

RESOLUTION NO. 050613

PASSED September 10, 2007

A Resolution approving the final plat of "Lincoln Park Subdivision", being a replat of a portion of Goss's Addition to Gainesville, located in the vicinity of S.E. 11th Street and S.E. 9th Avenue; authorizing the City Manager or designee, to execute a Surety Agreement to secure the construction of improvements; providing directions to the Clerk of the Commission; and providing an immediate effective date.

WHEREAS, the owner of the plat has submitted a final plat which substantially conforms to the design plat as approved by the City Commission on November 28, 2005. On November 27, 2006, the City Commission granted a six-month extension until May 28, 2007 to the applicant for filing an application for final plat approval. The application was filed with the Department of Community Development on May 29, 2007, as May 28, 2007 was a holiday, and incorporates all modifications and revisions specified in such approval; and

WHEREAS, the owner of the proposed subdivision has requested the City Commission to accept and approve the final plat as provided in Chapter 177 of the Florida Statutes and Chapter 30 of the Code of Ordinances of the City of Gainesville, Florida; and

WHEREAS, the City Commission finds that the final plat described herein is consistent with the City of Gainesville 2000-2010 Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA;

Section 1. The final plat of "Lincoln Park Subdivision", being a replat of a portion of Block 1 and Block 2, Range 4 and a portion of Block 1 and Block 2, Range 5 of "Goss's Addition to

Gainesville”, is accepted and approved by the City Commission on the following described property lying in the City of Gainesville, Alachua County, Florida:

(See Exhibit "A" attached hereto and made a part hereof as if set forth in full)

Section 2. The City Manager, or designee, is authorized to execute a Surety Agreement with a lending institution that secures the construction and completion of the improvements required under the ordinances of the City of Gainesville, a copy of which agreement is attached hereto as Exhibit “B”.

Section 3. The Clerk of the Commission is authorized and directed to affix his signature to the record plat on behalf of the City Commission and accept the dedication of the road rights-of-way and public utility and drainage easements, as shown on the plat.

Section 4. This resolution shall be effective immediately upon adoption.

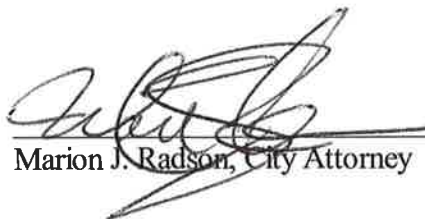
PASSED AND ADOPTED this 10th day of September, 2007.


Pegeen Hanrahan, Mayor

ATTEST:

APPROVED AS TO FORM AND LEGALITY:


Kurt Lannon,
Clerk of the Commission


Marion J. Radson, City Attorney

SEP 11 2007

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EXHIBIT A

PARCEL 1

A PARCEL OF LAND LYING IN SECTION 9, TOWNSHIP 10 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA, SAID PARCEL BEING A PORTION OF GOSS'S ADDITION TO GAINESVILLE AS PER PLAT THEREOF RECORDED IN PLAT BOOK "A", PAGE 34 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A RAILROAD SPIKE FOUND MARKING THE NORTHEAST CORNER OF SECTION 9, TOWNSHIP 10 SOUTH, RANGE 20 EAST; THENCE N 89°50'23" W ALONG THE NORTH LINE OF SAID SECTION 9 FOR 1450.67 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND, SAID POINT ALSO BEING THE NORTHWEST CORNER OF PARCEL "A" AS DESCRIBED IN OFFICIAL RECORDS BOOK 3154, PAGE 222 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA; THENCE S 00°14'55" W ALONG THE WEST LINE OF SAID PARCEL "A" FOR 84.10 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL "A"; THENCE S 89°50'23" E FOR 180.00 FEET TO THE INTERSECTION WITH THE EAST LINE OF THE WEST 3/4 OF BLOCK 1, RANGE 5, GOSS'S ADDITION TO GAINESVILLE AS PER PLAT RECORDED IN PLAT BOOK "A", PAGE 34 OF SAID PUBLIC RECORDS; THENCE S 00°14'55" W ALONG SAID EAST LINE AND THE PROLONGATION THEREOF FOR 391.51 FEET; THENCE N 89°44'25" W FOR 280.00 FEET; THENCE N 00°14'55" E FOR 54.87 FEET TO THE INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF SE 9TH AVENUE (40' RIGHT-OF-WAY); THENCE N 89°50'23" W ALONG SAID NORTH RIGHT-OF-WAY LINE FOR 170.25 FEET TO THE INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF STATE ROAD 331 (120' RIGHT-OF-WAY); THENCE N 00°00'09" W ALONG SAID EAST RIGHT-OF-WAY LINE FOR 410.26 FEET; THENCE S 89°50'23" E FOR 172.04 FEET; THENCE N 00°14'55" E FOR 10.00 FEET TO THE INTERSECTION WITH THE AFORESAID NORTH LINE OF SAID SECTION 9; THENCE S 89°50'23" E ALONG SAID NORTH LINE OF SECTION 9 FOR 120.00 FEET TO THE POINT OF BEGINNING. SAID PARCEL OF LAND SITUATE, LYING AND BEING IN ALACHUA COUNTY, FLORIDA, CONTAINING 4.358 ACRES MORE OR LESS.

