

RESOLUTION NO. 2017-238

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF AN AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA (COUNTY) AND THE POINTE AT PONTE VERDRA CONDOMINIUM ASSOCIATION, INC. (POINTE I) DISCLAIMING ANY RIGHT, TITLE, OR INTEREST THE COUNTY MAY HAVE IN CERTAIN IMPROVEMENTS TO POINTE I AND PERMITTING POINTE I TO KEEP AND MAINTAIN SAID IMPROVEMENTS WITHIN A CERTAIN PORTION OF A COUNTY RIGHT-OF-WAY SUBJECT TO CERTAIN CONDITIONS; AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY; AND INSTRUCTING THE CLERK OF COURT TO FILE THE AGREEMENT IN THE PUBLIC RECORDS OF THE COUNTY.

RECITALS

WHEREAS, a certain wooden pedestrian and bicycle bridge and its components (Improvements) have for decades been constructed and maintained within a certain portion of a County-owned right-of-way (County Right-of-Way) which was conveyed to the County in a Right of Way Deed, dated January 31, 1948 and recorded in Book 171, Page 535 of the official records of St. Johns County, Florida; and

WHEREAS, both the residents of Pointe I and the general public have made and continue to make use of the Improvements; and

WHEREAS, the County and Pointe I share the opinion that the Improvements are of public value and provide a valuable, ongoing, and important contribution to the residents of Pointe I; and

WHEREAS, the County and Pointe I share the opinion that the continued care and maintenance of the Improvements would be in the public interest and will contribute to the quality of life and recreational enjoyment of the residents of Pointe I; and

WHEREAS, Pointe I has asserted rights and interest in the ownership of the Improvements by the performance of repair and maintenance work on the Improvements and by virtue of a portion of the Improvements being located within a section of the County Right-of-Way over and upon lands owned by Pointe I; and

WHEREAS, the County and Pointe I wish to enter into a formal agreement regarding their interests in the Improvements and the utilization of the County Right-of-Way for the keeping and maintaining of the Improvements (Agreement), substantially in the form and format of the agreement attached as Exhibit A hereto and incorporated herein; and

WHEREAS, under the terms of the Agreement, the County would disclaim, relinquish, and forever assign to Pointe I any right, title, or interest the County may have in the Improvements; and

WHEREAS, under the terms of the Agreement, Pointe I would be allowed to keep and maintain the Improvements within the County Right-of-Way subject to certain conditions, including but not limited to Pointe I's agreement to allow public access to the Improvements and County Right-of-Way free from obstruction or interference, and Pointe I's agreement 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 the use of the County Right-of-Way by Pointe I, including but not limited to keeping and maintaining the Improvements in the County Right-of-Way, as well as certain other conditions; and

WHEREAS, while both the County and Pointe I recognize that the County has no obligation to repair, refurbish, operate, or maintain the Improvements either at present or under the terms of the Agreement, in order to provide for the continued safe use and enjoyment of the Improvements by the general public, as it has for years, under the terms of the Agreement, the County would make a one-time contribution of \$10,000.00 (County Contribution) to Pointe I, subject to the availability of lawfully appropriated funds, to be used solely for the repair, refurbishment, or maintenance of the Improvements; and

WHEREAS, the County has determined that the cost to the County of removal of the Improvements from the County Right-of-Way would likely be in excess of the County Contribution under the Agreement; and

WHEREAS, the County has reviewed the Agreement and determined that accepting the terms of, and executing, the Agreement provides a benefit to and is in the best interest of the County and the public.

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

Section 1. The above recitals are hereby incorporated into the body of this Resolution and are adopted as findings of fact.

Section 2. The Board of County Commissioners of St. Johns County, Florida hereby approves the terms, provisions, and conditions of the Agreement between St.

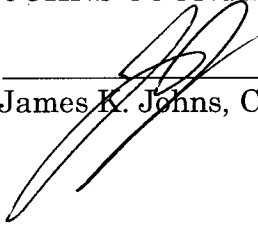
Johns County, Florida and Pointe I Condominium Association, Inc., and authorizes the County Administrator, or designee, to execute the Agreement on behalf of the County, in substantially the same form and format as attached.

Section 3. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or content of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.


Section 4. The Clerk of Courts of St. Johns County is instructed to file the executed Agreement in the public records of St. Johns County.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida this 18<sup>th</sup> day of July 2017.

