



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.9.

3/24/2020

Subject:

Adopt Resolution and Release Performance Bond: The Dunes at Indian River Preserve (Pod 15) - District 1
Developer: Indian River Preserve Estates 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 12, 2019 for the above referenced project.

Summary Explanation and Background:

The Dunes at Indian River Preserve (Pod 15) Subdivision is located at the intersection of Indian River Parkway and Clubhouse Drive. The proposed subdivision contains 70 units on 16.85 acres.

The Dunes at Indian River Preserve (Pod 15) subdivision received approval of its preliminary plat and final engineering plans on March 15, 2019, and final plat and contract approval on November 12, 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 February 25, 2020, The Dunes at Indian River Preserve (Pod 15) subdivision infrastructure improvements have been completed.

Reference: 19SD00012 and 17SD00018

143

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.



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

March 25, 2020

MEMORANDUM

TO: Corrina Gumm, Interim Public Works Director

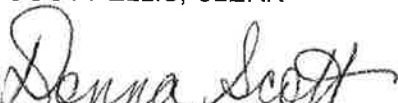
RE: Item F.9., Resolution and Release of Performance Bond for The Dunes at Indian River Preserve (Pod 15) developed by Indian River Preserve Estates Corporation

The Board of County Commissioners, in regular session on March 24, 2020, adopted Resolution No. 20-025; and authorized the Chair to release the Contract and Surety Bond dated November 12, 2019, for The Dunes at Indian River Preserve (Pod 15) developed by Indian River Preserve Estates Corporation. Enclosed are two fully-executed Resolutions.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK


Tammy Rowe, Deputy Clerk

/kp

Encls. (2)

RESOLUTION 20-025

WHEREAS, the Board of County Commissioners of Brevard County, Florida and Indian River Preserve Estate Corporation entered into a contract to guarantee the construction of improvements on property commonly known as The Dunes at Indian River Preserve (Pod 15).

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, Indian River Preserve Estate Corporation completed all of the infrastructure improvements and has requested that the executed contract approved on November 12, 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 The Dunes at Indian River Preserve (Pod 15).
2. The Board of County Commissioners of Brevard County, Florida hereby releases the contract and performance bond executed on November 12, 2019.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 24th day of March 2020.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: 

Bryan Lober, Chair

As approved by the Board on March 24, 2020

Subdivision No. 19SD00012

Project Name The Dunes at Indian River Preserve

**Subdivision Infrastructure
Contract**

THIS CONTRACT entered into this 12th day of November 2019, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and Indian River Preserve Estate 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 19SD00012. 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 1st day of May, 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 \$ 1,567,821.69. 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

KRISTINE ISNARDI CHAIR

As approved by the Board on: Nov. 12, 2019.

WITNESSES:

Carol Grove
Carol Grove

Tamy Casta
Tamy Casta

State of: Florida
County of: Brevard

PRINCIPAL:

Igor Olenicoff
Igor Olenicoff, as President
Indian River Preserve Estate Corp.

10-31-19
DATE

The foregoing instrument was acknowledged before me this 31st day of October 2019, by Igor Olenicoff who is personally known to me or who has produced as identification and who did (did not) take an oath.

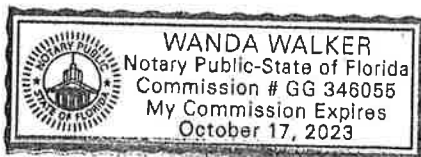
My commission expires:

S E A L

Commission Number:

Wanda Walker
Notary Public

Wanda Walker
Notary Name printed, typed or stamped



SURETY PERFORMANCE BOND

Bond Number: 4430408

KNOW ALL MEN BY THESE PRESENTS:

That we, Indian River Preserve Estates Corp., hereinafter referred to as "Owner" and, Markel 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 \$1,567,821.69, 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 30 day of October, 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 1 May, 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 30 day of October, 2019.

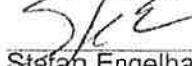
Indian River Preserve Estates Corp.

