

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: May 7, 2007

SUBJECT: Improvement Guarantee for Pinnacle Falls Renaissance (Water System)

ATTACHMENTS:

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

SUMMARY OF REQUEST:

Mr. A.J. Ball, agent for the owner Pinnacle Falls, LLC, submitted a request for an improvement guarantee. The improvement guarantee would cover the installation of a public water system in the Pinnacle Falls Renaissance major subdivision. Pinnacle Falls Renaissance was originally approved by the Planning Board for community and individual wells. After initial testing of well sites it appears that there is not enough water to supply the subdivision. Pinnacle Falls, LLC is currently working with the City of Hendersonville to extend public water to the site from the Kenmure subdivision.

The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$704,075.00 to cover the cost of the improvements (\$563,260.00) as well as the required twenty-five percent (25%) contingency (\$140,815.00). The proposed completion date for the improvements is October 30, 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.

BOARD ACTION REQUESTED:

Action by the Board of Commissioners is needed to either grant or deny the improvement guarantee application for Pinnacle Falls Renaissance. I recommend that the Board approve the improvement guarantee application 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 complies with the provisions of the Subdivision Ordinance and is approved.

**Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES**

Name of Subdivision Pinnacle Falls Phase I, II & III
 Name of Owner Pinnacle Falls LLC
 Address 419 N. Main Street, Hendersonville NC 28792
 Phone: 828-698-7890
 Agent A.J. Ball, Managing Partner 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) \$ 104,095.00

Projected completion date October 30, 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 _____

Date _____

Submitted By _____

Date _____

Received By _____

Date _____



SUMMARY OF IMPROVEMENTS

(Use a separate sheet for each section)

Subdivision Name and Section PINNACLE FALLS : PHASE - I (18 April 2007)

STREET NAME	ROADS & DRAINAGE	WATER	SEWER	TOTAL
<u>PINNACLE FALLS LANE</u>	\$ 0.00	\$ 120,350.00	\$	\$ 120,350.00
<u>MOUNTAIN MIST LANE</u>	\$ 0.00	\$ 14,050.00	\$	\$ 14,050.00
<u>MOUNTAIN MAPLE DRIVE</u>	\$ 0.00	\$ 18,550.00	\$	\$ 18,550.00
<u>WILD DEER TRAIL</u>	\$ 0.00	\$ 8,850.00	\$	\$ 8,850.00
<u>TURNING LEAF LANE</u>	\$ 0.00	\$ 8,450.00	\$	\$ 8,450.00
<u>RED MULBERRY LANE</u>	\$ 0.00	\$ 14,125.00	\$	\$ 14,125.00
<u>Balance & Subtotal</u>	\$ 0.00	\$ 184,375.00	\$ 0.0	\$ 184,375.00

Subtotal All Categories	\$ 184,375.00
Overhead (25% Minimum)	\$ 46,093.75
Total Guarantee Requested	\$ 230,468.75



SUMMARY OF IMPROVEMENTS

(Use a separate sheet for each section)



Subdivision Name and Section PINNACLE FALLS : PHASE - 2 (18 April 2007)

STREET NAME	ROADS & DRAINAGE	WATER	SEWER	TOTAL
<u>PINNACLE FALLS LANE</u>	\$ 0.00	\$ 218,865.00	\$	\$ 218,865.00
<u>MAGNOLIA BRANCH DRIVE</u>	\$ 0.00	\$ 0.00	\$	\$ 0.00
<u>DOGWOOD BRANCH ROAD</u>	\$ 0.00	\$ 10,400.00	\$	\$ 10,400.00
<u>EAGLE RIDGE ROAD</u>	\$ 0.00	\$ 16,432.50	\$	\$ 16,432.50
<u>BOONE COVE ROAD</u>	\$ 0.00	\$ 17,112.50	\$	\$ 17,112.50
<u>TUXEDO COVE ROAD</u>	\$ 0.00	\$ 10,587.50	\$	\$ 10,587.50
<u>MOUNTAIN ESCAPE DRIVE</u>	\$ 0.00	\$ 7,292.50	\$	\$ 7,292.50
<u>Balance & Subtotal</u>	\$ 0.00	\$ 280,690.00	\$ 0.0	\$ 280,690.00

Subtotal All Categories \$ 280,690.00

Overhead (25% Minimum) \$ 70,172.50

Total Guarantee Requested \$ 350,862.50



SUMMARY OF IMPROVEMENTS

(Use a separate sheet for each section)

Subdivision Name and Section PINNACLE FALLS : PHASE - 3 (18 April 2007)

STREET NAME (Include Lot Numbers)	ROADS & DRAINAGE	WATER	SEWER	TOTAL
<u>JUNIPER BERRY LANE</u> (lots # 111 - 128)	\$ 0.00	\$ 53,842.50	\$	\$ 53,842.50
<u>HUCKLEBERRY RIDGE LANE</u> (lots # 111 - 128)	\$ 0.00	\$ 44,352.50	\$	\$ 44,352.50
	\$ 0.00	\$ 0.00	\$	\$ 0.00
	\$ 0.00	\$ 0.00	\$	\$ 0.00
Balance & Subtotal	\$ 0.00	\$ 98,195.00	\$ 0.0	\$ 98,195.00
Subtotal All Categories	\$ 98,195.00			
Overhead (25% Minimum)	\$ 24,548.75			
Total Guarantee Requested	\$ 122,743.75			



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 Henderson County Planning Board and Planning Department conditionally approved the Master Plans and Development Plans for Pinnacle Falls Renaissance, under Chapter 170 of the Henderson County Code, which is entitled Subdivision of Land, and

WHEREAS, Improvement Guarantees for Phases I, II and III of Pinnacle Falls Renaissance have been approved by the County which did not cover the cost of public water system improvements, and

WHEREAS, Final Plats for various phases and sections of Pinnacle Falls Renaissance have been recorded with the County, and

WHEREAS, The County must insure that the developer will complete certain improvements required by Chapter 170, and

WHEREAS, 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 for final plat approval;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before 30 October 2007, complete as required the following improvements to serve lots in Pinnacle Falls: the completion of a public community water system, as required by the Henderson County Subdivision Ordinance, and as shown on the attached cost estimates prepared by Mr. John Jeter, P.E., (signed and sealed April 20, 2007).
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 \$704,075.00 (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.
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]**