



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.5.

5/19/2020

Subject:

Final Plat and Contract Approval, Re: Harbor Island Beach Club (20SD00006) (District 3)
Developer: Phoenix Park Fund V, LP

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

In accordance with Section 62-2841(i) and Section 62-2844, it is requested that the Board of County Commissioners grant final plat approval and authorize the Chair to sign the final plat and contract for Harbor Island Beach Club.

Summary Explanation and Background:

There are three stages of review for subdivision plan approval: the pre-application conference, the preliminary plat/final engineering plan review, and the final plat review. The pre-application conference for the above project was held on March 18, 2019 along with the site plan for Harbor Island Beach Club. The preliminary plat and final engineering plans, which is the second stage of approval, was approved on November 8, 2018. The third stage of review is the final plat approval for recordation. The applicant is posting a performance bond and contract for guarantee of the completion of the infrastructure improvements.

Staff has reviewed the final plat and contract for the Harbor Island Beach Club subdivision, and has determined that it is in compliance with the applicable ordinances.

Harbor Island Beach Club is located within RU-2-8 zoning south of Melbourne Beach, at the intersection of Strand Drive (previously known as Versailles Drive) and Highway A1A. The proposed subdivision contains 54 single family units and 88 condominium units on approximately 20.71 acres.

This approval is subject to minor engineering changes as applicable. Board approval of this project does not relieve the developer from obtaining all other necessary jurisdictional permits.

Reference: 20SD00006, 18SP00007, 20WV00007

Contact: Tad Calkins, Director, Extension 58299

Clerk to the Board Instructions:

43

F.5.

5/19/2020

Please have the contract signed and return the original and a certified copy to Planning and Development.

1



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

May 20, 2020

M E M O R A N D U M

TO: Tad Calkins, Planning and Development Director

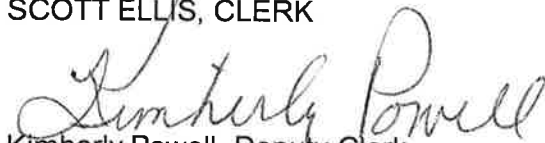
RE: Item F.5, Final Plat and Contract Approval for Harbor Island Beach Club (20SD00006)

The Board of County Commissioners, in regular session on May 19, 2020, granted final plat approval in accordance with Section 62-2841(i) and Section 62-2844; and authorized the Chair to execute the final plat and Contract with Phoenix Park Fund V, LP for Harbor Island Beach Club, subject to minor engineering changes, as applicable, and project does not relieve the developer from obtaining all other necessary jurisdictional permits. Enclosed is the fully-executed Contract and one certified copy of the Contract.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK


Kimberly Powell, Deputy Clerk

/cw

Encls. (2)

cc: Contracts Administration

Subdivision No. 20SD00006

Project Name Harbor Island Beach Club

**Subdivision Infrastructure
Contract**

THIS CONTRACT entered into this 4 day of May, 2020, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and Phoenix Park Fund V, LP, 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 20SD00006. 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 4th day of May, 2022.

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 \$ 224,651. 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:

Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Bryan Andrew Lober
Bryan Lober, Chair

As approved by the Board on: May 19, 20 20.

WITNESSES:

Paul Frazier
Gundlin

PRINCIPAL:

Daniel Winkler
Phoenix Park Fund V, LP, as President

DATE

5/4/2020

State of: Florida

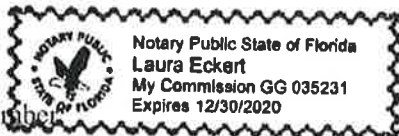
County of: Brevard

The foregoing instrument was acknowledged before me this 4 day of May, 20 20, by Daniel Winkler 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



Laura Eckert
Notary Public

Laura Eckert
Notary Name printed, typed or stamped



Liberty Mutual Surety
17771 Cowan, Suite 100 • Irvine, California 92614 • (949) 263-3300
www.libertymutualsurety.com

SUBDIVISION IMPROVEMENTS PERFORMANCE BOND

BOND NO. 41K234628

KNOW ALL MEN BY THESE PRESENTS:

THAT we, Phoenix Park Fund V, LP as Principal,
and The Ohio Casualty Insurance Company, a corporation organized and doing
business and under and by virtue of the laws of the State of New Hampshire and duly
licensed to conduct surety business in the State of Florida, as Surety,
are held and firmly bound unto Board of County Commissioners of Brevard County, FL

as Obligee, in the sum of Two hundred twenty four thousand six hundred fifty one and 00/100
(\$ 224,651.00) Dollars,
for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors,
jointly and severally firmly by these presents.

THE CONDITION OF THE OBLIGATION IS SUCH THAT:

WHEREAS, the above named Principal, has agreed to construct in Harbor Island Beach Club
Subdivision, in Melbourne Beach, Florida the
following improvements: Site Work Improvements

NOW, THEREFORE, the condition of this obligation is such, that if the above Principal shall well and
truly perform said agreement or agreements during the original term thereof or of any extension of said
term that may be granted by the Obligee with or without notice to the Surety, this obligation shall be void,
otherwise it shall remain in full force and effect

IN WITNESS WHEREOF, the seal and signature of said Principal is hereto affixed and the corporate seal
and the name of the said Surety is hereto affixed and attested by its duly authorized Attorney-in-Fact, this
4th day of May, 2020
YEAR

Phoenix Park Fund V, LP

Principal

BY:

The Ohio Casualty Insurance Company

BY:

Cindy L. Mirisola

Attorney-in-Fact



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8202911-964018**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Robert H Bond; Heather Bradley; Shelley Fane; Cindy L. Mirisola; Louis G. Mitchell; Gerald K. Sihle

all of the city of Altamonte Springs state of FL each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 15th day of January, 2020.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 15th day of January, 2020 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 4th day of May, 2020.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

PLAT	BOOK	PAGE

SHEET 2 OF 5
SECTIONS 20 & 21 TWP. 20 S. RANGE 38 E.