OWNER:



Igor Olenicoff, President

SURETY: Markel Insurance Company



Stefan Engelhardt, Attorney-In-Fact

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



Markel Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That MARKEL INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Illinois, and having its principal administrative office in Glen Allen, Virginia, does by these presents make, constitute and appoint

Amanda C. Webb, Nathan Wonder, Stefan Engelhardt, Emily Nagel, Karl Choltus, Leigh A. Penley, Sarah Harren

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings of other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for, providing the bond penalty does not exceed

Fifty Million and 00/100 Dollars (\$50,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution of the Board of Directors of Markel Insurance Company:

RESOLVED, that the President, any Senior Vice President, Vice President, Assistant Vice President, Secretary, Assistant Secretary or Assistant Treasurer shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for on behalf of the Company, subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Secretary.

FURTHER RESOLVED, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

In Witness Whereof, MARKEL INSURANCE COMPANY has caused these presents to be signed by its Senior Vice President, and its corporate seal to be hereto affixed this 3rd day of July, 2019.

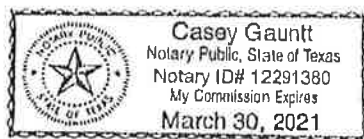
Commonwealth of Virginia
Henrico County

MARKEL INSURANCE COMPANY

By: 

Robin Russo, Senior Vice President

On this 3rd day of July, 2019 before me personally came Robin Russo, to me known, who being by me duly sworn, did depose and say that he resides in Henrico County, Virginia, that he is Senior Vice President of MARKEL INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



By: 

Casey Gauntt, Notary Public

I, Richard R. Grinnan, Vice President and Secretary of MARKEL INSURANCE COMPANY, do hereby certify that the above and foregoing is true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and, furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Glen Allen, Virginia this 30 day of October, 2019.

By: 

Richard R. Grinnan,
Vice President and Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity. 3710015

For verification of the authority of this Power you may call (713) 812-0800 on any business day between 8:30 AM and 5:00 PM CST.

A REPLAT OF TRACT A OF WALKABOUT GOLF COURSE, AS RECORDED IN PLAT BOOK 59, PAGE 37, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA



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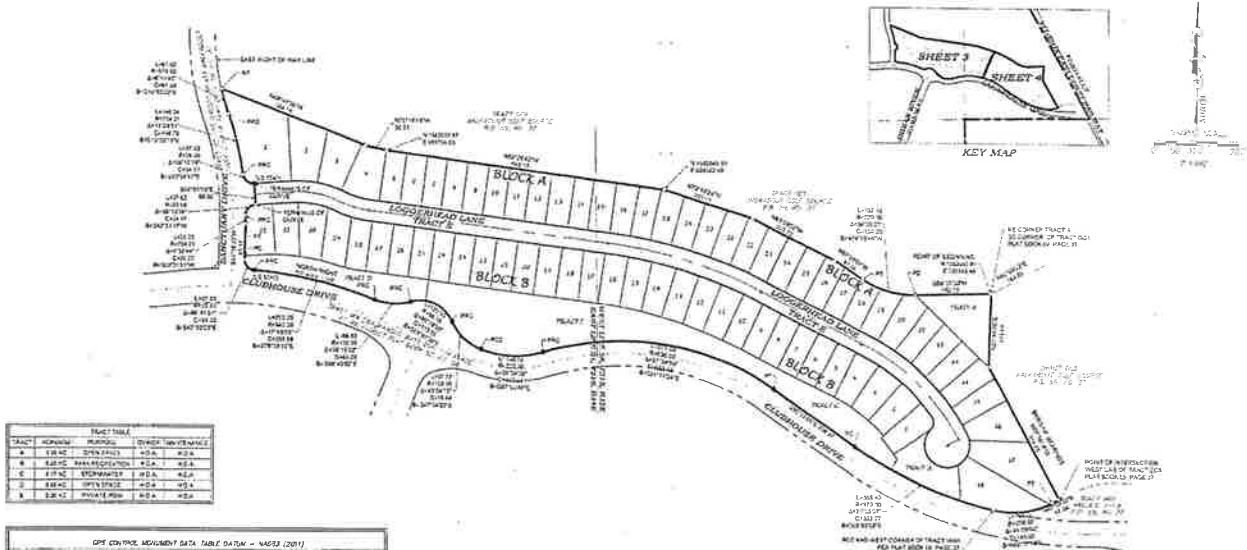
CLERK OF THE DISTRICT COURT
IN AND FOR GRADY COUNTY, FLORIDA

