee to October 1, 2007.

Mr. A.J. Ball agent for owner of the Pinnacle Falls Renaissance subdivision has requested to extend the completion dates of two improvement guarantees for Pinnacle Falls. Mr. Ball has requested a twelve (12) month extension for both improvement guarantees. Staff has extended the completion dates in the attached performance agreements to the maximum extent allowed under Section 170-39 of the Subdivision Ordinance (see attached).

Draft performance guarantee agreements are attached for the Board's consideration. If the application and extensions are approved, the developers must submit irrevocable letter of credits in accordance with the terms of the attached Agreements. Once the County receives the letters of credit in proper form, the relevant parties must execute the Agreements.

BOARD ACTION REQUESTED:

Action by the Board of Commissioners is needed to either grant or deny the improvement guarantee application for Summit Springs and extensions to the improvement guarantees for Blacksmith Run and Pinnacle Falls Renaissance. I recommend that the Board approve the improvement guarantee application and extensions pursuant to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance.

Suggested Motion: I move that the Board of Commissioners find and conclude that the request for an improvement guarantee and requested extensions comply with the provisions of the Subdivision Ordinance and is approved.

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision SUMMIT SPRINGS

Name of Owner JEFF H. COSGROVE & TIM ARMOUR

Address 145 TERRACE MT. DRIVE, HENDERSONVILLE, NC. 28739

Phone: 828-777-0777

Agent N/A Phone: _____

Date of Preliminary Plan Approval by Planning Board JUNE 20TH, 2006

Significant Conditions Imposed: SEE ATTACHED LETTER OF ACCEPTANCE

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 MOUNTAIN FIRST BANK

Amount of guarantee (including 25% overhead) \$ 415,208.75

Projected completion date JUNE 30TH, 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.

Jeff H. Cosgrove
Owner's Signature

3/14/07
Date

Submitted By JEFF COSGROVE

Date _____

Received By _____

Date _____

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Jeffery H. Cosgrove, 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 portion (lots 147-149) of a major subdivision known as Summit Springs, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, Henderson County Planning Board conditionally approved the Combined Master Plan and Development Plan for Summit Springs, 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 Developers will, on or before 31 July 2007 complete as required the following improvements to serve all lots in the Project: road construction including paving, on-site water distribution system and off-site water line extension as required by the Henderson County Subdivision Ordinance, as shown on the Master Plan and Development Plan for the Project conditionally approved by the Planning Board on June 20, 2006 and as shown on the attached cost estimates prepared by Chad Cabe and certified by Marvin Mercer, P.E. (signed and sealed on March 14, 2007).
2. The Developers 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 \$415,208.75 (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 Developers 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 the Project to be approved by the Subdivision Administrator, provided that all requirements of Chapter 170 of the Henderson County Code are met.
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 Developers to provide, at the Developers' 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 Developers have 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:
Jeffery H. Cosgrove

BY: _____

**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 _____, Jeffery H. Cosgrove 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_.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

March 14, 2007

Mr. Matt Card
Planner
Henderson County, NC
101 East Allen St.
Hendersonville, NC 28715

Re: Summit Springs Phase I

Dear Mr. Card:

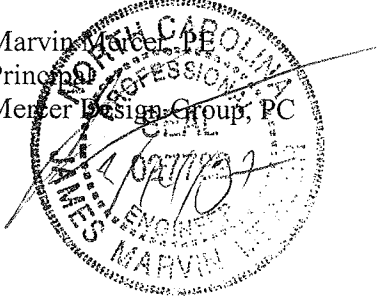
We have reviewed the three cost estimates submitted for Phase I of this project including:

1. Cost estimate for stone base and paving Phase I roads; \$166,800
2. Cost estimate for Off-Site water line extension; \$ 75,000
3. Cost estimate for On-Site water line extension; \$ 90,500

Based upon current bids our firm has received for similar work we find the bids as received to be acceptable. It is important to note that our firm did not design the Off-Site water system extension. We have based our opinion of this estimate based upon a set of approved plans for this extension as provided by the Engineer of Record for this extension. It is also important to note that these bids are not tabulated to indicate unit prices. Our firm made an estimate of materials for the phase and applied prices for the estimated quantities. The contractor has not supplied any quantities or unit prices and therefore we make no representation as to the quantity or unit price of any portion of the project only that the contractor's lump sum is in line with our total estimate for this phase of the project.

