

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

**MEETING DATE:** March 9, 2005

**SUBJECT:** Request for Modifications to Improvement Guarantee for The Homestead at Mills River, Phase I

**ATTACHMENTS:**

1. Letter from Scott McElrath
2. Original Performance Guarantee Agreement Approved March 17, 2004
3. Performance Guarantee Agreement for Extension Approved October 18, 2004
4. Draft of Revised Performance Guarantee Agreement
5. Revised Cost Estimate

### **SUMMARY OF REQUEST:**

On March 17, 2004, the Board of Commissioners approved an application by The Homestead at Mills River, LLC, and River Oaks Joint Venture, LLC, developers of The Homestead at Mills River, for an improvement guarantee for Phase I of the subdivision. As required by the Performance Guarantee Agreement for the improvement guarantee, the developers posted with Henderson County a surety performance bond ("bond") in an amount of at least \$1,807,500.00 to cover the cost of completing earthwork, road construction, installation of erosion control measures and storm drainage work in The Homestead at Mills River, Phase I. The actual amount of the bond provided to the County was \$1,886,250.00 (\$78,750 more than required). The original agreement also required that the required improvements be completed by October 31, 2004. The expiration date on the bond was December 31, 2004.

On October 18, 2004, the Board of Commissioners approved a request by the developers to extend the deadline for completing the improvements specified in the original agreement to June 30, 2005. The developers and the Board of Commissioners entered into a new Performance Guarantee Agreement that specified the new completion date for the improvements. The developers provided a rider to the existing bond, which extended the bond's expiration date to August 31, 2005.

On January 18, 2005, the Henderson County Planning Board conditionally approved a revised Master Plan and a revised Phase I Development Plan for The Homestead at Mills River. The revised plans showed the addition of land to the north of the previously approved Phase I. Such addition of land resulted in the redesign of some roads and the lot layout in the northern portion of Phase I. One of the conditions of approval was that the developers apply to the Board of Commissioners for an amendment to their existing improvement guarantee (which had allowed them to record a final plat for Phase I).

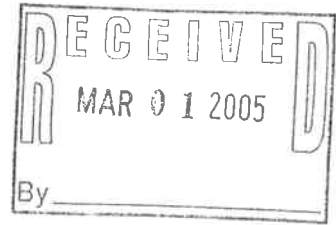
The developers are therefore requesting to amend the improvement guarantee for Phase I to reference the approval of the revised Development Plan and a revised cost estimate for the improvements in Phase I of The Homestead at Mills River based upon

the revised plan. The cost estimate has been reduced by \$11,000.00, from \$1,446,000.00 to \$1,435,000.00. The new cost estimate, plus the required 25% contingency amount would reduce the required amount of the bond posted with the County to \$1,793,750.00. The bond (as previously amended) on file with the County is for \$1,886,250.00. It therefore appears that the only change that would be needed to the existing bond is a reference to the revised Development Plan for Phase I of The Homestead at Mills River and its approval date.

If the Board of Commissioners agrees to revise the improvement guarantee as presented above, staff has attached for the Board's consideration a draft Performance Guarantee Agreement which reflects the necessary modifications and requires submittal of an amendment to the existing bond that acknowledges the revised Development Plan, and its approval date, for the project. The relevant parties must execute the new Performance Guarantee Agreement if the Board approves the extension request.

**COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:**

The proposed modifications to the improvement guarantee appear to be administrative in nature. Therefore, I recommend that the Board approve the request to amend the improvement guarantee for the Homestead at Mills River, Phase I, provided that the developers provide the County with an amendment to the existing surety performance bond in accordance with the new Performance Guarantee Agreement.



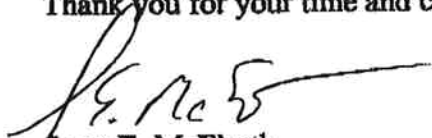
March 1, 2005

Mrs. Karen C. Smith  
Henderson County Planning Department  
101 East Allen Street  
Hendersonville, NC 28792

Dear Karen,

Due to the additional purchase of land adjoining Phase 1 of the Homestead at Mills River, I am respectfully requesting an amendment to our improvement guarantees.

Thank you for your time and consideration.



