

RESOLUTION NO. 2006- 234

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS OF A HOLD HARMLESS AGREEMENT BETWEEN ST. JOHNS COUNTY AND ABERDEEN COMMUNITY DEVELOPMENT DISTRICT AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY.

RECITALS

WHEREAS, Durbin Crossing North Phase 1 Unit 1 plat dedicates a portion of County Road 223 to St. Johns County ("County"); and

WHEREAS, in connection therewith, Aberdeen Community Development District ("District") intends to install certain landscape related improvements which are required to be located within and along that section of County Road 223; and

WHEREAS, the County has agreed to allow the District to install and maintain the improvements within the right-of-way and the District has executed a Hold Harmless Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof, to indemnify and hold the County harmless from damages and expenses which may be incurred as a direct or indirect result of such installation, maintenance or construction of the improvements.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above recitals are incorporated by reference into the body of this Resolution as findings of fact.

Section 2. The Board of County Commissioners of St. Johns County hereby approves the terms of the Hold Harmless Agreement and authorizes the County Administrator to execute said Agreement.

Section 3. The Clerk is instructed to record the original Hold Harmless Agreement in the Official Records of St. Johns County, Florida.

PASSED AND ADOPTED this 11th day of July, 2006.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA**

By: James E. Bryant
James E. Bryant, Chairman

ATTEST: Cheryl Strickland, Clerk

Patricia Roy Grande
Deputy Clerk

RENDITION DATE 7-13-06



Exhibit "A" to Resolution

HOLD HARMLESS AGREEMENT

THIS AGREEMENT is made and entered into this 17th day of April, 2006, by and among:

St. Johns County, Florida, a political subdivision of the State of Florida, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32095 ("County"); and

Aberdeen Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in St. Johns County, Florida, whose address is 14785 St. Augustine Road, Suite 4, Jacksonville, Florida 32258 ("District").

Recitals

WHEREAS, the District was established by rule of the Florida Land and Water Adjudicatory Commission for the purpose of planning, financing, constructing, installing, operating, and/or maintaining certain infrastructure, including transportation and roadway improvements, drainage facilities, landscaping and recreation improvements; and

WHEREAS, the District presently intends to construct and/or install certain improvements within the right-of-way of County Road 223, which improvements will be conveyed to the County for ownership, operation and maintenance as a public road; and

WHEREAS, in connection therewith, the District will install certain landscape related improvements which are required to be located within lands which are to be dedicated to the County as rights-of-way within and along County Road 223 located in St. Johns County ("County's Right-of-Way"); and

WHEREAS, the improvements which are and may be constructed within the County's Right-of-Way include landscaping and irrigation (collectively, the "Right-of-Way Improvements"); and

WHEREAS, upon completion of the construction of the Right-of-Way Improvements, the District shall have the responsibility for their maintenance, repair, and replacement; and

WHEREAS, the County has agreed to allow the Right-of-Way Improvements to be installed, constructed or maintained within the County's Right-of-Way only if the District, after the acceptance of the dedication of the County's Right-of-Way by the County, agrees to indemnify and hold the County harmless, to the extent permitted by Florida law, from damages and expenses which may be incurred as a direct or indirect result of such installation, maintenance or construction of the Right-of-Way Improvements and certain other conditions.

NOW, THEREFORE, based upon good and valuable consideration and the mutual covenants of the parties, the receipt of which and sufficiency of which is hereby acknowledged, the District and the County agree as follows:

SECTION 1. RECITALS. The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Agreement.

SECTION 2. RIGHT-OF-WAY UTILIZATION. The District may place, construct and/or maintain or cause to be placed, constructed and/or maintained the Right-of-Way Improvements in the Right-of-Way under the terms and conditions contained herein. The cost of maintenance, repair or replacement of any Right-of-Way Improvements shall be paid by the District.

SECTION 3. INDEMNIFICATION. Subsequent to acceptance of the dedication of the County's Right-of-Way by the County and to the extent permitted by Florida law, the District agrees to protect, defend, indemnify, and hold the County, its tenants, elected officials, officers, employees, and agents, free and unharmed from and against any, and all, third party (including employees of the District and its contractors, and subcontractors) claims, liability, losses, and/or cause of action, which may arise from any negligent act or omission of the District's staff, employees, or agents (including court costs and reasonable attorneys' fees) associated with, or connected with, the use of the landscape tract by the District, and its contractors, including ingress and egress thereto.

SECTION 4. COVENANT WITH LAND. This Agreement shall touch and concern the land and shall be a covenant running with the fee interest underlying the County's Right-of-Way, whether in existence on the date hereof or constructed in the future.

SECTION 5. SOVEREIGN IMMUNITY. The County agrees that nothing in this Agreement shall constitute or be construed as a waiver of the District's limitation on liability contained in Section 768.28 Florida Statutes, or obligate the District to indemnify or hold the County harmless in excess of that permitted by Florida law.

SECTION 6. SEVERABILITY. If any word, phrase, sentence, part, subsection, section, or other portion of this Agreement, or any application thereof, to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid shall remain in full force, and effect.

SECTION 7. GOVERNING LAW AND VENUE. This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

SECTION 8. PROCEDURE FOR ACHIEVING ASSIGNMENT. Effect of Not Following Procedure. In light of the scope and rationale for this Agreement, neither the County, nor the District may assign, transfer, and/or sell any of the rights noted in this Agreement without the express written approval of the other party. Should either the County, or the District, assign, transfer, or sell any of the rights of this Agreement without such prior express written approval of the other party, then such

action on the part of either the County, or the District, shall result in the automatic termination of this Agreement, without further notice or action required on the part of the other party.

SECTION 9. AMENDMENTS TO AGREEMENT. Both the County, and the District, acknowledge that this Agreement constitutes the complete agreement and understanding of both parties. Both the County, and the District, acknowledge that any amendment to this Agreement shall be in writing, and shall be executed by duly authorized representatives of both the County, and the District.

SECTION 10. ACCESS TO RECORDS. The access to, disclosure, non-disclosure, or exemption of records, data, documents, and materials associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes).

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the District and the County have caused these presents to be executed on the day and year first written above.

Executed in the presence of:

Aberdeen Community Development District

Kristen H Belisle
Print Name: Kristen H Belisle

Elaine J. Ising
Print Name: ELAINE J. ISING

J. Thomas Gillette, III
Chairman, Board of Supervisors

STATE OF FLORIDA
COUNTY OF Duval

The foregoing instrument was acknowledged before me this 17th day of April, 2006, by J. Thomas Gillette, III, on behalf of Aberdeen Community Development District. He/she is personally known to me or has produced _____ as identification and who did/did not take an oath.



Elaine J. Ising
(Signature of Notary Public)

ELAINE I. ISING
(Print Name of Notary)
Notary Public - State of FLORIDA
Commission Number: DD193028
My Commission Expires: March 12, 2007

St. Johns County, Florida

Print Name: _____

Print Name: _____

By: _____
Print Name: _____
Its: _____

Attest: _____
Print Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, St. Johns County, Florida, on behalf of the County. He/she is personally known to me or has produced _____ as identification and who did/did not take an oath.

(Signature of Notary Public)

(Print Name of Notary)
Notary Public - State of Florida
Commission Number: _____
My Commission Expires: _____