# **Agenda Report**



### Consent

2725 Judge Fran Jamieson Way Viera, FL 32940



7/7/2020

# Subject:

Adopt Resolution and Release Performance Bond: Bridgewater Central at Viera Subdivision - District 4 Developer: WCI Communities, LLC

### **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 February 26, 2019 for the above referenced project.

### **Summary Explanation and Background:**

Bridgewater Central at Viera subdivision is located within the Viera DRI south of Bridgewater North at Viera on the west side of Lake Andrew Drive. The proposed subdivision contains 262 residential lots on 114.25 acres.

The Bridgewater Central at Viera subdivision received preliminary plat and final engineering plans on October 16, 2018, and final plat and contract approval on February 26, 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 November 14, 2019, The Bridgewater Central at Viera subdivision infrastructure improvements have been completed.

Reference: 18SD00013

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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.



FLORIDA'S SPACE COAST

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



July 8, 2020

#### MEMORANDUM

TO: Marc Bernath, Public Works Director

RE: Item F.5., Resolution and Release Performance Bond: Bridgewater Central at Viera Subdivision - WCI Communities. LLC

The Board of County Commissioners, in regular session on July 7, 2020, executed and adopted Resolution No. 20-057, releasing the Contract and Surety Performance Bond dated February 26, 2019, for Bridgewater Central at Viera Subdivision - WCI Communities, LLC. Enclosed are two fully-executed copies of the Resolution.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS SCOTT ELLIS, CLERK

/sm

Encls. (2)

cc: Finance Budget

### RESOLUTION 20- 057

WHEREAS, the Board of County Commissioners of Brevard County, Florida and WCI Communities, LLC entered into a contract to guarantee the construction of improvements on property commonly known as Bridgewater Central at Viera.

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, WCI Communities, LLC completed all of the infrastructure improvements and has requested that the executed contract approved on February 26, 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 Bridgewater Central at Viera.
- 2. The Board of County Commissioners of Brevard County, Florida hereby releases the contract and performance bond executed on February 26, 2019.
- 3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 7th day of July 2020.

ATTEST:

Scott Ellis, Clerk

**BOARD OF COUNTY COMMISSIONERS** 

BREVARD COUNTY, FLORIDA

Bryan Lober, Chair

As approved by the Board on July 7, 2020

Subdivision No	18SD00013	Project Name Bridgewater Central a	
	Subdiv	ision Infrastructure	
		Contract	

THIS CONTRACT entered into this 20th day of February 2019, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and WCI Communities, LLC , 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: Onsite Paving, Drainage, Water, and Sewer.

and all other improvements depicted in subdivision number <u>18SD00013</u>. 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.

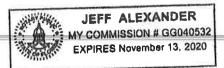
To the extent assignable, Principal assigns to County all of Principal's warranty rights under its construction contract with the contractor constructing the improvements (including all warranties provided by law of in equity with respect to such construction contract), which warranties may be asserted 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	day of
	, 20	

Revised 12/03/2014

- 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 \$4,432,352.36 ... 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.
- 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. **BOARD OF COUNTY COMMISSIONERS** OF BREVARD COUNTY, FLORIDA Robin Fisher, Chairman Kristine Isnarchi As approved by the Board on: Feb. 26 ,2019 . WITNESSES: PRINCIPAL: State of: FL County of: PALM BEACH The foregoing instrument was acknowledged before me this 30 day of Jaman 2019, by VALERIE MCCHESNEY who is personally known to me or who has produced as identification and who did (did not) take an oath. Notary Public le My commission expires: SEAL Commission Number: Notary Name printed, typed or stamped



