



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.2.

1/26/2021

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### Subject:

Adopt Resolution and Release Performance Bond: Viera Boulevard Commercial Center I, Phase 1 - District 4  
Developer: The Viera Company

### 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 July 9, 2019 for the above referenced project.

### Summary Explanation and Background:

The Viera Boulevard Commercial Center I, Phase 1 plat is located within the Viera Development of Regional Impact (DRI) at the southeast corner of Stadium Parkway and Viera Boulevard and contains nine lots on 89.37 acres.

The Viera Boulevard Commercial Center I, Phase 1 plat received approval of its preliminary plat and final engineering plans on May 23, 2019, and final plat and contract approval on July 9, 2019. 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 December 15, 2020, the Viera Boulevard Commercial Center I, Phase 1 plat infrastructure improvements have been completed and we are in receipt of a two-year maintenance bond.

Reference: 18SD00018

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.



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

January 27, 2021

**M E M O R A N D U M**

**TO:** Marc Bernath, Public Works Director

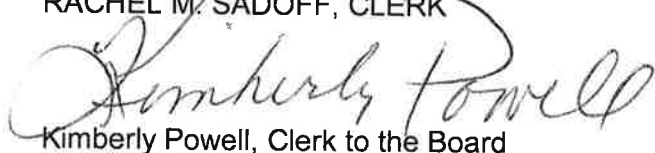
**RE:** Item F.2., Resolution and Release Performance Bond for Viera Boulevard Commercial Center I, Phase 1- The Viera Company

The Board of County Commissioners, in regular session on January 26, 2021, adopted and executed Resolution No. 21-003, releasing the Contract and Surety Performance Bond dated July 9, 2019, for Viera Boulevard Commercial Center I, Phase 1- The Viera Company. 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

/ns

Encls. (2)

## RESOLUTION 21- 003

WHEREAS, the Board of County Commissioners of Brevard County, Florida and The Viera Company entered into a contract to guarantee the construction of improvements on property commonly known as Viera Boulevard Commercial Center I, Phase 1.

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

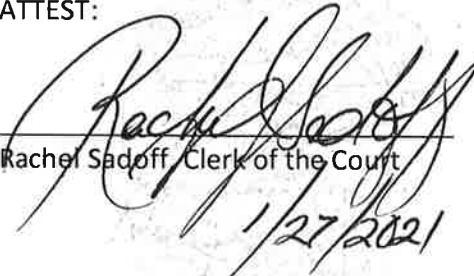
WHEREAS, The Viera Company completed all of the infrastructure improvements and has requested that the executed contract approved on July 9, 2019 be released and release of all undisbursed funds referenced in the Contract hereinabove described.

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 Viera Boulevard Commercial Center I, Phase 1.
2. The Board of County Commissioners of Brevard County, Florida hereby releases the contract and performance bond executed on July 9, 2019.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 26<sup>th</sup> day of January 2021.

ATTEST:

  
Rachel Sadoff, Clerk of the Court  
1/27/2021

BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

By: 

Rita Pritchett, Chair

As approved by the Board on January 26, 2021

**Subdivision No.** 18SD00018

**Project Name** Viera Blvd Commercial Center

**Subdivision Infrastructure  
Contract**

THIS CONTRACT entered into this 9<sup>th</sup> day of July, 2019, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and THE VIERA COMPANY, 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:  
Viera Boulevard Commercial Center

and all other improvements depicted in subdivision number 18SD00018. 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 30th day of July, 2020.

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 \$ 7,674,258.75 . 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:
  - 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

Kristine Isnardi, Chair

As approved by the Board on: July 9, 2019.

WITNESSES:

PRINCIPAL: The Viera Co

Mary Ellen McKibben  
JEB

Todd J. Pokrywka, as President

DATE

6-5-19

State of: Florida

County of: Brevard



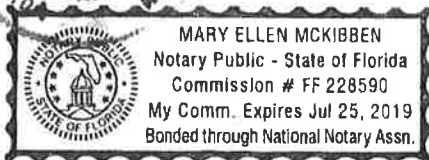
The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of June, 2019, by Todd J. Pokrywka, Pres. who is personally known to me or who has produced as identification and who did (did not) take an oath.

My commission expires:

Commission Number:

Notary Public

Notary Name printed, typed or stamped



## SURETY PERFORMANCE BOND

## KNOW ALL MEN BY THESE PRESENTS:

That we, THE VIERA COMPANY, hereinafter referred to as "Owner" and, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, 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 \$7,674,258.75 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 9<sup>th</sup> day of July, 2019, 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 July 30, 2020 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 5<sup>th</sup> day of June, 2019.

