

RESOLUTION NO. 031309

PASSED September 26, 2005

A Resolution approving the final plat of "Forest Creek Cluster Subdivision", a Re-plat of Lots 6 and 7 of Forest Creek Farms, located in the vicinity of the 3300 and 3400 Blocks of Northwest 17th Street; authorizing the City Manager or designee, to execute a four-party 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 May 24, 2004, and which incorporates all modifications and revisions specified in such approval; and

WHEREAS, an extension of time for six months from the expiration date was approved by the City Commission on March 14, 2005; 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 "Forest Creek Cluster Subdivision", a Re-plat of Lots 6 and 7 of Forest Park Farms, 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 four-party 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 public rights-of-way, easements, and other dedicated portions as shown on the plat.

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

PASSED AND ADOPTED this 26th day of September, 2005.



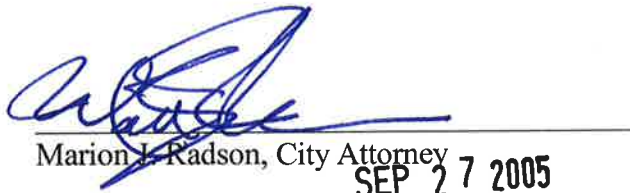
Charles S. Chestnut, IV,
Mayor-Commissioner Pro-Tempore

ATTEST:

APPROVED AS TO FORM AND LEGALITY:



Kurt Lannon,
Clerk of the Commission



Marion J. Radson, City Attorney
SEP 27 2005

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EXHIBIT "A"

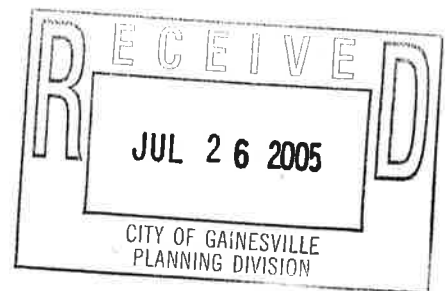
Legal Description:

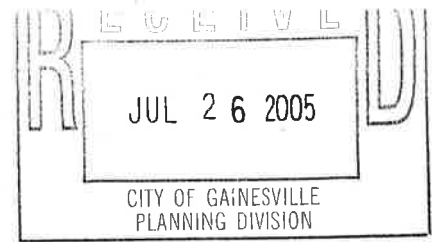
(Forest Creek Cluster Subdivision)

A portion of Forest Park Farms, a subdivision as per plat thereof recorded in Plat Book "C", page 46 of the public records of Alachua County, Florida, lying in the Northeast 1/4 of Section 30, Township 9 South, Range 20 East, City of Gainesville, Alachua County, Florida, being more particularly described as follows:

Begin at a 4" x 4" concrete monument (no i.d.) found at the Southwest corner of Lot 8 of "Pine Creek", a subdivision as per plat thereof recorded in Plat Book "E", page 66 of the public records of Alachua County, Florida, and run thence South 88°58'07" West, along a Westerly extension of the South boundary of said "Pine Creek", a distance of 0.85 feet to a point on the Easterly right of way line of N.W. 17th Street (40 foot right of way); thence South 03°39'13" West, along said Easterly right of way line, 530.08 feet to the beginning of the line of that certain Boundary Agreement described and recorded in Official Records Book 2718, page 1182 of said public records; thence South 89°28'07" East, along said line, 810.74 feet to a found 3/4" iron pipe (no i.d.) thence continue South 89°28'07" East, along said line, 77 feet, more or less, to the centerline of Hogtown Creek, and the end of said line; thence in a generally northerly direction, along the centerline of Hogtown Creek, a distance of 872 feet, more or less, to a point on the South boundary of said "Pine Creek" which bears North 88°58'07" East from the Point of Beginning, thence South 88°58'07" West, along said South boundary, 24 feet, more or less, to a found 1/2" iron pipe (no i.d.); thence continue South 88°58'07" West, along said South boundary, 930.00 feet to the Point of Beginning.

Containing 11.26 acres, more or less.





AGREEMENT

This agreement is entered into this ___ day of _____, 2002 between City of Gainesville, by and through its Board of City Commissioners, hereinafter referred to as "City", O'Steen Bros., Inc., hereinafter referred to as "Contractor," Schackow Realty & Development, LLC, a Florida limited liability company, hereinafter referred to as "Developer" and M & S Bank, hereinafter referred to as "Lender".

