

RESOLUTION NO. 2016- 206

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS OF AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE TO, EXECUTE A MAINTENANCE AND HOLD HARMLESS AGREEMENT ASSOCIATED WITH CONSTRUCTION OF PAVERS AND LANDSCAPING WITHIN CERTAIN COUNTY RIGHT-OF-WAY AT NOCATEE.

RECITALS

WHEREAS, Tolomato Community Development District ("CDD") has executed and presented to St. Johns County ("County") a Maintenance and Hold Harmless Agreement, attached hereto as Exhibit "A", incorporated by reference and made a part hereof, to allow for installation, construction and maintenance of brick pavers and landscaping ("Improvements") within certain County right-of-way being part of Twenty Mile at Nocatee Phase 4A; and

WHEREAS, the CDD agrees to indemnify and hold the County harmless, to the extent allowed by Florida law, from damages and expenses which may be incurred as a direct or indirect result of the construction, installation or maintenance of such improvements and other certain conditions as set forth in the agreement; and

WHEREAS, the brick pavers shall be constructed in accordance with County's Standards and Details Manuel for Pavers and upon completion of the installation of the Improvements, the CDD shall have the responsibility for the maintenance, repair and replacement of such Improvements; and

WHEREAS, if the County determines the Improvements need to be removed or repaired, the CDD will have the specified time in the agreement to remove or repair the Improvements. If the removal or repair is not completed within said time frame, the County shall have the right, but not the obligation, to make the removal, repair or replacement and invoice the CDD for reimbursement.

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 and such Recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners hereby approves the Maintenance and Hold Harmless Agreement and authorizes the County Administrator, or designee, to execute the agreement on behalf of the County.

Section 3. The Clerk is instructed to record the original Maintenance and Hold Harmless Agreement in the public records of St. Johns County, Florida.

Section 4. To the extent that there are typographical and/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.

PASSED AND ADOPTED by the Board of County Commissioners this 19 day of July, 2016.

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

By: _____

Jeb S. Smith, Chair

ATTEST: Hunter S. Conrad, Clerk

By: _____

Pam Halterman
Deputy Clerk

RENDITION DATE 7/21/16



**MAINTENANCE
AND HOLD HARMLESS AGREEMENT**

This Agreement is made and entered into this 26th day of May, 2016, 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 **TOLOMATO COMMUNITY DEVELOPMENT DISTRICT**, Chairman Richard T. Ray, c/o Governmental Management Services, LLC, 245 Nocatee Center Way, Ponte Vedra, Florida 32081 ("CDD").

Recitals

WHEREAS, brick pavers will be constructed, or caused to be constructed, by the CDD or HyDry Company, LLC, at their expense, within the areas of Twenty Mile Village at Nocatee – Phase 4A and the County's right-of-way in the traffic circle adjacent to the southerly boundary thereof as shown on attached **Exhibit "A"** incorporated and made a part hereof; and

WHEREAS, landscaping will be installed within the interior of such traffic circle by the CDD or HyDry Company, LLC, at their expense; and

WHEREAS, the County has agreed to allow construction of such brick pavers and landscaping within the County's right-of-way with the understanding the CDD 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 such improvements and certain other conditions; and

WHEREAS, the construction of brick pavers and landscaping within the County's right-of-way shall collectively be known as the "Right-of-Way Improvements"; and

WHEREAS, the Right-of-Way Improvements shall be constructed in accordance with the County's Standards and Details Manual for Pavers; and

WHEREAS, upon completion of the construction of the traffic circle and installation of such brick pavers and landscaping, the CDD shall have the responsibility for the maintenance, repair and replacement of such Right-of-Way Improvements; and

WHEREAS, if the County determines the Right-of-Way Improvements need to be removed or repaired, the CDD will have 60 days from the time of notification to remove or repair the Right-of-Way Improvements. If the repair or replacement is not completed within said time frame, the County shall have the right, but not the obligation, to make the removal, repair, or replacement and invoice the CDD for reimbursement.

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, the CDD 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 CDD may place, construct, and/or maintain or cause to be placed, constructed, and/or maintained the Right-of-Way Improvements in the County's right-of-way as shown on Exhibit A subject to the terms and conditions contained herein. Prior to the installation of any Right-of-Way Improvements, the CDD shall submit an Application for a Right of Way Permit for review and approval from the Public Works Department of St. Johns County. Right-of-Way Improvements shall be constructed in accordance with the County's Standards and Details Manual for pavers. The cost of installation, maintenance, repair, or replacement of such Right-of-Way Improvements shall be paid by the CDD. It is expressly stipulated that this Agreement is a license for permissive use only and that the place of the Right-of-Way Improvements shall not operate to create or vest any property rights to said CDD. Moreover, whenever necessary for the construction, repair, improvement, maintenance, safe and efficient operation, alteration, or relocation of all or any portion of said County owned right-of-way, road, or highway, as solely determined by the County in its reasonable discretion, any or all of said Right-of-Way Improvements shall be promptly removed from said road, highway, or right-of-way at the expense of the CDD and relocated or reset as the parties agree.