BOARD OF COUNTY COMMISSIONERS OF  
ST. JOHNS COUNTY, FLORIDA

By:   
James K. Johns, Chair

ATTEST: Hunter S. Conrad

  
Deputy Clerk

RENDITION DATE 7/20/17



St. Johns County  
500 San Sebastian View  
St. Augustine, Florida 32084

## AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, 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, (hereinafter referred to as the “County”); and THE POINTE AT PONTE VEDRA CONDOMINIUM ASSOCIATION, INC., whose address is 91 San Juan Drive, Ponte Vedra Beach, Florida 32082-1333 (hereinafter referred to as “Pointe I”).

### Recitals

WHEREAS, a certain wooden pedestrian and bicycle bridge and its components (hereinafter referred to as “Improvements”), as illustrated in the aerial photograph on attached Exhibit A, incorporated by reference and made a part hereof, have for decades been constructed and maintained within a certain portion of a County right-of-way (hereinafter referred to as “County Right-of-Way”), more particularly described on attached Exhibit B, incorporated by reference and made a part hereof, which was conveyed to the County in a Right of Way Deed, dated January 31, 1948 and recorded in Official Records Book 171, Page 535 of the public records of St. Johns County, Florida; and

WHEREAS, both the residents of Pointe I and the general public have made, and continue to make, use of the Improvements; and

WHEREAS, the County and Pointe I share the opinion that the Improvements are of public value and provide a valuable, ongoing, and important contribution to the residents of Pointe I; and

WHEREAS, the County and Pointe I share the opinion that the continued care and maintenance of the Improvements would be in the public interest and will contribute to the quality of life and recreational enjoyment of the residents of Pointe I; and

WHEREAS, Pointe I has asserted rights and interest in the ownership of the Improvements by the performance of repair and maintenance work on the Improvements and by virtue of a portion of the Improvements being located within a section of the County Right-of-Way over and upon lands owned by Pointe I; and

WHEREAS, Pointe I has requested, and the County has agreed, that the County disclaim, relinquish, and forever assign to Pointe I any right, title, or interest the County may have in the Improvements; and

WHEREAS, the County and Pointe I have agreed that Pointe I may keep and maintain the Improvements within the County Right-of-Way subject to certain conditions, including but not

limited to Pointe I's agreement 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 use of the County Right-of-Way, as well as certain other conditions as hereinafter set forth.

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 County and Pointe I 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. Rights, Title, and Interest in the Improvements. Without warranty of any kind, including but not limited to warranty of title, merchantability, or method of conveyance, the County hereby disclaims, relinquishes, and forever assigns to Pointe I any and all right, title, and interest of the County that it may have in the Improvements, including but not limited to any right, duty, or obligation to repair, refurbish, operate, or maintain the Improvements. Pointe I expressly acknowledges and understands that the County makes no representation or warranty as to the condition of the Improvements.

Nothing in this Agreement, nor the construction, keeping, or maintenance of the Improvements in the County Right-of-Way, shall effect, or be deemed to effect, a transfer, disclaimer, relinquishment, assignment, or other conveyance of right, title, or interest in the County Right-of-Way. The County expressly reserves all rights, title, and interest it has in the County Right-of-Way, including but not limited to the right to control ingress and egress onto or over the County Right-of-Way and access to any structures or improvements on or within the County Right-of-Way, including but not limited to the Improvements.

Section 3. Right-of-Way Utilization. Pointe I may use the County Right-of-Way to keep and maintain the existing Improvements only. Pointe I shall keep and maintain the Improvements in a good and safe state of repair. Any and all repair, refurbishment, operation, or maintenance of the Improvements shall be the sole responsibility, and at the sole expense, of Pointe I. Pointe I shall not expand, modify, or substantially replace the Improvements without the prior written authorization of the County, which shall not be unreasonably withheld.

If, at any time, either the County Engineer or County Building Official determines, in their professional judgment, that repair or maintenance of the Improvements is reasonably necessary for the safe use, access, or operation of the County Right-of-Way, the County shall notify Pointe I in writing of said determination. Pointe I shall then have sixty (60) days from the date of notification to complete such repairs or maintenance to the satisfaction of the County Engineer or County Building Official. If, within sixty (60) days, Pointe I has not completed such repairs or maintenance, or the County and Pointe I have not agreed in writing to an extension of time to complete such repairs or maintenance, the County shall have the right, but shall not be required, to complete the repairs or maintenance or to remove and dispose of the Improvements, if either the County Engineer or County Building Official determines, in their professional judgment, that the Improvements pose, or may pose, a hazard to public health, safety, or welfare or constitute a public nuisance. The County shall be reimbursed by Pointe I for the costs and expenses of any such repairs, maintenance, removal, and/or disposal. In the event that Pointe I requests; and the

County agrees in writing to, relocation of the Improvements in lieu of removal and disposal, any such relocation shall be the sole responsibility, and at the sole expense, of Pointe I.

