

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: July 20, 2005

SUBJECT: Request for Second Extension of Improvement Guarantee for The Homestead at Mills River, Phase I

ATTACHMENTS:

1. Letter from Scott McElrath
2. March 17, 2004 (Original) Performance Guarantee Agreement
3. October 18, 2004 Performance Guarantee Agreement
4. March 9, 2005 Performance Guarantee Agreement
5. Draft July 20, 2005 Performance Guarantee Agreement

SUMMARY OF REQUEST:

On March 17, 2004, the Board of Commissioners approved an application submitted by The Homestead at Mills River, LLC, and River Oaks Joint Venture, LLC ("developers"), for an improvement guarantee for Phase I of a subdivision known as The Homestead at Mills River ("the project"). As required by the Performance Guarantee Agreement for the improvement guarantee ("original Agreement"), the developer had to post with Henderson County a surety performance bond in an amount of at least \$1,807,500.00 to cover the cost of completing improvements in the project, including earthwork, road construction, installation of erosion control measures and storm drainage work. The actual amount of the bond provided to the County was \$1,886,250.00. The original Agreement also required that the improvements be completed by October 31, 2004. On October 18, 2004, the Board of Commissioners approved a request by the developers to extend the improvements completion date stated in the original Agreement to June 30, 2005. The developers submitted a rider to the original bond filed with Henderson County extending its expiration date until August 31, 2005. The Board approved additional modifications to the improvement guarantee for the project on March 9, 2005, in order to reference approval of revised plans for the project and a revised cost estimate for the required improvements. While the cost estimate for the improvements was lower, the developers did not decrease the amount of the bond on file with Henderson County.

The Planning Department has received a letter from Scott McElrath, on behalf of the developers, requesting that the County extend the deadline for completion of the improvements to August 30, 2005. Mr. McElrath's letter states that the extension is needed due to "... the extraordinary rainfall and various other unexpected delays." Section 170-39 of the Subdivision Ordinance allows the Board of Commissioners, upon proof of difficulty, to grant extensions to completion dates for improvement guarantees for a maximum of one additional year, provided that the time between initiation and completion of the improvements does not exceed two years.

If the Board of Commissioners agrees to grant the requested extension, staff has attached for the Board's consideration a draft Performance Guarantee Agreement which

reflects a new improvements completion date of August 30, 2005, and requires submittal of an amendment to the surety performance bond showing an expiration date not earlier than 60 days after such new improvements completion date. The new Performance Guarantee Agreement must be executed by the relevant parties if the Board approves the extension request.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

The extension, if granted, would not cause the developer to exceed the two-year maximum time period for completion of the required improvements. Therefore, I recommend that the Board approve the request to extend the completion date for the improvement guarantee for The Homestead at Mills River, Phase I, to August 30, 2005, provided that an amended surety performance bond is submitted in accordance with the new Performance Guarantee Agreement.

HOMESTEAD



MILLS RIVER

Ms. Karen C. Smith
Henderson County Planning Department
101 East Allen Street
Hendersonville, N.C. 28792

Dear Karen,

I am writing to you today to respectfully request an extension of my completion date on phase I roads in the Homestead at Mills River from June 30, 2005 to August 30, 2005.

Due to the extraordinary rainfall and various other unexpected delays we will need the additional time.

Thank you for your consideration and assistance.

Sincerely,

Scott E. McElrath
Homestead at Mills River

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this 17th 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 6th day of May, 2004.

APPROVED AS TO FORM:

Angela S. Becker
County Attorney

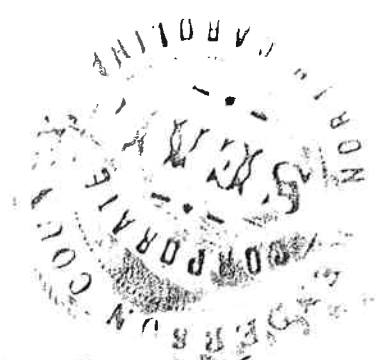
HENDERSON COUNTY BOARD OF COMMISSIONERS

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

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 6th day of May, 2004

Margaret Street
Notary Public



My Commission Expires: Sept. 17, 2007

[NOTARIAL SEAL]

STATE OF North Carolina
COUNTY OF Folk

I, Terry H. Smith, Notary Public for said State and County certify that Scott E 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.

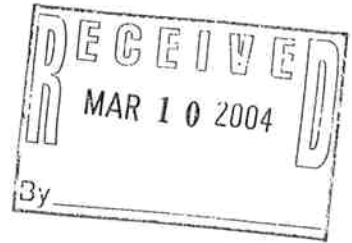
I do further certify that the said Scott E. McElrath, attorney-in-fact acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of said Sheppard Colledge, Member/Manager of River Oaks Joint Venture, LLC.