Scott E. McElrath  
Homestead at Mills River

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

**THIS AGREEMENT** made and entered into this 17<sup>th</sup> day of March, 2004 by and between The Homestead at Mills River, LLC, and River Oaks Joint Venture, LLC, hereinafter together referred to as "Developers," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

**WITNESSETH:**

**WHEREAS**, the Developers are attempting to secure approval of a Final Plat for a proposed subdivision known as The Homestead at Mills River, Phase I, located in Henderson County, North Carolina; and

**WHEREAS**, the Henderson County Planning Board conditionally approved the Master Plan and the Phase I Development Plan for The Homestead at Mills River 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 Developers to post a performance or surety bond with Henderson County to guarantee the completion of said required improvements; and

**WHEREAS**, the Developers have requested that the Board of Commissioners approve the posting of a surety 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 Developers will, on or before the 31st day of October, 2004, complete as required the following improvements in Phase I of The Homestead at Mills River subdivision: earthwork (including, but not limited to, clearing, grading and seeding), road construction (including, but not limited to, installation of gravel, asphalt, curbing, etc.), installation of erosion control measures and storm drainage work (installation of pipes, ponds, etc.), as required by the Henderson County Subdivision Ordinance, as shown on the revised Master Plan and revised Phase I Development Plan conditionally approved by the Henderson County Planning Board on March 16, 2004, and as shown on the attached proposal from Moore & Son Excavating (sealed by Perry G. Davis, P.E.) received on March 10, 2004.
2. The Developers will post with Henderson County a surety bond guaranteeing completion of said improvements by the required date. Said surety performance bond must be issued by licensed bonding company in the amount of at least \$1,807,500.00 (the "Improvement Guarantee"), payable to Henderson County,

and it must have 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 surety bond 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 Developers shall forfeit the Improvement Guarantee and the surety bond and the bonding company shall pay the funds to Henderson County, which shall use the funds to complete the required improvements.
4. At such time as the (Assistant) County Attorney has reviewed and approved this Agreement and this Agreement is fully executed, and a surety bond in the proper form is posted, then the Board will allow the Final Plat of The Homestead at Mills River, Phase I, 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 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 (Assistant) 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 6<sup>th</sup> day of May, 2004.

**APPROVED AS TO FORM:**

Angela S. Becker  
County Attorney

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

BY: Grady Hawkins  
Grady Hawkins, Chairman

ATTESTED BY:

[OFFICIAL SEAL]

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



DEVELOPER:  
The Homestead at Mills River, LLC

BY: Scott E. McElrath  
Manager

DEVELOPER:  
River Oaks Joint Venture, LLC

BY: Attorney in Fact  
Manager

[Signature]

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, Margaret Street, 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 6<sup>th</sup> day of May, 2004

Margaret Street  
Notary Public

My Commission Expires: Sept. 17, 2007

[NOTARIAL SEAL]



STATE OF North Carolina  
COUNTY OF Polk

I, Terry H. Smith, Notary Public for said State and County certify that Scott & McElrath, Manager of The Homestead at Mills River, 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 27th day of April, 2004.

Terry H. Smith  
Notary Public

My Commission Expires: 8/22/06

[NOTARIAL SEAL]

STATE OF Florida  
COUNTY OF Osceola

I, Kimberly J. Blanchett, Notary Public for said State and County certify that Shepherd E. Colledge, Manager of River Oaks Joint Venture, 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 24th day of May, 2004.



KIMBERLY J. BLANCHETT  
MY COMMISSION # DD 199736  
EXPIRES: August 1, 2007  
Bonded Thru Budget Notary Services

Kimberly J. Blanchett  
Notary Public

My Commission Expires: 8/1/2007

[NOTARIAL SEAL]

**STATE OF NORTH CAROLINA, COUNTY OF HENDERSON**

I, Terry H. Smith, a Notary Public for Polk County and State, do hereby certify that Scott E. McElrath, attorney-in-fact for Sheppard Colledge, Member/Manager of River Oaks Joint Venture, LLC, appeared before me this day and being by me duly sworn, says that he executes the foregoing and annexed instrument for and on behalf of the said Sheppard Colledge, Member/Manager of River Oaks Joint Venture, LLC, and that his authority to execute and acknowledge said instrument is contained in an instrument dated November 12, 2003, and recorded in Deed Book 1161, Page 494, Henderson County Registry, on November 14, 2003, and that this instrument was executed under and by virtue of the authority given by said instrument granting him/her power of attorney.

I do further certify that the said Scott E. McElrath, attorney-in-fact acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of said Sheppard Colledge, Member/Manager of River Oaks Joint Venture, LLC.

WITNESS my hand and notarial seal this the 27<sup>th</sup> day of April, 2004. Sworn to and subscribed before me.

