

**RESOLUTION NO. 020438**

**PASSED September 23, 2002**

**A Resolution approving the final plat of "Madera Cluster Development, Phase I", located in the vicinity of Williston Road (north side), a/k/a S.R. 331, between SW 21<sup>st</sup> Street and SW 23<sup>rd</sup> Terrace; authorizing the Mayor and Clerk of the Commission to execute a Tri-Party Agreement to secure the construction of improvements; and providing an immediate effective date.**

**WHEREAS**, the Development Review Board approved the design plat of "Madera Cluster Development, Phase I" on September 13, 2001; and

**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 October 22, 2001, and which 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 1991-2001 Comprehensive Plan and the City of Gainesville 2000-2010 Comprehensive Plan as adopted by Resolution No. 002684.

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

**Section 1.** The final plat of "Madera Cluster Development, Phase I" is accepted and approved by the City Commission on the following described property lying in the City of Gainesville, Alachua County, Florida:

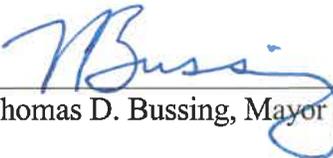
(See Exhibit "A" attached hereto and made a part hereof as if set forth in full)

**Section 2.** The Mayor and Clerk of the Commission are authorized to execute a Tri-Party Agreement with a lending institution that secures the construction and completion of the improvements required under the ordinances of the City of 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 23rd day of September, 2002.

  
\_\_\_\_\_  
Thomas D. Bussing, Mayor

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
Kurt Lannon,  
Clerk of the Commission

  
\_\_\_\_\_  
Marion J. Radson, City Attorney

SEP 24 2002

# EXHIBIT A

LEGAL DESCRIPTION FOR: *MADERA CLUSTER SUBDIVISION PHASE 1*

LEGAL DESCRIPTION:

A PARCEL OF LAND LYING IN LOT 6 OF THE NAPIER GRANT, TOWNSHIP 10 SOUTH, RANGE 20 EAST, ALACHUA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE WEST LINE OF SAID LOT 6 AND THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD NUMBER 331 (A.K.A. WILLISTON ROAD - A 100' RIGHT-OF-WAY);

THENCE NORTH 04 DEGREES 30 MINUTES 00 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 6, 1253.34 FEET;

THENCE DEPARTING SAID WEST LINE SOUTH 88 DEGREES 10 MINUTES 49 SECONDS EAST, 143.66 FEET;

THENCE SOUTH 01 DEGREES 49 MINUTES 11 SECONDS WEST, 40.00 FEET;

THENCE NORTH 82 DEGREES 42 MINUTES 18 SECONDS EAST, 60.77 FEET;

THENCE SOUTH 88 DEGREES 10 MINUTES 49 SECONDS EAST, 190.58 FEET;

THENCE SOUTH 36 DEGREES 59 MINUTES 41 SECONDS EAST, 23.63 FEET;

THENCE SOUTH 38 DEGREES 38 MINUTES 49 SECONDS EAST, 150.58 FEET TO THE INTERSECTION WITH A NON-TANGENT CURVE TO THE RIGHT, CONCAVE

SOUTHEASTERLY, AND HAVING A RADIUS OF 280.00 FEET;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04 DEGREES 39 MINUTES 00 SECONDS, 22.72 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 61 DEGREES 00 MINUTES 37 SECONDS EAST, 22.72 FEET TO THE END OF SAID CURVE;

THENCE SOUTH 33 DEGREES 50 MINUTES 44 SECONDS EAST, 133.95 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, CONCAVE SOUTHWESTERLY, AND HAVING A RADIUS OF 50.00 FEET;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 13 DEGREES 03 MINUTES 52 SECONDS, 11.40 FEET TO THE POINT OF TANGENCY, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE SOUTH 27 DEGREES 18 MINUTES 48 SECONDS EAST, 11.38 FEET;