OWNER: THE VIERA COMPANY

Todd J. Pokrywa  
Todd J. Pokrywa, President

SURETY:

Christine Payne  
Christine Payne, Vice-President







**Travelers Casualty and Surety Company of America  
Travelers Casualty and Surety Company  
St. Paul Fire and Marine Insurance Company**

**POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS:** That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Christine Payne** of **ORLANDO**

**Florida**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 3rd day of February, 2017.



State of Connecticut

City of Hartford ss.

By:

Robert L. Raney, Senior Vice President

On this the 3rd day of February, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed 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 hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2021



Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this \_\_\_\_\_ day of \_\_\_\_\_



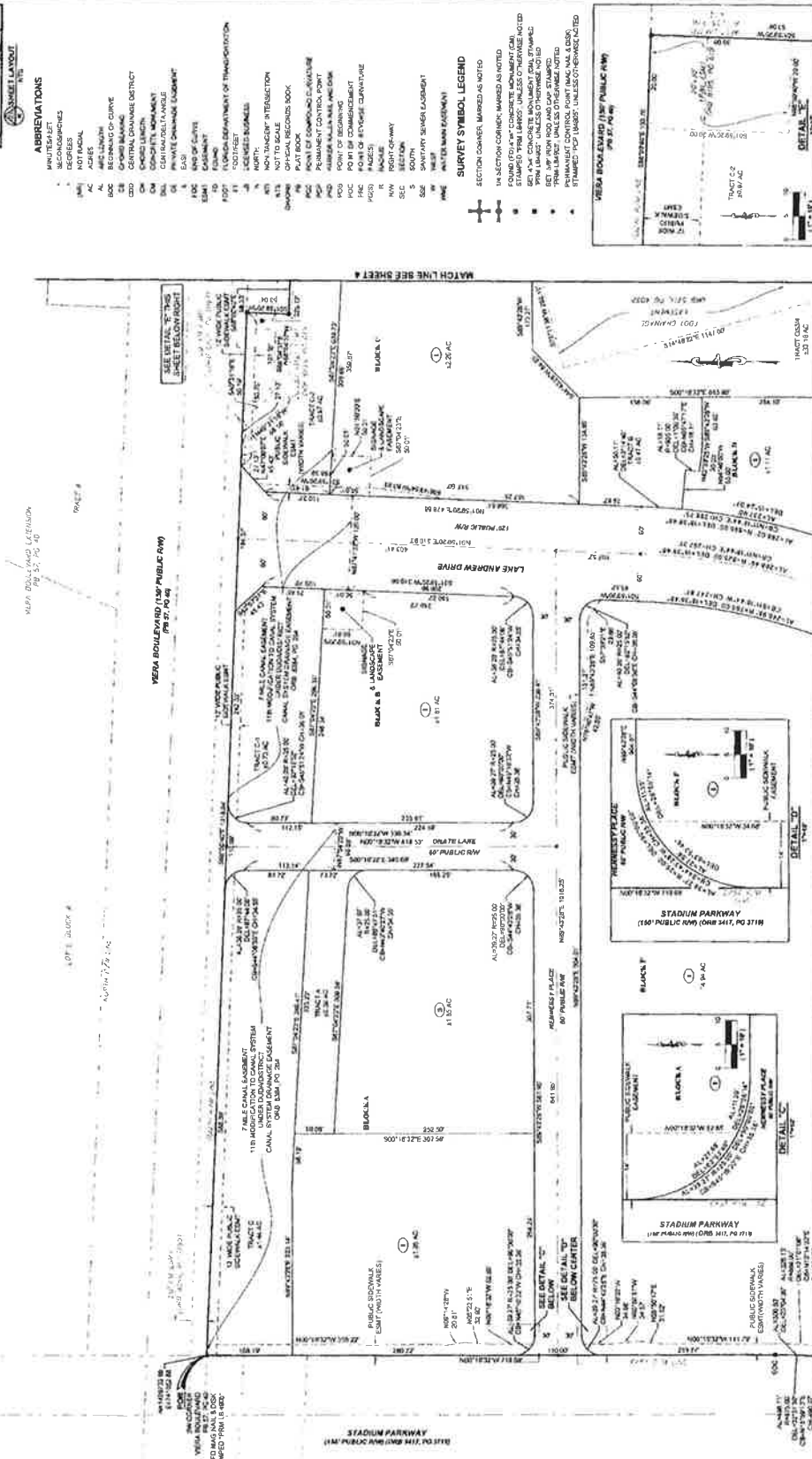
Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.  
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**