Section 3. Indemnification. To the extent permitted by Florida law, and subject to the limits of liability set forth in Florida Statute Section 768.28, the CDD, 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 Association and its contractors and subcontractors) claims, liability, losses and /or cause of action, which may arise from any negligent act or omission of the CDD staff, employees or agents (including court costs and reasonable attorneys' fees) associated with or connected with the construction or use of the County's right-of-way in connection with such Right-of-Way Improvements by the CDD.

Section 4. Covenant with Land. This Agreement shall touch and concern the land and shall be a covenant running with the fee interest underlying such Right-of-Way Improvements located on 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 the CDD 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 the CDD, 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 the CDD, 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 the CDD acknowledge that this Agreement constitutes the complete agreement and understating of both parties. Both the County and the CDD acknowledge that any amendments to this Agreement shall be in writing and shall be executed by duly authorized representatives of both the County and the CDD.

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 the CDD 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) _____

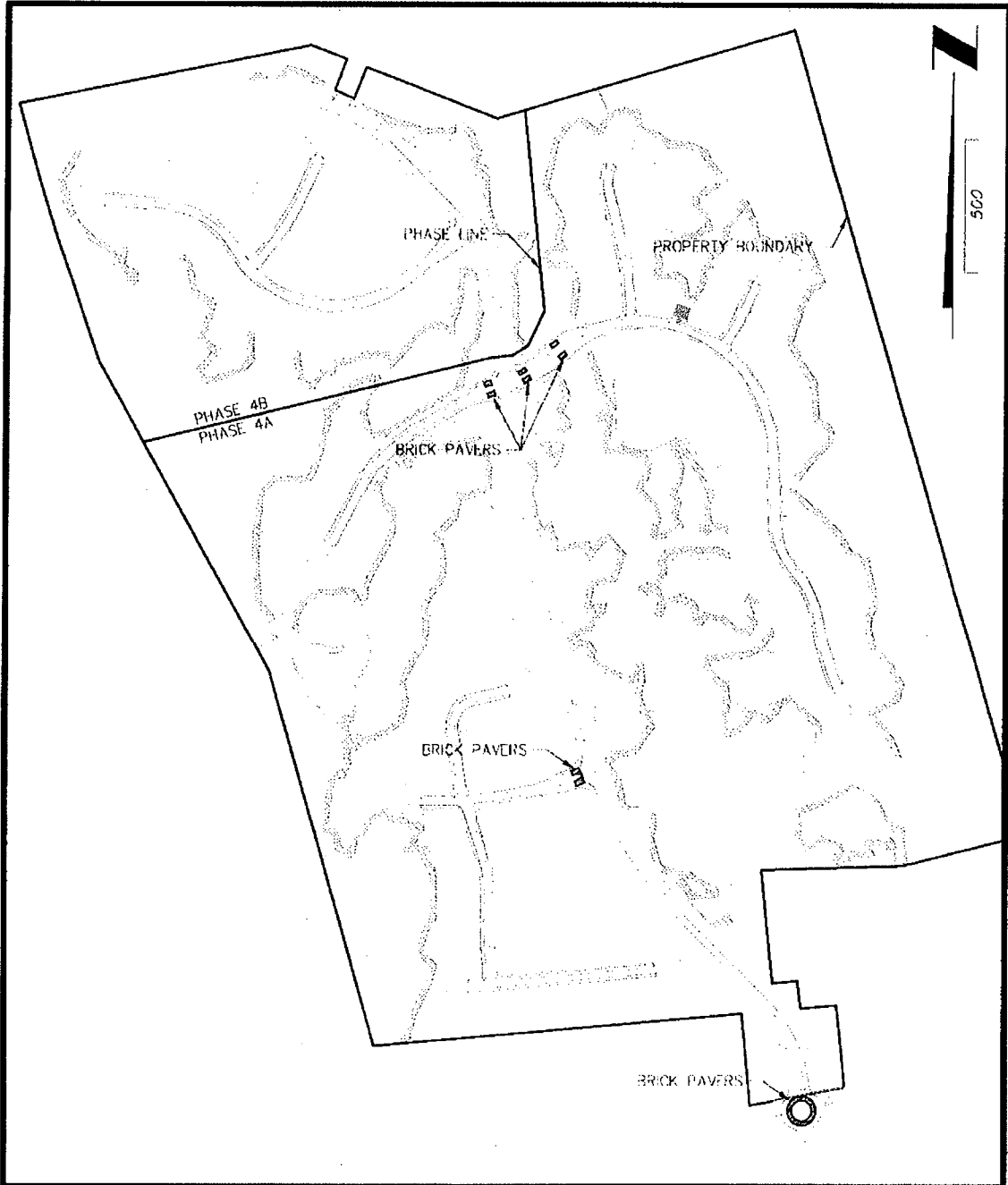
STATE OF FLORIDA
COUNTY OF ST. JOHNS


The foregoing instrument was acknowledged before me this ____ day of _____, 2016, 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.