My Commission expires:

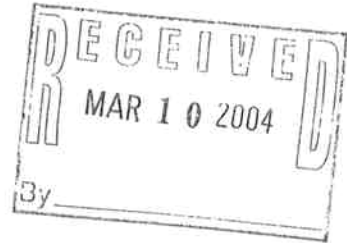
8/22/06

Terry H. Smith  
NOTARY PUBLIC





PROPOSAL  
FROM  
**MOORE & SON EXCAVATING**  
103 MCDOWELL ROAD  
ARDEN, NORTH CAROLINA 28704  
828-891-8900



SUBMITTED TO: Homestead at Mills River  
ADDRESS: 15 Justin Drive  
Etowah, NC 28729  
PHONE: 606-4313

WE HEREBY SUBMIT SPECIFICATIONS AND ESTIMATE FOR THE  
FOLLOWING GOODS AND/OR SERVICES:

- Phase I Road construction
- 1) Earthwork
  - 2) **Erosion Control**
  - 3) **Storm Drainage**
  - 4) **Paving & Curb**

**TOTAL: \$1,446,000.00**

Not included: no soil reports, no rock excavation, no permits or fees,  
no specification book, no compaction tests, no undercut or replacement of  
unsuitable soil and no water problems allowance. Any work that is not listed  
in this proposal will be considered an extra which must be agreed in writing  
and signed by an authorized representative.

We hereby propose to furnish labor and materials - complete in accordance with the above  
specifications with payment due upon completion of the job and receipt of the invoice.  
A 1.5% finance charge will be added to any outstanding balance over 30 days. All material is  
guaranteed as specified. All work to be completed in a workmanlike manner according to  
standard practices. Any alteration or deviation from above specifications involving extra costs,  
will be executed only upon approval and will become an extra charge over and beyond the  
estimate. All agreements contingent upon approval and will become an extra charge over and  
beyond the estimate. All agreements contingent upon weather, accidents, or delays beyond  
our control. This proposal subject to acceptance within 15 days and is void thereafter at the  
option of the undersigned.

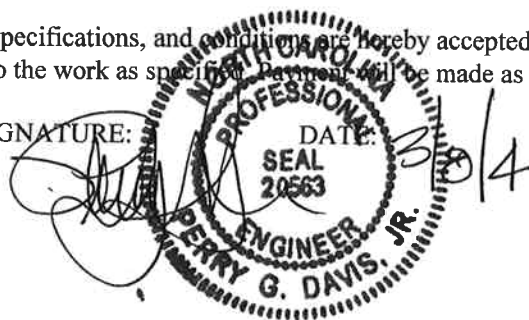
AUTHORIZED SIGNATURE:

*[Handwritten Signature]* DATE: 3-4-04

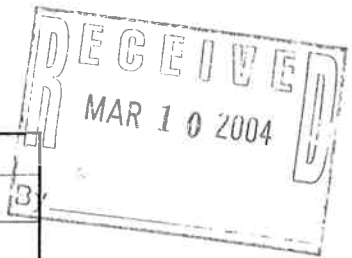
ACCEPTANCE OF PROPOSAL

The above prices, specifications, and conditions are hereby accepted. You  
are authorized to do the work as specified. Payment will be made as outlined above.

AUTHORIZED SIGNATURE:



I HAVE REVIEWED  
PROPOSAL & FEEL  
IT IS REASONABLE  
& COVERS THE MATERIAL  
COSTS.



<b>HOMESTEAD AT MILLS RIVER</b>				
<b>DATE 1/8/2004</b>				
<b>MOORE &amp; SON EXCAVATING</b>				
<b>EARTHWORK</b>				
<b>DESCRIPTION</b>			<b>QUANTITY</b>	<b>UNIT</b>
Clearing			17	AC
Stripping top soil			9722	YDS
Cut			116,600	YDS
Fill			116,600	YDS
Seeding			18	AC
Curb & backfill			22,030	FT
<b>EROSION CONTROL</b>				
Mud Mat			120	TONS
Silt fence w/ wire			10250	FT
Inlet Protection			67	EA
Slope drains 12"			380	FT
Check Dams			420	EA
St Traps			1	EA
Maintenance			4	Months
<b>STORM DRAINAGE PIPE &amp; PONDS</b>				
Pond 1			1	EA
Pond 2			1	EA
Pond 3			1	EA
Pond 4			1	EA
C1 Dissipaters			1	EA
C2 Dissipaters			1	EA
2x3x3 w/ F.G.H.			43	EA
4x4x4 w/ F.G.H.			23	EA
5x5x5 w/ F.G.H.			1	EA
18" H.D.P.E.			2450	FT
24" H.D.P.E.			780	FT
30" H.D.P.E.			2080	FT
36" H.D.P.E.			3380	FT
42" H.D.P.E.			110	FT
60" R.C.P.			60	FT
60" End wall			2	EA
72" R.C.P.			60	FT
72" End wall			2	EA
<b>PAVING &amp; CURB</b>				
8" A.B.C.			23893	SY
2" I-2			21480	SY
18" Valley Curb			21570	FT
18" Stand up curb - at inlets			460	FT

