

## SUBDIVISION IMPROVEMENT SURETY AGREEMENT

THIS AGREEMENT is entered into this 28<sup>th</sup> day of February 2006, between City of Gainesville, a political subdivision of the State of Florida, by and through its board of commissioners (City), Dixieland Enterprises (Developer), P. W. Norfleet, LLC (Contractor) and Mercantile Bank (Lender);

WHEREAS, the applicable ordinances of the City 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, Contractor has agreed to a contract price of \$271,050.94, which funds are included in the loan made by the Lender to the Developer; and

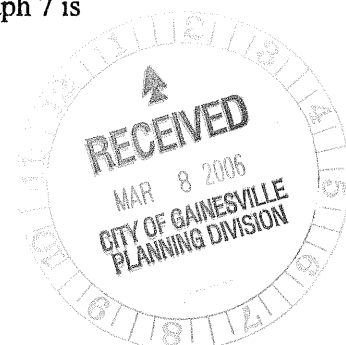
WHEREAS, the City has reviewed the subdivision capital improvements construction contract or cost estimate and has established that the sum is sufficient for the construction of the improvements; and

WHEREAS, Lender has made a loan to Developer, which loan includes funds for the construction of subdivision improvements;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties 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 escrow 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 the cost of construction and the cost of those items specified in P. W. Norfleet, LLC's Proposal of Feb 2nd 2006. All parties agree that the sum of \$325,261.12 (120% of the proposal) is sufficient to complete this project, as identified in plans prepared by P. W. Norfleet, LLC and approved by the City's Public Works Department on January 1st 2006, 2006. The cost of construction must be indicated in an executed, itemized contract. In no event shall the funds provided for the construction be less than 120% of the sum of the contract for the 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 shall 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 is signed by the City, the Lender and the Developer.



3. DEVELOPER RESPONSIBILITIES: The Developer is solely responsible for the construction of the subdivision improvements in accordance with the design documents prepared by a design 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 thirty (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 thirty (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.

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 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 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. 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 ten percent (10%) retainage to be paid to the Developer only upon final acceptance of 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 the corrective action must be taken prior to the City accepting the improvements, the City, the Developer and the Lender shall, within forty-five (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 one hundred twenty percent (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 ten percent retainage at the end of the original 90 day period required between preliminary inspection and final acceptance. The substitute surety agreement shall remain in effect 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 material 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 two hundred ten (210) 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 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 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, City's, Developer's, Contractor's and Lender's representatives are:

City of Gainesville:  
Gene Francis  
  
Gainesville, FL 32601

Developer:  
Dixieland Enterprises, LLC  
Attn: Richard Hall  
11658 NW 35<sup>th</sup> Lane  
Gainesville, FL 32606

Contractor:  
P W Norfleet, LLC  
Post Office Box 417  
Newberry, FL 32669

Lender:  
Mercantile Bank  
7515 West University Ave.  
Gainesville, FL 32607

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 associated 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 County.

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 28 day of February 2006.

Signed, sealed and delivered  
in our presence as witnesses:



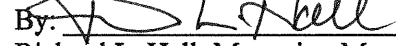
WITNESS

Printed Name

JR Draughton

  
WITNESS

Developer  
Dixieland Enterprises, LLC

By:   
Richard L. Hall, Managing Member

Printed Name John S. Williams

Elizabeth F. Berenger  
WITNESS  
Printed Name Elizabeth F. Berenger

Lisa Gillis  
WITNESS  
Printed Name Lisa Gillis

WITNESS  
Printed Name John S. Williams

[Signature]  
WITNESS  
Printed Name [Signature]

Debra Hirneise  
WITNESS  
Printed Name Debra Hirneise

[Signature]  
WITNESS  
Printed Name Kurt M. Lanning

Lender  
Mercantile Bank

by: Robert Cameron

Contractor  
P. W. Norfleet, LLC

by: Jessica P. Norfleet (MGMR)  
Jessica P. Norfleet, Managing Member

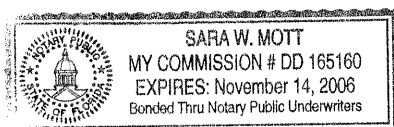
City  
City of Gainesville

by: Robert Honaker

**ACKNOWLEDGMENT**

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 28 day of February 2006, by Richard L. Hall, as Managing Member and on behalf of **DIXIELAND ENTERPRISES, LLC**, who is personally known to me or who produced as identification.

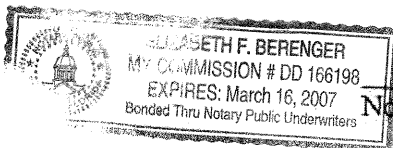


Sara W. Mott  
Notary Public

**ACKNOWLEDGMENT**

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 28 day of February 2006, by Robert E. Cameron of MERCANTILE BANK, a Florida banking corporation, who is personally known to me or who produced \_\_\_\_\_ as identification.

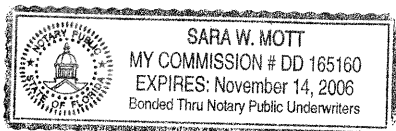


*Elizabeth F. Berenger*  
Notary Public

**ACKNOWLEDGMENT**

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 28 day of February 2006, by Jessica P. Norfleet, as Managing Member and on behalf of P. W. NORFLEET, LLC, who is personally known to me or who produced \_\_\_\_\_ as identification. sum



*Sara W. Mott*  
Notary Public

**ACKNOWLEDGMENT**

STATE OF FLORIDA  
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 28 day of <sup>April</sup> ~~February~~ 2006, by Peggen Harrahan, as mayor and on behalf of the City of Gainesville, who is personally known to me or who produced \_\_\_\_\_ as identification.

*Sharon D. Williams*  
Notary Public

