

## REQUEST FOR BOARD ACTION

### HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** March 9, 2005

**SUBJECT:** Improvement Guarantee for Cummings Cove Golf & Country Club, Phase II, Sections 4 and 5, Mountain Crest - Cummings Cove Company, LLC, Owner

**ATTACHMENTS:**

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

**SUMMARY OF REQUEST:**

Mr. William R. Buie, P.E., on behalf of Cummings Cove Company, LLC, owner and developer of Cummings Cove Golf & Country Club, has submitted a request for an improvement guarantee for Phase II, Sections 4 and 5 of the Mountain Crest section of that development. Henderson County Planning Department staff granted conditional approval of Development Plans for Phase II, Sections 4 and 5 – Mountain Crest, in July of 2002. The County Planning Board granted a one-year extension of such approvals in July of 2004. The requested improvement guarantee is proposed to cover required grading and road, water and sewer construction in both Sections 4 and 5 as well as construction of a booster station and water tank.

Pursuant to Sections 170-38 and 170-39 of the Henderson County Code (the Subdivision Ordinance), a developer may, in lieu of completing all of the required improvements prior to Final Plat approval, post a performance guarantee to secure the County's interest in seeing that satisfactory construction of incomplete improvements occurs. One type of permitted guarantee is an irrevocable letter of credit. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$1,719,031.25 to cover the cost of the improvements (\$1,375,225.00) as well as the required twenty-five percent (25%) contingency (\$343,806.25). The proposed completion date for the improvements is March 1, 2007. The Subdivision Ordinance allows a developer using an improvement guarantee a maximum of two years between the time of initiation and completion of required improvements.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developer must submit the 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 Cummings Cove Golf & Country Club, Phase II, Sections 4 and 5 – Mountain Crest, 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 Comminge Cove Golf & Country Club

Name of Owner Comminge Cove Company LLC

Address 20 Comminge Cove Parkway Hendersonville, NC 28739

Phone: (828) 891-1512

Agent Will Bric Phone: (828) 891-1512

Date of Preliminary Plan Approval by Planning Board <sup>staff</sup> 7/1/02; extension granted 7/20/04; revised plans submitted (KCS)

Significant Conditions Imposed: See approval letters

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 \_\_\_\_\_

Amount of guarantee (including 25% overhead) \$ 1,719,031.25

Projected completion date 3/1/07

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

2/9/05  
Date

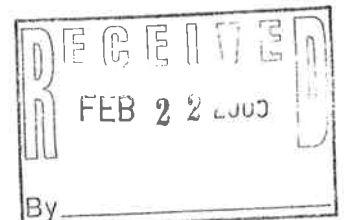
Submitted By \_\_\_\_\_

Date \_\_\_\_\_

Received By Matt Card

Date 2/22/05

\$ 200. fee received



**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**THIS AGREEMENT** made and entered into this DRAFT day of \_\_\_\_\_, 200\_, by and between Cummings Cove Company, 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 Cummings Cove Golf & Country Club, Phase II, Sections 4 and 5 – Mountain Crest, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

**WHEREAS**, Henderson County Planning Department staff conditionally approved Development Plans for the Project, 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> of March, 2007, complete as required the following improvements to serve lots in the Project: grading, road construction, water and sewer system construction (including construction of a booster station and water tank for the water system), road shoulder stabilization and installation of erosion control stabilization measures as required by the Henderson County Subdivision Ordinance, as shown on the Development Plans for the Project conditionally approved by the Henderson County Planning Department on or about July 11, 2002 (and as they may be amended and approved), and as shown on the attached cost estimates prepared by William G. Lapsley and Associates, P.A. (dated February 7, 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 \$1,719,031.25 (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 (Acting) 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 any other requirements of Chapter 170 of the Henderson County Code and/or conditions imposed by the Henderson County Planning Department staff and/or 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 (Acting) 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:**

DRAFT

\_\_\_\_\_  
**County Attorney**

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

DRAFT

**BY:**

\_\_\_\_\_  
**William L. Moyer, Chairman**

**ATTESTED BY:**

**[OFFICIAL SEAL]**

DRAFT

**Elizabeth W. Corn, Clerk to the Board**

**DEVELOPER:**

**Cummings Cove Company, LLC**

DRAFT

**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\_.

DRAFT

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

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

**[NOTARIAL SEAL]**

**STATE OF** \_\_\_\_\_  
**COUNTY OF** \_\_\_\_\_

I, \_\_\_\_\_, Notary Public for said State and County certify that \_\_\_\_\_, Manager of Cummings Cove Company, LLC, a limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

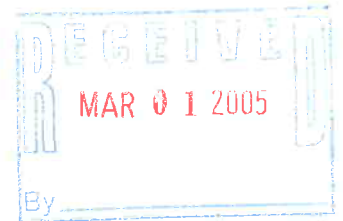
**THIS** the \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

