

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 9, 2005

SUBJECT: Improvement Guarantee for Cummings Cove
Mountain Top Area Phase I and Phase II

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

SUMMARY OF REQUEST:

Cummings Cove Company, LLC, owner of the project, submitted an application for an improvement guarantee for two phases in the Cummings Cove major subdivision. Phase I of the Mountain Top Area in Cummings Cove will consist of 40 single family lots on 36 acres of land. Phase II proposes 25 single family lots on 23 acres of land. Both Phases were conditionally approved by the Planning Board on July 19, 2005. The improvement guarantee is proposed to cover the grading, construction of the road, the water distribution and sewer system improvements, erosion control and road shoulder stabilization for Phase I and Phase II of the Mountain Top Area in Cummings Cove.

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 in order to submit a Final Plat and also prior to 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 date of approval of the improvement guarantee. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$2,311,562.50 to cover the cost of the improvements (\$1,849,250.00) as well as the required twenty-five percent (25%) contingency (\$462,312.50). The proposed completion date for the improvements is June 30, 2006.

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 Phase I and Phase II of the Mountain Top Area of Cummings Cove, subject to the developers 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 Cummings Cove - Mt. Top Area - Phases 1+2
Name of Owner Cummings Cove Company, LLC
Address 20 Cummings Cove Parkway, Hendersonville, NC 28739
Phone: 828-891-1512

Agent _____ Phone: _____

Date of Preliminary Plan Approval by Planning Board 8/16/05

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 Macon Bank

Amount of guarantee (including 25% overhead) \$ 2311,562.50

Projected completion date June 2005 June 30, 2006 per DH on 9/9/05 ^{mc}

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

8/24/05
Date

Submitted By _____

Date _____

Received By mc

Date 9/7/05

\$250.00 fee paid

9/7/05

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between Cummings Cove, 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 Phase I and Phase II of the Mountain Top Area of a proposed subdivision known as Cummings Cove, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Board conditionally approved the Phase I and Phase II Development Plan for the Mountain Top Area of Cummings Cove, 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 June 30, 2006, complete as required the following improvements to serve lots in Phase I and Phase II of the Mountain Top Area in Cummings Cove: grading, construction of the road, the water distribution and sewer system improvements, erosion control and road shoulder stabilization, as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Phase I and Phase II Development Plan for the Mountain Top Area of Cummings Cove, as conditionally approved by the Henderson County Planning Board on July 19, 2005, and as shown on the attached cost estimates prepared by Don Hunley, P.E., (dated September 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 \$2,311,562.50 (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 Cummings Cove Mountain Top Area, Phase I and Phase II, 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:
Cummings Cove, 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 Cummings Cove, 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]

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

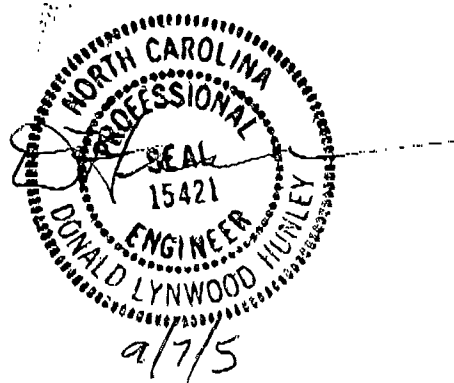
**Preliminary Cost Estimate
Cummings Cove Golf and Country Club
Phase 1 & 2 - Mountain Top Area**

Date: 9/7/2005

Project #: 5100

Summary of Costs

Grading and Road Construction (Section 1)	\$604,300.00
Water and Sewer Construction (Section 1)	\$529,000.00
Grading and Road Construction (Section 2)	\$325,200.00
Water and Sewer Construction (Section 2)	\$390,750.00
TOTAL ESTIMATED CONSTRUCTION COST	\$1,849,250.00
25% Contingency	\$462,312.50
TOTAL AMOUNT REQUIRED FOR LETTER OF CREDIT	\$2,311,562.50



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

**Preliminary Cost Estimate
Cummings Cove Golf and Country Club
Phase I - Mountain Top Area**

Date: 9/7/2005

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	9	AC	\$7,500.00	\$67,500.00
Strip Topsoil	10,000	CY	\$2.00	\$20,000.00
Earthwork	1	LS	\$190,000.00	\$190,000.00
Rock Excavation	250	CY	\$40.00	\$10,000.00
Stone Base	3,700	TN	\$16.00	\$59,200.00
Asphalt Surface Course (2.0")	10,400	SY	\$7.00	\$72,800.00
Drainage (General)	1	LS	\$50,000.00	\$50,000.00
Utility Sleeves	600	LF	\$8.00	\$4,800.00
Erosion Control Measures	1	LS	\$90,000.00	\$90,000.00
Temporary Seeding	15	AC	\$2,000.00	\$30,000.00
TOTAL ESTIMATED CONSTRUCTION COST				\$604,300.00

