

LEGISLATIVE #

160635A

RESOLUTION NO. 160635

A resolution of the City of Gainesville, Florida, approving the final plat named “Wiltshire Cluster Subdivision” located in the vicinity of 5041 NW 23rd Avenue, Gainesville, Florida, as more specifically described in this resolution; authorizing the City Manager to execute a security agreement to secure the construction and completion of the subdivision improvements required under the ordinances of the City of Gainesville; providing directions to the Clerk of the Commission and accepting the dedication of the easements and other dedicated portions as shown on the plat; and providing an immediate effective date.

WHEREAS, on November 22, 2016, the Development Review Board approved the design plat of the subject property (Petition No. DB-16-124 SUB); and

WHEREAS, on January 19, 2017, the City Commission approved the design plat in accordance with the City of Gainesville Land Development Code (Chapter 30 of the Code of Ordinances); and

WHEREAS, the owner of the proposed subdivision has submitted a final plat that substantially conforms to the design plat that was approved by the City Commission on January 19, 2017; and

WHEREAS, the owner has submitted a security agreement and placed a cash deposit with the City’s Finance Director to secure the construction and completion of the required subdivision improvements within 12 months from the date of final plat approval; and

WHEREAS, the owner thereby requests the City Commission to accept and approve the final plat described herein in accordance with Section 30-3.37 of the Land Development Code and Chapter 177 of the Florida Statutes; and

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

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

SECTION 1. The final plat of “Wiltshire Cluster Subdivision” is accepted and approved by

the City Commission for the property lying in the City of Gainesville, Alachua County, Florida, that is described in **Exhibit A** attached hereto and made a part hereof as if set forth in full.

SECTION 2. The City Manager is authorized to execute the Security Agreement for Construction of Public Improvements attached as **Exhibit B**, in accordance with the Land Development Code, to secure the construction and completion of the subdivision improvements required under the ordinances of the City of Gainesville.

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 easements and other dedicated portions as shown on the plat.

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

PASSED AND ADOPTED this _____ day of _____, 2017.

LAUREN POE
Mayor

Attest:

Approved as to form and legality:

Clerk of the Commission

NICOLLE M. SHALLEY
City Attorney

Legal Description

The West 390 feet of the North 660 feet of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, Township 9 South, Range 19 East, Alachua County, Florida, less any portion lying within road right of way.

Parcel Identification Number: 06373-000-000

Exhibit "A" to Resolution No. 160635

SECURITY AGREEMENT FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS

THIS AGREEMENT ("Agreement") is entered into on the ____ day of _____, 2017, by and between the City of Gainesville, Florida, a municipal corporation ("City"), W.G. Johnson & Son, Inc., a Florida corporation ("Contractor"), and Wiltshire 352, LLC, a Florida limited liability company ("Developer").

WITNESSETH

WHEREAS, as the fee simple owner and developer of the subject property located in the City of Gainesville, the Developer has applied to the City for final plat approval of a subdivision named the *Wiltshire Cluster Subdivision* ("Subdivision"); and

WHEREAS, the City has approved the construction plans and specifications ("Construction Plans") that the Developer submitted pursuant to Section 30-184 of the City of Gainesville Land Development Code for all subdivision public improvements required pursuant to the approved design plat, Sections 30-187 and 30-188 of the Land Development Code, the Public Works Design Manual, and all other applicable local, state and federal regulations ("Required Improvements"); and

WHEREAS, pursuant to Section 30-186 of the Land Development Code, no final plat of any subdivision shall be approved by the City unless one of the forms of security allowed for in Section 30-186 ("Security") has been provided to the City, conditioned to secure the construction and completion of the Required Improvements described in the Construction Plans in a satisfactory manner within 12 months from the date of final plat approval; and

WHEREAS, the Security provided by the Developer shall be enforceable by and payable to the City in a sum at least equal to 120 percent of the total cost to construct and complete the Required Improvements provided in the Subdivision. The total cost of construction shall be indicated in an executed, itemized contract verified by a private engineer acting for the Developer or in a professional engineer's signed and sealed estimate, and shall be verified and approved by the Public Works Director or designee. Improvements otherwise covered by a separate security agreement between the Developer and the City and those improvements already constructed and approved by the Public Works Director or designee shall not be included when determining the cost of improvements subject to this Agreement; and