**DRAFT**

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

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

**[NOTARIAL SEAL]**



**William G. Lapsley & Associates, P.A.  
Consulting Engineers and Land Planners**

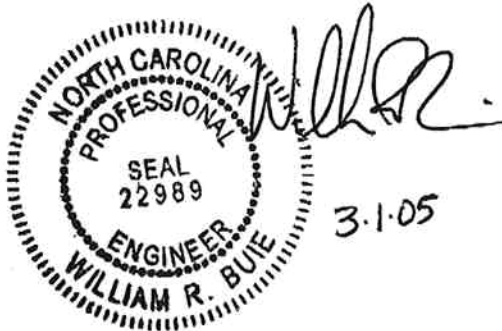
**Preliminary Cost Estimate  
Cummings Cove Golf and Country Club  
Phase II, Section 4 - Mountain Crest**

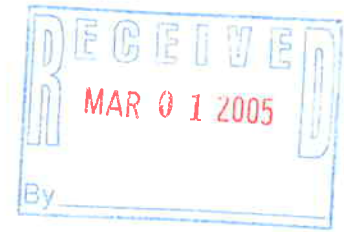
**Date: 2/7/2005**

**Project #: 5100**

**Summary of Costs**

Grading and Road Construction (Section 4)	\$272,900.00
Water and Sewer Construction (Section 4)	\$239,675.00
Booster Station and Water Tank Construction	\$383,800.00
Grading and Road Construction (Section 5)	\$233,900.00
Water and Sewer Construction (Section 5)	\$244,950.00
<b>TOTAL ESTIMATED CONSTRUCTION COST</b>	<b>\$1,375,225.00</b>
25% Contingency	\$343,806.25
<b>TOTAL AMOUNT REQUIRED FOR LETTER OF CREDIT</b>	<b>\$1,719,031.25</b>





**William G. Lapsley & Associates, P.A.**  
**Consulting Engineers and Land Planners**

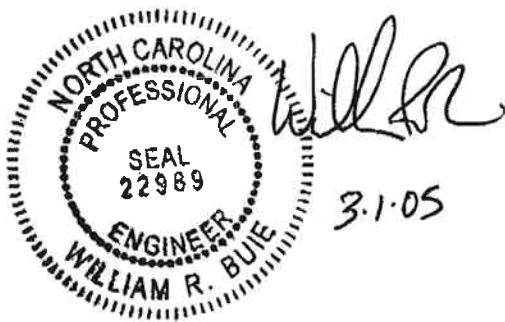
**Preliminary Cost Estimate**  
**Cummings Cove Golf and Country Club**  
**Phase II, Section 4 - Mountain Crest**

Date: 2/7/2005

Project #: 5100

**Site Work (Does not include Landscaping and Irrigation)**

<u>Item</u>	<u>Quan.</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total Price</u>
Project Mobilization	1	LS	\$10,000.00	\$10,000.00
Clearing and Grubbing	3	AC	\$7,500.00	\$22,500.00
Strip Topsoil	3,400	CY	\$2.00	\$6,800.00
Earthwork	1	LS	\$95,000.00	\$95,000.00
Rock Excavation	250	CY	\$40.00	\$10,000.00
Stone Base	1,450	TN	\$16.00	\$23,200.00
Asphalt Surface Course (1.5")	4,000	SY	\$7.00	\$28,000.00
Drainage (General)	1	LS	\$35,000.00	\$35,000.00
Utility Sleeves	300	LF	\$8.00	\$2,400.00
Erosion Control Measures	1	LS	\$30,000.00	\$30,000.00
Temporary Seeding	5	AC	\$2,000.00	\$10,000.00
<b>TOTAL ESTIMATED CONSTRUCTION COST</b>				<b>\$272,900.00</b>







