

RESOLUTION NO. 2019- 188

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF AN MAINTENANCE AGREEMENT BETWEEN FBP DEVELOPMENT PV, LLC, A FLORIDA LIMITED LIABILITY COMPANY, AND ST. JOHNS COUNTY, FLORIDA, AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE MAINTENANCE AGREEMENT ON BEHALF OF ST. JOHNS COUNTY.

RECITALS

WHEREAS, FBP Development PV, LLC, a Florida Limited Liability Company ("FBP") is the owner of property located at the intersection of Mickler Road and County Road 210 in St. Johns County; and

WHEREAS, FBP wishes to enhance the aesthetic appearance of the roundabout and medians located at or near the intersection of County Road 210 and Mickler Road, including the approaches to the intersection, ("Roundabout") by providing for maintenance of the landscaping of the Roundabout to a level and frequency beyond that currently provided by the County's maintenance schedule and funding; and

WHEREAS, in order to provide for the enhanced maintenance of the landscaping of the Roundabout, FBP wishes to assume all responsibility and cost of mowing and trimming the Roundabout; and

WHEREAS, St. Johns County ("County") and FBP wish to enter into a formal written Landscaping Maintenance and Hold Harmless Agreement substantially in the form and format as attached hereto and incorporated herein by reference, to allow FBP to assume the responsibility and cost of mowing and trimming the Roundabout subject to certain conditions, including but not limited to FBP's agreement to protect, defend, indemnify and hold the County harmless, to the extent permitted by Florida law, from claims, losses, damages and expenses which may be incurred as a direct or indirect result of FBP's landscape maintenance of said Roundabout; and

WHEREAS, the County finds a public purpose in entering this agreement.

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 of St. Johns County hereby approves the terms, conditions, provisions, and requirements of the Landscaping Maintenance and Hold Harmless Agreement with FBP Development PV, LLC, a Florida Limited Liability Company, and authorizes the County Administrator, or designee, to execute the Landscaping Maintenance and

Hold Harmless Agreement on behalf of the County in substantially the form and format as attached.

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 of St. Johns County, Florida, this 4 day of June, 2019.

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

By: Paul M. Waldron
Paul M. Waldron, Chair

ATTEST: Hunter S. Conrad, Clerk

By: Sam Hatterman
Deputy Clerk

RENDITION DATE 6/6/19



LANDSCAPING MAINTENANCE AND HOLD HARMLESS AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2019, by and between ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida ("County"), whose address is 500 San Sebastian View, St. Augustine, Florida 32084, and FBP DEVELOPMENT PV, LLC, a Florida limited liability company ("FBP"), whose mailing address is P.O. Box 1414, Ponte Vedra Beach, FL 32004-1414.

RECITALS

WHEREAS, pursuant to Chapter 336, Florida Statutes, the County is responsible for the operation and maintenance of the County Road System; and

WHEREAS, Mickler Road and County Road 210, including a certain roundabout and medians located at or near the intersection of County Road 210 and Mickler Road, including the approaches to the intersection (the "Roundabout"), more particularly illustrated in attached Exhibit A, incorporated by reference and made a part hereof, are part of the County Road System in St. Johns County, Florida; and

WHEREAS, the County has maintained the Roundabout, including by mowing, trimming, and otherwise maintaining the landscaping installed in the Roundabout; and

WHEREAS, FBP wishes to enhance the aesthetic appearance of the Roundabout by providing for maintenance of the landscaping of the Roundabout to a level and frequency beyond that currently provided by the County's maintenance schedule and funding; and

WHEREAS, in order to provide for the enhanced maintenance of the landscaping of the Roundabout, FBP wishes to assume all responsibility and cost of mowing and trimming the Roundabout; and

WHEREAS, the County has agreed to allow FBP to assume the responsibility and cost of mowing and trimming the Roundabout depicted on Exhibit A subject to certain conditions, including but not limited to FBP's agreement to protect, defend, indemnify and hold the County harmless, to the extent permitted by Florida law, from claims, losses, damages and expenses which may be incurred as a direct or indirect result of FBP's landscape maintenance of said Roundabout; and

WHEREAS, the County has agreed to recognize the efforts of FBP in increasing the aesthetic and community value of the County Road System; and

WHEREAS, the County finds a public purpose in entering this agreement.

