

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 4, 2007

SUBJECT: Improvement Guarantee Applications

ATTACHMENTS:

1. Cummings Cove Application for Improvement Guarantee
2. Draft Performance Guarantee Agreement for Cummings Cove
3. Cost Estimates for Cummings Cove
4. Henderson Home Assistance Group Application for Improvement Guarantee
5. Draft Performance Guarantee Agreement for Henderson Home Assistance Group
6. Cost Estimates for Henderson Home Assistance Group

SUMMARY OF REQUEST:

William R. Buie with William G. Lapsley and Associates, agent, submitted an application for an improvement guarantee for a subdivision titled Cummings Cove, Valley View Section. The major subdivision includes 29 lots on 8.94 acres of land off of Cummings Cove Parkway. The Development Plan for Cummings Cove, Valley View, was conditionally approved on July 23, 2007. The improvement guarantee is proposed to cover clearing and grading, water distribution and sewer system improvements, construction of the road which includes paving, installation of concrete curbing, storm drainage, erosion control, and road shoulder stabilization. The developer intends to post with the County a surety performance bond in the amount of at least \$724,125.00 to cover the cost of the improvements (\$579,300.00) as well as the required twenty-five percent (25%) contingency (\$144,825.00). The proposed completion date for the improvements is July 31, 2008.

Henderson Home Assistance Group, LLC, owner and developer of the project, submitted an application for an improvement guarantee for a minor subdivision. The minor subdivision includes 8 lots on 4.644 acres of land off of US Hwy 64 West. The Development Plan for Henderson Home Assistance Group, LLC was conditionally approved on June 1, 2007, by the Planning Department. The improvement guarantee is proposed to cover the construction of the water system and road construction. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$49,945.00 to cover the cost of the improvements (\$39,956.00) as well as the required twenty-five percent (25%) contingency (\$9,989.00). The proposed completion date for the improvements is December 31, 2007.

BOARD ACTION REQUESTED:

Action by the Board of Commissioners is needed to either grant or deny the improvement guarantee applications for Cummings Cove and Henderson Home Assistance Group. I recommend that the Board approve the improvement guarantee applications 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 improvement guarantees comply with the provisions of the Subdivision Ordinance and is approved.



William G. Lapsley & Associates, P.A.

Consulting Civil Engineers and Land Planners

William G. Lapsley, P.E.
William R. Buie, P.E.
G. Thomas Jones III, P.E.
Donald L. Hunley, P.E.

August 1, 2007

Mr. Matt Card
Henderson County Planning Department
101 E. Allen Street
Hendersonville, NC 28792

RE: Cummings Cove – Valley View Section
Application for Improvement Guarantees
WGLA #07119

Dear Mr. Card:

Please find enclosed the completed Application for Improvement Guarantees for the Valley View Section at Cummings Cove. This section was reapproved by the Planning Board last month. The developer, Ful Track, LLC, intends to begin construction immediately on the improvements, but they would also like to begin construction of several houses.

Attached with this application is a bid sheet for the infrastructure improvements from Mr. Chad Cabe. His total bid for grading, paving, storm drainage, water and sewer improvements is \$579,300.00. I have reviewed this bid, and I believe the pricing is reasonable. The requirements for improvement guarantees is for 125% of the estimated cost of the project. Therefore the amount to bond for this project is \$724,125.00.

Also enclosed is a check for \$250 for the application fee. If you have any questions or need more information, don't hesitate to contact our office.

Sincerely,
WILLIAM G. LAPSLEY & ASSOCIATES, P.A.

William R. Buie, P.E.

SUBDIVISION OF LAND

170 Attachment 8

Henderson County, NC

Appendix 8
Application for Improvement Guarantees

Name of Subdivision: Cummings Cove-Valley View Section

Name of Owner: Ful Track, LLC

Address: 2101 South Congress Ave. Delray Beach, FL 33445

Phone:

Agent: William R. Buie Phone: (828) 687-7177

Date of Preliminary Plan Approval by Planning Board: July 19, 2007

Significant Conditions imposed:

Type of improvement requested:

Cash on Deposit (Certified Check)

Bank Escrow Account

Irrevocable Letter of Credit

[X] Surety Performance Bond

Trust Agreement

Name of bank or bonding company: FIDELITY AND DEPOSIT CO. OF MARYLAND

Amount of guarantee (including 25% overhead): \$ 724,125.00

Projected completion date: July 2008

Are cost estimates attached (with quantities and unit costs)? [X] Yes [] No

Have engineering and design work been completed?