WHEREAS, the estimated total cost to construct and complete the Required Improvements is \$427,605.90. Therefore, the Developer shall provide Security in an amount equal to or greater than \$513,127.08; and

WHEREAS, this Agreement and the Security provided herein is separate and distinct from the maintenance security that the Developer shall also comply with in accordance with Section 30-186(f) of the Land Development Code.

NOW THEREFORE, in consideration of the mutual covenants as set forth below, the parties agree as follows:

1. **Effective Date and Term.** This Agreement shall become effective on the date the last of the parties executes this Agreement as indicated below and shall remain in effect until:
 - a. All Required Improvements are constructed and the City has inspected and approved the Required Improvements as being completed in accordance with the Construction Plans, the Land Development Code and all other applicable local, state and federal regulations, and the Developer has provided maintenance security in accordance with Section 30-186(f) of the Land Development Code, OR
 - b. A substitute security agreement is duly executed by all parties in accordance with paragraph 9 below.

2. **Form of Security.** As Security for the Developer's construction and completion of the Required Improvements, the Developer shall provide in an amount calculated as described above the following: *((Fill in one of the below.))*
 - Surety Bond:** On the same date as the effective date of this Agreement, Developer shall cause _____ ("Issuer") to issue to the City, as beneficiary, a Surety Bond in the amount of _____, lawful money of the United States of America. The Issuer shall be a surety company authorized to do business in the state of Florida with a rating of not lower or less than A-XII as rated by A.M. Best Company, Inc.
 - Cash Deposit:** On the same date as the effective date of this Agreement, Developer shall deposit with the City Director of Management and Budget a cash deposit in the amount of **\$513,127.08**, lawful money of the United States of America.
 - Irrevocable and Unconditional Letter of Credit:** On the same date as the effective date of this Agreement, Developer shall cause _____ ("Issuer") to issue to the City, as beneficiary, an Irrevocable and Unconditional Letter of Credit in the amount of _____, lawful money of the United States of America. The Security issued shall, by its terms, be irrevocable, unconditional and provide for drafts to be honored at a banking location within Alachua County, Florida.
 - Construction Loan Agreement:** On the same date as the effective date of this Agreement, Developer shall deposit with the City a certified copy of a Construction Loan Agreement between _____ ("Issuer") and the Developer in the amount of _____, lawful money of the United States of America. The Construction Loan Agreement, by its terms, shall be for the benefit of and satisfactory to the City and shall comply with the requirements contained in Section 30-186(c)(3) of the City's Land Development Code.

3. **Developer's Responsibilities.** Within 12 months from the date of final plat approval, the Developer shall construct and complete the Required Improvements, as evidenced by the inspection and approval of the City's Public Works Director or designee. Should the Contractor, in acting for the Developer, not construct the Required Improvements as provided for in this Agreement, the Developer agrees to retain another contractor within 30 days of the original Contractor's default for the purpose of constructing the Required Improvements. In the event the Developer has either not retained another contractor within 30 days of the default of the original Contractor or otherwise not completed construction of the Required Improvements and received approval of the City for same within 12 months from the date of final plat approval, the Developer shall be deemed in default and the City shall have the right without prior notice to Developer to draw on the Security in such

amount as the City deems necessary to complete construction of that portion of the Required Improvements that have not been completed.

In accordance with Section 30-186(f) of the Land Development Code, the Developer warrants any completed Required Improvements against all defects in materials and construction workmanship and also against design defects, and shall provide maintenance security for same.