PLAT BOOK PAGE

DESCRIPTION: THE JUNGLE AT INDIAN AFTER RAINSTORM (MAY 12)

TRACT A (RESIDENTIAL TRACT) OF WILKINSON TOWNSHIP, MA¹, AS SHOWN ON PLAT BOOK 57, PAGE 37, OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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FACT TABLE				
TRACT	HOUSING	MUNICIPALITY	TRUCK	INVESTMENT
A	1.0E+02	OPEN SPACE	+0.4	+0.4
B	1.0E+02	RAILROAD/STATION	+0.4	+0.4
C	1.0E+02	SPRINGFIELD	+0.4	+0.4
D	1.0E+02	PRIVATE SPACE	+0.4	+0.4
E	1.0E+02	PRIVATE ROAD	+0.4	+0.4

[illegible]

PREPARED BY:
INDIAN RIVER SURVEY, INC.
PROFESSIONAL SURVEYING AND MAPPING
CERTIFICATE OF AUTHORIZATION No. LG 1545
1815 20TH STREET, VERO BEACH, FLORIDA 33460
PHONE (772) 563-7080 FAX (772) 778-1617

[illegible][illegible]

SECTION 1, TOWNSHIP 21 SOUTH, RANGE 34 EAST AND SECTION 6, TOWNSHIP 21 SOUTH, RANGE 35 EAST, BREVARD COUNTY, FLORIDA.
A REPLAY OF TRACT A OF WALKABOUT GOLF COURSE, AS RECORDED IN PLAT BOOK 59, PAGE 37, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

Sweet, 1992
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CIVIC JURY					
Case #	Case Name	Case Type	Case Status	Case Date	Case Time
1	100-100000	100-100000	100-100000	100-100000	100-100000
2	100-100000	100-100000	100-100000	100-100000	100-100000
3	100-100000	100-100000	100-100000	100-100000	100-100000
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19	100-100000	100-100000	100-100000	100-100000	100-100000
20	100-100000	100-100000	100-100000	100-100000	100-100000

PREPARED BY:
INDIAN RIVER SURVEY, INC.
PROFESSIONAL SURVEYING AND MAPPING
CERTIFICATE OF AUTHORIZATION No. LB 7945
1015 20TH STREET, VERO BEACH, FLORIDA 32950
PHONE (772) 569-7680 FAX (772) 778-3617