Thank you for the opportunity to assist with this project. If you have any questions please feel free to call. (828-645-7088)

Marvin M. Hester, PE
Principal
Mercer Design Group, PC




MERCER DESIGN GROUP, PC
CIVIL ENGINEERING • PROJECT MANAGEMENT

P.O. Box 1516 Weaverville, NC 28787
Phone: 828-645-7088 Fax: 828-645-7714 E-mail: mercerdesign@charter.net

Chad Cabe
P.O. Box 141
Horse Shoe, NC 28742
828-606-0606

PROPOSAL

13 March 2007

For: Jeff Cosgrove-Hosanna III LLC
145 Terrace Mountain Dr.
Hendersonville, NC 28792
828-777-0777

At: Summitt Springs Development
Hendersonville, Henderson County, NC

To pave Phase I (one) roads with 2" of super pave hot mix asphalt.
To sub grade to get proper drainage. Stone with 8" of ABC type stone. Stone will
be conditioned which consists of applying water and packing with a vibratory
roller. 80,000 sq. ft. (8,888 sq. yd.) \$166,793.00

*This price does not include any state testing.

*After 30 days all quoted prices are subject to review according to current market conditions.

Chad Cabe
P.O. Box 141
Horse Shoe, NC 28742
828-606-0606

PROPOSAL

3 October 2006

For: Jeff Cosgrove-Hosanna III LLC
145 Terrace Mountain Dr.
Hendersonville, NC 28792
828-777-0777

OFF-SITE WATER LINE

At: Summitt Springs Development
Hendersonville, Henderson County, NC

We propose to successfully complete the water line project entitled Summitt Springs Development Hendersonville, Henderson County, North Carolina, drawing number W-1 and W-2 inclusive dated September 15, 2006 and prepared by Vaughn and Melton Consulting Engineers respectfully in strict accordance with these plans with the following revisions:

- 1) Should rock be encountered and cannot be removed by mechanical means of onsite equipment, a change order for the removal would be necessary.
- 2) Surveying and staking of water line location is responsibility of owner.
- 3) No bonds and/or permits have been quoted.
- 4) Does not include removal of brush from property.
- 5) All materials is quoted for shipment within 30 days of bid or quote date. After 30 days all quoted prices are subject to review according to current market conditions.
- 6) \$35,000 due upon arrival of materials on site.

Water lump sum - \$74,833.00

Chad Cabe

P.O. Box 141

Horse Shoe, NC 28742

828-606-0606

PROPOSAL

13 March 2007

For: Jeff Cosgrove-Hosanna III LLC
145 Terrace Mountain Dr.
Hendersonville, NC 28792
828-777-0777

1ST PHASE
ON-SITE WATER LINE

At: Summit Springs Development
Hendersonville, Henderson County, NC

We propose to successfully complete the water line project entitled Summit Springs Development Hendersonville, Henderson County, North Carolina, drawing number C-30, C-31 and C-32 inclusive dated March 2007 and prepared by Mercer Design Group, PC Civil Engineer Project Management respectfully in strict accordance with these plans with the following revisions:

- 1) Should rock be encountered and cannot be removed by mechanical means of onsite equipment, a change order for the removal would be necessary.
- 2) Surveying and staking of water line location is responsibility of owner.
- 3) No bonds and/or permits have been quoted.
- 4) Does not include removal of brush from property.
- 5) All materials is quoted for shipment within 30 days of bid or quote date. After 30 days all quoted prices are subject to review according to current market conditions.
- 6) \$50,000 due upon arrival of materials on site.
- 7) Price quoted with C-900 pipe

Water lump sum - \$90,541.00

Matthew Card

From: Norman Divers [norman@brooksandmedlock.com]
Sent: Monday, March 05, 2007 11:58 AM
To: 'Ed Nunez'; Connie Rayfield
Cc: Matthew Card; 'Scott McDowell'; 'Kraig Radesi'
Subject: RE: Blacksmith Run S/D;

March 5, 2007

Henderson County Legal Department
100 North King Street
Hendersonville, NC 28792

Henderson County Planning Department
213 1st Avenue East
Hendersonville, NC 28792

Attention: Connie Rayfield

Matt Card, Subdivision Coordinator

RE: Completion of Infrastructure Timeline – Blacksmith Run Subdivision
BME Project No.: 175206

Ms Rayfield and Mr. Card:

Please accept this email/letter as a formal request for an extension of time regarding the completion of improvements at the Blacksmith Run subdivision in Henderson County, NC. We have run into some time delays on power extension and equipment delivery that will directly effect the start-up of the wastewater treatment plant. This is the only remaining item requiring the extension. We anticipate the full start up and initiation of sewer service to each lot to be available by October 1, 2007 and therefore request an extension until such time.

Please advise me on any other items you may need to facilitate this extension of time and if you have any questions, please do not hesitate to contact us.

