

RESOLUTION NO. 051154

PASSED April 10, 2006

A Resolution approving the final plat of "Madera Cluster Development, Phase III", located in the general vicinity of Williston Road (north side), a/k/a S.R. 331, between SW 21st Street and SW 23rd Terrace; authorizing the City Manager or designee, to execute a Subdivision Improvement Surety Agreement to secure the construction of improvements; providing directions to the Clerk of the Commission; and providing an immediate effective date.

WHEREAS, the Development Review Board approved the design plat of "Madera Cluster Development, Phase III" 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, on September 23, 2002, the City Commission granted a six-month extension of time of the design plat approval to April 22, 2003; and

WHEREAS, on April 26, 2004, the City Commission adopted Resolution No. 031201 that approved the conditional final plat of "Madera Cluster Development, Phase III; 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 to execute a Surety Agreement that secures the construction of improvements; 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 "Madera Cluster Development, Phase III" is accepted and approved by the City Commission on the following described property lying in the City of Gainesville, Alachua County, Florida:

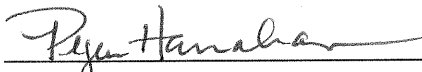
(See Exhibit "A" attached hereto and made a part hereof as if set forth in full)

Section 2. The City Manager or designee, is authorized to execute a Subdivision Improvement Surety Agreement with a lending institution and the developer of the property 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.

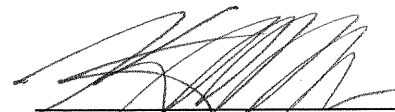
Section 4. This resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 10th day of April, 2006.



Pegeen Hanrahan, Mayor

ATTEST:



Kurt Eannon,
Clerk of the Commission

APPROVED AS TO FORM AND LEGALITY:



Marion J. Radson, City Attorney
APR 11 2006

EXHIBIT "A"

MADERA CLUSTER SUBDIVISION, PHASE III

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:

COMMENCE AT THE INTERSECTION OF THE WEST LINE OF SAID LOT 6 AND THE NORTH RIGHT-OF-WAY LINE OF STATE ROAD NUMBER 331 (AKA WILLISTON ROAD - A 100' RIGHT-OF-WAY); THENCE NORTH 04°30'00" WEST ALONG THE WEST LINE OF SAID LOT 6 AND ALONG THE WEST BOUNDARY OF MADERA CLUSTER SUBDIVISION PHASE I, AS RECORDED IN PLAT BOOK 23, PAGES 72 AND 73 OF THE PUBLIC RECORDS OF SAID COUNTY, A DISTANCE OF 1253.34 FEET TO NORTHWEST CORNER OF SAID MADERA CLUSTER SUBDIVISION PHASE I, AND THE POINT OF BEGINNING; THENCE THE FOLLOWING (4) FOUR COURSES ALONG THE BOUNDARY OF SAID MADERA CLUSTER SUBDIVISION PHASE I; SOUTH 88°10'49" EAST, A DISTANCE OF 143.66 FEET; THENCE SOUTH 01°49'11" WEST, A DISTANCE OF 40.00 FEET; THENCE NORTH 82°42'18" EAST A DISTANCE OF 60.77 FEET THENCE SOUTH 88°10'49" EAST, A DISTANCE OF 110.00 FEET; THENCE NORTH 09°57'00" EAST, DEPARTING THE BOUNDARY OF SAID MADERA CLUSTER SUBDIVISION PHASE I, A DISTANCE OF 141.42 FEET; THENCE NORTH 01°49'11" EAST, 427.07 FEET; THENCE NORTH 67°18'52" WEST, 131.32 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT, CONCAVE SOUTHEASTERLY, AND HAVING A RADIUS OF 120.00 FEET, AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 69°48'14" EAST, 178.08 FEET; THENCE NORTHEASTERLY AND SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 95°48'16", AN ARC DISTANCE OF 200.65 FEET TO THE END OF SAID CURVE; THENCE NORTH 22°31'23" WEST, A DISTANCE OF 60.16 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 180.00 FEET, AND BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 60°19'02" EAST, 23.27 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07°24'49", AN ARC DISTANCE OF 23.29 FEET TO THE END OF SAID CURVE; THENCE NORTH 45°58'20" EAST A DISTANCE OF 140.11 FEET; THENCE NORTH 04°30'00" WEST, A DISTANCE OF 310.82 FEET TO THE NORTH LINE OF LOT 6 OF NAPIER GRANT AS RECORDED IN DEED BOOK I, PAGE 591 OF THE PUBLIC RECORDS OF SAID COUNTY; THENCE SOUTH 86°22'07" WEST, ALONG THE NORTH LINE OF SAID LOT 6, A DISTANCE OF 600.07 FEET TO THE NORTHWEST CORNER OF SAID LOT 6; THENCE SOUTH 04°30'00" EAST, ALONG THE WEST LINE OF SAID LOT 6, A DISTANCE OF 1054.48 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 11.015 ACRES, MORE OR LESS.

EXHIBIT "B"



SUBDIVISION IMPROVEMENT SURETY AGREEMENT AS TO MADERA CLUSTER DEVELOPMENT, PHASE III

This agreement is entered into this ___ day of _____, 2006 between City of Gainesville, by and through its City Commission, hereinafter referred to as "City", R. E. Arnold Construction, Inc., hereinafter referred to as "Contractor," Duncan & Chesapeake, LLC, a Florida limited liability company, hereinafter referred to as "Developer" and Mercantile 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, R. E. Arnold Construction, Inc. hereinafter called the Contractor has agreed to a contract price of \$251,000.00 to install the streets, necessary drainage and utilities and other improvements required under applicable law in the Madera Cluster Development, Phase III. These funds are included in the loan made by the Lender to the Developer; and,

WHEREAS, Causseaux & Ellington, Inc., a Florida Professional Surveyor and Mapper has agreed to a total contract price of \$6,300.00 to install the permanent control points and lot corners under applicable law in the Madera Cluster Development, Phase III 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, Mercantile Bank hereinafter called the Lender has made a loan to Greentrust Homes, 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, Phase III 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 \$308,760.00 is sufficient to meet these 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 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.** 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 City's inspection period. The substitute surety agreement shall remain in affect 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 said 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 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 _____ 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	Developer:	Duncan & Chesapeake, LLC. Kristen D. Johnson 4041-B NW 37 th Place Gainesville, FL 32606
Contractor:	R. E. Arnold Construction, Inc. Gene Arnold 2601 NW 74 th Place	Lender:	Mercantile Bank Bob Cameron 7515 W. University Avenue

Gainesville, FL 32653

Gainesville, FL 32607

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 _____, 2006.

Witnesses:

Lisa Gillis

Lisa Gillis

Elizabeth J. Berenson

Elizabeth J. Berenson

As to Lender

MERCANTILE BANK

Melanie Shore

By: Melanie Shore

Its: Senior Vice President

R. E. ARNOLD CONSTRUCTION, INC.

David H. Blackman

Kate Carter

As to Contractor

Roger Arnold

By: Roger Arnold

Its: Vice President

DUNCAN & CHESEAPEAKE, LLC

Diane Trama

Kerriann Dilly

As to Developer

Kristin Johnson

By: Kristin Johnson

Its: Manager

CITY OF GAINESVILLE

As to Engineer

By: _____

Its: City Engineer