Revised 12/03/2014

#### SURETY PERFORMANCE BOND

Bond No. 914086 Bridgewater Central at Viera Phase 2 Infrastructure Improvements

### KNOW ALL MEN BY THESE PRESENTS:

That we, WCI Communities, LLC	, hereinafter referred to				
as "Owner" and, National Union Fire Insurance	e Company of Pittsburgh, PA hereinafter referred to as				
"Surety", are held and firmly bound unto the	BOARD OF COUNTY COMMISSIONERS OF BREVARD				
payment of which we hind ourselves our hi	s "County", in the sum of \$_4,432,352.36, for the eirs, executors, successors and assigns, jointly and				
severally, firmly by these presents:	errs, executors, successors and assigns, jointly and				
,, , , , , , , , , , , , , , , , , , , ,					
WHEREAS, Owner has entered into a	a contract with the County dated the day of ade 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, 20, 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 30th day of Januar	ny ao 19				
CALOUTED tillsday of	, 20_13				
	WCI Communities, LLC,				
	OWNIAN a Delaware limited liability company				
	Mchesney				
	SURETY: National Union Fire Insurance Company of Pittaburgh, PA				
	wam				
	Mechelle Larkin, Attorney-in-Fact				
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# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is altached, and not the truthfulness, accuracy, or validity of that document. State of California County of <u>Orange</u> JAN 30 2019 \_\_\_ before me, \_\_\_ Kathy R. Mair, Notary Public [Name of Notary Public and Title "Notary Public"] personally appeared Mechelle Larkin ----- [Name(s) of Signer(s)] 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. KATHY R. MAIR WITNESS my hand and official seal: Notary Public - California Orange County Commission # 2193966 My Comm. Expires May 22, 2021 Place Notary Seal Above Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document. **Description of Attached Document** Title or Type of Document: Document Date: \_\_\_\_\_\_ Number of Pages \_\_\_\_\_\_ Signer(s) Other Than Named Above: Capacity(ies) Claimed by Signer(s) Signer's Name: Mechelle Larkin Signer's Name: Corporate Officer - Title(s): Corporate Officer - Title(s): Partner - Limited General Partner – Limited General Individual Attorney-in-Fact ☐ Individual ☐ Attorney-in-Fact Trustee Guardian or Conservator Trustee Guardian or Conservator Other: Other: Signer Is Representing: Signer is Representing:

#### POWER OF ATTORNEY

American Home Assurance Company National Union Fire Insurance Company of Pittsburgh, PA Power No. 8324

Principal Bond Office: 175 Water Street, New York, NY 10038

KNOW ALL MEN BY THESE PRESENTS:

That American Home Assurance Company, a New York corporation, and National Union Fire Insurance Company of Pittsburgh, PA, a Pennsylvania corporation, does each hereby appoint

--- Kathy R. Mair, Mechelle Larkin, My Hua of Irvine, Californias--

its true and lawful Attorney(s)-in-Pact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the respective company thereby.

IN WIFNESS WHEREOfy American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA. have each executed these presents





this 1st day of Auguest, 2018

Michael Yang, Vice President

On this 1st day of Anguest, 2018 before me came the above named officer of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, PA., to the personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing insurment and affixed the seals of said corporations thereto by authority of his office.

JULIANA HALLENBECK Nationy Public - State of New York Nation Hastingson

Clastified in Brook County

16y Commission Explice April 18, 2021

#### CERTIFICATE

Excrpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company and Mational Union Fire Insurance Company of Pittsburgh, PA, oil May 18, 1976.

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is; authorized to appoint Attorneys-in-Pact to represent and act for and on behalf of the Company to execute bonds; undertakings, recognizances and other contracts of indentity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

"RESOLVED, that the signitures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney of to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile significant seal shall be valid and binding upon the Company whomso affixed with respect to any bond, undertaking, recognizance and other contract of indemnity and writing obligatory in the nature thereof;

"RESOLVED, that any such Attorney in Friet delivering a secretarial certification that the foregoing resolutions still be in effect may hisert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

J. Martin Bogue; Assistant Secretary of American Home Assurance Company and of National Union Fire Insurance Company of Pittsburgh, PA. do hereby certify that the foregoing exemps of Resolutions adopted by the Boards of Directors of these companyings; and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full foregoing exempts.

IN WITNESS WHEREOF, There hereunto set my hand and affixed the faceing the seaf of each corporation.