4. **Contractor's Responsibilities.** The Contractor agrees to construct the Required Improvements in a reasonably diligent manner to ensure completion of all Required Improvements within the time specified in paragraph 3.
5. **City's Responsibilities.** The City agrees to fulfill its responsibilities as required by the provisions of the City's Land Development Code, as may be amended from time to time.
- ~~6. **Issuer's Responsibilities.** The Issuer agrees that the Security described in paragraph 2 shall remain valid for the term of this Agreement and shall be maintained and administered in accordance with this Agreement, and that any disbursement or release of the Security during the term of this Agreement shall not be made without the express approval and certification of the City. In the event the Security can only be issued for a limited term, the Security shall provide for automatic extensions, without requiring written amendment, for successive periods and a combined term that equals or exceeds 12 months. In addition, the Issuer shall provide written notice to the City at least 60 days in advance of any expiration date, in the event the term of the Security will not be extended beyond the then current expiration date.~~
7. **Inspection.** During the term of this Agreement, the City may inspect the Subdivision at any time during reasonable business hours to determine if Developer has complied with this Agreement.
8. **Release of Security – Cash Deposit.** This paragraph is applicable if the Developer provided Security in the form of a cash deposit with the City. Upon the Developer's completion of any portion of the Required Improvements, as evidenced by the inspection and approval of the City's Public Works Director or designee, and the Developer providing the City with the appropriate maintenance security required by Section 30-186(f) of the Land Development Code, the Developer may request and the City shall then release and/or refund to the Developer an amount equal to the City-approved costs of such completed Required Improvements. However, at no time before all Required Improvements have been completed and so certified by the City shall the balance of the Security be reduced to less than 30 percent of the estimated total cost to construct and complete all Required Improvements as written above.

If the Developer completes the construction of all Required Improvements, with inspection and acceptance by the City, and provides the appropriate maintenance security required by Section 30-186(f) of the Land Development Code, then the City shall release and/or refund to the Developer the remaining balance of the Security.

9. **Substitute Security Agreement.** This paragraph is applicable if the Developer provided Security in the form of a Surety Bond, Irrevocable and Unconditional Letter of Credit, or Construction Loan Agreement. Upon the Developer's completion of any portion of the Required Improvements, as evidenced by the inspection and approval of the City's Public Works Director or designee, and the Developer providing the City with the appropriate maintenance security required by Section 30-

186(f) of the Land Development Code, the Developer may provide substitute security and the parties may execute a substitute security agreement for a sum equal to at least 120 percent of the cost to construct and complete the remaining Required Improvements. However, at no time before all Required Improvements have been completed and so certified by the City shall the balance of the Security provided to the City equal less than 30 percent of the estimated total cost to construct and complete all Required Improvements as written above.

10. **Relationship.** This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture between the City and the Developer, the Contractor or the Issuer, if any. The Developer cannot create any obligation or responsibility on behalf of the City or bind the City in any manner. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein.
11. **Bankruptcy.** The filing by the Developer of a petition for relief under federal bankruptcy laws or any other similar law or statute of the United States, or the entry of an order or decree appointing a receiver of the Developer or its assets, shall not affect the Security or the City's rights under this Agreement.
12. **Modification and Waiver.** This Agreement may only be modified or waived in writing signed by all the parties. No course of dealing shall be deemed a waiver of rights or a modification of this Agreement. The failure of any party to exercise any right in this Agreement shall not be considered a waiver of such right. No waiver of a provision of this Agreement shall apply to any other portion of this Agreement. A waiver on one occasion shall not be deemed to be a waiver on other occasions.
13. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. Any legal action, in equity or law, with respect to this Agreement shall be brought and heard in Alachua County, Florida.
14. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal or unenforceable shall be severable and shall not be construed to render the remainder to be invalid, illegal or unenforceable.
15. **Captions.** The captions and headings of sections or paragraphs used in this Agreement are for convenient reference only and shall not limit, define or otherwise affect the substance or construction of provisions of this Agreement.
16. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Any representations or statements heretofore made with respect to such subject matter, whether verbal or written, are merged herein.
17. **Successors and Assigns.** No parties to this Agreement shall assign or transfer any interest in this Agreement without the prior written consent of the other parties. The parties each bind the others

and their respective successors and assigns in all respects to all the terms, conditions, covenants, and provisions of this Agreement.

