

## **REQUEST FOR BOARD ACTION**

### **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**MEETING DATE:** April 3, 2006

**SUBJECT:** Improvement Guarantee for The Orchards at Flat Rock

**ATTACHMENTS:**

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

#### **SUMMARY OF REQUEST:**

The Orchards, LLC, owner, submitted a request for an improvement guarantee for Phase I of The Orchards at Flat Rock major subdivision. The Orchards at Flat Rock is located on 37 acres of land off South Orchard Road. Phase I will have a total of 124 attached townhouse units. The Henderson County Planning Board granted conditional approval of the Combined Master Plan and Phase I Development Plan on September 20, 2005. The improvement guarantee is proposed to cover grading, the water and sewer distribution systems including of a small portion of offsite installation, construction of the roads which includes paving and installation of the curb, a storm sewer system and erosion control for Phase I.

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 and for 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 improvement guarantee approval date. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$1,175,953.00 to cover the cost of the improvements (\$940,762.00) as well as the required twenty-five percent (25%) contingency (\$235,190.50). April 3, 2008 is the proposed completion date of the improvements.

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

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

I recommend that the Board approve the improvement guarantee application for The Orchards at Flat Rock, subject to the developer submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

Henderson County  
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision The ORchards of FLAT ROCK

Name of Owner The ORchards, LLC

Address PO Box 2884, Asheville, NC 28802

Phone: 828-274-1004

Agent \_\_\_\_\_ Phone: \_\_\_\_\_

Date of Preliminary Plan Approval by Planning Board \_\_\_\_\_

Significant Conditions Imposed: NONE

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 BB+T

Amount of guarantee (including 25% overhead) \$ 1,175,953.00

Projected completion date 4-3-2008

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

3-17-06  
Date

[Signature]  
Submitted By

3-21-06  
Date

MC  
Received By

3/21/06  
Date

Fee \$250.00 MC

3/21/06

**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between The Orchards, LLC, hereinafter referred to as "Developer," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

**WITNESSETH:**

**WHEREAS**, the Developer is attempting to secure approval of one or more Final Plats for Phase I of a proposed subdivision known as The Orchards at Flat Rock, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

**WHEREAS**, the Henderson County Planning Board conditionally approved the Combined Master Plan and Phase I Development Plan for The Orchards at Flat Rock, under Chapter 170 of the Henderson County Code, which is entitled Subdivision of Land, and

**WHEREAS**, Chapter 170 requires the completion of certain improvements prior to Final Plat approval, however Sections 170-38 and 170-39 allow the Board of Commissioners to permit the Developer to post an irrevocable letter of credit with Henderson County to guarantee the completion of said required improvements; and

**WHEREAS**, the Developer has requested that the Board of Commissioners approve the posting of an irrevocable letter of credit to guarantee and secure the completion of said improvements in lieu of completion of all improvements prior to said approval;

**IT IS THEREFORE AGREED** as follows:

1. The Developer will, on or before April 3, 2008, complete as required the following improvements to serve lots in Phase I of The Orchards at Flat Rock: grading, the water and sewer distribution systems including of a small portion of offsite installation, construction of the roads which includes paving and installation of the curb, a storm sewer system and erosion control measures as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Phase I Development Plan for The Orchards at Flat Rock, conditionally approved by the Henderson County Planning Board on September 20, 2005, and as shown on the attached cost estimates prepared by Brooks & Medlock Engineering, PLLC, (signed and sealed on March 20, 2006) which are in part based on estimates and contracts between Fallon Utility Contractors, Inc., C & T Paving, Inc., and the Developer.
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 \$1,175,953.00 (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 of credit in the proper form is posted, then the Board will allow the Final Plat(s) for Phase I of The Orchards at Flat Rock, to be approved by the Subdivision Administrator, provided that any other requirements of Chapter 170 of the Henderson County Code and/or conditions imposed by the Planning Board have been satisfied.
5. The County Manager shall have the authority to approve the release of portions of the Improvement Guarantee as work progresses, provided the amount remaining under the Improvement Guarantee meets or exceeds 125% of the cost of the remaining improvements. The County Manager has the discretion to require the Developer to provide, at the Developer's expense, an independent verification of the remaining work.

**IN WITNESS WHEREOF**, the Board has, by appropriate action, caused this Agreement to be reviewed for approval by the County Attorney and executed by its Chairman or other authorized member and attested by the Clerk, and the Developer has caused this Agreement to be properly executed, this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**APPROVED AS TO FORM:**

\_\_\_\_\_  
County Attorney

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

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

**ATTESTED BY:**

[OFFICIAL SEAL]

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

**DEVELOPER:**  
**The Orchards, LLC**

**BY:** \_\_\_\_\_  
**Managing Member**

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

I, \_\_\_\_\_, Notary Public for said County and State, certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners of Henderson County, a municipal corporation and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by the Chairman of the Board of Commissioners, sealed with its corporate seal, and attested by her as its Clerk.