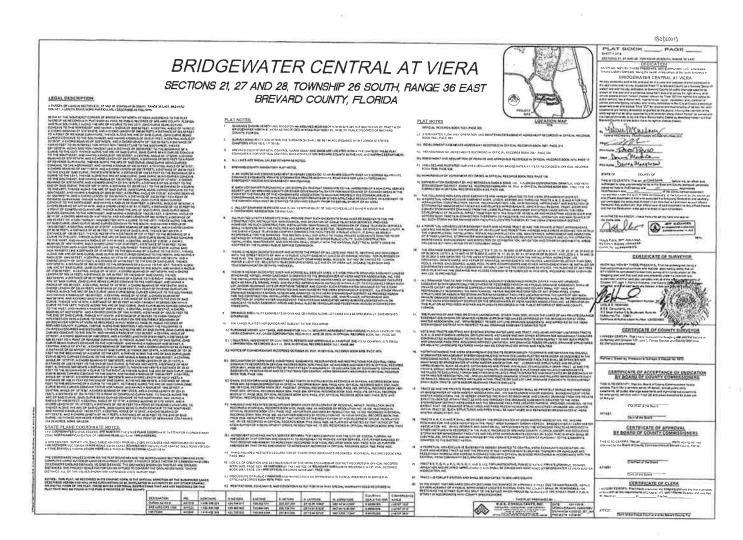


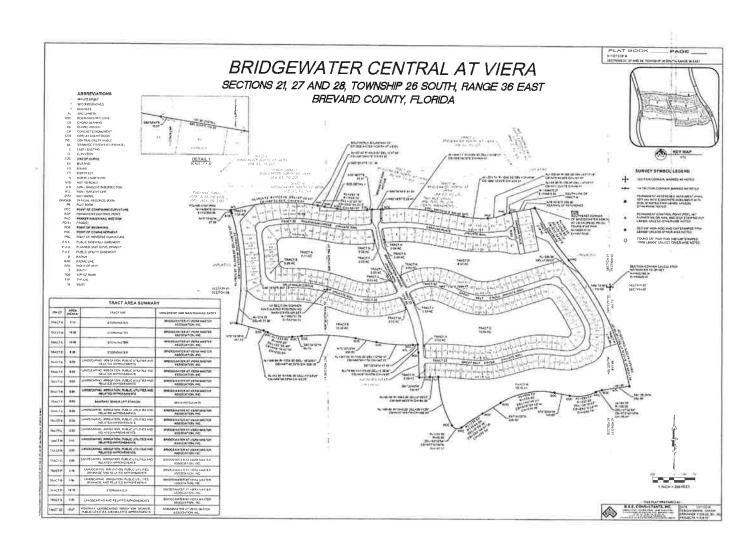


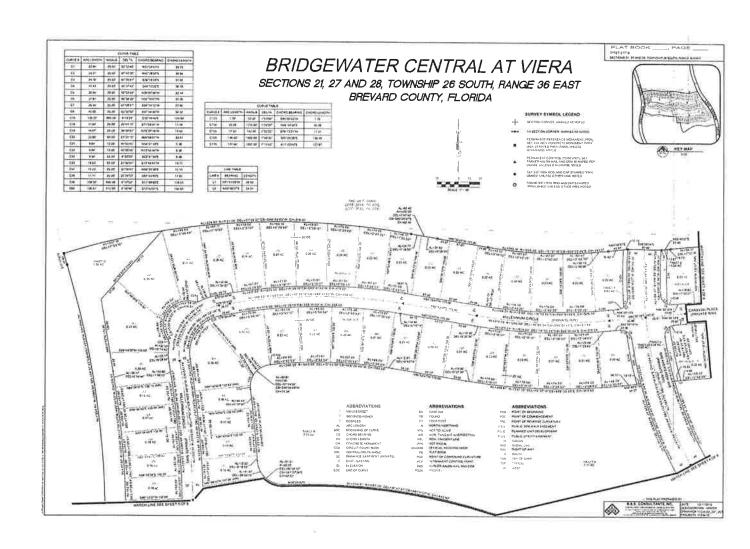
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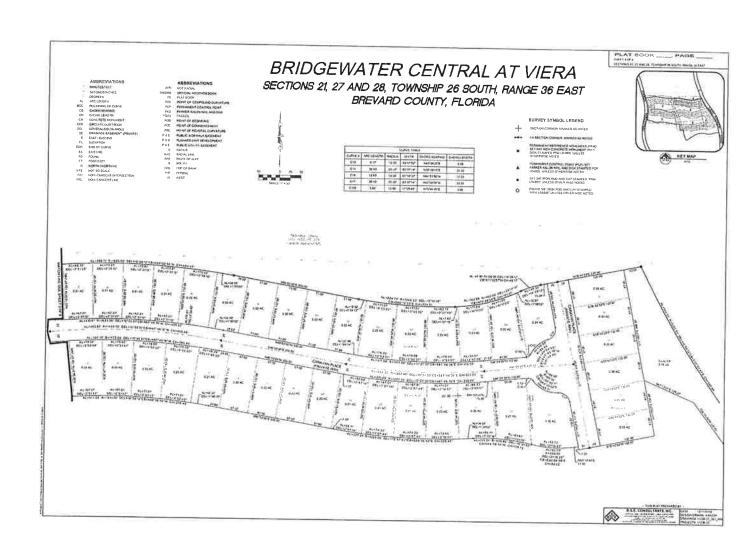
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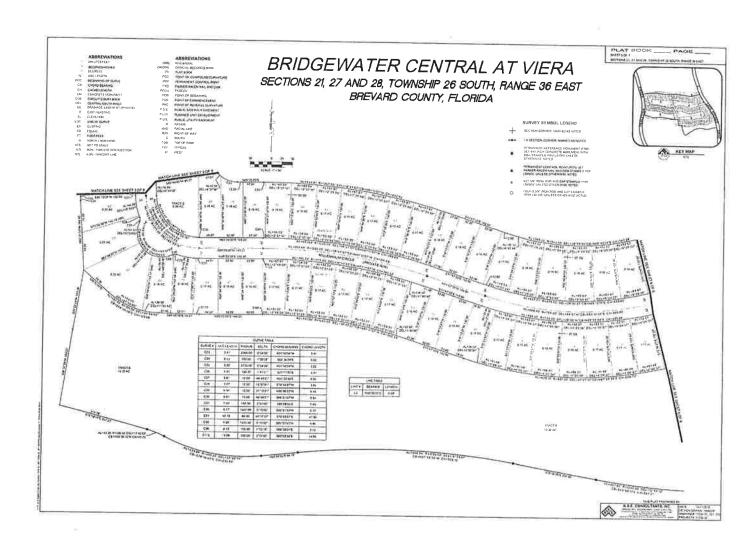
Martin Bogue, Assistant Secretary

