

RESOLUTION NO. 2009- 335

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 HP MISSION TRACE PROPERTIES, LLC AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY.

RECITALS

WHEREAS, HP Mission Trace, LLC, a Florida limited liability company (“HP”) has requested permission to install and maintain certain landscape related improvements on the west side of Kenton Morrison Road along the eastern edge of the Shoppes at Mission Trace Shopping Center. The County has agreed to allow HP to install and maintain the improvements within the County owned right-of-way of Kenton Morrison Road; and

WHEREAS, HP 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 improvement; and

WHEREAS, to the extent that there are typographical, scrivener or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

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

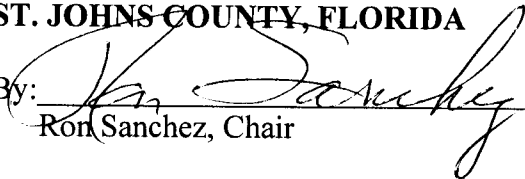
Section 1. The above recitals are incorporated by reference into the body of this Resolution as findings of fact.

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, or designee, to execute said Agreement.

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

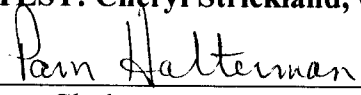
PASSED AND ADOPTED this 17th day of November, 2009.

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

By: 
Ron Sanchez, Chair

RENDITION DATE 11/19/09

ATTEST: Cheryl Strickland, Clerk

By: 
Deputy Clerk



HOLD HARMLESS AGREEMENT

This Agreement is made and entered into this ____ day of _____, 2009, by and between:

St. Johns County, Florida, a political subdivision of the State of Florida, whose address is 500 San Sebastian View, St. Augustine, Florida 32084 ("County"); and

HP Mission Trace Properties, LLC, a Florida limited liability company, whose address is 6675 Corporate Center Parkway, Suite 100, Jacksonville Florida 32216 ("HP Mission Trace")

Recitals

WHEREAS, HP Mission Trace will install certain irrigation and landscaping related improvements which are required to be located within lands which are County owned right-of-way within and along Kenton Morrison Road located in St. Johns County, Florida, ("County's Right-of-Way") being more particularly described as the west side of Kenton Morrison Road, south of State Road 16 along the eastern edge of the Shoppes at Mission Trace Shopping Center; and

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

WHEREAS, upon completion of the construction of the Right-of-Way Improvements, HP Mission Trace 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 HP Mission Trace 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 mutual covenants of the parties, the receipt of which and sufficiency of which is hereby acknowledged, HP Mission Trace 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. HP Mission Trace 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 HP Mission Trace. Further, HP Mission Trace agrees to remove these improvements at the written request of the County and at no expense to the County if for any reason the County needs to do any type of road maintenance or construction that necessitates the removal of these facilities.

Section 3. Indemnification. To the extent permitted by Florida law, HP Mission Trace 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 HP Mission Trace and its contractors and subcontractors) claims, liability, losses and /or cause of action, which may arise from any negligent act or omission of HP Mission Trace staff, employees or agents (including court costs and reasonable attorneys' fees) associated with or connected with the use of the County's right-of-way by HP Mission Trace, 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 hereto or constructed in the future.

Section 5. 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 portion of this Agreement, and all applications thereof, not having been declared void, unconstitutional or invalid shall remain in full force and effect.

Section 6. Governing Law and Venue. This Agreement shall be constructed 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 7. Procedure for Achieving Assignment. In light of the scope and rationale for this Agreement, neither the County, nor HP Mission Trace 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 County or HP Mission Trace, assign, transfer or sell any the rights of the Agreement without such prior express written approval of the other party, then such action on the part of either the County or HP Mission Trace, shall result in the automatic termination of this Agreement, without further notice or action required on the part of the other party.

Section 8. Amendments to Agreement. Both the County and HP Mission Trace acknowledge that this Agreement constitutes the complete agreement and

understating of both parties. Both the County and HP Mission Trace acknowledge that any amendments to this Agreement shall be in writing and shall be executed by duly authorized representatives of both the County and HP Mission Trace.

Section 9. 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).

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

Signed, sealed and delivered
in our presence as Witnesses:

ST. JOHNS COUNTY, a political
subdivision of the State Florida

(sign) _____
(print) _____

By: _____
Michael D. Wanchick
County Administrator

(sign) _____
(print) _____

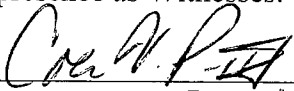
STATE OF FLORIDA
COUNTY OF ST. JOHNS

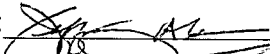
The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by Michael D. Wanchick, as County Administrator of St. Johns County, Florida, a political subdivision of the State of Florida, on behalf of the County, who is personally known to me.

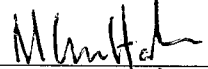
Notary Public
My Commission Expires: _____

Signed, sealed and delivered
in our presence as Witnesses:

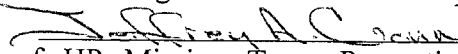
HP Mission Trace Properties, LLC

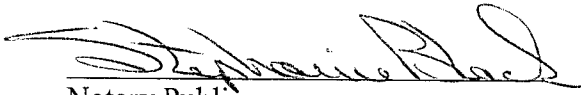
(sign) 
(print) COEN V. PURVIS III

By: 
Its President

(sign) 
(print) M. Christian Harden

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 26 day of October, 2009, by  as President of HP Mission Trace Properties, LLC, on behalf of the company, who is personally known to me or has produced as identification.


Notary Public
My Commission Expires: 3/25/2011

STEPHANIE BLACK
Notary Public, State of Florida
My Comm. Expires March 25, 2011
Comm. No. DD 654984