THENCE SOUTH 20 DEGREES 46 MINUTES 52 SECONDS EAST, 36.29 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, CONCAVE SOUTHWESTERLY, AND HAVING A RADIUS OF 80.00 FEET;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 16 DEGREES 16 MINUTES 52 SECONDS, 22.73 FEET TO THE POINT OF TANGENCY, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 12 DEGREES 38 MINUTES 26 SECONDS EAST, 22.66 FEET;

THENCE SOUTH 04 DEGREES 30 MINUTES 00 SECONDS EAST, 22.40 FEET TO THE NORTH LINE OF NAPIER ESTATE AS RECORDED IN PLAT BOOK "E" PAGE 16 OF THE PUBLIC RECORDS OF ALACHUA COUNTY, FLORIDA;

THENCE SOUTH 86 DEGREES 51 MINUTES 26 SECONDS WEST, 176.32 FEET ALONG SAID NORTH LINE TO THE NORTHWEST CORNER OF SAID NAPIER ESTATE;

THENCE SOUTH 04 DEGREES 53 MINUTES 02 SECONDS EAST, 834.90 FEET ALONG THE WEST LINE OF SAID NAPIER ESTATE TO THE POINT OF INTERSECTION WITH THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD 331 (100' RIGHT-OF-WAY), SAID POINT BEING ON A NON-TANGENT CURVE TO THE LEFT, CONCAVE SOUTHERLY, AND HAVING A RADIUS OF 5741.63 FEET;

THENCE WESTERLY ALONG SAID NORTH RIGHT-OF-WAY LINE AND ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04 DEGREES 11 MINUTES AND 03 SECONDS, 419.30 FEET TO THE POINT OF BEGINNING, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 84 DEGREES 32 MINUTES 33 SECONDS WEST, 419.21 FEET.

THE ABOVE DESCRIBED PARCEL CONTAINS 12.223 ACRES, MORE OR LESS.

**SUBDIVISION IMPROVEMENT SURETY AGREEMENT  
AS TO MADERA CLUSTER DEVELOPMENT**

This agreement is entered into this 23<sup>rd</sup> day of SEPTEMBER 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," Greentrust, LLC, a Florida limited liability company, as managing member of Greentrust-Madera, LC, a Florida limited liability company, hereinafter referred to as "Developer" and CNB National 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 previously to a total contract price of \$475,300.00 to install the streets, necessary drainage and other improvements in Madera Cluster Development and has previously been paid by the Developer a sum of \$421,665.45 so that the remaining balance on said contract is \$53,634.55 and 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**, CNB National Bank hereinafter called the Lender has made a loan to Greentrust, 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 Madera Cluster Development 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.

**EXHIBIT "B"**

2. **Capital Improvements Fund.** The Capital Improvements Fund shall consist of sufficient monies to pay for 120% of the balance of cost of construction. All parties agree that the sum of \$64,361.46 is sufficient to meet this criteria and to complete this project, as identified in plans prepared by Causseaux and Ellington 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 completion of construction be less than 120% of the sum necessary for the completion of 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 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.** 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 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  
Theresa Scott, P.E.

Developer: Greentrust, LLC.  
Wendy Bratzel

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

Lender: CNB National Bank  
Bob Cameron

A copy of any notice, request or approval to the City must also be sent to:

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 \_\_\_\_\_, 2002.

Witnesses:

Sheri Kipton  
Michelle Cook  
As to Lender

CNB NATIONAL BANK

By: Roger B. Taylor  
Roger B. Taylor  
Vice President-Commercial Banking

O'STEEN BROS, INC.

[Signature]  
[Signature]  
As to Contractor

By: [Signature] V.P.

*Core R. Hill*

*Margaret A. Hahn*  
As to Developer

\_\_\_\_\_

As to Engineer

GREENTRUST-MADERA, LC  
By: Greentrust, LLC, Managing  
Member

By: *Wendy Bratzel*  
Wendy Bratzel, Manager

CITY OF GAINESVILLE

By: \_\_\_\_\_

City Engineer

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Theresa Scott, P.E.