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

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

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

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

I, \_\_\_\_\_, Notary Public for said State and County certify that \_\_\_\_\_, Manager of The Orchards, 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]**

  
**BROOKS & MEDLOCK**  
 ENGINEERING, PLLC

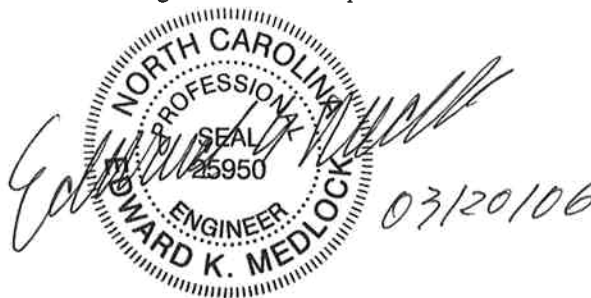
PROJECT: The Orchards at Flat Rock

DATE: 03-20-2006

Task	Contract Amount	% Complete	Costs Remaining
<b>GRADING</b>	271,800	19.00%	220,158
<b>STORM SEWER</b>	192,168	0.00%	192,168
<b>OFFSITE WATER</b>	146,818	98.00%	2,936
<b>ONSITE WATER</b> Includes water service stubs.	111,180	0.00%	111,180
<b>OFFSITE SEWER</b> Includes gravity sewer	158,604	98.00%	3,172
<b>ONSITE SEWER</b> Includes onsite force main, gravity sewer & onsite pump station	236,362	0.00%	236,362
<b>STREETS/CURBS</b>	174,786	0.00%	174,786
<b>TOTAL</b>			<b>940,762</b>
			<b>X 125%</b>
<b>TOTAL (125%) Bond Amount</b>			<b>1,175,953</b>

Note:

Cost shown are based upon actual contracts initiated with legitimate and qualified contractors performing the work. Percent complete is based upon physical inspection, measurement of materials installed and stored on site for installation. Costs are based upon the work performed and under contract at the time of this report and do not forecast any additional services or work that MAY be encountered during the construction process.





P.O. Box 1439  
Leicester, NC 28748  
Office: (828) 683-6864  
Fax: (828) 683-6835

### PROPOSAL and CONTRACT

LIFESTYLE HOMES OF DISTINCTION  
121 LONDON ROAD  
ASHEVILLE, N.C. 28803

DATE .....03-17-06....

C & T Paving Inc., hereinafter called the Company, offers to furnish all labor, materials and equipment required for the performance of the following work in connection with construction or improvements at

.....THE ORCHARD'S AT FLAT ROCK.....  
which property is owned by .....

Description of Work and Price:

- 1). PLACE AND CONDITION 6" ABC STONE; INSTALL 2" H-BINDER ASPHALT;  
INSTALL 1" 9.5B HOT MIX ASPHALT APPROX. 9712SY.

LUMP SUM \$ 153,449.60

- 2). 6' X 8" EXTRUDED MACHINE CURB: 3360LF.

LUMP SUM \$ 21,336.00

Unless a lump price is to be paid for the foregoing work and is clearly so stated it is understood and agreed that the quantities referred to above are estimates only and that payment shall be made at the stated unit prices on the actual quantities of work performed by the Company as determined upon completion of the work.

If the foregoing meets with your acceptance, kindly sign and return the attached copy of our proposal. Upon its receipt, it is understood the foregoing, including the terms and conditions set forth on the reverse side hereof, will constitute the full and complete agreement between us.

This proposal expires thirty (30) days from the date hereof, but may be accepted at any later date at the sole option of the Company.

Very truly yours,

ACCEPTED:

.....  
FIRM NAME

BY .....  
NAME & TITLE

BY .....  
INDIVIDUAL NAME AND TITLE

DATE .....

**C & T Paving & Inc.**  
*[Signature]*

Form on the reverse side of this proposal is to be used to accept or reject the proposal on behalf of the property owner.  
This document is based upon verbal information and is subject to verification.  
In the event of any dispute, the fact of installation shall be the sole basis for the right to payment of any amount due.

Fallon Utility Contractors, Inc.

P.O. Box 19058  
 Asheville, NC 28815  
 Ph/Fax:(828)299-7567/Cell:(828)712-7401  
 LIC# SC-G13359/NC-48423

# Estimate

Date	Estimate #
12/22/2005	

Name / Address
Bruce Alexander Lifestyle Homes of Distinction, Inc. PO Box 2884 Asheville, NC 28802

Project
Orchard @ Flat Roc...

