

SUBDIVISION IMPROVEMENT SURETY AGREEMENT

THIS AGREEMENT is entered into this 7th day of August 2007, between City of Gainesville, a political subdivision of the State of Florida, by and through its board of commissioners (City), Edix Investments, Inc. (Developer), O'Steen Brothers, Inc. (Contractor) and Millennium Bank (Lender);

WHEREAS, the applicable ordinances of the City and Florida Statutes require that assurances be given before a subdivision is platted and that the proposed improvements will be completed within a reasonable time to the standards required by the City Engineer for acceptance and maintenance by the City after completion; and

WHEREAS, Contractor has agreed to a contract price of \$539,858.00, which funds are included in the loan made by the Lender to the Developer; and

WHEREAS, the City has reviewed the subdivision capital improvements construction contract or cost estimate and has established that the sum is sufficient for the construction of the improvements; and

WHEREAS, Lender has made a loan to Developer, which loan includes funds for the construction of subdivision improvements;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. TERM: This Agreement is effective on the date entered above and shall remain in effect until the improvements are constructed and released and accepted by the City or a substitute escrow agreement is signed by the City, the Developer and the Lender.

2. CAPITAL IMPROVEMENTS FUND: The Capital Improvements Fund shall consist of sufficient monies to pay for the cost of construction and the cost of those items specified in O'Steen Brothers' Proposal of Lincoln Park, located at 825 SE 11th Street, Gainesville, FL 32641. All parties agree that the sum of \$647,829.00.00 (120% of the proposal) is sufficient to complete this project, as identified in plans prepared by O'Steen Brothers and approved by the City's Public Works Department on May 15, 2007. The cost of construction must be indicated in an executed, itemized contract. In no event shall the funds provided for the construction be less than 120% of the sum of the contract for the construction. In any event, the amount of the fund is subject to the approval of the City Engineer. This fund is irrevocably set aside for construction of the required subdivision improvements and shall not be used for any other purpose until such improvements are in place and accepted by the City or, if required, a substitute surety agreement provided for in paragraph 7 is signed by the City, the Lender and the Developer.

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3. DEVELOPER RESPONSIBILITIES: The Developer is solely responsible for the construction of the subdivision improvements in accordance with the design documents prepared by a design engineer employed by the Developer. The Developer agrees to ensure that the improvements are completed within the time specified in paragraph 9. In addition, the Developer agrees to the following:

- a. Should the Contractor not construct the improvements provided for under this contract, the Developer agrees to retain another contractor within thirty (30) days of the original Contractor's default for the purpose of constructing the improvements. The Developer further agrees to obtain the consent of the Lender and the City as to the selection of the replacement contractor.
- b. Should the Developer not proceed to contract with another contractor within thirty (30) days of the default of the original Contractor, the Lender or the City shall be entitled to construct the improvements to meet the City's requirements. The Developer further agrees that the Lender or the City shall be entitled to use the remaining funds in the Capital Improvements Fund, identified in this agreement, for the purpose of the construction of the improvements. Further, the Developer agrees that all monies provided for the construction of the improvements will be secured by the lien of the mortgage provided by the Developer to the Lender.

4. CONTRACTOR'S RESPONSIBILITIES: The Contractor agrees to construct the subdivision improvements in a reasonably diligent manner to ensure completion of all the improvements within the time specified in paragraph 9.

5. CITY'S RESPONSIBILITIES: The City agrees to fulfill all its responsibilities as required by the provisions of the City Subdivision Ordinance.

6. LENDER'S RESPONSIBILITIES: The Lender agrees that the disbursement of funds during the course of construction from the Capital Improvements Fund shall be made only upon certification by both a private engineer acting for the Developer and approval of said certification by the City Engineer. The certification shall describe the value of work completed as of the date of the certification. Upon certification, the lender shall provide to the Developer for disbursement to the Contractor the sum so certified but will retain for each progress payment a ten percent (10%) retainage to be paid to the Developer only upon final acceptance of release of the subdivision improvements by the City.

7. SUBSTITUTE SURETY AGREEMENT: If upon completion of the project, at the preliminary inspection, it is determined that certain subdivision improvements are not functioning properly, even though the improvements were constructed in accordance with the construction plans and specifications and the design provided by the Developer's engineer, and that the corrective action must be taken prior to the City accepting the

improvements, the City, the Developer and the Lender shall, within forty-five (45) days, enter into a substitute surety agreement to provide for the corrections to the subdivision improvements. The substitute surety agreement shall provide a fund in the amount of at least one hundred twenty percent (120%) of the estimated cost of redesign, repair, rework and or replacement of the deficient improvements. Upon acceptance of the substitute surety agreement, the Contractor shall be paid for all constructed work to date and shall also be paid the ten percent retainage at the end of the original 90 day period required between preliminary inspection and final acceptance. The substitute surety agreement shall remain in effect until the date the City accepts the corrected improvements to the subdivision. The Developer acknowledges that this Subdivision Improvement Surety Agreement does not take the place of such maintenance bond as the City requires by the Code of Ordinances.