[X] 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 [Handwritten Signature]

Date July 26, 2007

Submitted By [Handwritten Signature]

Date 8-1-07

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 Ful Track, LLC, hereinafter referred to as "Developer," and Henderson County;"

WITNESSETH:

WHEREAS, the Developer is attempting to secure approval of one or more Final Plat(s) for the Valley View Section of Cumming Cove major subdivision, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Board conditionally approved the Development Plan 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 surety performance bond 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 a surety performance bond 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 July 31, 2008, complete as required the following improvements to serve lots in Cummings Cove, Valley View Section: Clearing and grading, construction of the road which includes paving, installation of concrete curbing, storm drainage, 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 Development Plan conditionally approved by the Henderson County Planning Board on July 19, 2007 and as shown on the attached cost estimates prepared by Chad Cabe, dated May 16, 2007, and certified by William Buie, P.E. (engineer for the project).
2. The Developer will post with Henderson County a surety performance bond guaranteeing completion of said improvements by the required date. Said surety performance bond must be issued by a bank or surety company licensed to do business in North Carolina, in the amount of at least \$724,125.00 (the "Improvement Guarantee"), with Henderson County as beneficiary.

3. In the event that the required improvements are completed as required, the Bond 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 surety performance bond 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 the surety performance bond in the proper form is posted, then the Henderson County Board of Commissioners will allow the Final Plat(s) for Cummings Cove, Valley View Section, 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 Henderson County Board of Commissioners 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:

Elizabeth W. Corn, Clerk to the Board

**DEVELOPER:
Ful Track , 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 Ful Track, 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]

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

PROPOSAL

16 May 2007

Cummings Cove Properties, LLC
3000 Cummings Road
Hendersonville, NC 28739

Valley View
Cummings Cove Golf & Country Club
Henderson County, NC

Erosion Control

Silt Fence, Rip Rap and Clean Stone for check dams and outlet protection,
Silt Ponds, Railroad Ballast at entrance for mud mat, filter fabric,
hydro-seeding & strawing

\$22,800.00

Storm Drainage

\$58,000

Clearing and Grading

\$208,000

Paving Roads with 2" of super pave hot mix asphalt compacted.
Stone with **6"** of ABC type stone, condition and compacted.

\$55,500

Concrete Curbing

\$40,000

Total Estimate \$384,300.00

This estimate is based on plan sheet 2-11 dated 10-02, job #00114, drawn ABL, drawn by William G. Lapsley & Associates P.A. Consulting Engineers and Land Planners Hendersonville, NC

The following items are excluded from our scope of work; retaining walls, rock excavation, undercut excavation, foundation excavation, soil testing and any other unforeseen obstacles. Surveying is responsibility of owner. No bonds and/or permits are quoted.

All prices quoted are good for 30 days. After 30 days, all quoted prices are subject to review according to current market conditions.

If soil is unsuitable to pass compaction, a change order will be necessary.

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

PROPOSAL

16 May 2007

Cummings Cove Properties, LLC
3000 Cummings Road
Hendersonville, NC 28739

Valley View
Cummings Cove Golf & Country Club
Henderson County, NC

We propose to successfully complete the sewer line project entitled Valley View Cummings Cove Golf & Country Club Henderson County, North Carolina drawing numbers 2-11 dated 10-02, job #00114, drawn ABL, drawn by William G. Lapsley & Associates P.A. Consulting Engineers and Land Planners Hendersonville, NC 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) \$55,000 due upon arrival of materials on site.

