



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.3.

8/8/2023

Subject:

Adopt Resolution and Release Performance Bond: Cove at Morrow Place (FKA Morrow Place at Walkabout) - District 1

Developer: D.R. Horton, Inc.

Fiscal Impact:

None

Dept/Office:

Public Works/Engineering

Requested Action:

In accordance with Section 62-2844(b), it is requested that the Board of County Commissioners adopt the attached Resolution and authorize the Chair to sign the Resolution releasing the Contract and Surety Performance Bond dated May 3, 2022, for the above referenced project.

Summary Explanation and Background:

The Cove at Morrow Place subdivision is a re-plat of Morrow Place at Walkabout to revise lot lines and accommodate a different townhouse floor plan without changing the number of lots. It is located within the Indian River Preserve Planned Unit Development on the north side of Clubhouse Drive approximately half a mile west of the traffic circle at Indian River Parkway. The re-plat of the subdivision contains 34 townhouse units on 5.51 acres.

The Cove at Morrow Place subdivision received preliminary plat and final engineering plans on February 9, 2022, and final plat and contract approval May 3, 2022. The developer posted a Surety Performance Bond for guarantee of the completion of the infrastructure improvements according to the approved plans.

Per Section 62-2809(b)(2), "Construction after final plat recordation: ...the applicant shall provide security required in Section 62-2844 for the performance of such construction..." Section 62-2844(a) states: "An applicant shall be required to secure its performance security of the construction required under this article by a surety bond, letter of credit, savings account, certificate of deposit or execution of a tri-party escrow agreement. Such security shall not be required if a certificate of completion has been issued for all the subdivision improvements prior to final plat recordation." Because the applicant chose to plat the subdivision prior to completion of construction, the applicant entered into a Contract with the Board and posted a Surety Performance Bond to guarantee the completion of the infrastructure improvements according to the approved plans.

As of February 21, 2023, the Cove at Morrow Place subdivision infrastructure improvements have been

completed.

Reference: 21SDM00001, 21FM00014

Contact: Christine Verrett, Special Projects Coordinator III, Extension 58328

Clerk to the Board Instructions:

Please forward the Board action to the Public Works Department and provide 2 originals of the Resolution.



August 9, 2023

MEMORANDUM

TO: Marc Bernath, Public Works Director Attn: Christine Verrett

RE: Item F.3., Resolution and Release Performance Bond: Cove at Morrow Place (FKA Morrow Place at Walkabout) – Developer: D.R. Horton, Inc.

The Board of County Commissioners, in regular session on August 8, 2023, adopted Resolution No. 23-068, releasing the Contract and Surety Performance Bond dated May 3, 2022, for Cove at Morrow Place (FKA Morrow Place at Walkabout) – Developer: D.R. Horton, Inc. Enclosed are two fully-executed Resolutions.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/tr

Encls. (2)

RESOLUTION 23- 068

WHEREAS, the Board of County Commissioners of Brevard County, Florida and D.R. Horton, Inc. entered into a contract to guarantee the construction of improvements on property commonly known as Cove at Morrow Place.

WHEREAS, by execution of the Contract, the Board of County Commissioners of Brevard County, Florida agreed to accept said improvements for private use at such time as said improvements were satisfactorily completed; and

WHEREAS, D.R. Horton, Inc. completed all of the infrastructure improvements and has requested that the executed contract approved on May 3, 2022, be released and release of all undisbursed funds referenced in the Contract hereinabove described.

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Brevard County, Florida that:

1. The Board of County Commissioners of Brevard County, Florida hereby acknowledges that there is satisfactory completion of all improvements to that certain real property commonly known as Cove at Morrow Place.
2. The Board of County Commissioners of Brevard County, Florida hereby releases the contract and performance bond executed on May 3, 2022.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 8th day of August, 2023.

ATTEST.


Rachel Sadoff, Clerk of the Court

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: 

Rita Pritchett, Chair

As approved by the Board on August 8, 2023

Subdivision No. 21Sm Dm.00001

Project Name Cave at Morrow Place

**Subdivision Infrastructure
Contract**

THIS CONTRACT entered into this 3 day of May 20 22, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and D.P. Horton Inc., hereinafter referred to as "PRINCIPAL."

WITNESSETH:

IN CONSIDERATION of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. The PRINCIPAL agrees to construct the improvements described below:

Infrastructure improvements consisting of water, sewer, storm drainage, roadways, sidewalks and all other improvements depicted in subdivision number 21SDm.00001. A copy of said plat to be recorded in the Plat Books of the Public Records of Brevard County.

