

AGREEMENT

THIS TRI-PARTY AGREEMENT (this "Agreement") is entered into this 13th day of May, 2002, by and among MERCHANTS & SOUTHERN BANK ("Lender"), HILLCREST DEVELOPMENT CORPORATION OF GAINESVILLE ("Developer") and WATSON CONSTRUCTION CO. INC. ("Contractor") for the purposes set forth herein and for the benefit of the City OF GAINESVILLE, FLORIDA (the "City").

RECITALS

A. Developer intends to develop a residential subdivision to be know as Hillcrest and to record a plat of the same on the real property described on attached Exhibit "A".(the "Subdivision").

B. Developer has contracted with the Contractor to install the streets, necessary drainage water, sewer and other improvements (the "Improvements") required under applicable law and ordinances of the City pursuant to a contract between Developer and Contractor a copy of which is attached hereto as Exhibit "B". (the "Contract").

C. As a condition of the acceptance of the plat of the Subdivision for recording, require that assurances be given before the Subdivision is platted that the Improvements will be completed within a reasonable time to the standards required by the City and will together with the other components of the Improvements be the responsibility of the Developer after completion for maintenance and repair until accepted by the City.

D. Lender has made a loan to the Developer for the purpose of paying the cost of the Improvements and has agree to join in this Agreement for the purpose of assuring the City funds will be available for completion of the Improvements in the event the Developer or the Contractor fail to complete the same.

E. The parties hereto now desire to reduce their understanding and agreement to writing.

NOW THEREFORE, in consideration of the mutual covenants and promises hereinafter made by the parties hereto, it is agreed as follows:

1. The parties hereto agree to the truth of the recitals set forth herein and to their incorporation herein by reference.

2. Lender from the loan proceeds made available to the Developer for construction of the Improvements hereby sets aside for this purpose, the sum of \$665,460.00 which is 120% of the amount set forth in the Contract and which will be used exclusively for construction of the Improvements and may not be used for any other purpose until such Improvements are in place and accepted by the City. Disbursement of the funds during the course of construction will be made on certification by Eng-Denman & Associates, Inc., P.E., a private engineer acting for the account of the Developer, as to the value of work then completed, and then, acceptance by the City of such certification, or, a separate certification by the City. The Lender shall then advance to the Developer for payment to the Contractor the sum agreed by the private engineer and the City, each progress payment to be charged a ten percent (10%) retainage, to be paid with the final payment on completion of the Improvements and so certified to by the City.

Should the Contractor default in performance under this Contract, the Developer agrees to proceed promptly to engage a new contractor within thirty (30) days to complete these Improvements. The selection of the new contractor will be subject to approval by the Lender and by the City which approval will not be unreasonably withheld. Should the Developer not proceed to relet the contract within such time period on a default by the present Contractor, the Lender and/or the City shall be entitled to



complete the Improvements so that the City will accept the Improvements, and use for the purpose of paying for such completion, the balance remaining of the loan funds attributable to the Contract and if such amounts are not sufficient, the Lender shall advance additional monies up to (10%) of the original fund for a maximum total of \$732,006.00 if so, and shall have the option to advance any additional monies that may be required, all of which advances have been secured by the Developer to the Lender.

This completion may be by the Lender and another contractor, or by the City, directly whichever shall be determined by the Lender and the City to be most appropriate for an early completion of the Improvements and final acceptance by the City.

The Developer and the Contractor agree to prosecute the construction of the Improvements in a reasonably diligent manner to assure completion within 150 days from recording of the plat. Should the Developer be required to engage a new contractor as a result of the default by the Contractor, the time for completion will be extended for a period not to exceed ninety (90) additional days. If in the judgment of the City, the progress of construction is falling behind schedule, the City will so advise the Developer who shall then be bound to take corrective measures. The Lender shall likewise be advised and may thereupon withhold further disbursements of progress payment until a resolution of the problem acceptable to the City may be obtained. The obligation of Lender hereunder shall cease on the earlier of one (1) year from the date of completion as set forth in the Contract or such date as all the Improvements have been completed and so certified to by the City.

Should the City have to take over and complete or have completed the Improvements required by City ordinances, then the obligation of the Lender to pay a sum equal to the cost of such Improvements to the City (in accordance with the terms and conditions of the agreement) or make such sum available that shall exist independent of and regardless of whether or not the Developer may be in default on its agreement with the Lender.

THIS AGREEMENT signed at Gainesville, Florida, this 15 day of May, 2002.

Signed and sealed in the presence of:

Clint D. Hatge

As to Lender

Guineya R. Matthews

As to Developer

Thij J. Munjain

As to Contractor

[Signature]

As to City

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Lender:
MERCHANTS & SOUTHERN BANK

By:

As Its: [Signature]

Developer:
HILLCREST DEVELOPMENT CORPORATION OF GAINESVILLE

By:

As Its: President

Contractor:
WATSON CONSTRUCTION CO., INC.