The County expressly reserves any right it may have to remove the Improvements from the County Right-of-Way at any time, and to dispose of the Improvements, should the County Right-of-Way be needed for any public purpose or purposes. Pointe I expressly reserves any right it may have to contest the County's right to take such action. In the event the County determines to remove the Improvements for the reason provided in this paragraph, the County shall notify Pointe I in writing no less than ninety (90) days prior to commencement of removal.

Section 4. Public Use and Access. The Pointe I agrees to allow public pedestrian and bicycle access to the Improvements and the County Right-of-Way and to keep the Improvements and the County Right-of-Way free from any obstruction to or interference with public use, including public pedestrian and bicycle access.

Section 5. County Contribution. The County agrees to make a one-time contribution of Ten Thousand and Dollars (\$10,000.00) ("County Contribution") to Pointe I to be used solely for the repair, refurbishment, or maintenance of the Improvements. Nothing in this Agreement, including but not limited to the County Contribution, shall in any way obligate, or create any duty on the part of, the County to repair, refurbish, operate, or maintain the Improvements or to make any other contribution at any time to the repair, refurbishment, operation, or maintenance of the Improvements.

The parties understand and acknowledge that the obligation to make the County Contribution is subject to the availability of lawfully appropriated funds. While the County will make all reasonable efforts in order to provide funds needed for the County Contribution, the County makes no express commitment to provide such funds in any given County fiscal year. Moreover, it is expressly noted that Pointe I cannot demand that the County provide any such funds in any given County fiscal year.

The parties agree that, in the event lawfully appropriated funds are not available such that the County is unable make the County Contribution within one (1) year of the effective date of this Agreement, no later than fourteen (14) days thereafter, Pointe I may provide the County with written notice of intent to terminate this Agreement. Upon receipt of the notice by the County, this Agreement shall be deemed null and void *ab initio* and the parties shall be returned to their status *quo ante*.

Section 6. Indemnification. To the extent permitted by Florida law, Pointe I and its successors and assigns agree to protect, defend, indemnify, and hold the County and its tenants, elected officials, officers, employees, agents, and assigns free and unharmed from and against any and all claims, liability, damages, losses and/or causes of action (including without limitation court costs and reasonable attorneys' fees) of any and all third party, including but not limited to Pointe I's officers, employees, contractors, subcontractors, members, and owners, arising or occurring during the term of this Agreement, which may (directly or indirectly) relate to or arise from the use of the County Right-of-Way by Pointe I, including but not limited to the keeping and maintaining of the Improvements in the County Right-of-Way by Pointe I. This indemnification shall survive the termination of this Agreement.

Nothing contained in this section is intended to nor shall be construed to operate as a waiver on the part of the County of the limitations of liability set forth in section 768.28, Florida Statutes, or of the County's sovereign immunity.

Section 7. Insurance. Pointe I shall obtain all insurance required under this section and shall furnish proof of insurance to the County. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificate(s) shall clearly indicate Pointe I has obtained insurance of the type, amount, and classification as required by this Agreement and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County. Certificates shall specifically include the County as Additional Insured for all lines of coverage except Workers' Compensation and Professional Liability. A copy of the endorsement must accompany the certificate. Compliance with the foregoing requirements shall not relieve Pointe I of its liability and obligations under this Agreement.

Certificate Holder Address: St. Johns County, a political subdivision of the State of Florida  
500 San Sebastian View  
St. Augustine, FL 32084

Pointe I shall maintain Comprehensive General Liability Insurance with minimum limits of \$5,000,000 per occurrence, \$10,000,000 aggregate, to protect Pointe I from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages which may (directly or indirectly) relate to or arise from the use of the County Right-of-Way by Pointe I, whether such use is by Pointe I or by anyone employed by or contracting with Pointe I.

In the event of unusual circumstances, the County Administrator or his designee may adjust these insurance requirements.

Section 8. 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 9. 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 10. 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 11. Attorney's Fees. In connection with any administrative and/or legal action arising under this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs at all levels of the proceedings in addition to any other relief granted.

Section 12. Procedure for Achieving Assignment. In light of the scope and rationale for this Agreement, neither the County nor Pointe I may assign, transfer, and/or sell any of the rights noted in this Agreement without the express prior written approval of the other party. Should either County or Pointe I 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 Pointe I, shall result in the automatic termination of this Agreement, without further notice or action required on the part of the other party.