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

Section 1. Recitals and Exhibits. The recitals and exhibits above 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. FBP shall maintain, or cause to be maintained, the landscaping of the Roundabout under the terms and conditions contained herein. The cost of such maintenance of the landscaping shall be the sole expense of FBP. It is expressly understood and agreed that this Agreement is for permissive use only and that nothing in the execution, operation, effect, or performance of this Agreement, nor the maintenance of the Roundabout or any work performed upon public property pursuant to this Agreement, shall in anyway operate to create or vest any right, title, interest, or estate to FBP in the Roundabout or other public property.

Section 3. FBP Duties. FBP shall maintain in perpetuity the landscaping of the Roundabout area identified in Exhibit A at its sole cost and expense and subject to the following conditions:

A. Maintenance shall be limited to mowing and trimming of the installed landscaping in the locations identified in Exhibit A. No other maintenance activities are permitted by this Agreement.

B. Grass shall be maintained to be no greater than twelve (12) inches tall.

C. Routinely remove and dispose of all grass clippings, trimmings, roots, litter, and other material resulting from the activities described in this Section 3.

D. Maintenance under this Section 3 shall be performed in a good and workmanlike manner, with reasonable care, in accordance with the terms of this Agreement.

E. Maintenance activities shall be conducted no earlier than thirty (30) minutes after sunrise and no later than thirty (30) minutes prior to sunset.

F. FBP shall not install any landscaping or other improvements, including but not limited to trees, bushes, plants, fencing, walls, or other structures ("Landscaping Improvements"), within the Roundabout without first seeking and obtaining required approvals and right-of-way permits from the County. Maintenance of any approved and permitted Landscaping Improvements shall be the sole responsibility of FBP and shall be performed

in a good and workmanlike manner, with reasonable care, and in accordance with the terms of this Agreement, which shall include, but not be limited to, keeping and trimming such Landscaping Improvements so as not to interfere with or obstruct vehicle sightlines in the Roundabout or otherwise cause or constitute a safety hazard.

Section 4. County Duties.

A. Right of Way Permitting. The County shall timely review any application by or on behalf of FBP, for a right-of-way permit for the installation of Landscaping Improvements within the Roundabout. This paragraph shall not be construed to require the County grant any right-of-way permit application that does not comply with County right-of-way standards or other safety standards.

B. Signage. The County shall fabricate three signs according to the specifications set forth in attached Exhibit B, incorporated by reference and made a part hereof. The County shall install one sign at each approach to the Roundabout at the locations identified on Exhibit A. FBP shall be solely responsible for the maintenance, repair, and replacement of the signs after initial installation.

Section 5. Emergency Maintenance. If, at any time, in the sole determination of the County, the integrity or safety of the Roundabout requires immediate maintenance for the benefit of the public health, safety, or welfare, the County may perform such maintenance as it deems appropriate under the circumstances. The County shall attempt to notify FBP prior to such action, but may take necessary steps to correct the emergency situations prior to such notification in order to prevent imminent danger to public health, safety, or welfare.

Section 6. FBP Failure to Perform. In the event that FBP fails to fulfill any of its maintenance obligations under Section 3 above, the County shall notify FBP in writing of said failure to perform and of the corrective action to be taken. FBP shall then have ten (10) days from the date of the notice, or such other time as FBP and the County mutually agree in writing, to take such corrective action and provide the County with written notice of the same. In the event FBP does not take corrective action within ten (10) days, the County may: (1) provide FBP with written authorization granting such additional time as the County deems appropriate to take correction action; or (2) may terminate this Agreement for cause upon providing at least ten (10) days after advance written notice to FBP.

Section 7. Termination. This Agreement may be terminated by either party without cause upon sixty (60) days prior written notice to the other party.