By:

As Its: President

CITY OF GAINESVILLE, FLORIDA

By:

Bussing
MAYOR

APPROVED AS TO FORM AND LEGALITY

BY: [Signature]

**MARION J. RADSON, CITY ATTORNEY
CITY OF GAINESVILLE, FLORIDA**

MAY 14 2002

EXHIBIT A

A portion of Plot 10, Pless Place, as per plat thereof recorded in Deed Book 195, at Page 230, of the Public Records of Alachua County, Florida, described as commencing at the Southwest corner of said Plot 10; thence North $00^{\circ}10'25''$ East (reference bearing) along the West line of said Plot 10, a distance of 420.00 feet to the point of beginning; thence continuing along said West line, North $00^{\circ}10'25''$ East, 1123.60 feet to the North line of said Plot 10; thence South $89^{\circ}56'00''$ East along said North line, a distance of 413.83 feet to the East line of said Plot 10; thence South $00^{\circ}10'25''$ West along said East line, a distance of 1542.98 feet to the North right-of-way line of Northwest 8th Avenue; thence South $89^{\circ}58'51''$ West along said North line, a distance of 299.33 feet; thence departing said North right-of-way line, North $00^{\circ}10'25''$ East, 420.00 feet; thence South $89^{\circ}58'51''$ West, 114.50 feet to the Point of Beginning, all in Alachua County, Florida.

Contract

THIS CONTRACT is made and entered into this 30th day of Apr., 2002, effective and only effective if and when the City accepts the plat for recording, by and between Watson Construction Co. Inc., Contractor, of the City of Gainesville, County of Alachua, State of Florida, and Hillcrest Development Corporation of Gainesville, Owner.

WITNESSETH: That, In consideration of the covenants and agreements hereinafter contained on the part of the Owner, the Contractor does agree as follows:

To perform sitework in accordance with plans by Eng-Denman & Associates, Inc., P.E. per * Attachment A - document list, for Hillcrest Subdivision and in accordance with Watson Construction Company, Inc. To perform all work per proposal in Attachment B. Conduits, and sleeves for irrigation, gas, phone and electric not shown on the plans are not a part of this contract. Removal and disposal of any hazardous material is excluded. Any excess dirt generated to achieve design grades shall be left on site or disposed of by contractor at owner's timely directions. ~~Underbrush/Clearing for stockpile areas shall be done at unit prices per Attachment C.~~ *JR*

HDC
per

IN CONSIDERATION THEREOF, the Owner agrees to pay the Contractor, the lump sum of Five Hundred Fifty Four Thousand Five Hundred Fifty Dollars (\$554,550.00) in the following manner, to wit:

Owner shall make progress payments for work completed to the contractor as approved by owner. Each payment will be charged ten percent (10%) retainage to be credited to the final payment on completion.

Contractor shall submit for payment by the 25th of each month to the owner and the owner shall make payment to the contractor not later than the 10th of the following month. Payments past due shall bear interest from the date the payment is due at a rate of 1.5% per month to be paid by the owner to the contractor.

The work to performed by the Contractor shall be commenced within 30 days from execution of this Contract and completed within 150 days therefrom.

Contractor acknowledges that Owner has contracted to sell the stock in Owner to a third party which sale is to take place prior to commencement of construction by Contractor. Contractor agrees that should the Owner's contemplated sale not take place that Owner shall have the right to terminate this Contract and enter into a contractor of Owner's choosing and one that is acceptable to the City of Gainesville, Florida. The change of contractors will be without any liability or expense to either Contractor or Owner.

IN WITNESS WHEREOF, the above named parties have hereunto set their hands and seals on the day above written, and for themselves, their heirs, administrators and assignees, do hereby agree to do the full performance of the covenants and agreements as herein above set forth.

Witnesseth:

James D. Dalt

Freddie Schinz
per 4.30.02
Freddie Schinz, President, (date)
Hillcrest Development Corporation of
Gainesville

* Construction Plans

Witnesseth:





Larry Watson, President (date)
Watson Construction, Inc.

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WATSON CONSTRUCTION Co., Inc.

6322 N.W. 18th Drive • Gainesville, FL 32653 • 352/378-9157 • FAX 352/378-1499 • License #CGC A11972

Mr. Dan Whitcraft
Fax #~~373-0067~~ 331-3518
Re: Hillcrest Residential Development

Aug 22, 2001

Sept. 21, 2001

Watson Construction Co., Inc. proposes to perform the following items of work on the above referenced project in accordance with plans by Eng, Denman, and Associates, Inc., revised 5/15/01 for the sum set forth below:

1. Survey and layout of our work, performed by a licensed professional surveyor
2. Testing of our work
3. Silt fence
4. Clearing for R/W's, PUE's, and basins
5. Demolition of existing house
6. Earthwork for R/W's and basins
7. Asphalt pavement including alleys (stabilized subgrade, 6" limerock base, 1.25" asphalt)
8. Curb and gutter
- ~~9. Sidewalks~~
10. Storm drainage
11. Sanitary sewer
12. Water distribution
13. Sod basin slopes and disturbed areas in NW 8th Ave. right of way
14. Sod between curbs and walks
15. Seed remaining disturbed areas

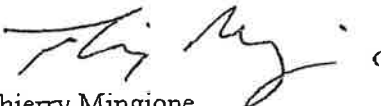
TOTAL BID : ~~\$ 604,507~~ \$ 554,669⁰⁰

EXCLUSIONS: removal and replacement of unsuitable material, conduits or other utilities, GRU tap and connection fees, permits, asbestos or other hazardous material removal

NOTES: 1. We assume utility trench excavated material will be suitable for trench backfill
2. We assume site cuts are suitable for fill under pavement
3. Sidewalk #2¹⁰ / SF as required

Thank you for the opportunity to provide you with this proposal. Please call me at 378-9157 if you have any questions or require additional information.

Sincerely,


Thierry Mingione
Estimator