8. WARRANTIES: The Developer warrants the subdivision improvements against all defects in materials and construction workmanship and also against design defects. The Contractor warrants the construction of the improvements for a period of one full year from the date of preliminary inspection against all defects in material and construction workmanship.

9. TIME FOR COMPLETION OF IMPROVEMENTS: The Developer and the Contractor agree to proceed with the construction of these improvements in a reasonably diligent manner to assure completion within One Hundred and Eighty (180) days form recording the plat. If in the judgment of the City Engineer, the progress of construction is falling behind schedule, he may so advise the Developer who shall thereupon withhold further disbursements of progress payment until a resolution of the problem acceptable to the City Engineer may be obtained.

10. NOTICE: Except as otherwise provided in this Agreement, any notice, request or approval form either party to the other must be in writing and sent by certified mail, return receipt requested, or by personal delivery. Such notice will be deemed to have been received when either deposited in a United States Postal Service mailbox or personally delivered with a signed proof of delivery. For purposes of notice, City's, Developer's, Contractor's and Lender's representatives are:

City of Gainesville:
P.O. Box 490

Gainesville, FL 32601

Contractor:
O'Steen Brothers, Inc.
1006 SE 4th Street
Gainesville, FL 32601

Developer:
Edix Investments, Inc.
Attn: Edwin Dix
720 NW 23rd Avenue
Gainesville, FL 32609

Lender:
Millennium Bank
4340 Newberry Road
Gainesville, FL 32607

11. ASSIGNMENT OF INTEREST: Neither party will assign or transfer any

interest in this agreement without prior written consent of the other party.

12. SUCCESSORS AND ASSIGNS: The City and Contractor each bind the other and their respective successors and assigns in all respects to all of the terms, conditions, covenants and provisions of this agreement.

13. INDEPENDENT CONTRACTOR: In the performance of this agreement, the Lender, Developer and Contractor are acting in the capacity of independent contractors and not as agents, employees, partners, joint venturers or associated of the City.

14. THIRD PARTY BENEFICIARIES: This agreement does not create any relationship with, or any rights in favor of, any third party.

15. SEVERABILITY: If any provision of this agreement is declared void by a court of law, all other provisions will remain in full force and effect.

16. NON-WAIVER: The failure of any party to exercise any right in this agreement will not waive such right in the event of any further default or non-compliance.

17. GOVERNING LAW AND VENUE: This agreement is governed in accordance with the laws of the State of Florida. Venue is in Alachua County.

18. AMENDMENTS: The parties may amend this agreement only by mutual written agreement of the parties.

19. CONSTRUCTION: This agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the parties. It is recognized that both parties have substantially contributed to the preparation of this agreement.

20. ENTIRE AGREEMENT: This agreement constitutes the entire agreement and supercedes all prior written or oral agreements, understandings or representations.

This agreement executed at Gainesville, Florida this 7th day of August 2007.

Signed, sealed and delivered
in our presence as witnesses:




WITNESS

Printed Name Beth Godwin



WITNESS Brent Carter

Developer
Edix Investments, Inc.

By: 
Edwin Dix, president

[Signature]
Printed Name Laure Arnaldi

[Signature]
WITNESS
Printed Name Roxanne Thomason

Lender
Mercantile Bank
[Signature]
by: [Signature]

[Signature]
WITNESS
Printed Name James Evans

Contractor
O'Steen Brothers, Inc.
by: [Signature]
Dexter A. O'Steen, president VP

[Signature]
WITNESS
Printed Name Bryan Richards

WITNESS
Printed Name _____

[Signature]
WITNESS
Printed Name Rosemary Skell

City
City of Gainesville
by: [Signature]

[Signature]
WITNESS
Printed Name Christopher Cooper

APPROVED AS TO FORM AND LEGALIT
By: [Signature]
Marion J. Hudson, City Atty.
City of Gainesville, Florida
SEP 11 2007

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 7 day of August 2007, by Edwin Dix, as president and on behalf of **EDIX INVESTMENTS, INC.**, who is personally known to me or who produced _____ as identification.

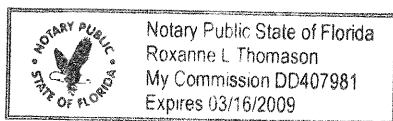
[Signature]
Notary Public

 BETH GODWIN
Commission DD 634551
Expires March 10, 2011
Bonded Thru Troy Fain Insurance 800-365-7019

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 7th day of August 2007, by Danny Gulliland, of **MILLENNIUM BANK**, a Florida banking corporation, who is personally known to me or who produced _____ as identification.

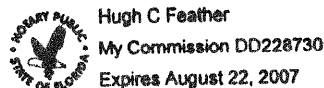


Roxanne L. Thomason
Notary Public

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 7th day of August 2007, by ~~William B. O'Steen~~ DEXTELIA, as president and on behalf of **O'STEEN BROTHERS, INC.**, who is personally known to me or ~~who~~ produced _____ as identification.



Hugh C. Feather
Notary Public

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this _____ day of August 2007, by _____, as _____ and on behalf of the **City of Gainesville**, who is personally known to me or who produced _____ as identification.

Notary Public