Description	Qty	Total
GRADING		
Mobilization	1	10,000.00
Clearing, grubbing and strip top soil:Phase I aprox 20 acres/Phase II aprox 7 acres	27	103,000.00
Stone - Short Road Phase II Entrance	1	6,400.00
Haul (4) Loads of trash to Landfill	4	2,000.00
Rough Grading ***	1	183,800.00
Fine Grading (pad area within 2/10) ***	1	41,000.00
Construction Berm	1	4,000.00
Erosion Control: Silt Fence and (2) Mud Mats, ditches, structure maintenance	1	47,000.00
Provide Dirt backfill for walls per plans	1	10,000.00
15 Acres Seeding	15	22,125.00
No testing, top soil stays in designated areas, no unsuitable soil, no retaining wall work and no rock		
PRICE PER PLANS DATED 11/14/05		
*** Note: Cut and fill material is limited to Phase I and Phase II areas of the project and does not include any import dirt from any off site source.		
Bid sheets for grading are considered to be contract documents.		
Price does not include any fees, permits, layout, or staking,		<b>Total</b> \$429,325.00



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12/22/2005	

Name / Address
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Project
Orchards of Flat Rock

Description	Qty	Total
<b>OFFSITE WATER</b>		
(5) 8" MJ Gate valves	5	4,000.00
8" x 8" Tap Sleeve and Valve	1	3,500.00
4269 Ft - 8" DIP CL350 Waterline	4,269	93,918.00
(9) Fire Hydrants complete w/ 8x8x6 Tee and Valve	9	21,600.00
38 Foot - Bore and 16" Jack	1	5,700.00
(12) 8" MJ Els	12	2,400.00
(1) Creek Crossing - 50 Ft 8" DIP Water line and (4) 8" MJ Els & Bore	50	12,500.00
End of Line Blow Off and Deadman	1	700.00
Repair (12) Gravel Drives and (2) Concrete Drives	1	2,500.00
<b>ONSITE WATER</b>		
2860 Ft - 6" C900 Waterline	2,860	51,480.00
30 Foot - Bore and 12" Casing	1	4,500.00
8x8x6 Tee and valve	1	800.00
(2) 6" MJ Tees	2	400.00
(6) 6" MJ Valves	6	3,000.00
(4) Fire Hydrants complete w/ 6x6x6 Tee and Valve	4	10,000.00
(1) 1.5 Meter Service (no meter)	1	300.00
(120) 3/4" (Hendersonville type) Water Services (meter by Hendersonville)	120	38,400.00
End of line 6" Cap and Blow Off	1	700.00
(1) Deadman	1	400.00
1.5 RPZ in Hot Box	1	1,200.00
<b>OFFSITE SEWER</b>		
4090 Ft - 6" C900 Force Main Sewer	4,090	89,980.00
(1) Creek Crossing - 50 Ft DIP Sewer w/ (4) MJ Els & Bore	50	12,500.00
(4) Pavcd Driveways Repaired	4	1,200.00
(7) Gravel Driveways Repaired	7	1,400.00
(1) 2" Air Relief in Manhole	1	1,500.00
<b>OFFSITE GRAVITY SEWER</b>		
1192 Ft - 8" PVC SDR35 Sewer	1,192	26,224.00
80 Ft - 16" Bore and Casing	80	16,000.00
Price does not include any fees, permits, layout, or staking,		
<b>Total</b>		

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# Estimate

Date	Estimate #
12/22/2005	

Name / Address
Bruce Alexander Lifestyle Homes of Distinction, Inc. PO Box 2884 Asheville, NC 28802

Project
Orchards of Flat Rock

Description	Qty	Total
80 Ft - 8" DIP Sewer	80	2,800.00
Tie to existing Manhole	1	600.00
(4) Manholes # 18, 17, 16, and 15A (4.0 - 5.6)	4	6,400.00
<b>ONSITE SEWER</b>		
2467 Ft - 8" SDR35 Sewer	2,467	54,274.00
Manholes #1 - 15 (5.0 - 8.29)	15	23,250.00
1100 Ft - 6" SDR35 Sewer and (34) 6" Sewer laterals	1,100	20,400.00
(1) 4" Sewer Tap	1	600.00
<b>ONSITE FORCE MAIN</b>		
1114 Ft - 6" SDR21 Force Main Sewer	1,114	20,538.00
(4) 6" MJ Els	4	800.00
Pump Station per revised plans to include: Controls, wet well, hoist, 35K generator w/ auto disconnect, etc.(excluding fence)	1	116,500.00
PRICE PER REVISED PLANS DATED 11/14/05		
Bid Sheets for offsite and onsite water and sewer utilities are considered to be contract documents.		
Price does not include any fees, permits, layout, or staking,	<b>Total</b>	\$652,964.00

Fallon Utility Contractors, Inc.

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# Estimate

Date	Estimate #
12/22/2005	

Name / Address
Bruce Alexander Lifestyle Homes of Distinction, Inc. PO Box 2884 Asheville, NC 28802

Project
Orchard @ Flat Roc...

Description	Qty	Total
STORM SEWER		
1450 Ft - 15" RCP	1,450	30,450.00
480 Ft - 18" RCP	480	12,000.00
566 Ft - 24" RCP	566	18,678.00
220 Ft - 30" RCP	220	9,900.00
616 Ft - 36" RCP	616	40,040.00
(38) Boxes, Grates and Outlets	38	64,600.00
825 Ft - 10" french Drain	825	16,500.00
No testing, seeding, unsuitable soil, or retaining wall work		
PRICE PER PLANS DATED 11/14/05		
Bid sheets for storm sewer are considered to be contract documents.		
<p>Price does not include any fees, permits, layout, or staking.</p>		
<b>Total</b>		\$192,168.00