Developer: Greentrust, LLC.  
Wendy Bratzel

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

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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.

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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 23<sup>RD</sup> day of SEPTEMBER, 2002.

Witnesses:

Sheri Kipton  
Michelle Flock  
As to Lender

CNB NATIONAL BANK

By: Roger B. Taylor  
Vice President-Commercial Banking

O'STEEN BROS, INC.

[Signature]  
[Signature]  
As to Contractor

By: [Signature] U.P

GREENTRUST-MADERA, LC  
By: Greentrust, LLC, Managing  
Member

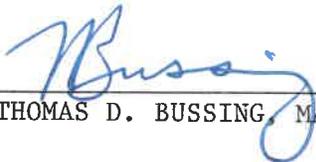
By:   
Errol Cowan, Manager

  
  
As to Developer

ATTEST:

  
KURT LANNON,  
CLERK OF THE COMMISSION

CITY OF GAINESVILLE

By:   
THOMAS D. BUSSING, MAYOR

APPROVED AS TO FORM AND LEGALITY  
BY:   
MARION J. RADSON, CITY ATTORNEY  
CITY OF GAINESVILLE, FLORIDA  
OCT - 2 2002

This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion or modification.

# STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR ON THE BASIS OF A STIPULATED PRICE

Prepared by  
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE  
and  
Issued and Published Jointly By



AMERICAN CONSULTING  
ENGINEERS COUNCIL



*National Society of  
Professional Engineers*  
*Professional Engineers in Private Practice*



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
*A practice division of the*  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General  Contractors of America

This Standard Form of Agreement has been prepared for use with the Standard General Conditions of the Construction Contract, (No. 1910-8) (1990 Edition). Their provisions are interrelated and a change in one may necessitate a change in the others. The suggested language for instructions to bidders contained in the Guide to the Preparation of Instructions to Bidders, (No. 1910-12) (1990 Edition) is also carefully interrelated with the language of this Agreement. Comments concerning their usage are contained in the Commentary on Agreements for Engineering Services and Contract Documents, (No. 1910-9) (1986 Edition). See also Guide to the Preparation of Supplementary Conditions, (No. 1910-17) (1990 Edition).

EJCDC No. 1910-8-A-1 (1990 Edition)  
Reprinted 8/95

EJCDC  
STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is dated as of the 4th 29th day of March APRIL in the  
year ~~19~~ 2002 by and between Greentrust, LLC. GREENTRUST-MADERA, LC  
O'Steen Brothers (hereinafter called OWNER) and  
(hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction of Phase I improvements including 1900 l.f. of road, potable water infrastructure, electrical infrastructure, sanitary collection facilities, lift station, and forcemains. ALSO INCLUDING MEDIAN WORK REQUIRED BY DOT ON WILLISTON ROAD.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Madera Cluster Development - Phase I

Article 2. ENGINEER.

The Project has been designed by Causseaux & Ellington, Inc.

who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents. EXCEPT AS NOTED IN SUPPLEMENTARY CONDITIONS,

SD MB

Article 3. CONTRACT TIMES.

WBS

3.1 The Work will be substantially completed on or before August 15, 192002, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions on or before September 1st, 192002.

3.1 The Work will be substantially completed within 120 days after the date when the Contract Times commence to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within 150 days after the date when the Contract Times commence to run.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER Three Five Hundred Dollars dollars (\$ 300.00 ) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER One Thousand dollars (\$ 1,000.00 ) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

WBS

[Where failure to reach a Milestone on time is of such consequence to OWNER that the assessment of liquidated damages is to be provided, appropriate amending or supplementing language should be inserted here.]

(Strike any of the above paragraphs that are inapplicable)

WBS

Article 4. CONTRACT PRICE.

