



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.6.

8/24/2021

Subject:

Adopt Resolution and Release Performance Bond: Walkabout Way & Pod 17, also known as Morrow Place Subdivision - District 1

Developer: Olen Development Corporation

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 November 5, 2013 for the above referenced project.

Summary Explanation and Background:

The Walkabout Way & Pod 17, also known as Morrow Place subdivision plat is located approximately two miles north of Highway 46 in the Indian River Preserve Golf and Community, formerly known as Walkabout Golf Community. The proposed subdivision contains 34 single family lots on 8.64 acres.

The Walkabout Way & Pod 17, also known as Morrow Place subdivision plat received approval of its preliminary plat and final engineering plans on August 22, 2006, and final plat and contract approval on November 5, 2013. 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 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 August 10, 2021, the Walkabout Way & Pod 17, also known as Morrow Place subdivision plat infrastructure improvements have been completed. The roadways are private and do not require a

maintenance bond; however, we are in receipt of a two-year maintenance bond for the sewerage system/water transmission system which will be held by Brevard County Utilities.

Reference: SD0402003

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 25, 2021

M E M O R A N D U M

TO: Marc Bernath, Public Works Director

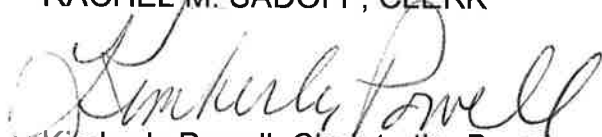
RE: Item F.6., Resolution and Release Performance Bond for Walkabout Way and Pod 17, also known as Morrow Place Subdivision – Olen Development Corporation

The Board of County Commissioners, in regular session on August 24, 2021, executed and adopted Resolution No. 21-101, releasing the Contract and Surety Performance Bond dated November 5, 2013, for Walkabout Way and Pod 17, also known as Morrow Place Subdivision – Olen Development Corporation. Enclosed are two fully-executed Resolutions.

Your continued cooperation is always appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK**


Kimberly Powell, Clerk to the Board

/cid

Encls. (2)

RESOLUTION 21- 101

WHEREAS, the Board of County Commissioners of Brevard County, Florida and Olen Development Corporation entered into a contract to guarantee the construction of improvements on property commonly known as Walkabout Way and Pod 17, also known as Morrow Place, Subdivision.

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, Olen Development Corporation completed all of the infrastructure improvements and has requested that the executed contract approved on November 5, 2013 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 Walkabout Way and Pod 17, also known as Morrow Place, Subdivision.
2. The Board of County Commissioners of Brevard County, Florida hereby releases the contract and performance bond executed on November 5, 2013.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 24th day of August, 2021.

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 24, 2021

Subdivision No. SD 0402003 Project Name WALLABOUT WAY b
POD 17 (MORROW PLACE)

**Subdivision Infrastructure
Contract**

THIS CONTRACT entered into this 5th day of NOVEMBER 2013, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY", and OLEN DEVELOPMENT CORP., 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:

and all other improvements depicted in subdivision number SD 0402003. A copy of said plat to be recorded in the Plat Books of the Public Records of Brevard County.
2. The PRINCIPAL agrees to construct said improvements strictly in accordance with the plans and specifications on file in the office of the Land Development Division, which have been incorporated herein by this reference.
3. The PRINCIPAL agrees to complete said construction on or before the 31 day of OCTOBER, 2014.
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 \$ 477,944. If such bond is a cash bond or a certificate of deposit, said amount shall be deposited with the Board of County Commissioners. 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:

**SUBDIVISION INFRASTRUCTURE
CONTRACT
Page 2**

- 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,
 - 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 Grantee 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 Grantee 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 Grantee 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:



Scott Ellis, Clerk

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**



Andy Anderson, Chairman

As approved by the Board on: NOV 05 2013

WITNESSES:

[Signature]
[Signature]

PRINCIPAL:

[Signature]
9/30/13
DATE

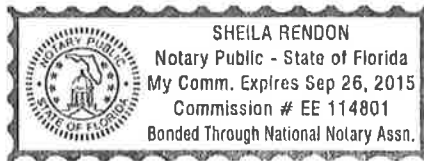
State of Florida
County of Beoward

The foregoing instrument was acknowledged before me this 30 day of September 2013, by Alfred La Fare who is personally known to me or who has produced as identification and who did (did not) take an oath.