Section 13. Entire Agreement. Both the County and Pointe I acknowledge that this Agreement constitutes the entire agreement among the parties and supersedes any prior understanding or agreement among them respecting the subject matter hereof. There are no representations, arrangements, understandings, or agreements, either oral or written, among the parties hereto relating to the subject matter of this Agreement except those fully expressed herein, and each party agrees that, in entering into this Agreement, it has not relied on and is not entitled to rely on any statements, promises, or representations other than those set forth herein. Both the County and Pointe I acknowledge that any amendments to this Agreement shall be in writing and shall be executed by duly authorized representatives of both the County and Pointe I.

Section 14. 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) and other applicable state or federal law. Access to such public records may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party or an unaffiliated party.

Section 15. Recordation. The County shall record this Agreement in a timely fashion in the official records of St. Johns County, Florida. The County shall pay all recording costs and taxes necessary to record this Agreement in the official records.

Section 16. Notices. All notices pertaining to this Agreement shall be delivered either by hand or by certified mail, return receipt requested, to:

Pointe I:           The Pointe at Ponte Vedra Condominium Association, Inc.  
                          91 San Juan Drive  
                          Ponte Vedra Beach, FL 32082-1333

With copy to: Sovereign-Jacobs Property Management Companies, LLC  
                          461 A1A Beach Blvd.  
                          St. Augustine, FL 32080

The County:       St. Johns County  
                          County Administrator  
                          500 San Sebastian View  
                          St. Augustine, FL 32084

With copy to: St. Johns County  
                          Office of the County Attorney  
                          500 San Sebastian View



St. Augustine, FL 32804

Section 17. Section Headings. Section headings in this Agreement are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

Section 18. Negotiated Agreement. This Agreement was negotiated and prepared by both parties with the participation of counsel and advisers of their own choosing. The parties have agreed to the text of this Agreement, and none of the provisions hereof shall be construed against either party on the ground that such party is the author of this Agreement or any part thereof

Section 19. Authority to Execute. Each party to this Agreement covenants to the other that it has the lawful authority to enter into this Agreement and that it has authorized the execution of this Agreement by the representative noted below.

Section 20. Effective Date. This Agreement shall be effective on the date of the last signature of the parties hereto.

IN WITNESS WHEREOF, the County and Pointe I 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 \_\_\_\_\_, 2017, 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 or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

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

Signed, sealed and delivered  
in our presence as Witnesses:

The Pointe at Ponte Vedra Condominium  
Association, Inc.