Best regards,

Norman E. Divers, III
Partner, Sr. Project Manager
Brooks & Medlock Engineering, PLLC
828-232-4700
norman@brooksandmedlock.com
www.brooksandmedlock.com

This message may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

3/5/2007

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Blacksmith Mountain, LLC, hereinafter referred to as "Developer," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

WITNESSETH:

WHEREAS, the Board and the Developer entered into an Agreement on May 19, 2006 (hereinafter "the original Agreement"), concerning an improvement guarantee for the subdivision known as Blacksmith Run, located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$386,063.00 in accordance with the original Agreement; and

WHEREAS, the Board and the Developer entered into a second Agreement on December 4, 2006 which extended the completion date to April 1, 2007;

WHEREAS, the Developer has requested that the Board of Commissioners approve extending the completion date of the latest agreement to October 1, 2007;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before October 1, 2007, complete as required the following improvements to serve lots in Phase I of Blacksmith Run: installation of the wastewater treatment plant as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Development Plan for Blacksmith Run, conditionally approved by the Henderson County Planning Board on December 21, 2004, and as shown on the attached cost estimates prepared by Edward Medlock, P.E., (signed and sealed on April 24, 2006).
2. The Developer will post with Henderson County an amended irrevocable letter of credit guaranteeing completion of said improvements by the required date, and having an expiration date not earlier than 60 days after the completion date stated in Paragraph 1, above.
3. At such time as this Agreement is fully executed, this Agreement will supercede prior Agreements between the Board and the Developers regarding the improvement guarantee.
4. 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:
Blacksmith Mountain, 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 Blacksmith Mountain, 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]**



PINNACLE
Falls
A Renaissance Community

March 2, 2007

Matt Card, Planner
Henderson County Planning Dept
213 First Avenue East
Hendersonville, NC 28792

Dear Matt,

I received a call from the Henderson County Attorney's office reminding me that our Letter of Credit #2007 has expired or will expire in the near future. My records indicate that LOC will expire in May 2007. In addition, my records indicate that our Letter of Credit #2014 will expire on 20 April 2007.

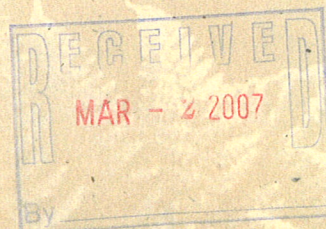
As of this date we have completed approximately 95% of the required grading and road construction work which includes the required 6 inches of aggregate base course and a two inch binder coat of asphalt. The only remaining road work will be the final compacted topcoat of asphalt. The water system remains in the design phase with approximately 95% of that work completed and waiting submission to the City of Hendersonville for review and approval. John Jeter, PE can provide certification of the aforementioned percentages if you deem that necessary.

Due to circumstances beyond our control, i.e. weather delays, design issues, delays in receiving approvals from various regulatory agencies we have not been successful in completing all the required tasks contained in our original bond application. Therefore we are requesting a twelve month extension on Letters of Credit #2007 and 2014. Please advise me as to the required documentation from our Bank to extend the LOCs.

If you have any questions or require additional information, please advise me at your earliest convenience. I can be reached at 828-606-3030 or 828-698-7890.

Sincerely,

A.J. Ball
Project Manager
Pinnacle Falls Renaissance



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 Board and the Developer entered into an Agreement on August 1, 2005 (hereinafter "the original Agreement"), concerning an improvement guarantee for Phase II of a proposed subdivision known as Pinnacle Falls, located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$579,820.00 in accordance with the original Agreement; and

WHEREAS, the original Agreement provided that all required improvements were to be completed on or before March 1, 2007 and

WHEREAS, the Developer has requested that the Board of Commissioners approve extending the completion date of the original agreement to August 1, 2007;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before August 1, 2007 complete as required the following improvements to serve all lots in Phase II of the Project: 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 II, as conditionally approved by the Henderson County Planning Department on June 23, 2005, and as shown on the attached cost estimates prepared by John Jeter, P.E., (dated July 26, 2005).
2. The Developers will post with Henderson County an amended 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 \$579,820.00 (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. At such time as this Agreement is fully executed and the Developer has filed an amendment to the original bond as provided in Paragraph 2, above, this Agreement will supercede prior Agreements between the Board and the Developer regarding the improvement guarantee.

4. 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 Developers 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.
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 Developers to provide, at the Developers' 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 Developers have 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]**

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 Board and the Developer entered into an Agreement on November 7, 2005 (hereinafter "the original Agreement"), concerning an improvement guarantee for Phase III of a proposed subdivision known as Pinnacle Falls, located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$320,250.00 in accordance with the original Agreement; and

WHEREAS, the original Agreement provided that all required improvements were to be completed on or before March 1, 2007 and

WHEREAS, the Developer has requested that the Board of Commissioners approve extending the completion date of the original agreement to November 7, 2007;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before November 7, 2007 complete as required the following improvements to serve all lots in Phase III of the Project: 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 Developers will post with Henderson County an amended 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. At such time as this Agreement is fully executed and the Developer has filed an amendment to the original bond as provided in Paragraph 2, above, this Agreement will supercede prior Agreements between the Board and the Developer regarding the improvement guarantee.

4. 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 Developers 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.
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 Developers to provide, at the Developers' 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 Developers have 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]**