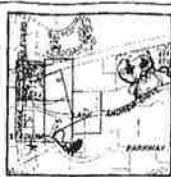




**BEING A REPLAT OF A PORTION OF TRACT "E", STADIUM EAST, AS PER PLAT BOOK 54, PAGE 15,  
PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND A PARCEL OF LAND LYING AND BEING IN  
SECTION 4, TOWNSHIP 26 SOUTH, RANGE 36 EAST AND SECTION 33, TOWNSHIP 25 SOUTH, RANGE 36 EAST  
BREVARD COUNTY, FLORIDA**



PLAT BOOK \_\_\_\_ PAGE \_\_\_\_  
SHEET OF 1  
SECTION 4, TOWNSHIP 26 SOUTH, RANGE 36 EAST AND  
SECTION 33, TOWNSHIP 23 SOUTH, RANGE 36 EAST

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### SURVEY SYMBOL LEGEND

SECTION CORNER, MARKED AS NOTED

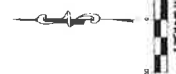
1/4 SECTION CORNER, MARKED AS NOTED

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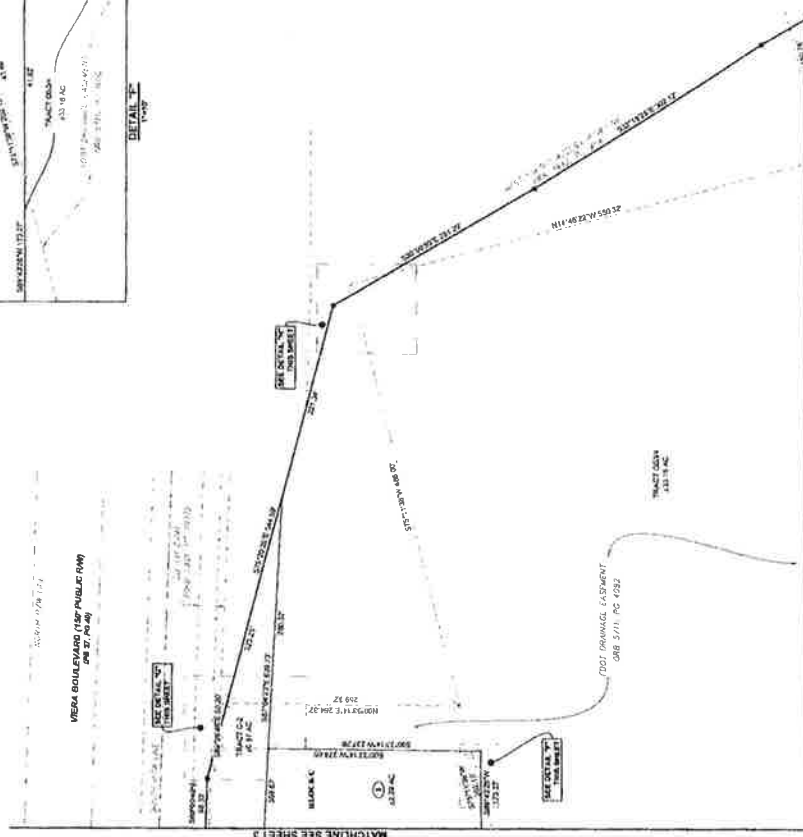
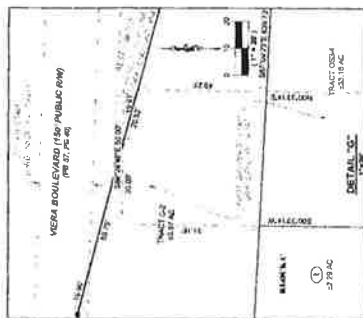
SET 4" CONCRETE MONUMENT (CM) STAMPED "PRM LBWBS", UNLESS OTHERWISE NOTED

SET 1/2" RGN ROD AND CAP; STAMPED "PRM-LBWS", UNLESS OTHERWISE NOTED

PERMANENT CONTROL POINT (BAG NAIL & DSK) STAMPED "PCP LBWBS", UNLESS OTHERWISE NOTED

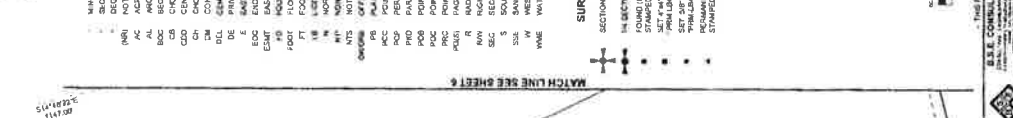


THIS PLAN PREPARED BY  
B.S.F. CONSULTANTS, INC.  
SINCE 1951 - 10000 AVENUE - SUITE 200 - NEW YORK, N.Y. 10035  
DATE: 5/2/78  
DESIGNATION: HOUSE  
DRAWING: 11.11.30.004