Sewer Lump Sum - \$140,000

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

PROPOSAL

16 May 2007

Cummings Cove Properties, LLC
3000 Cummings Road
Hendersonville, NC 28739

Valley View
Cummings Cove Golf & Country Club
Henderson County, NC

We propose to successfully complete the water line project entitled Valley View Cummings Cove Golf & Country Club Henderson County, North Carolina drawing numbers 2-11 dated 10-02, job #00114, drawn ABL, drawn by William G. Lapsley & Associates P.A. Consulting Engineers and Land Planners Hendersonville, NC 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 - \$55,000

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision: Henderson Home Assistance Group, LLC

Name of Owner: Henderson Home Assistance Group, LLC

(Attn.: Mr. Ayman Kaddouri)

Address: 131 3rd Avenue West #A, Hendersonville, NC 28792

Phone: 828-808-5389

Agent: Paul Patterson Phone: 692-6629
Ayman Kaddouri Phone: 808-5389 (Cell)

Date of Preliminary Plan Approval by Planning Board: July 2007 (by Planning Staff)

Significant Conditions Imposed: Public Water to be installed and Road to be graded and stoned

Type of improvement requested:

- Cash on Deposit (Certified Check)
- Bank Escrow Account
- Irrevocable Letter of Credit
- Surety performance Bond (Letter of Credit)
- Trust Agreement

Name of bank or bonding company: Mountain 1st

Amount of guarantee (including 25% overhead) \$ 49,945.00

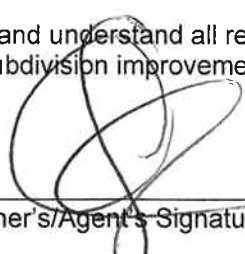
Project completion date: December 31, 2007

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 in Article V of the Henderson County Subdivision Ordinance regarding subdivision improvement guarantees.


Owner's/Agent's Signature

8/1/07
Date

Submitted By: _____

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 Henderson Home Assistance Group., hereinafter referred to as "Developer," and Henderson County.

WITNESSETH:

WHEREAS, the Developer is attempting to secure approval of one or more Final Plat(s) for a proposed minor subdivision known as Henderson Home Assistance Group, LLC, 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 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 Henderson County 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 Henderson County 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 December 31, 2007, complete as required the following improvements to serve lots in Henderson Home Assistance, LLC: construction of the roads and installation of the water distribution systems required by the Henderson County Subdivision Ordinance, as shown on the Development Plan prepared by Paul Patterson, P.L.S., conditionally approved by the Henderson County Planning Department on August 7, 2007, and as shown on the attached cost estimates prepared by Excavating Unlimited, LLC (dated July 23, 2007), and Paul Patterson
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 \$49,945.00 (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 credit in the proper form is posted, then the Board will allow the Final Plat(s) for Henderson Home Assistance Group, 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:
Henderson Home assistance Group, 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 _____, 2007.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

