

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 20, 2006

SUBJECT: Improvement Guarantee for Phase III 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 III of The Homestead at Mills River. Phase III was conditionally approved by the Planning Board on May 16, 2006. The improvement guarantee is proposed to cover the cost of completing earthwork, erosion control, storm drainage, paving and installation of the curb and gutter for Phase III.

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 \$985,108.75 to cover the cost of the improvements (\$788,087.00) as well as the required twenty-five percent (25%) contingency (\$197,021.75). The proposed completion date for the improvements is June 1, 2007.

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 III 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 Homestead at Mills River Phase III
Name of Owner Homestead at Mills River LLC + River Oaks Joint Venture
Address 334 Mills River way Horse shoe, NC 28742
Phone: 828-606-4313
Agent Scott E. McElrath Phone: (828)-890-5135
Date of Preliminary Plan Approval by Planning Board May 16, 2006
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 Berkley Regional Insurance Company

Amount of guarantee (including 25% overhead) \$ 1,000,000.00

Projected completion date June 1, 2007

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

Have engineering and design work been completed?
 complete partially complete incomplete

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

[Signature]
Owner's Signature

8/29/06
Date

Submitted By Scott E. McElrath

Date _____

Received By MC
Fee paid: \$250.00

Date 8/29/06
8/29/06



STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this _____ day of _____, 200__, by and between The 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 III, located in Henderson County, North Carolina; and

WHEREAS, the Planning Board conditionally approved the Development Plan for The Homestead at Mills River, Phase III, 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 June 1, 2007, complete as required the following improvements in Phase III of The Homestead at Mills River subdivision: earthwork, erosion control, storm drainage, paving and installation of curb and gutter, as shown on the Phase III Development Plan conditionally approved by the Planning Board on May 16, 2006 and as shown on the attached cost estimate prepared by Mr. Perry Davis, P.E. (signed and sealed on August 8, 2006);
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 \$985,108.75, payable to Henderson County, and with an expiration date on the bond not earlier than July 31, 2007; and

3. When this Agreement is fully executed, the surety performance bond is posted, any outstanding conditions have been satisfied, and other requirements of the Subdivision Ordinance are met, then the Board will allow the Final Plat of The Homestead at Mills River, Phase III, to be approved by the Subdivision 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

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]



CAPE FEAR

Engineering, Inc.

August 8, 2006

Mr. Scott McElrath
Homestead @ Mills River

Re: Cost estimates for Homestead @ Mills River Phase 3

Dear Scott,

The following is a breakdown of the infrastructure at the above referenced project for Homestead @ Mills River Phase 3:

1. Earthwork
2. Erosion Control
3. Storm Drainage
4. Paving & Curbing

This is our opinion of the probable cost total of \$ 788,087 which is adequate to pay for the items above.

Please contact our office if you need any additional information.

Sincerely,



Perry Davis, PE, PLS