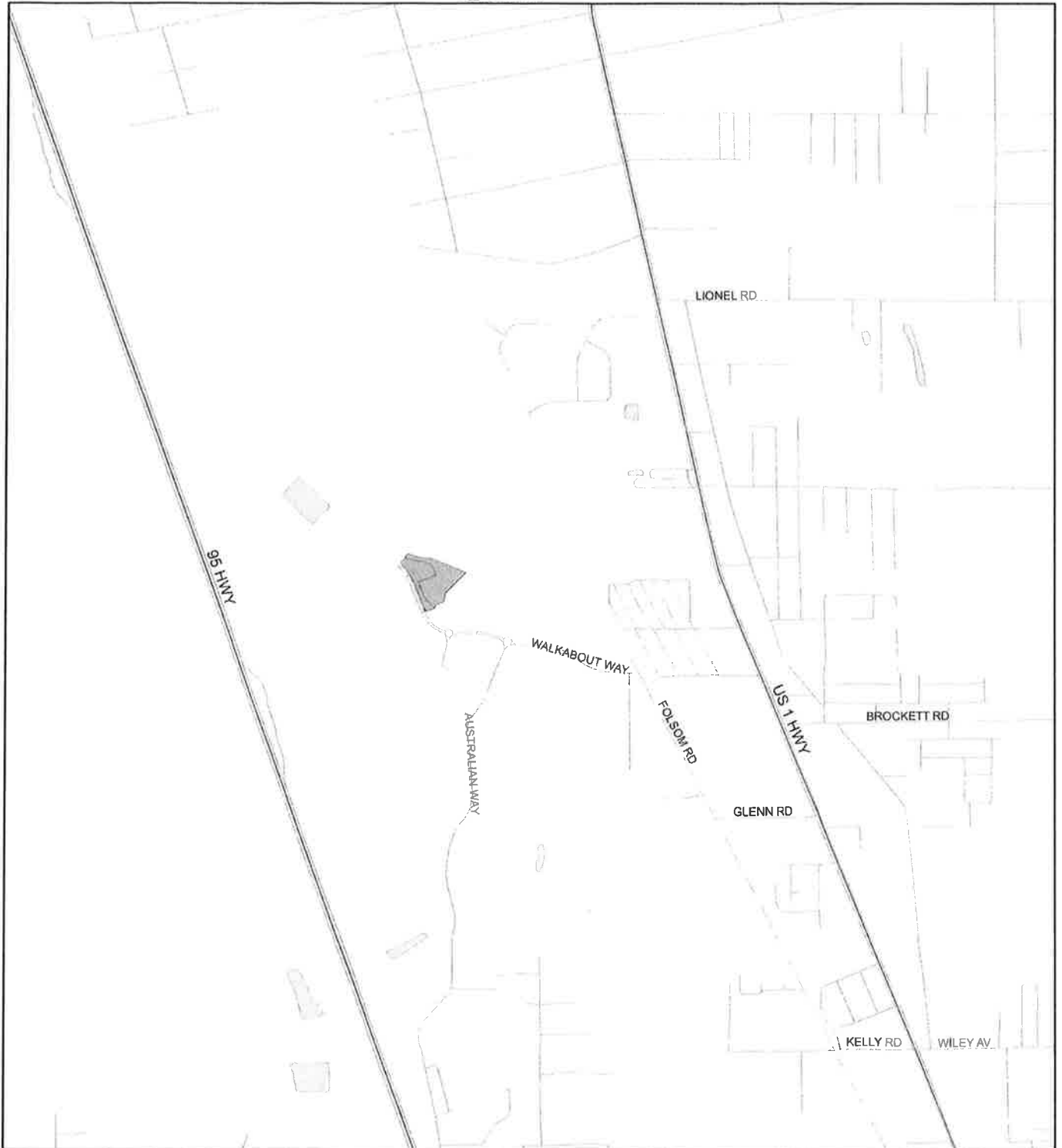
My commission expires:
S E A L
Commission Number:

[Signature]
Notary Public
Sheila Rendon
Notary Name printed, typed or stamped

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



LOCATION MAP
FLORIDA LAND & CATTLE CORPORATION
SD0402003_Morrow Place at Walkabout



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 the Brevard County Planning and Zoning Office - GIS Section Date: 10/10/2013

1380-00863

BOND NO.: MS1775243
PREMIUM: \$11,949.00

SURETY PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, OLEN DEVELOPMENT CORP., hereinafter referred to as "Owner" and, GREAT AMERICAN 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 \$477,944.00, for the payment of which we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Owner has entered into a contract with the County dated the 30th day of SEPTEMBER, 2013, 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 OCTOBER 31, 2014, 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 is deemed 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 of 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 2ND day of OCTOBER, 2013.