(sign) \_\_\_\_\_  
(print) \_\_\_\_\_

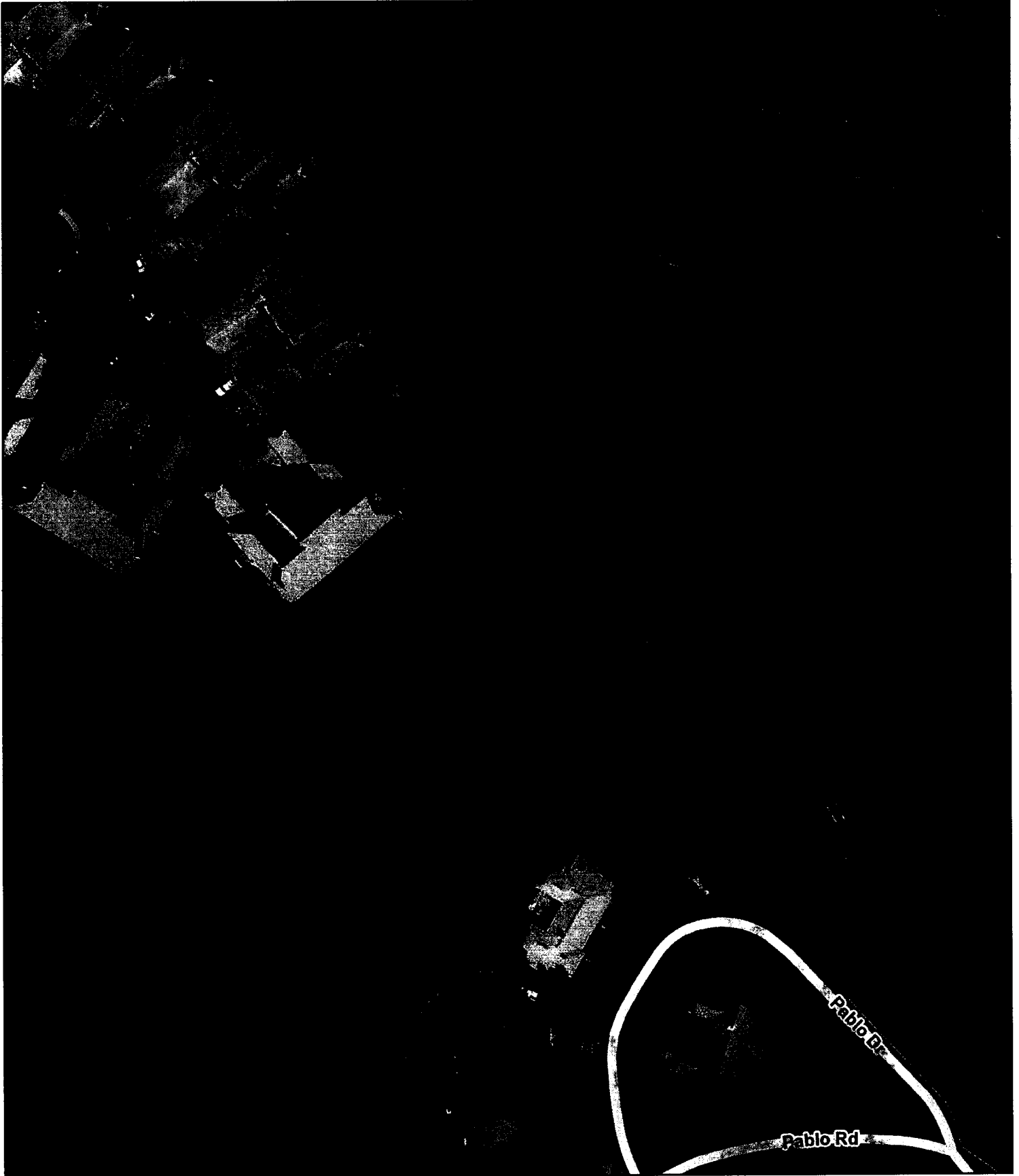
\_\_\_\_\_  
Mark Yancey, President

(sign) \_\_\_\_\_  
(print) \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Mark Yancey, as President of The Pointe at Ponte Vedra Condominium Association, Inc., on behalf of The Pointe at Ponte Vedra Condominium Association, Inc. who is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

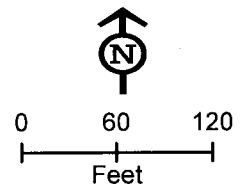


Map created with St. Johns County's iMap

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

Date: 3/17/2017

# Exhibit A



## EXHIBIT B

(County Right-of-Way)

The Northwesternly Two Hundred Seventy (270) feet of the following described parcel:

A strip of land located in Government Lot 3, Section 15, Township 3 South, Range 29 East, St. Johns County, Florida, and more particularly described as follows:

For point of beginning commence at a permanent reference monument shown on the plat of Ponte Vedra recorded in the public records of St. Johns County, Florida in Map Book 5, page 24, as being located in the extreme Easterly corner of Lot 4, Block 50, and run thence South Forty-five degrees Twelve minutes Thirty seconds East ( $S45^{\circ} 12' 30''E$ ) along the Northeasterly boundary of the right of way of an unnamed public road a distance of Four Hundred Four and Forty-Five One Hundredths (404.45) feet to a permanent reference monument set at a point of curvature in the Northeasterly boundary of the right of way of Pablo Road; run thence North Thirty-six degrees Sixteen minutes Twenty seconds West ( $N36^{\circ} 16' 20''W$ ) a distance of Two Hundred Fifty-seven and Fifty-seven One Hundredths (257.57) feet to a point; run thence North Forty-five degrees Twelve minutes Thirty seconds West ( $N45^{\circ} 12' 30''W$ ) keeping parallel to and Forty (40) feet distant from the Northeasterly boundary of said Lot 4, Block 50, when measured at right angles thereto, a distance of Five Hundred Sixty (560) feet, more or less, to the Westerly shore of Ponte Vedra lagoon and the Easterly boundary of Lot 2, Ponte Vedra Apartments, as per plat recorded in the public records of St. Johns County, Florida in Map Book 6, page 23; run thence in a Southerly direction along the Westerly shore of said lagoon and along the Easterly boundary of said Lot 2, a distance of Fifty (50) feet, more or less, to a point where the shore of said lagoon is intersected by the Northwesternly prolongation of the Northeasterly boundary of Lot 4, Block 50, Ponte Vedra; run thence South Forty-five degrees Twelve minutes Thirty seconds East ( $S45^{\circ} 12' 30''E$ ) along the Northwesternly prolongation of the Northeasterly boundary of said Lot 4, and along the Northeasterly boundary of said lot a distance of Three Hundred Eighty (380) feet, more or less, to the point of beginning.