18. **Time.** Time is of the essence in this Agreement. Whenever a notice or performance is to be done on a Saturday or Sunday or on a legal holiday observed by the City, it shall be postponed to the next business day.
19. **Notices.** Any notices pursuant to this Agreement shall be effective upon receipt and sent by either certified mail, return receipt requested, overnight courier service or delivered in person to the following addresses:

To the City: City Manager
 City of Gainesville
 P.O. Box 490, Station 6
 Gainesville, Florida 32602-0490

With a copy: Director of Public Works
 City of Gainesville
 P.O. Box 490, Station 58
 Gainesville, Florida 32602-0490

To the Developer: Wiltshire 352, LLC
 2750 NW 43rd St., Ste. 102
 Gainesville, FL 32605
 Telephone: 352-376-6372

To the Contractor: W.G. Johnson & Son, Inc.
 2430 NW 73rd Place
 Gainesville, FL 32653
 Telephone: 352-376-6219

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officials on the dates written below.

WITNESSES:

CITY OF GAINESVILLE

Sign: _____

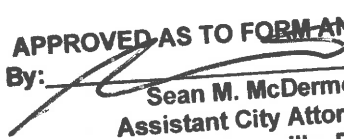
Print Name: _____

By: _____

Anthony Lyons
City Manager

Sign: _____

Print Name: _____

APPROVED AS TO FORM AND LEGALITY
By:  12/3/17
Sean M. McDermott
Assistant City Attorney II
City of Gainesville, Florida

STATE OF FLORIDA
COUNTY OF ALACHUA

I, an officer duly authorized in the state and county named above to take acknowledgments, certify that on this date before me, the foregoing instrument was acknowledged by Anthony Lyons, City Manager of the City of Gainesville. He personally appeared before me and is: (check one of the below)
_____ personally known to me, or
_____ produced the following type of identification: _____

Executed and sealed by me on _____, _____.

Notary Public
Print Name: _____
My Commission expires: __/__/__

WITNESSES:

Sign: [Signature]
Print Name: TEY WRIGHT

Sign: [Signature]
Print Name: Logan Peters

DEVELOPER

WILTSHIRE 352, LLC,
a Florida limited liability company

By: [Signature]
Print Name: Michael J. Cooper
Title: Manager

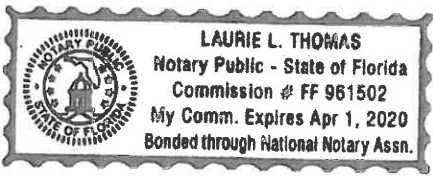
STATE OF FLORIDA
COUNTY OF ALACHUA

I, an officer duly authorized in the state and county named above to take acknowledgments, certify that on this date before me, the foregoing instrument was acknowledged by Michael J. Cooper, as Manager for and on behalf of Wiltshire 352, LLC, a Florida limited liability company. He personally appeared before me and is: (check one of the below)

personally known to me, or
 produced the following type of identification: _____

Executed and sealed by me on _____.

[Signature]
Notary Public
Print Name: Laurie L. Thomas
My Commission expires: 4/1/2020



WITNESSES:

Sign: Dora Lee Bryan
Print Name: Dora Lee Bryan

Sign: Heather Wilbur
Print Name: Heather Wilbur

CONTRACTOR

W.G. JOHNSON & SON, INC.,
a Florida corporation

By: W. Glenn Johnson, III
Print Name: W. Glenn Johnson, III
Title: President

STATE OF FLORIDA
COUNTY OF ALACHUA

I, an officer duly authorized in the state and county named above to take acknowledgments, certify that on this date before me, the foregoing instrument was acknowledged by W. Glenn Johnson, III, as President for and on behalf of W.G. Johnson & Son, Inc., a Florida corporation. He personally appeared before me and is: (check one of the below)

personally known to me, or
 produced the following type of identification: _____

Executed and sealed by me on October 27, 2017.

Dora Lee Bryan
Notary Public
Print Name: Dora Lee Bryan
My Commission expires: 11