2. Principal agrees to construct the improvements strictly in accordance with the plans and specifications on file in the Land Development Division (which construction is hereinafter referred to as the "Work"). Such plans and specifications (hereinafter referred to as the "Plans") are hereby incorporated into this Agreement by reference and made a part hereof. Principal warrants to County that the Work will conform to the requirements of the Plans and other requirements specified in the County's approval of the Work. Principal also warrants to County that the Work will be free from faults and defects. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered to be defective. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this paragraph 2.

If within two (2) years after approval and acceptance of the improvements by County, any Work is found to be defective, Principal shall promptly, without cost to County, either correct such defective Work, or, if it has been rejected by County, remove it from the site and replace it with nondefective Work. If Principal does not promptly comply with the terms of such instructions, County may elect any of the remedies provided for in paragraph 6 herein below. Corrective Work shall be warranted to be free from defects for a period of six (6) months. Any defect in such Work shall be corrected again by Principal promptly upon notice of the defect from County. In the event the maintenance bond given by Principal in connection with County's acceptance of the improvements is extended, the two (2) year warranty period provided for herein shall be extended for a like period.

To the extent assignable, Principal assigns to County all of Principal's warranty rights under its construction contract with the contractor constructing the improvements (including all warranties provided by law of in equity with respect to such construction contract), which warranties may be asserted by County on behalf of Principal in the event Principal fails to perform its warranty obligations hereunder. Where warranties granted hereunder overlap, the more stringent requirement shall control."

3. The PRINCIPAL agrees to complete said construction on or before the 1 day of June, 20 24.

4. In order to guarantee performance of PRINCIPAL'S obligations herein contained, PRINCIPAL shall furnish cash, letter of credit, certificate of deposit or surety bond in a form approved by the COUNTY, in the amount of \$ 184,381.89. If such bond is a cash bond or a certificate of deposit, said amount shall be deposited with the Board of County Commissioners within five (5) business days of the County's acceptance of this contract. Said bond shall be 125% of the estimated cost of construction, as determined by the Land Development Division. PRINCIPAL shall maintain such records and accounts, including property, personnel, financial records, as are deemed necessary by the COUNTY to ensure proper accounting for all funds expended under the agreement. Said records shall be made available upon request for audit purposes to Brevard County and its auditors.
5. The COUNTY agrees to accept said plat above described for recording in the public records of Brevard County, Florida and to accept the areas depicted thereon as dedicated for public use, including but not limited to streets and parks, at such time as said improvements are satisfactorily completed. Satisfactory completion in accordance with the plans and specifications shall be determined by written approval of the County Development Engineer or designated assistant.
6. In the event, PRINCIPAL fails to complete said improvements within the time prescribed, the COUNTY may elect to take all or any of the following actions:
 - A. Vacate all or part of such recorded plat where improvements have not Been completed in accordance with the plans and specifications,
 - B. Complete the improvements utilizing COUNTY employees and materials and request payment from the bond or the PRINCIPAL,
 - C. Request the surety on said performance bond to complete such improvements, or
 - D. Contract for completion of said improvements.
7. The PRINCIPAL and Surety on said performance bond shall be liable for all costs, expenses, and damages incurred by the COUNTY, including attorney's fees, in the event the PRINCIPAL defaults on this contract.
8. In the performance of this Agreement, the PRINCIPAL shall keep books, records, and accounts of all activities, related to the agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this agreement shall be open to inspection during regular business hours by an authorized representative of the Office and shall be retained by the PRINCIPAL for a period of three years after termination of this agreement. All records, books and accounts related to the performance of this agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119 of the Florida Statutes.
9. No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this agreement shall be subject to copyright by PRINCIPAL in the United States or any other country.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

Rachel M. Saboff
RACHEL M. SABOFF, CLERK

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Kristine Zonka
Kristine Zonka, Chair

As approved by the Board on: May 3, 2022.

WITNESSES:

Pamela H Grinage
Pamela H Grinage
Jonja Pedull

PRINCIPAL:

John T. Lynch
as President
Asst. Sec.
5.2.22
DATE

State of: Florida

County of: Brevard

The foregoing instrument was acknowledged before me this 2 day of May, 2022, by John T. Lynch who is personally known to me or who has produced as identification and who did (did not) take an oath.

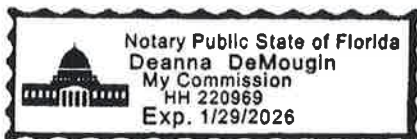
My commission expires: 01/29/2026

S E A L

Commission Number: HH 220969

Deanna DeMougin
Notary Public

Deanna DeMougin
Notary Name printed, typed or stamped



SURETY PERFORMANCE BOND

Bond No. 800054872

KNOW ALL MEN BY THESE PRESENTS:

That we, D.R. Horton, Inc., hereinafter referred to as "Owner" and, Atlantic Specialty Insurance Company, hereinafter referred to as "Surety", are held and firmly bound unto the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as "County", in the sum of \$184,381.89, for the payment of which we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, Owner has entered into a contract with the County dated the 3 day of May, 2022, which contract is made a part hereof by reference.