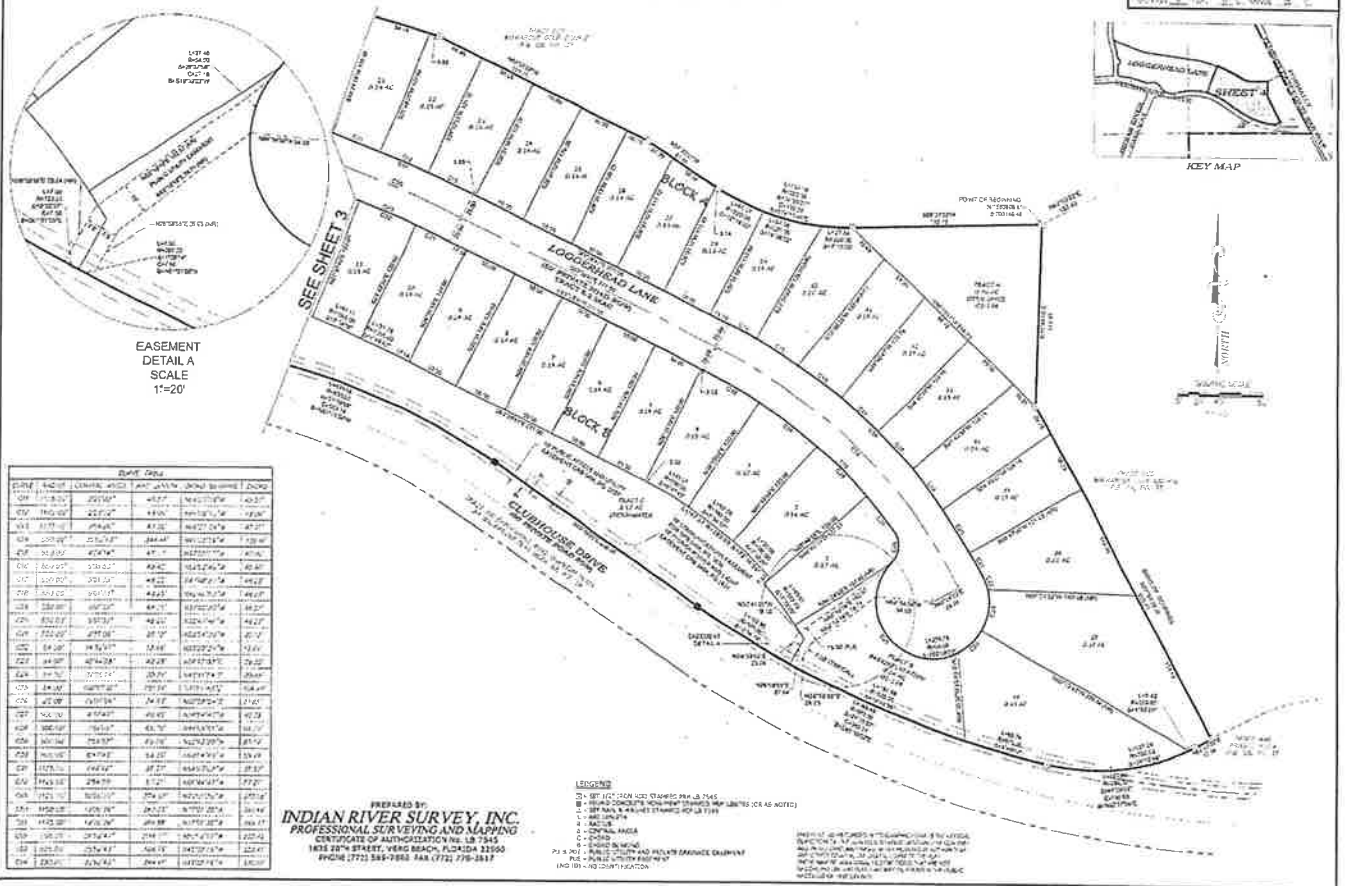
THIS PLANT HAS NO CORRELATION WITH CLIMATE; IT IS ONE OF THE MOST COMMON OF THE TROPICAL FORESTS AND GROWS IN ALL TYPES OF SOILS AND CLIMATES. IT IS A MEMBER OF THE RUBIACEAE FAMILY.

[illegible]

THE DUNES AT INDIAN RIVER PRESERVE (POD 15)
 SECTION 1, TOWNSHIP 21 SOUTH, RANGE 34 EAST AND SECTION 6, TOWNSHIP 21 SOUTH, RANGE 35 EAST, BREVARD COUNTY, FLORIDA.
 A REPLAT OF TRACT A OF WALKABOUT GOLF COURSE, AS RECORDED IN PLAT BOOK 59, PAGE 37, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