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

**Preliminary Cost Estimate
Cummings Cove Golf and Country Club
Phase 1 - Mountain Top Area**

Date: 9/7/2005

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	0	LF	\$27.00	\$0.00
8" PVC DIP (CL 50)	3,800	LF	\$40.00	\$152,000.00
4' Precast Manhole	23	EA	\$2,000.00	\$46,000.00
Stone Bedding	575	TN	\$16.00	\$9,200.00
4" Service Lines	40	EA	\$2,000.00	\$80,000.00
2" PVC Sewer Force Main	1,550	LF	\$10.00	\$15,500.00
Air Release Valves	1	EA	\$1,000.00	\$1,000.00
Sewer Lift Station	1	EA	\$40,000.00	\$40,000.00
Trench Rock Excavation	500	CY	\$80.00	\$40,000.00
			SUBTOTAL	\$383,700.00
3/4" Meter and Box	39	EA	\$500.00	\$19,500.00
8" DIP Water Main	1,200	LF	\$30.00	\$36,000.00
6" PVC Water Main	1,850	LF	\$25.00	\$46,250.00
2" PVC Water Main	450	LF	\$10.00	\$4,500.00
8" Valves	2	EA	\$800.00	\$1,600.00
6" Valves	10	EA	\$650.00	\$6,500.00
2" Valves	1	EA	\$450.00	\$450.00
Fittings	1	LS	\$7,000.00	\$7,000.00
Fire Hydrant Assembly	6	EA	\$1,500.00	\$9,000.00
Blowoff Valves	1	EA	\$1,500.00	\$1,500.00
Air Release Valves	1	EA	\$1,000.00	\$1,000.00
Trench Rock Excavation	150	CY	\$80.00	\$12,000.00
			SUBTOTAL	\$145,300.00
TOTAL ESTIMATED CONSTRUCTION COST				\$529,000.00

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

**Preliminary Cost Estimate
Cummings Cove Golf and Country Club
Phase 2 - Mountain Top Area**

Date: 9/7/2005

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	4	AC	\$7,500.00	\$30,000.00
Strip Topsoil	4,600	CY	\$2.00	\$9,200.00
Earthwork	1	LS	\$95,000.00	\$95,000.00
Rock Excavation	100	CY	\$40.00	\$4,000.00
Stone Base	2,700	TN	\$16.00	\$43,200.00
Asphalt Surface Course (2.0")	9,200	SY	\$7.00	\$64,400.00
Drainage (General)	1	LS	\$25,000.00	\$25,000.00
Utility Sleeves	300	LF	\$8.00	\$2,400.00
Erosion Control Measures	1	LS	\$30,000.00	\$30,000.00
Temporary Seeding	6	AC	\$2,000.00	\$12,000.00
TOTAL ESTIMATED CONSTRUCTION COST				\$325,200.00

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

**Preliminary Cost Estimate
Cummings Cove Golf and Country Club
Phase 2 - Mountain Top Area**

Date: 9/7/2005

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	0	LF	\$27.00	\$0.00
8" PVC DIP (CL 50)	2,150	LF	\$40.00	\$86,000.00
4' Precast Manhole	12	EA	\$2,000.00	\$24,000.00
Stone Bedding	750	TN	\$16.00	\$12,000.00
4" Service Lines	24	EA	\$2,000.00	\$48,000.00
3" PVC Sewer Force Main	1,050	LF	\$12.00	\$12,600.00
2" PVC Sewer Force Main	930	LF	\$10.00	\$9,300.00
Air Release Valves	1	EA	\$1,000.00	\$1,000.00
Sewer Lift Station	2	EA	\$40,000.00	\$80,000.00
Trench Rock Excavation	500	CY	\$80.00	\$40,000.00
			SUBTOTAL	\$312,900.00
3/4" Meter and Box	20	EA	\$500.00	\$10,000.00
6" PVC Water Main	1,750	LF	\$25.00	\$43,750.00
8" Valves	0	EA	\$800.00	\$0.00
6" Valves	4	EA	\$650.00	\$2,600.00
Fittings	1	LS	\$3,500.00	\$3,500.00
Fire Hydrant Assembly	4	EA	\$1,500.00	\$6,000.00
Blowoff Valves	0	EA	\$1,500.00	\$0.00
Air Release Valves	0	EA	\$1,000.00	\$0.00
Trench Rock Excavation	150	CY	\$80.00	\$12,000.00
			SUBTOTAL	\$77,850.00
TOTAL ESTIMATED CONSTRUCTION COST				\$390,750.00