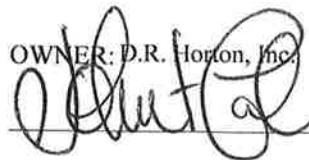
NOW THEREFORE, the condition of this obligation is such that if Owner shall promptly and faithfully perform said contract and complete the work contemplated therein by 01/06/24, 2024, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

If the Owner shall be declared in default of said contract by the County, the Surety shall have sixty (60) days from the date of said default within which to take whatever action it deems necessary in order to insure performance. If, at the expiration of sixty (60) days from the date of said default, no arrangements have been made by the Owner or surety satisfactory to the County for the completion of said contract, then the County shall have the right to complete said contract and the Owner and Surety jointly and severally, shall pay all costs of completing said contract to the County, including but not limited to engineering, legal and other costs, together with any damages, either direct or consequential, which the County may sustain on account of the Owner's default of said contract. After the expiration of the aforesaid grace period, the County shall have the additional right to contract for the completion of said contract upon which the Owner has defaulted and upon the County's acceptance of the lowest responsible bid for the completion of said contract, the Owner and Surety shall become immediately liable for the amount of said bid and in the event the County is required to commence legal proceedings for the collection thereof, interest shall accrue at the rate of six percent (6%) per annum beginning with the commencement of such legal proceedings. The County, in its discretion, may permit the Surety to complete said contract, in the event of Owner's default.

In the event that the County commences suit for the collection of any sums due hereunder, the obligors and each of them agree to pay all costs incurred by the County, including attorney's fees.

EXECUTED this 24th day of February, 2022.

OWNER: D.R. Horton, Inc.



SURETY: Atlantic Specialty Insurance Company



Noah William Pierce, Attorney-In-Fact

Pre-approved Form reviewed for
Legal form and content: 12/18/07



Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: **Noah William Pierce, Jennifer B. Gullett, Caroline K. Lamarre Berton**, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: **unlimited** and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this twenty-seventh day of April, 2020.

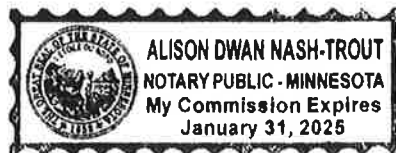


By

Paul J. Brehm, Senior Vice President

STATE OF MINNESOTA
HENNEPIN COUNTY

On this twenty-seventh day of April, 2020, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.



Notary Public

I, the undersigned, Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated 24th day of February, 2022