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.1 and 4.2 below:

4.1 for all Work other than Unit Price Work, a Lump Sum of:

FOUR HUNDRED SEVENTY-FIVE THOUSAND (use words) THREE HUNDRED DOLLARS (\$ 475,300.00) figures

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.8 of the General Conditions;

plus

4.2 for all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 4.2:

UNIT PRICE WORK

NO.	ITEM	UNIT	ESTIMATED QUANTITY	UNIT PRICE	TOTAL ESTIMATED
N/A					

TOTAL OF ALL UNIT PRICES N/A (use words) \$ N/A (dollars)

As provided in paragraph 11.9 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by ENGINEER as provided in paragraph 9.10 of the General Conditions. Unit prices have been computed as provided in paragraph 11.9.2 of the General Conditions.

[In special circumstances, the Bid may be attached to avoid extensive retyping. See paragraph 13.10 below. Any exhibits attached should be listed in Article 8.]

[If adjustment prices for variations from stipulated Base Bid quantities have been agreed to, insert appropriate provisions. See Suggested Bid Form Paragraph 4 and Comment I.]

*Handwritten initials and signature:*  
 DBO  
 (Circular stamp with initials) AS

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1. Progress Payments; Retainage. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the ~~21~~ 21 LAST day of each month during construction as provided in paragraphs 5.1.1. and 5.1.2. below. All such payments will be measured by the schedule of values established in paragraph 2.9 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

100 % of Work completed (~~with the balance being retainage~~). If Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER, on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.

~~\_\_\_\_\_ % (with the balance being retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.2 of the General Conditions).~~

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 90 % of the Contract Price (with the balance being retainage), less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

5.2. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

*Handwritten initials and a circled signature.*

Article 6. INTEREST.

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."
- 7.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 7.3. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
- 7.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 7.5. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 7.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 7.7. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

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Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1. This Agreement (pages 1 to 8, inclusive).
- 8.2. Exhibits to this Agreement (pages 1 to 2, inclusive). Specifically O'Steen's Bid.
- 8.3. Performance, Payment, and other Bonds, identified as exhibits \_\_\_\_\_ and consisting of \_\_\_\_\_ pages. N/A
- 8.4. Notice to Proceed.
- 8.5. General Conditions (pages 1 to \_\_\_\_\_, inclusive).
- 8.6. Supplementary Conditions (pages 1 to 2, inclusive). ~~Specifically Tree Provisions.~~
- 8.7. Specifications bearing the title \_\_\_\_\_ and consisting of \_\_\_\_\_ divisions and \_\_\_\_\_ pages, as listed in table of contents thereof. N/A
- 8.8. Drawings consisting of a cover sheet and sheets numbered C0 00 through C5 40, inclusive with each sheet bearing the following general title: Madera Cluster Development - Phase I  
*[Fill in, und, if a set of Drawings is not attached to each signed counterpart of Agreement, so indicate in which case OWNER and CONTRACTOR should initial or otherwise appropriately identify each Drawing.]*
- 8.9. Addenda numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive. N/A  
*[Those Addenda which pertain exclusively to the bidding process need not be listed.]*
- 8.10. CONTRACTOR'S Bid (pages 1 to 2, inclusive) marked exhibit A.  
*[Attach actual Bid only in special circumstances.]*
- 8.11. Documentation submitted by CONTRACTOR prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive). N/A
- 8.12. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 13. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

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Article 9. MISCELLANEOUS.

9.1. Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.5 OTHER PROVISIONS.

*[Insert other provisions here if applicable.]*

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IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on March 4th APRIL 29, 19 2002 (which is the Effective Date of the Agreement).

OWNER GREENTRUST-MANERA, LLC  
Wendy Bratzel CONTRACTOR O'Steen Brothers

BY Greentrust, LLC, MANAGING PARTNER Dexter O'Steen

By: [Signature] By: [Signature] V.P.  
WENDY BRATZEL, PRINCIPAL MEMBER [CORPORATE SEAL]  
[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices \_\_\_\_\_

Address for giving notices \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement.

License No. \_\_\_\_\_

Agent for service of process: \_\_\_\_\_

\_\_\_\_\_

(If CONTRACTOR is a corporation, attach evidence of authority to sign).