Section 8. Indemnity. To the extent permitted by Florida law, FBP, its successors and assigns, and individual members constituting FBP, covenant and

agree to protect, defend, indemnify, and hold the County and its elected officials, officers, agents, employees, and assigns harmless from all claims, lawsuits, liability, injuries, death, or damages, including costs and attorneys' fees, resulting from, arising out of, or related to any act, action, neglect, or omission by FBP, its officers, contractors, employees, or agents associated with or connected with the use of the County's right-of-way in connection with 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 9. Relationship of the Parties. The parties agree that this Agreement does not and shall not be construed as or constitute an agency, partnership, joint venture, or other fiduciary or confidential relationship between FBP and the County.

Section 10. No Third Party Beneficiaries. This Agreement is entered into only for the benefit of the parties hereto, and their respective successors and assigns. Both the County and FBP expressly agree that nothing in this Agreement shall be construed to create any third party beneficiary status on any person or entity.

Section 11. Waiver. The failure of either party to insist upon strict performance of any term or provision of this Agreement on one or more occasions shall not be construed as a waiver of such term or provision and all such terms and provisions shall remain in full force and effect. No waiver of any portion of the provisions hereof shall be effective unless it is in writing and signed by the party against whom the waiver is asserted. Any such written waiver shall be applicable only to the specific instance to which it relates and shall not be deemed to be a continuing waiver or waiver of any future matter.

Section 12. Entire Agreement. This Agreement, together with the attached exhibits, 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. This Agreement may not be modified or amended except by the mutual written agreement of the parties.

Section 13. Negotiated Agreement. This Agreement was negotiated and prepared by both parties with each party having had the opportunity to consult with 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 14. 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 15. 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, invalid, or otherwise unenforceable for any reason, then such word, phrase, sentence, part, subsection, or 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, invalid, or unenforceable shall remain in full force and effect.

Section 16. 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 17. Assignment. This Agreement shall not be transferred or assigned in whole or in part without written consent of both parties. Nothing in this Agreement shall prevent FBP from delegating its duties hereunder, but such delegation shall not release FBP from its obligation to perform this Agreement.

Section 18. Amendments to Agreement. Both parties acknowledge that this Agreement constitutes the complete agreement and understanding of both parties. Any amendments to the Agreement shall be in writing and shall be executed by duly authorized representatives of both the County and FBP.

Section 19. Notice. All notices pertaining to this Agreement shall be in writing and shall be delivered either by hand or by certified mail, return receipt requested, to:

For the County:	St. Johns County Road & Bridge Manager 2740 Industry Center Rd. St. Augustine, FL 32084
With copy to:	St. Johns County Office of the County Attorney 500 San Sebastian View St. Augustine, FL 32084
For FBP:	FBP Development PV, LLC P.O. Box 1414 Ponte Vedra Beach, FL 32004-1414

Section 20. Counterparts. This Agreement may be executed in any number of counterparts, including facsimile, and each counterpart shall be deemed an original and all of which together will constitute one and the same instrument.

Section 21. Paragraph and Section Headings. Paragraph and 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 22. Access to Records. The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or 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 23. Authority to Execute. Each party to this Agreement covenants to the other party 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 24. Effective Date. This Agreement shall be effective on the date of the last signature of the parties hereto.

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

Signed, sealed and delivered
in our presence as witnesses:

(sign) _____

(print) _____

(sign) _____

(print) _____

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

By: _____

Michael D. Wanchick
County Administrator

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledge before me this ____ day of _____, 2019 by Michael D. Wanchick, as County Administrator of St. Johns County, Florida, who is personally known to me.

Notary Public, State of Florida

Name Printed:_____

My Commission Expires:_____

[Notary Seal]

Signed, sealed and delivered
in our presence as witnesses:

(sign) _____

(print) _____

(sign) _____

(print) _____

FBP DEVELOPMENT PV, LLC,
a Florida limited liability company

By: _____

Its: _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledge before me this ____ day of _____,
2019 by _____, on behalf of FBP DEVELOPMENT PV, LLC, who
produced _____ as identification or is personally known to
me.