This Power of Attorney expires
January 31, 2025

Kara Barrow, Secretary

PLAT BOOK ____, PAGE ____
SHEET 2 OF 2
SECTION 1, TOWNSHIP 21 SOUTH, RANGE 34 EAST

REUSE UTILITY EASEMENT DETAIL



PUBLIC UTILITY EASEMENT DETAIL

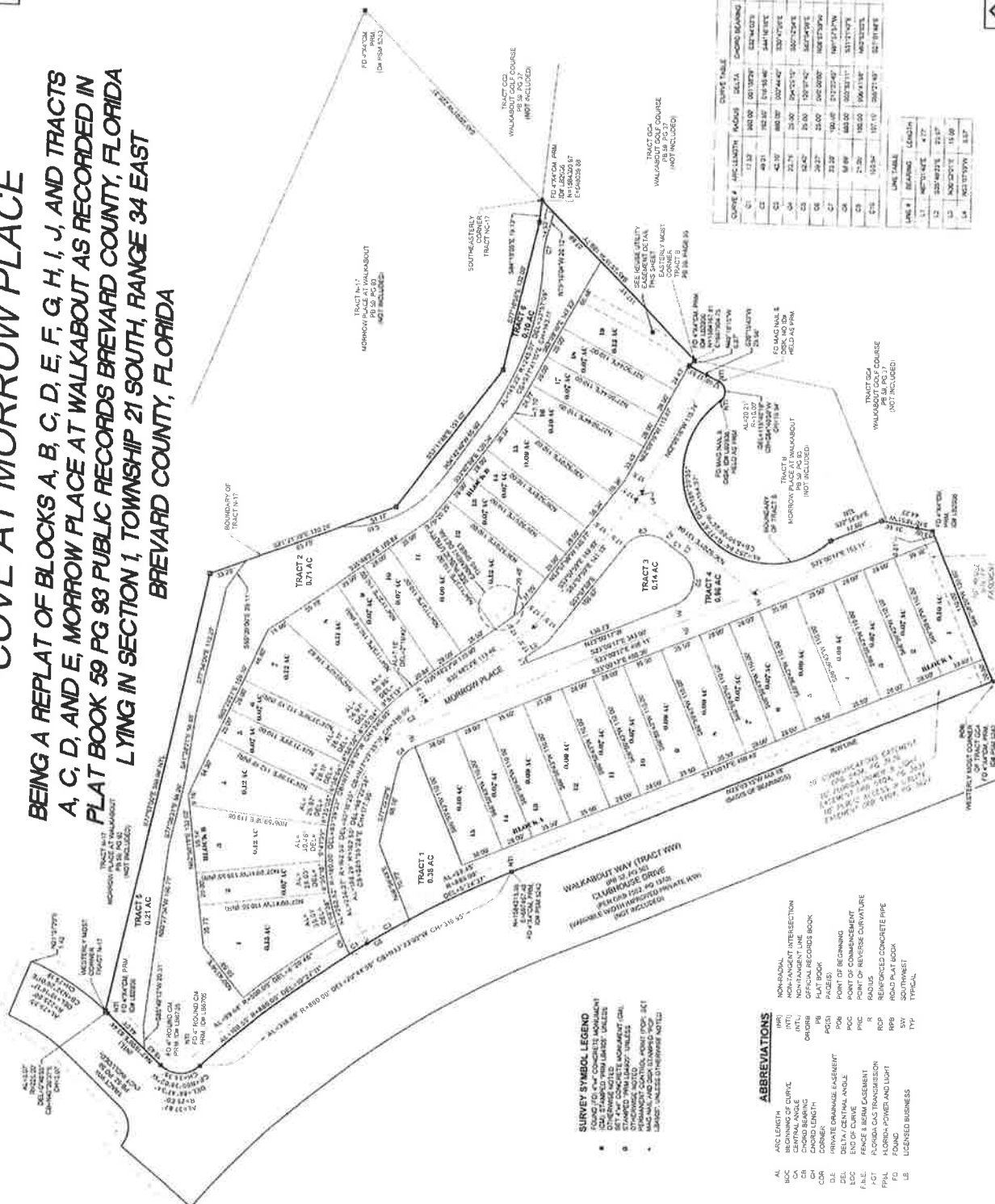


THIS PLAN PREPARED BY:

E.S.E. CONSULTANTS, INC.
CONSULTING ENGINEERS AND ARCHITECTS
10000 W. 10th Avenue, Suite 100
Denver, CO 80231
Tel: 303.751.1100
Fax: 303.751.1101
www.esec.com

DATE: 01/27/2003
DESIGNED BY: LEMMA
DRAWING NUMBER: 113200_000_000
PROJECT: 113200

A circular professional engineer seal for the State of Colorado. The outer ring contains the text 'E.S.E. CONSULTANTS, INC.' and 'PROFESSIONAL ENGINEER'. The inner circle contains the text 'STATE OF COLORADO' and '113200_000_000'.

[illegible]

LINE TABLE		
LINE #	READING	LENGTH
1.1	MS771-47E	4.77
1.2	MS771-47E	4.77
1.3	MS771-47E	4.77
1.4	MS771-47E	4.77

ABBREVIATIONS

ARC LENGTH	ARC	NON-LOCAL
BEGINNING OF CURVE	INTI	NON-LOCAL INTERSECTION
CENTRAL ANGLE	ONDR	NON-TANGENT LINE
CHORD LENGTH	PL	NOTATIONAL RECORDS BOOK
CORNER	POB	PLAT BOOK
PRIVATE DRAINAGE EASEMENT	POB	POINT OF BEGINNING
DELTA (CENTRAL ANGLE)	PCC	POINT OF COMMERCE
FENCE IN FORM EASEMENT	PSC	POINT OF REVERSE CURVATURE
FLORIDA GAS TRANSMISSION	R	RADIUS
FLORIDA-POWER AND LIGHT	RCP	REINFORCED CONCRETE PIPE
FOUND	RFB	ROAD PLAT BOOK
LICENSED BUSINESS	TYT	THYRISTOR

SURVEY SYMBOL LEGEND

FOUND 100 4" CONCRETE MOMENT
ICU STAMPED WITH LEADERS' UNLESS
OTHERWISE NOTED

SET 4" CONCRETE MOMENT (CM)
STAMPED WITH LEADERS' UNLESS
OTHERWISE NOTED

PERMANENT CONTROL POINT (POP) SET
MAG. NAIL AND DECK STAMPED "POP"
LEADERS' UNLESS OTHERWISE NOTED

LOCATION MAP

COVE AT MORROW PLACE

21FM00014



1:24,000 or 1 inch = 2,000 feet

 Subject Property

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/9/2022