OLEN DEVELOPMENT CORP.
OWNER:

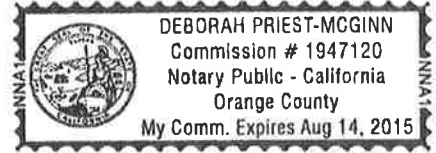
GREAT AMERICAN
INSURANCE COMPANY
SURETY:


MATTHEW F. SCHAFNITZ,
ATTORNEY-IN-FACT



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
 County of Orange }



On **October 2, 2013** before me, **Deborah Priest-McGinn**, Notary Public
 personally appeared **Matthew F. Schafnitz**



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Deborah Priest-McGinn
 Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document

Description of Attached Document

Title or Type of Document: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name:

- Individual
- Corporate Officer – Title(s): _____
- Partner - Limited General
- Attorney-in-Fact
- Guardian or Conservator
- Other: _____

Signer is Representing: _____



Signer's Name:

- Individual
- Corporate Officer – Title(s): _____
- Partner - Limited General
- Attorney-in-Fact
- Guardian or Conservator
- Other: _____

Signer is Representing: _____



GREAT AMERICAN INSURANCE COMPANY®

Administrative Office: 301 E 4TH STREET • CINCINNATI, OHIO 45202 • 513-369-5000 • FAX 513-723-2740

The number of persons authorized by this power of attorney is not more than **THREE**

No. 0 14803

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the GREAT AMERICAN INSURANCE COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Ohio, does hereby nominate, constitute and appoint the person or persons named below, each individually if more than one is named, its true and lawful attorney-in-fact, for it and in its name, place and stead to execute on behalf of the said Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof, provided that the liability of the said Company on any such bond, undertaking or contract of suretyship executed under this authority shall not exceed the limit stated below.

Name	Address	Limit of Power
JAMES G. BRAKKE	ALL OF	ALL
MATTHEW F. SCHAFNITZ	LAGUNA NIGUEL,	\$75,000,000.00
FRANCINE L. HEBERT	CALIFORNIA	

This Power of Attorney revokes all previous powers issued on behalf of the attorney(s)-in-fact named above.

IN WITNESS WHEREOF the GREAT AMERICAN INSURANCE COMPANY has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this **28TH** day of **AUGUST**, 2012
Attest **GREAT AMERICAN INSURANCE COMPANY**



Steph C. B.
Assistant Secretary

David C. Kitchen
Divisional Senior Vice President

DAVID C. KITCHIN (877-377-2405)

STATE OF OHIO, COUNTY OF HAMILTON - ss:

On this **28TH** day of **AUGUST**, 2012, before me personally appeared **DAVID C. KITCHIN**, to me known, being duly sworn, deposes and says that he resides in Cincinnati, Ohio, that he is a Divisional Senior Vice President of the Bond Division of Great American Insurance Company, the Company described in and which executed the above instrument; that he knows the seal of the said Company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of his office under the By-Laws of said Company, and that he signed his name thereto by like authority.



KAREN L. GROSHEIM
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 02-20-16

Karen L. Groshiem

This Power of Attorney is granted by authority of the following resolutions adopted by the Board of Directors of Great American Insurance Company by unanimous written consent dated June 9, 2008.

RESOLVED: That the Divisional President, the several Divisional Senior Vice Presidents, Divisional Vice Presidents and Divisional Assistant Vice Presidents, or any one of them, be and hereby is authorized, from time to time, to appoint one or more Attorneys-in-Fact to execute on behalf of the Company, as surety, any and all bonds, undertakings and contracts of suretyship, or other written obligations in the nature thereof; to prescribe their respective duties and the respective limits of their authority; and to revoke any such appointment at any time.

RESOLVED FURTHER: That the Company seal and the signature of any of the aforesaid officers and any Secretary or Assistant Secretary of the Company may be affixed by facsimile to any power of attorney or certificate of either given for the execution of any bond, undertaking, contract of suretyship, or other written obligation in the nature thereof, such signature and seal when 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.

CERTIFICATION

I, **STEPHEN C. BERAHA**, Assistant Secretary of Great American Insurance Company, do hereby certify that the foregoing Power of Attorney and the Resolutions of the Board of Directors of June 9, 2008 have not been revoked and are now in full force and effect.



Signed and sealed this

day of

OCTOBER

2013

Steph C. B.
Assistant Secretary

S1029AC (1/11)

RESOLUTION 21-

WHEREAS, the Board of County Commissioners of Brevard County, Florida and Olen Development Corporation entered into a contract to guarantee the construction of improvements on property commonly known as Walkabout Way and Pod 17, also known as Morrow Place, Subdivision.

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WHEREAS, Olen Development Corporation completed all of the infrastructure improvements and has requested that the executed contract approved on November 5, 2013 be released and release of all undisbursed funds referenced in the Contract hereinabove described.

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2. The Board of County Commissioners of Brevard County, Florida hereby releases the contract and performance bond executed on November 5, 2013.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 24th day of August, 2021.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

Rachel Sadoff, Clerk of the Court

By: _____
Rita Pritchett, Chair
As approved by the Board on August 24, 2021