## SUPPLEMENTARY CONDITIONS

The following Supplementary Conditions are hereby attached to and considered a part of the Standard Form of Agreement Between Owner and Contractor on the Basis of a Stipulated Price dated April 29, 2002.

### CONTACT PROCEDURE

All issues related to the construction shall be directed to the Owner. The Owner shall provide the construction foreman with contact information and shall respond to all issues. The Owner may delegate authority to handle certain issues to the Engineer, Urban Forester, or other appropriate representatives.

### LIMITS OF DISTURBANCE

1. The clearing shall occur in phases to minimize unnecessary tree removal. The first phase shall consist of clearing along roads to 4 feet beyond the limits of paving on each side with tree barricades around trees as shown in the plan. The Contractor shall ensure that the limits of disturbance in this first clearing operation does not exceed the stated widths.
2. The Owner and its representative(s) shall work cooperatively with the Contractor in the field to locate subsequent limits of disturbance to minimize tree removal in a cost effective and reasonable manner for the installation of lateral utilities, bicycle and walking paths, and other infrastructure.
3. The Contractor shall maintain the barricades in the agreed upon locations for the duration of the construction. Any field adjustment of barricade locations shall occur only after preapproval by the Urban Forester or other representative specifically designated by the Owner for tree protection authority.
4. No construction equipment or vehicle access; storage of equipment, materials, or spoils; clearing; or other construction activity shall be permitted outside the limits of disturbance unless specifically authorized by the Urban Forester or other representative specifically designated by the Owner for tree protection authority. Two-way equipment access shall be restricted as necessary to ensure that the limits of disturbance are not violated.
5. The cost of the construction shall be adjusted at a rate of \$2.00 per linear foot of tree protection fencing less the cost of any tree barricades included in the original bid that were not erected.

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6. Clearing shall include topping where necessary to avoid secondary damage from falling trees. The topping shall be performed by a qualified tree surgeon under contract to the Contractor with additional expenses allocated. Tree surgeon expenses are to be documented and are not to exceed \$2000 for the entire construction of Phase I.
7. Root pruning, equipment rental, and extra construction time shall be employed by the Contractor to protect the roots and branches of designated trees and shrubs as jointly determined in the field by the Contractor and the Owner or its representatives. Additional expenses not to exceed \$5,000 for Phase 1 shall be paid by the Owner to the Contractor for this purpose and shall be documented on an hourly basis by the Contractor.

#### NEW BONUS CLAUSE ADDED TO GENERAL CONDITIONS PAGE

If the work is Substantially Completed prior to July 15, 2002, the Contractor shall be given a bonus of \$300 per calendar day for each day in advance of July 15 to a maximum of \$10,000.

#### HAULING OF UNSUITABLES

The cost of hauling of unsuitable materials from the site and delivery of replacement material shall be performed by the Contractor at a rate to \$12 per cubic yard of material removed. The payment schedule for this shall be handled under separate agreement.

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1006 SE 4<sup>th</sup> Street Gainesville, FL 32601  
Phone (352) 376-1634 ♦ Fax (352) 373-7642

September 11, 2002

Mr. Rory Causseaux  
Causseaux & Ellington  
6011 NW 1<sup>st</sup> Place  
Gainesville, Florida 32607

RE: Madera

Please accept this letter as confirmation that the contract amount on Madera is a total sum of \$475,300.00. We, the contractor have been paid a total sum of \$421,665.45 from CNB Bank. The remaining balance on the contract is \$53,634.55  
Thankyou!

Sincerely,

Sarajo O'Steen  
Secretary-O'Steen Brothers, Inc

Subscribed and sworn to before me this 11<sup>th</sup> day of September 2002 by Sarajo O'Steen who is personally known by me or who has produced \_\_\_\_\_ as identification and who did take an oath.

My commission Expires:

3/7/2003

  
Notary Public

David Geiger  
(printed name)