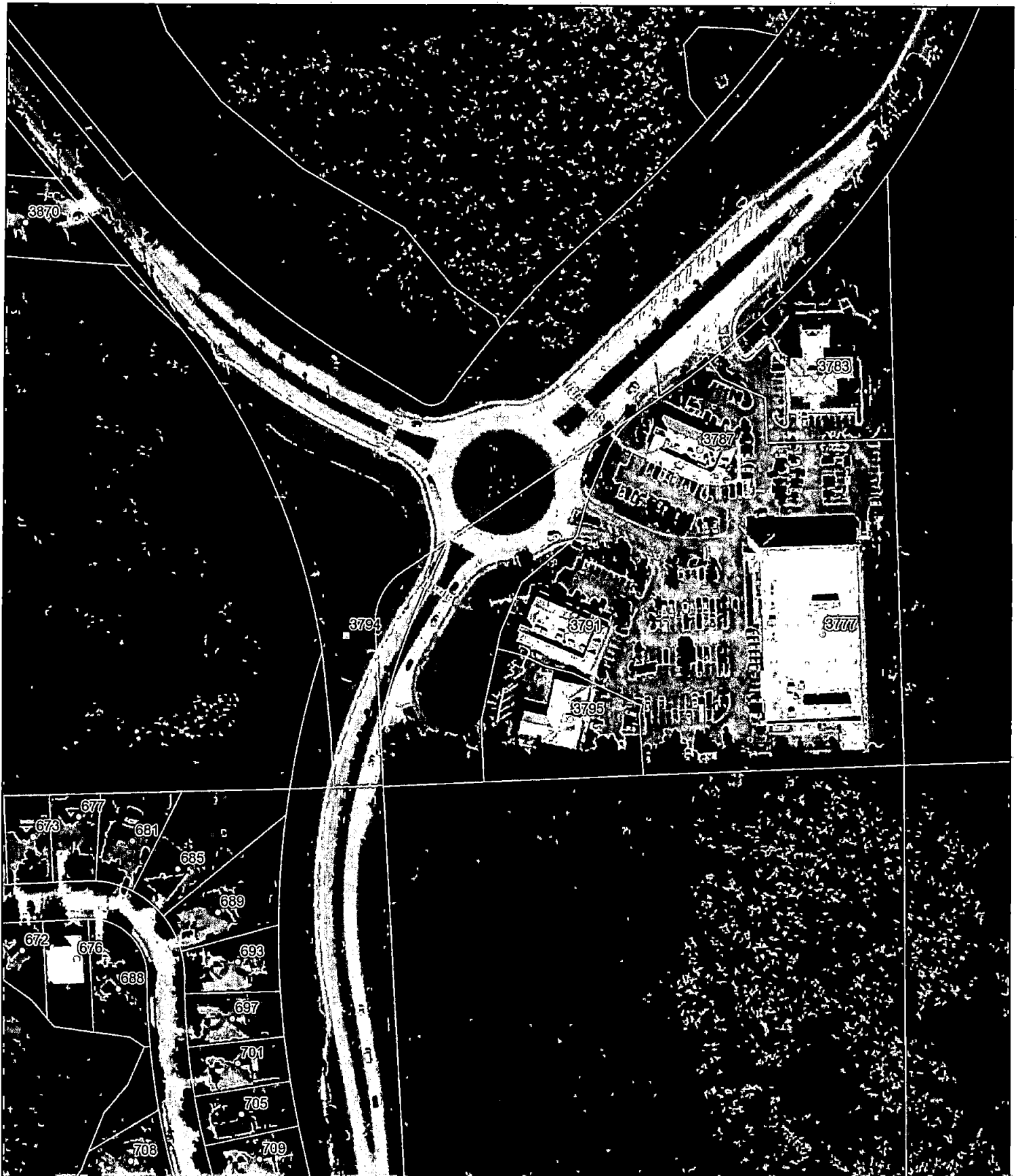
Notary Public, State of Florida

Name Printed: _____

My Commission Expires: _____

[Notary Seal]

EXHIBIT A
Roundabout



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: 11/30/2017

EXHIBIT A

The Roundabout

x - Approximate locations of signs

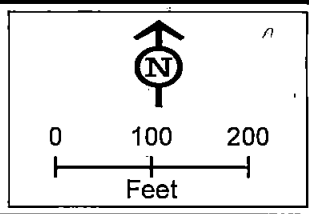


EXHIBIT B
Sign Specifications

**Landscaping
Maintained
by Merchants
of the
SHOPPES at
PALM VALLEY**