TOGETHER WITH

PARCEL 2

A PARCEL OF LAND LYING IN SECTION 9, TOWNSHIP 10 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA, SAID PARCEL BEING A PORTION OF GOSS'S ADDITION TO GAINESVILLE AS PER PLAT THEREOF RECORDED IN PLAT BOOK "A", PAGE 34 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A RAILROAD SPIKE FOUND MARKING THE NORTHEAST CORNER OF SECTION 9, TOWNSHIP 10 SOUTH, RANGE 20 EAST; THENCE N 89°50'23" W ALONG THE NORTH LINE OF SAID SECTION 9 FOR 1450.67 FEET TO THE NORTHWEST CORNER OF PARCEL "A" AS DESCRIBED IN OFFICIAL RECORDS BOOK 3154, PAGE 222 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA; THENCE S 00°14'55" W ALONG THE WEST LINE OF SAID PARCEL "A" FOR 84.10 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL "A"; THENCE S 89°50'23" E FOR 160.00 FEET TO THE INTERSECTION WITH THE EAST LINE OF THE WEST 3/4 OF BLOCK 1, RANGE 5, GOSS'S ADDITION TO GAINESVILLE AS PER PLAT RECORDED IN PLAT BOOK "A", PAGE 34 OF SAID PUBLIC RECORDS; THENCE S 00°14'55" W ALONG SAID EAST LINE AND THE PROLONGATION THEREOF FOR 391.51 FEET; THENCE N 89°44'25" W FOR 280.00 FEET; THENCE N 00°14'55" E FOR 14.87 FEET TO THE INTERSECTION WITH THE SOUTH RIGHT-OF-WAY LINE OF SE 9TH AVENUE (40' RIGHT-OF-WAY); THENCE N 89°50'23" W ALONG SAID SOUTH RIGHT-OF-WAY LINE FOR 20.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE S 00°14'55" W FOR 200.00 FEET TO THE INTERSECTION WITH THE PROLONGATION OF THE SOUTH LINE OF LOT 1, BLOCK 2, RANGE 4, GOSS'S ADDITION TO

EXHIBIT "A"

GAINESVILLE AS PER PLAT THEREOF RECORDED IN PLAT BOOK "A", PAGE 34 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA; THENCE N 89°50'23" W ALONG SAID PROLONGATION AND SAID SOUTH LINE OF LOT 1 FOR 139.19 FEET TO THE INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF STATE ROAD 331 (120' RIGHT-OF-WAY); THENCE N 00°00'09" W ALONG SAID EAST RIGHT-OF-WAY LINE FOR 200.00 FEET TO THE INTERSECTION WITH THE NORTH LINE OF SAID LOT 1; THENCE S 89°50'23" E ALONG SAID NORTH LINE OF LOT 1 AND THE PROLONGATION THEREOF FOR 140.07 FEET TO THE POINT OF BEGINNING. SAID PARCEL OF LAND SITUATE, LYING AND BEING IN ALACHUA COUNTY, FLORIDA, CONTAINING 0.642 ACRES MORE OR LESS.

#050613

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.

RECEIVED
AUG 8 2007
MILLENNIAL BANK

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 from 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 from 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 Contactor 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 Luude Arnaldi

[Signature]
WITNESS
Printed Name Roxanne Thomason

Lender OC
~~Mercantile Bank~~
MILLENNIUM
by: [Signature]

[Signature]
WITNESS
Printed Name James Evans

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

WITNESS [Signature]
Printed Name Bryan Richards

WITNESS
Printed Name _____

City
City of Gainesville
by: _____

WITNESS
Printed Name _____

WITNESS
Printed Name _____

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.

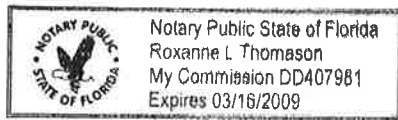
[Signature]
Notary Public

 BETH GODWIN
Commission DD 634551
Expires March 10, 2011
Bonded thru Troy Fain Insurance 800-385-7010

ACKNOWLEDGMENT

STATE OF FLORIDA
COUNTY OF ALACHUA

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

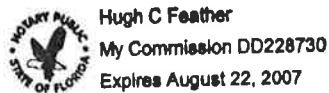


Roxanne L. Thomason
Notary Public

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, 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