

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 6, 2005

SUBJECT: Improvement Guarantee for Phase II of The Homestead at Mills River

ATTACHMENTS:

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

SUMMARY OF REQUEST:

The Homestead at Mills River, LLC, and River Oaks Joint Venture, LLC, owners of the project, submitted an application for an improvement guarantee for Phase II of The Homestead at Mills River. Phase II was conditionally approved by the Planning Board on May 17, 2005. The improvement guarantee is proposed to cover the cost of completing, earthwork, grading, road construction and installation of erosion control measures and storm drainage work in The Homestead at Mills River, Phase II.

According to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance, where the required improvements have not been completed or in lieu of completing all of the required improvements in order to submit a Final Plat and also prior to Final Plat approval, the developer may post a performance guarantee for the improvements. Section 170-38 of the Henderson County Subdivision Ordinance also states that the installation of the improvements must be completed within two years of the date of approval of the improvement guarantee. The developers intend to post with the County a surety performance bond in the amount of at least \$1,665,606.25 to cover the cost of the improvements (\$1,332,485.00) as well as the required twenty-five percent (25%) contingency (\$333,121.25). The proposed completion date for the improvements is September 15, 2006.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developers must submit a surety performance bond in accordance with the terms of the Agreement. Once the County receives a surety performance bond in proper form, the relevant parties must execute the Agreement.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

I recommend that the Board approve the improvement guarantee application for Phase II of The Homestead at Mills River, subject to the developers submitting to Henderson County a surety performance bond in accordance with the terms of the draft Performance Guarantee Agreement.

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision The Homestead at Mills River

Name of Owner Homestead at Mills River, LLC & River Oaks Joint Venture, LLC

Address 15 Justin Dr. Etowah NC 28729

Phone: 828-606-4313 or 828-890-5135

Agent Scott E. McElrath Phone: _____

Date of Preliminary Plan Approval by Planning Board _____

Significant Conditions Imposed: _____

Type of improvement requested:

Cash on Deposit (Certified Check)

Bank Escrow Account

Irrevocable Letter of Credit

Surety Performance Bond

Trust Agreement

Name of bank or bonding company Arch Insurance Company

Amount of guarantee (including 25% overhead) \$ 1,700,000.00

Projected completion date September 15, 2006

Are cost estimates attached (with quantities and unit costs)? yes no

Have engineering and design work been completed?

complete partially complete incomplete

I have read and understand all requirements stated in Article V of the Henderson County Subdivision Ordinance regarding subdivision improvement guarantees.

[Signature]
Owner's Signature

7/7/05
Date

Submitted By Scott McElrath

Date _____

Received By [Signature]

Date 8/1/05

fee \$250.00 paid

8/1/05

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200_, by and between The Homestead at Mills River, LLC, and River Oaks Joint Ventures, LLC, hereinafter 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 II, located in Henderson County, North Carolina; and

WHEREAS, the Planning Board conditionally approved the Development Plan for The Homestead at Mills River, Phase II, 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, Section 170-38 and 170-39 allows the Board of Commissioners to permit the Developers to post a surety performance 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 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 Developers will, on or before the September 15, 2006, complete as required the following improvements in Phase II of The Homestead at Mills River subdivision: earthwork, grading, road construction and installation of erosion control measures and storm drainage work, as shown on the Phase II Development Plan conditionally approved by the Planning Board on May 17, 2005;
2. The Developers 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 licensed bonding company in the amount of at least \$1,665,606.00, payable to Henderson County, and with an expiration date on the bond not earlier than November 15, 2006; and
3. When this Agreement is fully executed, the surety performance bond is posted, any outstanding conditions have been satisfied, and other requirements of said

Ordinance are met, then the Board will allow the Final Plat of The Homestead at Mills River, Phase II, to be approved by the Subdivision Ordinance Administrator, provided that all technical requirements have been met.

4. 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 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 _____ 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:
The Homestead at Mills River, LLC

BY: _____
Manager

DEVELOPER:
River Oaks Joint Ventures, LLC

BY: _____
Manager

ATTESTED BY:

[CORPORATE SEAL]

Secretary/Assistant Secretary

**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 _____, Manger 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 _____, Manger 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_.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

PROPOSAL
FROM
MOORE & SON
SITE CONTRACTORS
103 McDowell Road
Arden, North Carolina 28704
828-891-8900

Submitted To: Homestead at Mills River **Job Name:** 38
Address 15 Justin Dr.
Etowah, NC 28729
Phone: 606-4313

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

Phase II Road construction

- 1) Earthwork
- 2) Erosion Control
- 3) Storm Drainage
- 4) Paving & Curb
- 5) Retaining Walls

TOTAL: 1,332,485.00

Not included: soil reports, rock excavation, permits or fees, specification book, compaction tests, 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 for the amount stated above. **All past due balances (over 30 days) will be subject to a late charge of 1 1/2 % per month (18% per year).** 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: 6-15-05

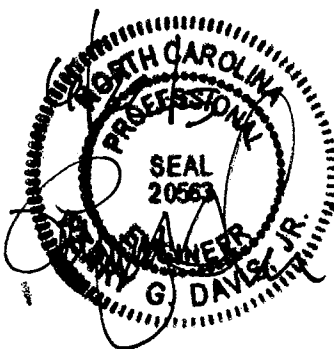
ACCEPTANCE OF PROPOSAL

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: _____

HOMESTEAD AT MILLS RIVER					
DATE 6/15/2005 Phase II					
MOORE & SON EXCAVATING					
				QUANTITY	UNIT
TOTAL DISTURBED				8	Acre
Clearing					Acre
EARTHWORK					
-strippings					CY
-onsite cut				22,491	CY
-onsite fill				47,242	CY
-net borrow				24,751	CY
FINE GRADE AREA					
Paving Area				14,100	SY
Curb Area				15,000	LF
EROSION CONTROL					
Mud Mat					EA
Silt Fence					LF
Diversion Ditch					LF
Temp Inlet Protection					EA
Check Dam					EA
Rip Rap Apron				10	EA
Temp Sediment Pond 'K'				1	EA
Temp Sediment Pond 'L'				1	EA
Temp Sediment Pond 'O'				1	EA
Temp Sediment Pond 'P'				1	EA
Level Spreader				7	EA
Temp/Perm Seeding				4.5	Acre
STORM DRAINAGE					
18" CMP				3,604	LF
24" CMP				433	LF
30" CMP				887	LF
18" FES				3	EA
24" FES				1	EA
30" FES				2	EA
24" Driveway Culvert				30	LF
Arch Culvert (size?)				80	LF
Curb Inlet				34	EA
Junction Box (Drop Inlet)				14	EA
CONSTRUCTION ITEMS					
Paving (8/2)				14,100	SY
24" Curb & Gutter				15,000	LF
Retaining Walls				2100	SF





CAPE FEAR

Engineering, Inc.

Sent to
shep 6/24/05
(Signature)
6/24/05

June 22, 2005

Scott McElrath
PO Box 2499
Hendersonville, NC 29793

RE: Homestead at Mills River – Phase 2

Dear Scott:

We have reviewed the attached cost estimates for the roads at the above referenced project by Moore and Son Site Contractors dated June 15, 2005. We feel that the estimate of \$1,332,485.00 for the Phase 2 roadways is adequate and reasonable for this project.

If you have any questions or comments, please contact our office.

Sincerely,

(Signature)
Perry Davis, PE, PLS