**William G. Lapsley & Associates, P.A.  
Consulting Engineers and Land Planners**

**Preliminary Cost Estimate  
Cummings Cove Golf and Country Club  
Phase II, Section 4 - Mountain Crest**

Date: 2/7/2005

Project #: 5100

**On-Site Utilities**

<u>Item</u>	<u>Quan.</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total Price</u>
8" PVC SDR 35 Gravity Sewer	2,450	LF	\$27.00	\$66,150.00
8" PVC DIP (CL 50)	200	LF	\$40.00	\$8,000.00
4' Precast Manhole	17	EA	\$1,500.00	\$25,500.00
Stone Bedding	575	TN	\$16.00	\$9,200.00
4" Service Lines	14	EA	\$2,000.00	\$28,000.00
Trench Rock Excavation	500	CY	\$80.00	\$40,000.00
			<b>SUBTOTAL</b>	<b>\$176,850.00</b>
3/4" Meter and Box	14	EA	\$500.00	\$7,000.00
6" PVC Water Main	1,200	LF	\$20.00	\$24,000.00
2" PVC Water Main	550	LF	\$8.50	\$4,675.00
6" Valves	5	EA	\$650.00	\$3,250.00
2" Valves	2	EA	\$450.00	\$900.00
Fittings	1	LS	\$3,500.00	\$3,500.00
Fire Hydrant Assembly	3	EA	\$1,500.00	\$4,500.00
Blowoff Valves	2	EA	\$1,500.00	\$3,000.00
Trench Rock Excavation	150	CY	\$80.00	\$12,000.00
			<b>SUBTOTAL</b>	<b>\$62,825.00</b>
<b>TOTAL ESTIMATED CONSTRUCTION COST</b>				<b>\$239,675.00</b>

**Construction of Water Storage Tank**

<u>Item</u>	<u>Quan.</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total Price</u>
8" PVC Water Main	3,100	LF	\$30.00	\$93,000.00
Trench Rock Excavation	350	CY	\$80.00	\$28,000.00
Construct Gravel Road	2,800	LF	\$13.50	\$37,800.00
Booster Pump Station	1	LS	\$85,000.00	\$85,000.00
150,000 Gallon Ground Storage Tank	1	LS	\$140,000.00	\$140,000.00
<b>TOTAL ESTIMATED CONSTRUCTION COST</b>				<b>\$383,800.00</b>





**William G. Lapsley & Associates, P.A.  
Consulting Engineers and Land Planners**

**Preliminary Cost Estimate  
Cummings Cove Golf and Country Club  
Phase II, Section 5 - Mountain Crest**

Date: 2/16/2005

Project #: 5100

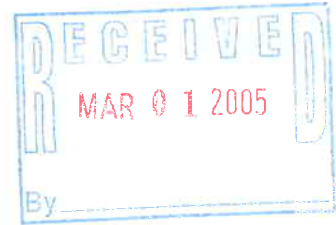
**Site Work (Does not include Landscaping and Irrigation)**

<u>Item</u>	<u>Quan.</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total Price</u>
Project Mobilization	1	LS	\$10,000.00	\$10,000.00
Clearing and Grubbing	3	AC	\$7,500.00	\$22,500.00
Strip Topsoil	3,000	CY	\$2.00	\$6,000.00
Earthwork	1	LS	\$75,000.00	\$75,000.00
Rock Excavation	100	CY	\$40.00	\$4,000.00
Stone Base	1,300	TN	\$16.00	\$20,800.00
Asphalt Surface Course (1.5")	3,600	SY	\$7.00	\$25,200.00
Drainage (General)	1	LS	\$35,000.00	\$35,000.00
Utility Sleeves	300	LF	\$8.00	\$2,400.00
Erosion Control Measures	1	LS	\$27,000.00	\$27,000.00
Temporary Seeding	3	AC	\$2,000.00	\$6,000.00

**TOTAL ESTIMATED CONSTRUCTION COST**

**\$233,900.00**





**William G. Lapsley & Associates, P.A.**  
**Consulting Engineers and Land Planners**

**Preliminary Cost Estimate**  
**Cummings Cove Golf and Country Club**  
**Phase II, Section 5 - Mountain Crest**

Date: 2/16/2005

Project #: 5100

**On-Site Utilities**

<u>Item</u>	<u>Quan.</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Total Price</u>
8" PVC SDR 35 Gravity Sewer	2,900	LF	\$27.00	\$78,300.00
8" PVC DIP (CL 50)	320	LF	\$40.00	\$12,800.00
4' Precast Manhole	18	EA	\$1,500.00	\$27,000.00
Stone Bedding	750	TN	\$16.00	\$12,000.00
4" Service Lines	14	EA	\$2,000.00	\$28,000.00
Trench Rock Excavation	500	CY	\$80.00	\$40,000.00
			<b>SUBTOTAL</b>	<b>\$198,100.00</b>
3/4" Meter and Box	14	EA	\$500.00	\$7,000.00
6" PVC Water Main	550	LF	\$20.00	\$11,000.00
2" PVC Water Main	200	LF	\$8.50	\$1,700.00
6" Valves	5	EA	\$650.00	\$3,250.00
2" Valves	2	EA	\$450.00	\$900.00
Fittings	1	LS	\$3,500.00	\$3,500.00
Fire Hydrant Assembly	3	EA	\$1,500.00	\$4,500.00
Blowoff Valves	2	EA	\$1,500.00	\$3,000.00
Trench Rock Excavation	150	CY	\$80.00	\$12,000.00
			<b>SUBTOTAL</b>	<b>\$46,850.00</b>
<b>TOTAL ESTIMATED CONSTRUCTION COST</b>				<b>\$244,950.00</b>