^aThe coordinates depicted hereon are based on the state plane coordinates for the east zone of Florida. The datum is the North American datum of 1983. 20' 1 adjustment. Plot coordinates were computed from TIES traversed by conventional traverse to the monuments listed in the table above. Plot distances are horizontal groundline distances as measured in U.S. survey feet and decimals thereof. A combined scale factor of 0.9999910367 was applied to compute plot distances.

[illegible]

BRIEL & ASSOCIATES
Land Surveyors, Inc. LA 5016
1790 Hwy. A1A, Suite 208
Satellite Beach, FL 32937 (321) 773-7777

LYING IN SECTIONS 20 and 21, TOWNSHIP 28 SOUTH, RANGE 38 EAST, BREVARD COUNTY, FLORIDA.

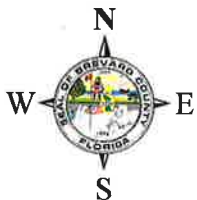
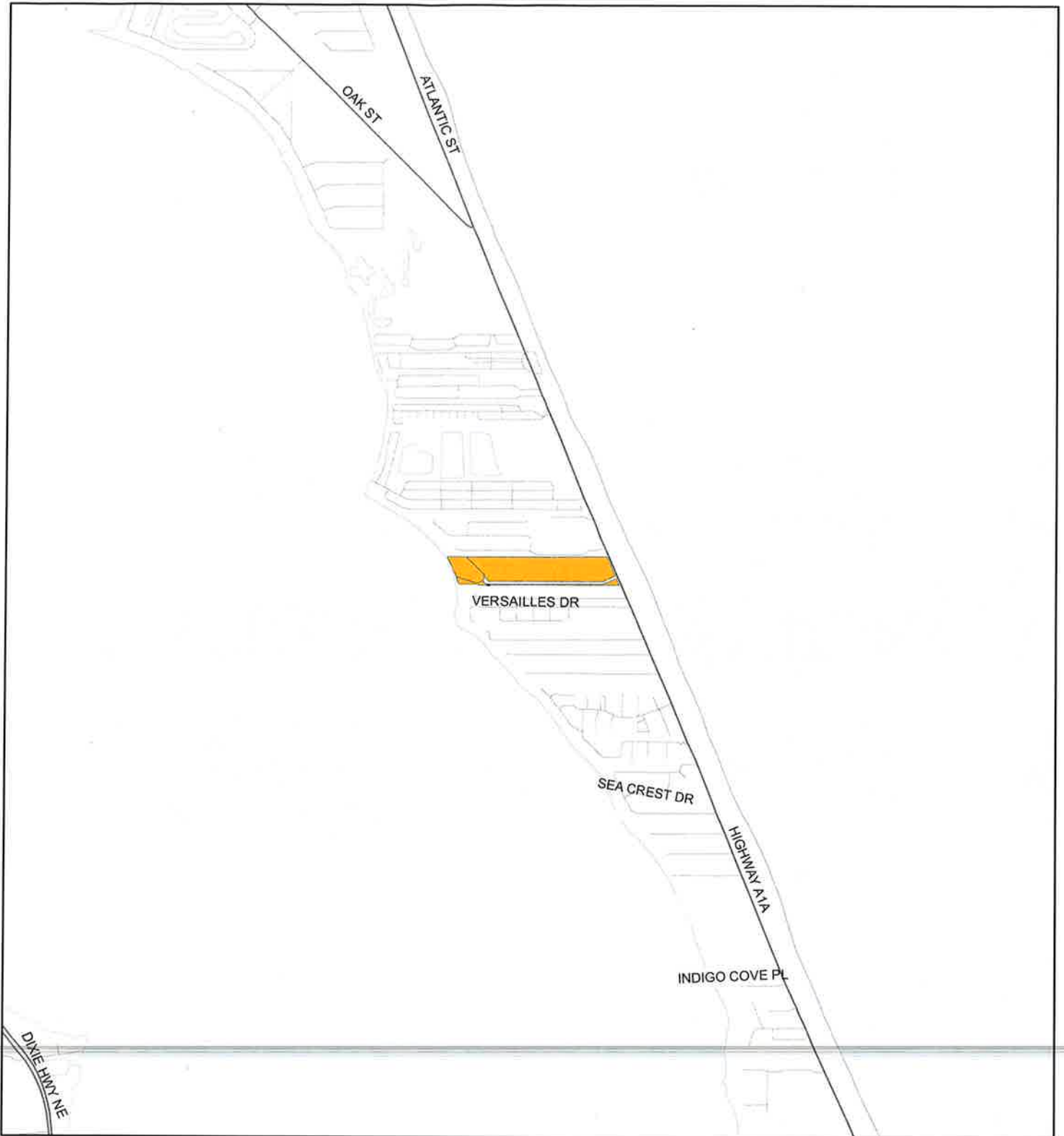


BRIEL & ASSOCIATES
Land Surveyors, Inc. LB346
1790 Hwy. A1A, Suite 208
Satellite Beach, FL 32937 (321)773-7777

LOCATION MAP

HARBOR ISLAND BEACH CLUB

20SD00006



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: 4/28/2020