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

**THIS AGREEMENT** made and entered into this 10<sup>th</sup> day of October, 2004, by and between The Homestead at Mills River, LLC, and River Oaks Joint Venture, LLC, hereinafter together 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 or about the 17<sup>th</sup> day of March, 2004, (hereinafter "the original Agreement"), concerning an improvement guarantee for a portion of a proposed subdivision known as The Homestead at Mills River, Phase I, located in Henderson County, North Carolina; and

**WHEREAS**, the Developer posted with Henderson County a surety performance bond in the amount of \$1,886,250.00 in accordance with the original Agreement; and

**WHEREAS**, the original Agreement provided that all required improvements were to be completed on or before the 31<sup>st</sup> day of October, 2004, and

**WHEREAS**, the Developer has asked the Board for an extension of time in which the Developer must complete the required improvements and the Board has agreed to such extension upon the condition that the surety performance bond previously posted by the Developer be amended to reflect a new expiration date.

**IT IS THEREFORE AGREED** as follows:

1. The Developer will, on or before the 30<sup>th</sup> day of June, 2005, complete as required the following improvements in Phase I of The Homestead at Mills River subdivision: earthwork (including, but not limited to, clearing, grading and seeding), road construction (including, but not limited to, installation of gravel, asphalt, curbing, etc.), installation of erosion control measures and storm drainage work (installation of pipes, ponds, etc.), as required by the Henderson County Subdivision Ordinance, as shown on the revised Master Plan and revised Phase I Development Plan conditionally approved by the Henderson County Planning Board on March 16, 2004, and as shown on the proposal from Moore & Son Excavating (sealed by Perry G. Davis, P.E.) received on March 10, 2004 and attached to the original Agreement.
2. The Developer shall file with Henderson County an amendment to the previously filed surety performance bond reflecting that the bond will expire no earlier than 60 days after such new improvements 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 previously submitted surety performance bond as provided in Paragraph 2, above, the Developer will be released from its obligation to complete the required improvements by October 31, 2004.
4. In the event that the required improvements are completed as required, the amended surety performance 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 Henderson County shall call the amended surety performance bond and use the funds to complete the required improvements. The Developer shall be required to reimburse to the County any amounts expended to complete the required improvements that exceed the Improvement Guarantee.
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 (Assistant) 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 7<sup>th</sup> day of December, 2004.

**APPROVED AS TO FORM:**

*Angela S. Baker*  
County Attorney

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

BY: *[Signature]*  
Chairman

**ATTESTED BY:**

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



DEVELOPER:  
The Homestead at Mills River, LLC

BY: [Signature]  
Manager

DEVELOPER:  
River Oaks Joint Venture, LLC

BY: [Signature]  
Manager

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, Margaret Street, 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 7<sup>th</sup> day of December, 2004.

Margaret Street  
Notary Public

My Commission Expires: Sept. 17, 2007

[NOTARIAL SEAL]



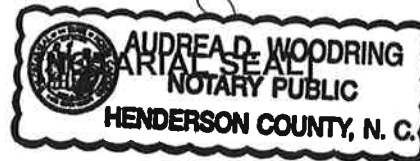
STATE OF North Carolina  
COUNTY OF Henderson

I, Audrea D. Woodring, Notary Public for said State and County certify that Scott McElrath, Manager of The Homestead at Mills River, 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 4<sup>th</sup> day of November, 2004.