MATCHLINE SEE SHEET A

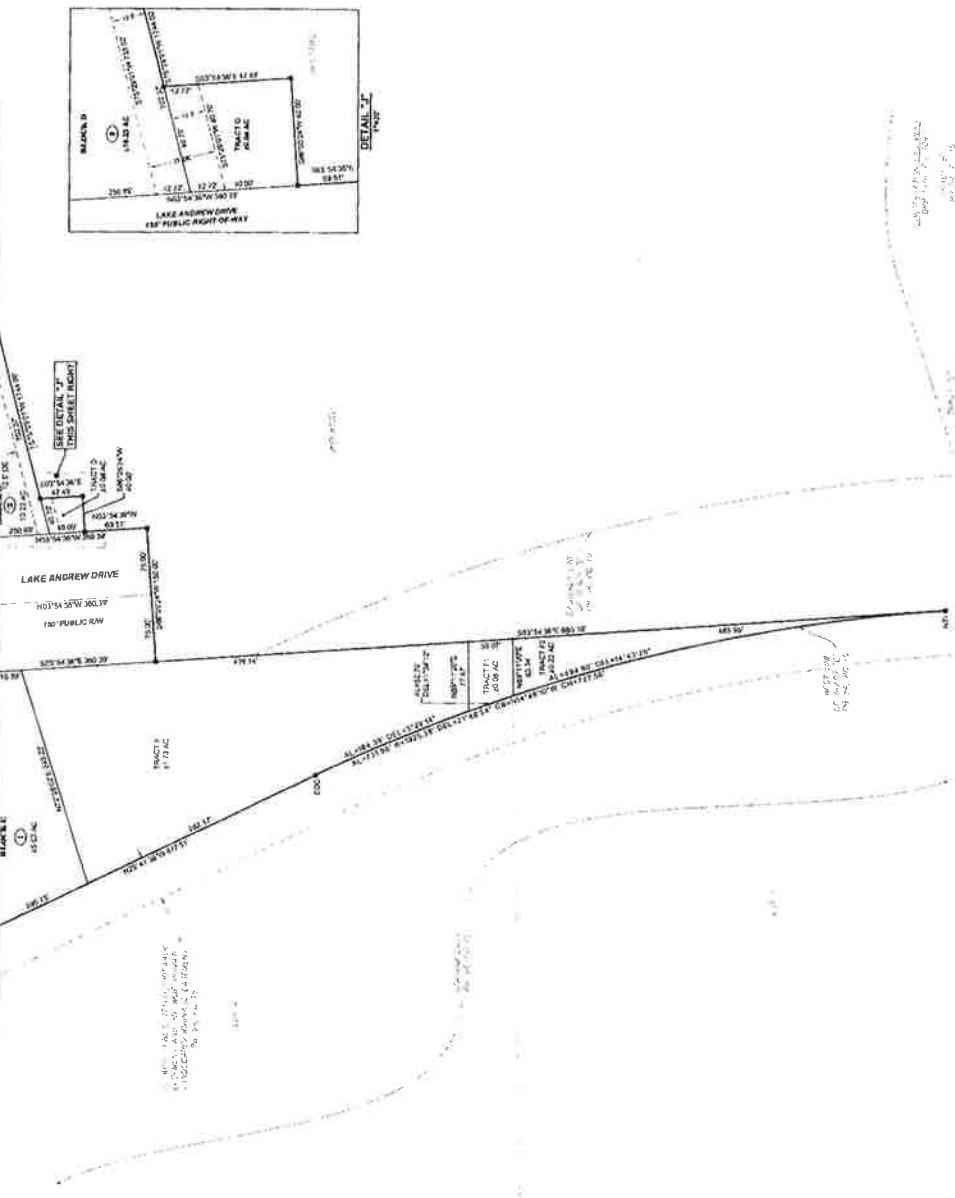
PLAT BOOK \_\_\_\_\_ PAGE \_\_\_\_\_  
 9-22-1907  
 SECTION 4, TOWNSHIP 38 SOUTH, RANGE 36 EAST, AND  
 SECTION 33, TOWNSHIP 38 SOUTH, RANGE 36 EAST







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BREVARD COUNTY, FLORIDA**

[illegible]