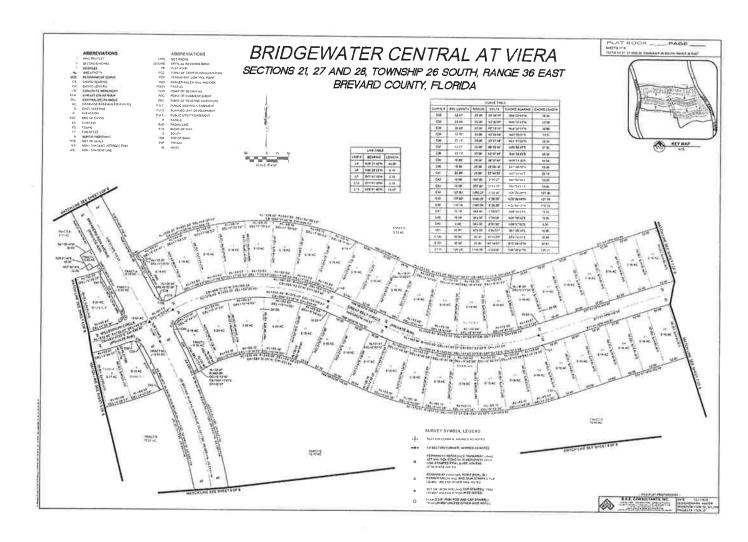


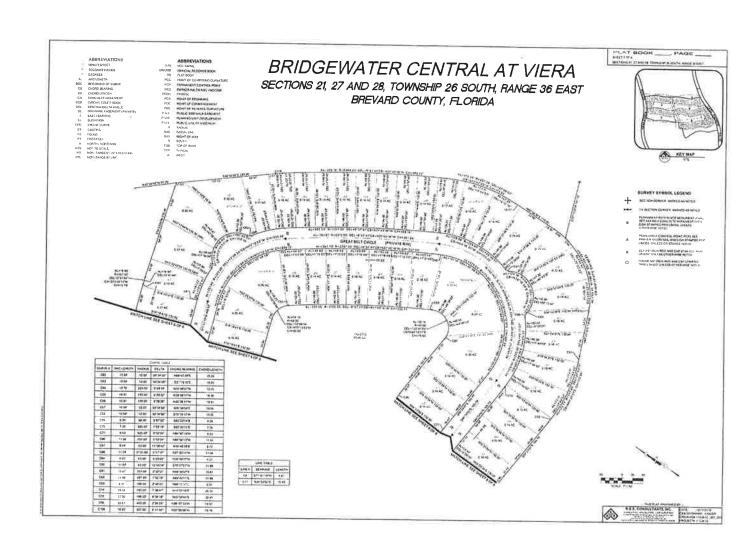


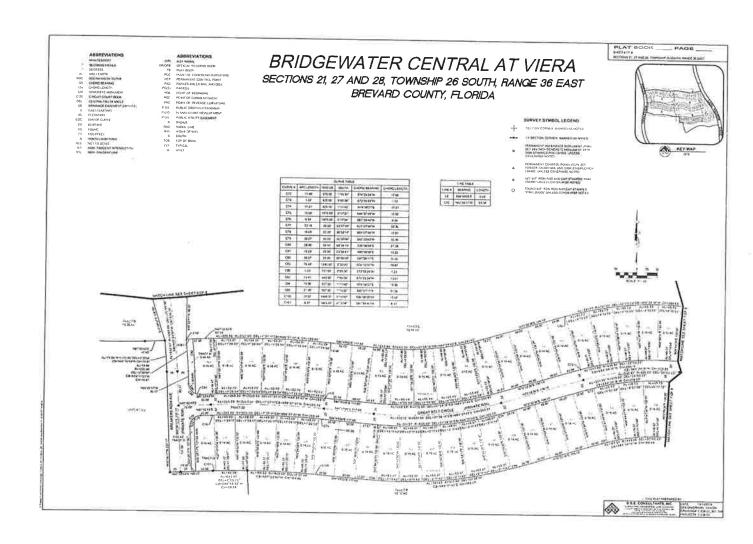












# LOCATION MAP

### BRIDGEWATER CENTRAL AT VIERA 18SD00013





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: 1/25/2019