Audrea D. Woodring  
Notary Public

My Commission Expires: 8/8/2009



STATE OF Florida  
COUNTY OF CLAY

I, Melinda W. Brogan, Notary Public for said State and County certify that Shepherd Colledge, Manager of River Oaks Joint Venture, 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 23<sup>rd</sup> day of November, 2004

Melinda W. Brogan  
Notary Public

My Commission Expires: October 24, 2008 [NOTARIAL SEAL]



Melinda W Brogan  
My Commission DD366617  
Expires October 24, 2008

**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**THIS AGREEMENT** made and entered into this 09 day of SEPTEMBER, 2005, by and between The Homestead at Mills River, LLC, and River Oaks Joint Venture, LLC, hereinafter together 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 or about the 17<sup>th</sup> day of March, 2004, (hereinafter "the original Agreement"), concerning an improvement guarantee for a portion of a proposed subdivision known as The Homestead at Mills River, Phase I, (hereinafter "Phase I") located in Henderson County, North Carolina; and

**WHEREAS**, the Developer posted with Henderson County a surety performance bond in the amount of \$1,886,250.00 (hereinafter "the original bond") in accordance with the original Agreement; and

**WHEREAS**, the original Agreement provided that all required improvements were to be completed on or before the 31<sup>st</sup> day of October, 2004, and

**WHEREAS**, the Developer obtained approval of Final Plats of Phase I from Henderson County Planning Department staff on or about June 29, 2004, and subsequently recorded such Final Plats; and

**WHEREAS**, on or about October 18, 2004 the Board and the Developer entered into a second Agreement, which superceded the original Agreement, which allowed the completion date for the improvements to be extended to June 30, 2005, provided that the original bond posted by the Developer was amended to reflect a new expiration date; and

**WHEREAS**, the Developer provided Henderson County with a rider to the original bond which extended the bond's expiration date from December 31, 2004 to August 31, 2005, in accordance with the second Agreement; and

**WHEREAS**, the Henderson County Planning Board conditionally approved a revised Master Plan for The Homestead at Mills River and a revised Development Plan for Phase I on January 18, 2005, which reflected the addition of property to Phase I and the redesign of some roads and the lot configuration in the northern portion of Phase I; and

**WHEREAS**, the Henderson County Planning Board, in granting the January 18, 2005 conditional approval of the revised Development Plan for Phase I, recognized that

proposed changes to the roads and lots could affect the cost estimates provided for the existing improvement guarantee for Phase I and, therefore, established a condition which requires the Developer to request from the Board an amendment to such existing improvement guarantee: and

**WHEREAS**, the Developer has submitted a request to amend the existing improvement guarantee for Phase I, with such request including revised cost estimates for the improvements based on the revised Development Plan for Phase I; and

**WHEREAS**, the amount required for the improvement guarantee, based on the revised cost estimates for the improvements shown on the revised Development Plan for Phase I plus the required 25% contingency, would be \$1,793,750.00, which is \$13,750.00 less than the improvement guarantee amount required by the original Agreement; and

**WHEREAS**, the Developer does not intend, at this time, to reduce the amount of the original bond (as amended) filed with Henderson County;

**IT IS THEREFORE AGREED** as follows:

1. The Developer will, on or before the 30<sup>th</sup> day of June, 2005, complete as required the following improvements in Phase I: earthwork (including, but not limited to, clearing, grading and seeding), road construction (including, but not limited to, installation of gravel, asphalt, curbing, etc.), installation of erosion control measures and storm drainage work (installation of pipes, ponds, etc.), as required by the Henderson County Subdivision Ordinance, as shown on the revised Master Plan for The Homestead at Mills River and revised Development Plan for Phase I both conditionally approved by the Henderson County Planning Board on January 18, 2005, and as shown on the attached revised proposal from Moore & Son Excavating dated March 1, 2005.
2. The Developer shall file with Henderson County an amendment to the original bond (as previously amended) that references the revised Development Plan for Phase I, conditionally approved by the Planning Board on January 18, 2005 (rather than the Development Plan approved on October 21, 2003).
3. At such time as this Agreement is fully executed and the Developer has filed an amendment to the original bond (as previously amended) as provided in Paragraph 2, above, this Agreement will supercede prior Agreements between the Board and the Developer regarding the improvement guarantee for Phase I.
4. In the event that the required improvements are completed as required, the amended surety performance 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 Henderson County shall call the amended surety performance bond and use the funds to



complete the required improvements. The Developer shall be required to reimburse to the County any amounts expended to complete the required improvements that exceed the Improvement Guarantee.

- 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 \_\_\_\_\_, 2005.

