

**SUBDIVISION IMPROVEMENT SURETY AGREEMENT
AS TO WESCHESTER PHASE II**



This agreement is entered into this 11 day of April, 2006 between City of Gainesville, by and through its City Commission, hereinafter referred to as "City", W.G. Johnson & Sons, Inc., hereinafter referred to as "Contractor," Weschester, LLC, a Florida limited liability company, hereinafter referred to as "Developer" and Wachovia Bank, National Association, 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, W.G. Johnson & Sons, Inc. hereinafter called the Contractor has agreed to a contract price of \$727,846.00 to install the streets, necessary drainage and utilities and other improvements required under applicable law in the Weschester, Phase II subdivision. 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 \$3,750.00 to install the permanent control points and lot corners under applicable law in the Weschester, Phase II 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, Wachovia Bank, National Association, hereinafter called the Lender has made a loan to Weschester 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 Weschester, Phase II in Gainesville, Florida; and,

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto do mutually agree as follows:

EXHIBIT "B"

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 \$877,915.20 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 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 such 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 365 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:	Weschester, LLC P.O. Box 7779 Jacksonville, FL 32238
Contractor:	W.G. Johnson & Son, Inc. 2430 NW 73 rd Place Gainesville, FL 32653	Lender:	Wachovia Bank, National Association 225 Water Street, Third Floor FL0061 Jacksonville, FL 32202

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 11 day of May, 2006.

Witnesses:

[Signature]
ROBERT K. CALL
[Signature]
As to Lender BEATRIZ E. BACANI

WACHOVIA BANK

By: [Signature]

[Signature]
Ruth Meyer
[Signature]
As to Contractor

W.G. JOHNSON & SON, INC.

By: [Signature]

[Signature]
Kenneth J. LaPointe
[Signature]
As to Developer SHIRLEY ANN YOUNG

WESCHESTER, LLC a Florida Limited Liability Company

By: TWT Development Corporation, a Florida corporation, and Managing Member

By: [Signature]

ATTEST:

By: [Signature]
Clerk of Commission

CITY OF GAINESVILLE

By: [Signature]
Mayor