WITNESS my hand and notarial seal this the 27th 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: *[Signature]* DATE: 3-4-04

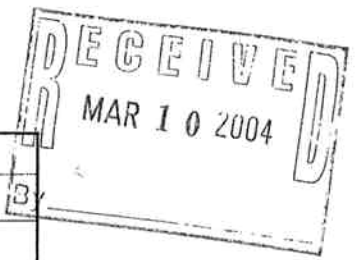
ACCEPTANCE OF PROPOSAL

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: *[Signature]*



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



HOMESTEAD AT MILLS RIVER

DATE 1/8/2004

MOORE & SON EXCAVATING

EARTHWORK DESCRIPTION	QUANTITY	UNIT
Clearing	17	AC
Stripping top soil	9722	YDS
Cut	116,600	YDS
Fill	116,600	YDS
Seeding	18	AC
Curb & backfill	22,030	FT
EROSION CONTROL		
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
STORM DRAINAGE PIPE & PONDS		
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
PAVING & CURB		
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 10th 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 17th 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 31st 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 30th 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 7th 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 7th day of December, 2004.

Margaret Street
Notary Public

My Commission Expires: Sept. 17, 2007

[NOTARIAL SEAL]



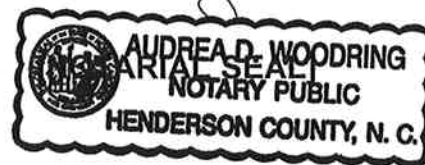
STATE OF North Carolina
COUNTY OF Henderson

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 4th day of November, 2004.

Audrea D. Woodring
Notary Public

My Commission Expires: 8/8/2009



STATE OF Florida
COUNTY OF Alachua

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 23rd 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 9th day of March, 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 17th 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 31st 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:

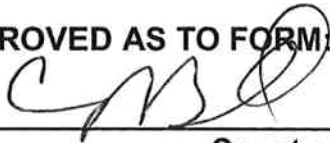
1. The Developer will, on or before the 30th day of June, 2005, complete as required the following improvements in Phase I: earthwork (including, but not limited to, clearing, grading and seeding), road construction (including, but not limited to, installation of gravel, asphalt, curbing, etc.), installation 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 21st day of March, 2005.

APPROVED AS TO FORM:



County Attorney

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY:



William L. Moyer, Chairman

ATTESTED BY:



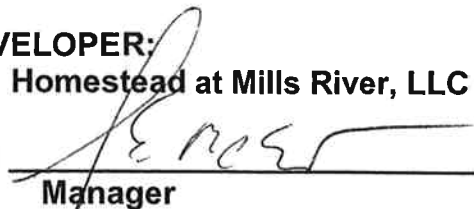
Elizabeth W. Corn, Clerk to the Board

[OFFICIAL SEAL]

DEVELOPER:

The Homestead at Mills River, LLC

BY:



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 21st day of March, 2005

Margaret Street
Notary Public

My Commission Expires: Sept. 17, 2007

[NOTARIAL SEAL]



**STATE OF North Carolina
COUNTY OF Henderson**

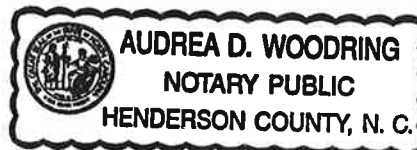
I, Audrea D. Woodring Notary Public for said State and County certify that Scott E. McElrath, Manager of The Homestead at Mills River, LLC, a limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

THIS the 14th day of March, 2005

Audrea D. Woodring
Notary Public

My Commission Expires: 8/8/2009

[NOTARIAL SEAL]



STATE OF FLORIDA
COUNTY OF CLAY

I, Melinda W. Brogan, Notary Public for said State and County certify that Shepherd College, 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 15th day of March, 2005.

Melinda W. Brogan
Notary Public

My Commission Expires: 10-24-2008

[NOTARIAL SEAL]



Melinda W Brogan
My Commission DD365517
Expires October 24, 2008

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.

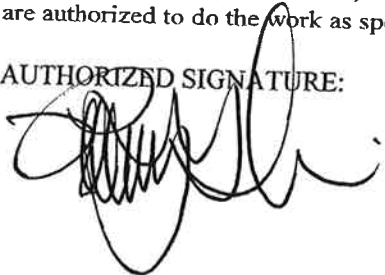
We hereby propose to furnish labor and materials - complete in accordance with the above specifications with payment due upon completion of the job and receipt of the invoice. A 1.5% finance charge will be added to any outstanding balance over 30 days. All material is guaranteed as specified. All work 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:

3/2/05

**REVISED 3-1-05 **

HOMESTEAD AT MILLS RIVER

DATE 1/8/2004

MOORE & SON EXCAVATING

EARTHWORK

DESCRIPTION

QUANTITY

UNIT

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

EROSION

CONTROL

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

STORM DRAINAGE

PIPE & PONDS

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

PAVING & CURB

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

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

DRAFT

THIS AGREEMENT made and entered into this _____ day of _____, 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 March 17, 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 October 31, 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, on or about March 9, 2005, the Board and the Developer entered into a third Agreement, which superceded prior Agreements regarding the improvement

guarantee for Phase I and reflected the January 18, 2005 conditional approval of such revised plans as well as a revised cost estimate for the improvements in Phase I based on such revised plans; and

WHEREAS, the Developer has again 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 30th day of August, 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 a 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) indicating that the bond will expire so earlier than 60 days after the 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 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 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

DRAFT

BY: _____

William L. Moyer, Chairman

ATTESTED BY:

[OFFICIAL SEAL]

DRAFT

Elizabeth W. Corn, Clerk to the Board

DEVELOPER:

The Homestead at Mills River, LLC

BY: _____

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_.

DRAFT

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_.

DRAFT

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]