**APPROVED AS TO FORM:**

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

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

**BY:** **DRAFT**  
\_\_\_\_\_  
William L. Moyer, Chairman

**ATTESTED BY:**

**[OFFICIAL SEAL]**

**DRAFT**  
\_\_\_\_\_  
Elizabeth W. Corn, Clerk to the Board

**DEVELOPER:**  
The Homestead at Mills River, LLC

**BY:** **DRAFT**  
\_\_\_\_\_  
Manager

**DEVELOPER:**  
**River Oaks Joint Venture, 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 The Homestead at Mills River, 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\_.

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

**My Commission Expires:** \_\_\_\_\_ **[NOTARIAL SEAL]**

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

I, \_\_\_\_\_, Notary Public for said State and County certify that \_\_\_\_\_, Manager of River Oaks Joint Venture, 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.

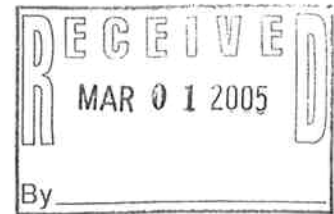
THIS the \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

DRAFT

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

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

[NOTARIAL SEAL]



PROPOSAL  
FROM  
**MOORE & SON EXCAVATING**  
103 MCDOWELL ROAD  
ARDEN, NORTH CAROLINA 28704  
828-891-8900

SUBMITTED TO: Homestead at Mills River  
ADDRESS: 15 Justin Drive  
Etowah, NC 28729  
PHONE: 606-4313

WE HEREBY SUBMIT SPECIFICATIONS AND ESTIMATE FOR THE  
FOLLOWING GOODS AND/OR SERVICES:

- Phase I Road construction
- 1) Earthwork
  - 2) Erosion Control
  - 3) Storm Drainage
  - 4) Paving & Curb

Revised TOTAL: \$1,435,000.00 as of 3-1-05

Not included: no soil reports, no rock excavation, no permits or fees,  
no specification book, no compaction tests, no undercut or replacement of  
unsuitable soil and no water problems allowance. Any work that is not listed  
in this proposal will be considered an extra which must be agreed in writing  
and signed by an authorized representative.

We hereby propose to furnish labor and materials - complete in accordance with the above specifications with payment due upon completion of the job and receipt of the invoice. A 1.5% finance charge will be added to any outstanding balance over 30 days. All material is guaranteed as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs, will be executed only upon approval and will become an extra charge over and beyond the estimate. All agreements contingent upon approval and will become an extra charge over and beyond the estimate. All agreements contingent upon weather, accidents, or delays beyond our control. This proposal subject to acceptance within 15 days and is void thereafter at the option of the undersigned.

AUTHORIZED SIGNATURE:  DATE: 3-1-05

ACCEPTANCE OF PROPOSAL

The above prices, specifications, and conditions are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

AUTHORIZED SIGNATURE: DATE:

**RECEIVED**  
 MAR 01 2005  
 By \_\_\_\_\_

**\*\*REVISED 3-1-05 \*\***

**HOMESTEAD AT MILLS RIVER**  
**DATE 1/8/2004**  
**MOORE & SON EXCAVATING**

<b>EARTHWORK DESCRIPTION</b>	<b>QUANTITY</b>	<b>UNIT</b>
Clearing	18	AC
Stripping top soil	9722	YDS
Cut	91,700	YDS
Fill	91,700	YDS
Seeding	18.75	AC
Curb & backfill	23,030	FT
<b>EROSION CONTROL</b>		
Mud Mat	120	TONS
Silt fence w/ wire	10250	FT
Inlet Protection	67	EA
Slope drains 12"	380	FT
Check Dams	420	EA
St Traps	1	EA
Maintenance	4	Months
<b>STORM DRAINAGE</b>		
<b>PIPE &amp; PONDS</b>		
Pond 1	1	EA
Pond 2	1	EA
Pond 3	1	EA
Pond 4	1	EA
C1 Dissipaters	1	EA
C2 Dissipaters	1	EA
2x3x3 w/ F.G.H.	43	EA
4x4x4 w/ F.G.H.	23	EA
5x5x5 w/ F.G.H.	1	EA
18" H.D.P.E.	2450	FT
24" H.D.P.E.	780	FT
30" H.D.P.E.	2080	FT
36" H.D.P.E.	2740	FT
42" H.D.P.E.	110	FT
60" R.C.P.	60	FT
60" End wall	2	EA
72" R.C.P.	60	FT
72" End wall	2	EA
<b>PAVING &amp; CURB</b>		
8" A.B.C.	24,870	SY
2" I-2	22,145	SY
18" Valley Curb	22,570	FT
18" Stand up curb at inlets	460	FT