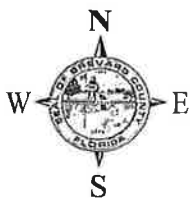
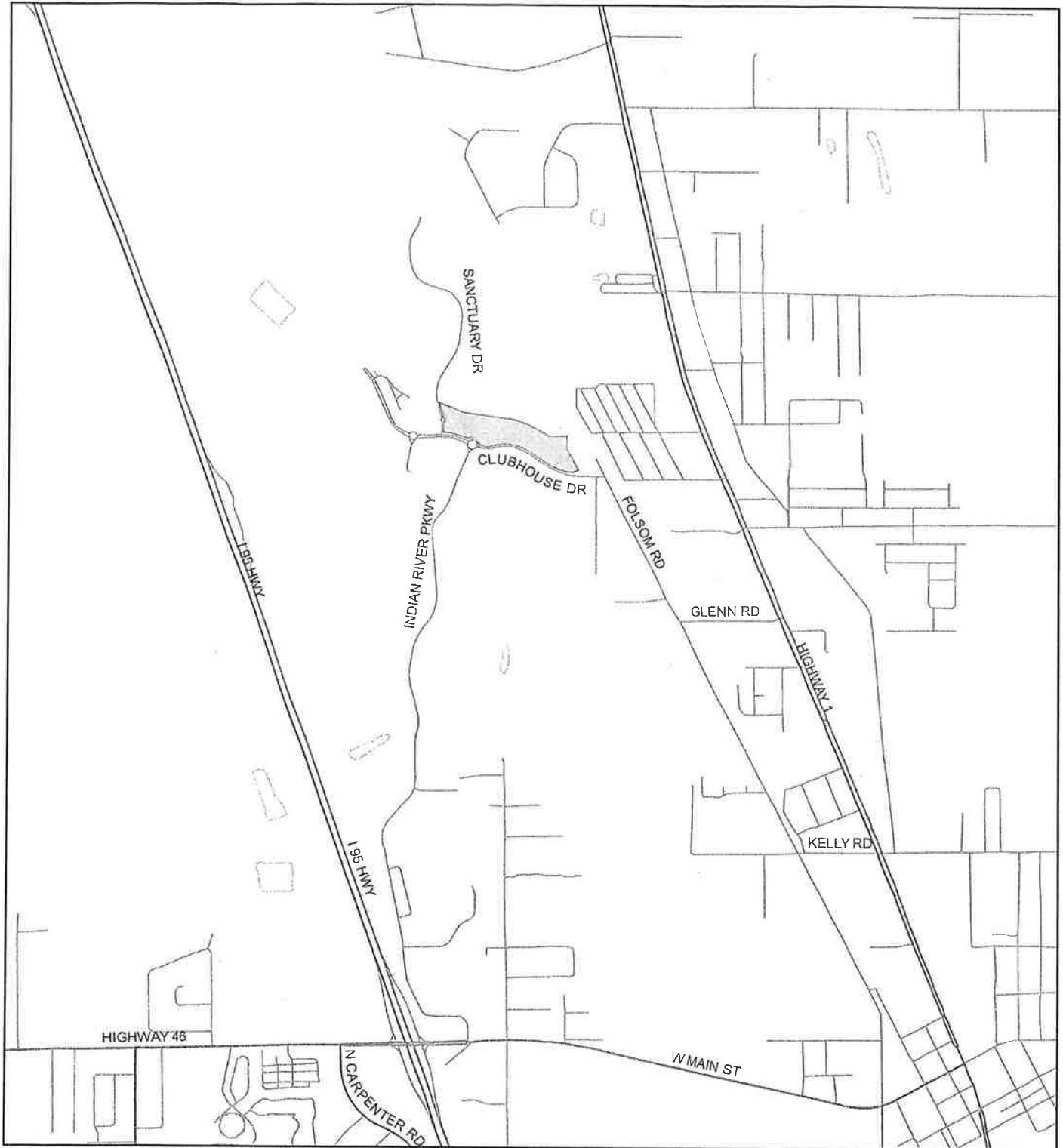
PLAT BOOK PAGE

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LOCATION MAP

THE DUNES at INDIAN RIVER PRESERVE (POD 15)
19SD00012



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: 10/28/2019