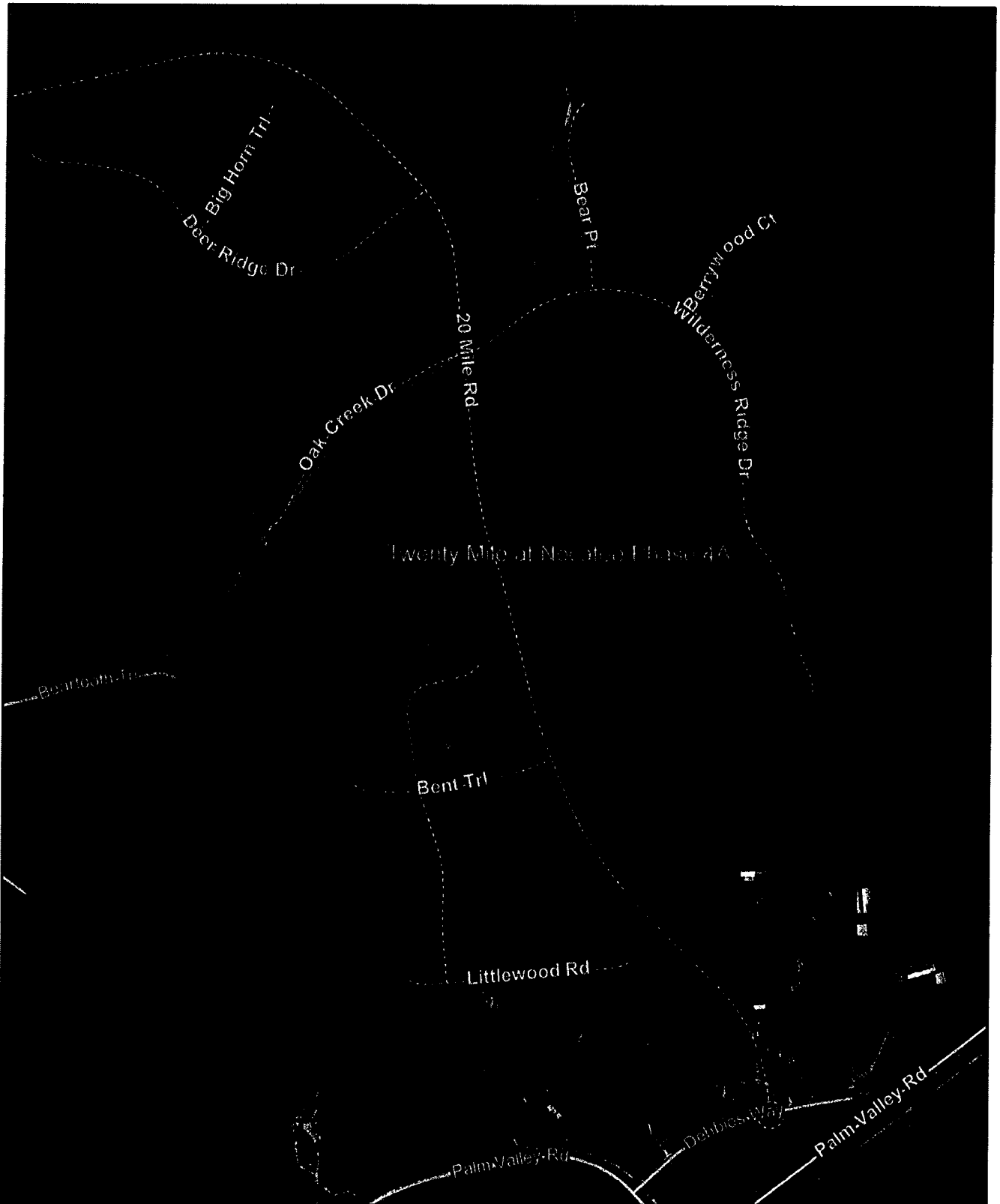
Notary Public, State of Florida
Name Printed: _____
My Commission Expires: _____


[Notary Seal]

EXHIBIT "A"



 VISION - EXPERIENCE - RESULTS ENGLAND - THIMS & MILLER, INC. <small>14775 Old St. Augustine Road Jacksonville, FL 32258 TEL (904) 642-8990 FAX (904) 645-9485 CA - CCG02684 LG - 0000376</small>	HOLD HARMLESS PAVER EXHIBIT		E.I.V. NO. 12 180-03
	TWENTY MILE VILLAGE - PHASE 4A		DRAWN BY: WBW
	HYDRY COMPANY, LLC.		DATE: 9/24/2015
	ST JOHNS COUNTY, FLORIDA		DRAWING NO. A




 2013 Aerial Imagery
 0 150 300
 Feet
 June 22, 2016

Maintenance and Hold Harmless Agreement

Twenty Mile at Nocatee Phase 4A

Land Management Systems Real Estate Division
 (904) 209-0790

 Disclaimer:
 This map is for reference use only. Data provided are derived from multiple sources with varying levels of accuracy. The St. Johns County Real Estate Division disclaims all responsibility for the accuracy or completeness of the data shown hereon.