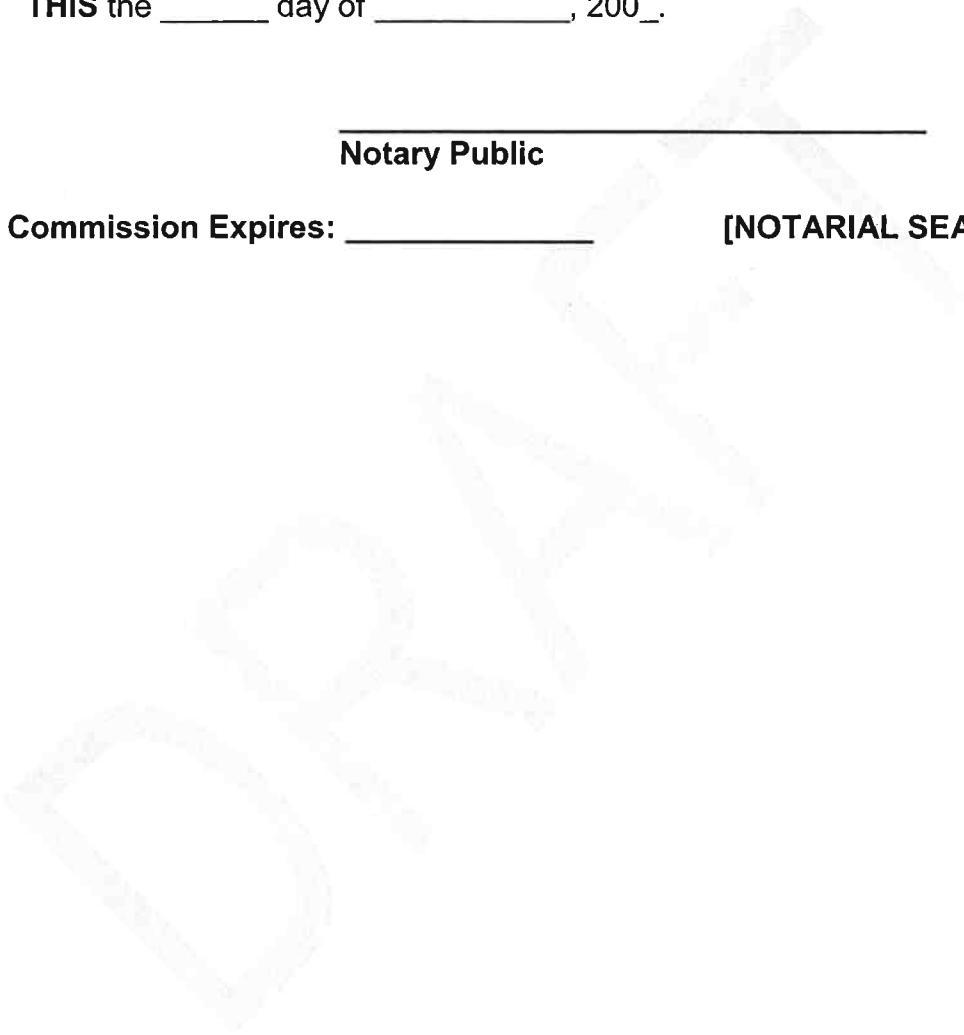
I, _____, Notary Public for said State and County
certify that _____, Managing Member of Henderson Home
Assistance Group, LLC, personally came before me this day and acknowledged
the due execution of the foregoing instrument.

THIS the _____ day of _____, 200__.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]



HENDERSON HOME ASSISTANCE GROUP, LLC

ESTIMATE

WATER:

Item Description:	Quantity	Unit Cost	Cost
2" SDR13.5 PVC	486 l.f.	11.00	\$5,346.00
6" D.I.	18 l.f.	20.00	\$360.00
Fire Hyd. & Assembly	1 ea	3100.00	\$3,100.00
6" Gate Valve	1 ea.	700.00	\$700.00
6"x2" Reducer	1 ea.	100.00	\$100.00
Flush Hydrant	1 ea	500.00	\$500.00
Misc. Fittings	1 ls	500.00	\$500.00
Lateral (Single)	1 ea	400.00	\$400.00
Lateral (Double)	3 ea	700.00	\$2,100.00
FH Removal	1 ea	1500.00	\$1,500.00
		Subtotal:	\$14,606.00

ENGINEERING FEES (Water System) (Estimate):	\$1,500.00	
MISC FEES:	\$850.00	
WATER SYSTEM:	Subtotal:	\$16,956.00

HENDERSON HOME ASSISTANCE GROUP, LLC

(TABULATED ESTIMATE)

Item Description:	Cost	
WATER:	\$16,956.00	
ROAD GRADING: (See Attached estimate)	\$23,000.00	
	Subtotal:	\$39,956.00
25% Contingency	\$9,989.00	
TOTAL ESTIMATED CONSTRUCTION BOND:	\$49,945.00	

Excavating Unlimited LLC

741 Zelda Court
Hendersonville, NC 28792

Estimate

Date	Estimate #
7/23/2007	1019

Name / Address
Ayman Kaddouri 121 3rd Avenue West #A Hendersonville, NC 28792

			Project
Description	Qty	Rate	Total
Mobilization of equipment	1	1,500.00	1,500.00
Grading Road 500' X 18' and a 70' Cul-da-sac	1	21,500.00	21,500.00
<p>*Note: The above estimates are based on the minor subdivision plot for Henderson Home Assistance Group drawn by Patterson & Patterson.</p> <p>**Note: Any rock excavation or removal of undercut material will be billed as an additional charge.</p>			
		Total	\$23,000.00