### SURVEY SYMBOL LEGEND

- IN A SECTION CORNER MARKED AS NOTED  
FOUND TOY "X" CONCRETE MONUMENT IN CM.  
UNLESS OTHERWISE NOTED  
STAMPED FROM LIBRARY; UNLESS OTHERWISE NOTED  
SET 4" W/ CONCRETE MONUMENT IN CM STAMPED  
FROM LIBRARY; UNLESS OTHERWISE NOTED  
SET OF IRON ROD AND CAP STAMPED  
FROM LIBRARY; UNLESS OTHERWISE NOTED  
PERMANENT CONTROL POINT (MAG NAIL & D6N);  
STAMPED FROM LIBRARY; UNLESS OTHERWISE NOTED

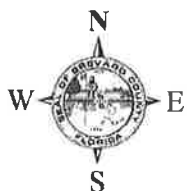
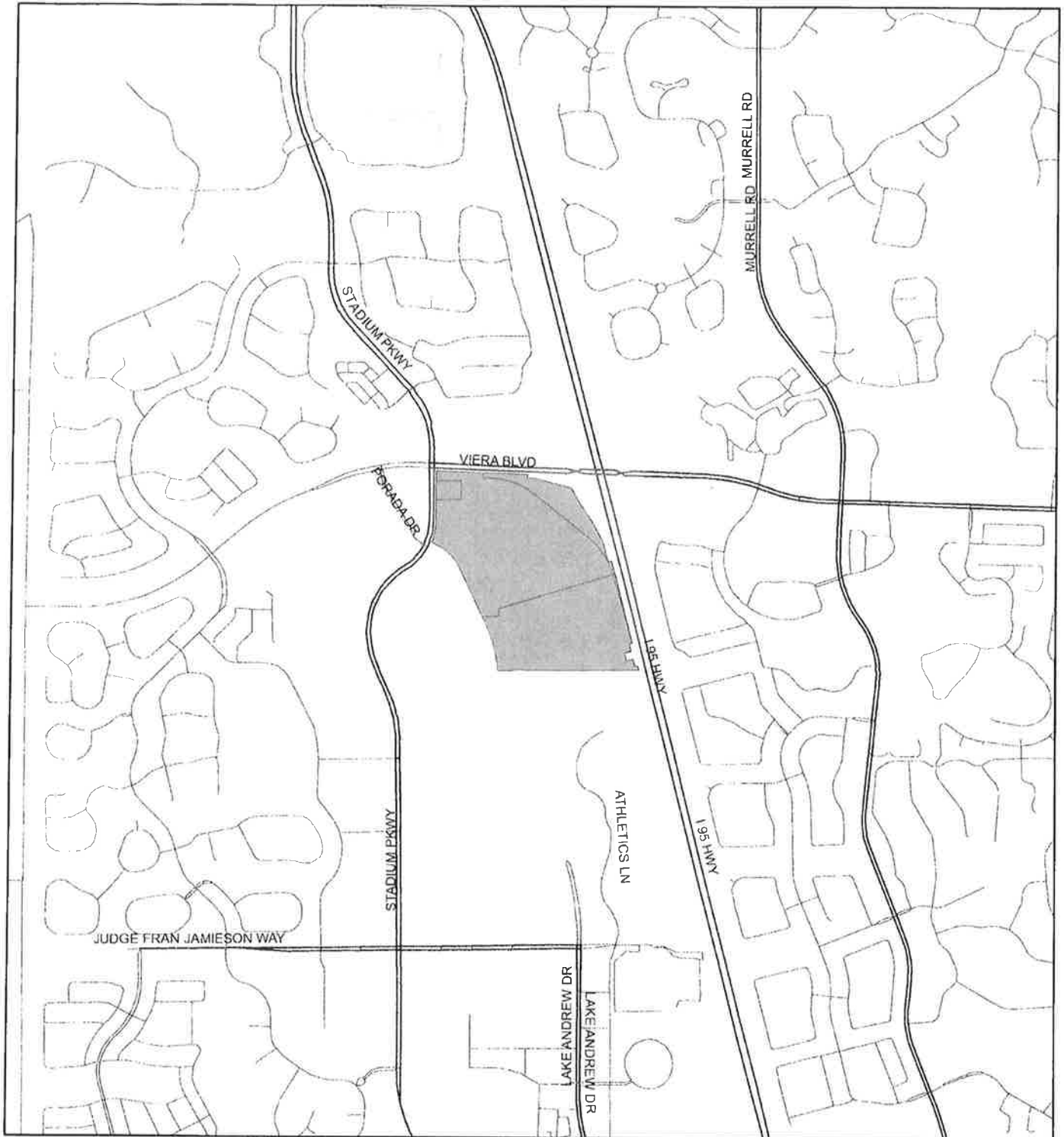




# LOCATION MAP

VIERA BOULEVARD COMMERCIAL CENTER 1 - PHASE 1

18SD00018



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: 4/6/2019