WHEREAS, the applicable ordinances of the City of Gainesville 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, O'Steen Bros, Inc. hereinafter called the Contractor has agreed to a contract price of \$287,930.00 to install the streets, necessary drainage and other improvements required under applicable law in the Forest Creek Cluster Subdivision. These 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, the contract or estimate with the surveyor, and has established the sum that is sufficient for the construction of the improvements and the installation of the required survey control point; and

WHEREAS, M & S Bank hereinafter called the Lender has approved a loan to Schackow Realty & Development, LLC, a Florida limited liability company, hereinafter called the Developer, which includes funds for the construction of subdivision improvements in a subdivision to be known as Forest Creek Cluster Subdivision in Gainesville, Florida; and,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto do mutually 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 surety 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 120% of the cost of construction. All parties agree that the sum of \$345,516.00 is sufficient to meet this criteria and to complete this project, as identified in plans prepared and submitted by Eng, Denman & Associates, Inc. and approved by the City Public Works

Department. The cost of construction must be indicated in an executed, itemized contract verified by a private engineer acting for the Developer as identified in paragraph 6 below or in a professional engineer's signed and sealed estimate. In no event shall the funds provided for the construction be less than 120% of the sum of the contracts for construction and surveying. 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 may 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 below is signed by the City and the Developer.

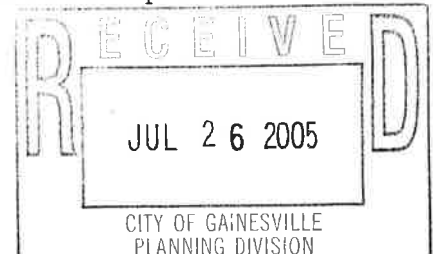
3. **Developer's Responsibilities.** The Developer is solely responsible for the construction of the subdivision improvements in accordance with the design documents prepared by a professional engineer employed by the Developer. The developer agrees to ensure that the improvements are completed within 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 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 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.

c. The Developer shall retain the services of a Florida Professional Surveyor and Mapper to monument all lot corners and to establish permanent control points in the centerline of all streets once the improvements have been completed as required by Chapter 177 of the Florida Statutes. The Developer shall require the Surveyor retained to provide this service to provide the City a certification that the Surveyor has placed the above-described corners and the last date of placement.

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.



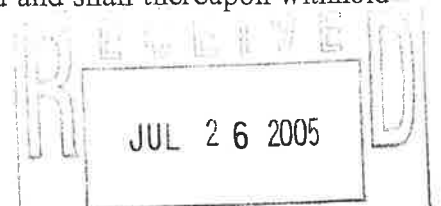
5. **City's Responsibilities.** The City agrees to fulfill all its responsibilities as required by the provisions of the City of Gainesville Subdivision Ordinance.

6. **Lender's Responsibilities.** Upon Plat approval by the City, the Lender agrees that the disbursement of funds from its loan of not less than \$345,516.00 should only be made only upon certification by both a private Professional 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 based upon a schedule of values provided by the Contractor. 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 10% retainage to be paid to the Developer only upon final acceptance or 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 corrective action must be taken prior to the City accepting the improvements; the Developer shall, within 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 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 10% retainage at the end of the original 90 day period required between preliminary inspection and final acceptance. The substitute surety agreement shall remain in affect until the date the City accepts the corrected improvements to the subdivision.

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 materials 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 120 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 then be bound to take corrective measures. The Lender shall likewise be advised and 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 party 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, Contractor's and City representative are:

City: City of Gainesville
Attn: _____

Developer: Schackow Realty & Development, LLC
Richard Schackow

Contractor: O'Steen Bros, Inc.
Dexter O'Steen

Lender: M & S Bank
Attn: James Stewart

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 associates of the City.

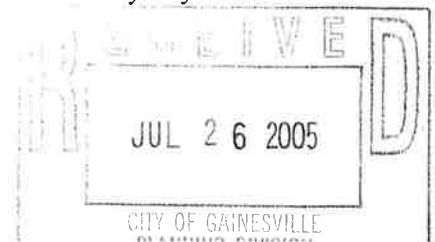
14. **Third Party Beneficiaries**. This agreement does not create any relationship with, or any rights in favor of, any third party.

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 City.

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 _____ day of _____, 2005

Witnesses:

M & S BANK

By: _____

As to Lender

O'STEEN BROS, INC.

By: _____

As to Contractor

SCHACKOW REALTY &
DEVELOPMENT, LLC

By: _____

Richard Schackow

As to Developer

CITY OF GAINESVILLE

By: _____

City Engineer

As to Engineer

