

Meeting Date
May 17, 2016



AGENDA	
Section	New Business
Item No.	VI.A.1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	FINAL PLAT AND CONTRACT APPROVAL RE: MATANILLA REEF AT AQUARINA DISTRICT 3 DEVELOPER: ARMADA US INC FISCAL IMPACT: NONE
DEPT/OFFICE:	PLANNING & DEVELOPMENT DEPARTMENT

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 Chairman to sign the final plat and contract for the above referenced project.

Summary Explanation & Background:

There are three stages of review of 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 December 19, 2013. The preliminary plat and final engineering plans, which is the second stage, was approved by the Board on October 7, 2014. 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, and has determined that it is in compliance with the applicable ordinances.

The Matanilla Reef at Aquarina subdivision is located on the west side of Highway A1A approximately 1.7 miles south of Highway 192 aka Fifth Avenue, containing 15 residential lots and one commercial lot on approximately 3.23 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: 13SP-01005, 15SP00005, 15SD00019

Clerk to the Board instruction: Please return the signed original contract and certified copy of contract

Exhibits Attached: location maps, contract

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager		Department Director / Extension Robin M. Difabio, AICP Planning & Development Department Ext. 5-2069
Stockton Whitten		



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

May 18, 2016

MEMORANDUM

TO: Robin DiFabio, Planning and Development Director

RE: Item VI.A.1., Final Plat and Contract Approval for Matanilla Reef at Aquarina – Armada US, Inc.

The Board of County Commissioners, in regular session on May 17, 2016, granted final plat approval, and authorized the Chairman to sign the final plat and Contract with Armada US, Inc. for Matanilla Reef at Aquarina, subject to minor engineering changes, as applicable, and developer responsible for obtaining all other necessary jurisdictional permits. Enclosed are fully-executed and a certified copy of the Contract.

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK


✓ Tammy Rowe, Deputy Clerk

Encl. (2)

cc: Contracts Administration

Subdivision No. 15SD00019

Project Name Matanilla Reef

**Subdivision Infrastructure
Contract**

THIS CONTRACT entered into this 5 day of May 2016, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and Armador US Inc, and Commercial Building Corp the owners of and contractor for the project hereinafter referred to as "PRINCIPALS."

WITNESSETH:

IN CONSIDERATION of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. The PRINCIPALS agree to construct the improvements described below:

and all other improvements depicted in subdivision number 15SD00019. A copy of said plat to be recorded in the Plat Books of the Public Records of Brevard County.

2. Principals agree 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. Principals also warrant 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.

To the extent assignable, Principals assigns to County all of Principals 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 Principals in the event Principals fail to perform its warranty obligations hereunder. Where warranties granted hereunder overlap, the more stringent requirement shall control."

3. The PRINCIPALS agree to complete said construction on or before the 5 day of May, 2018.
4. In order to guarantee performance of PRINCIPALS' obligations herein contained, PRINCIPALS shall furnish cash, letter of credit, certificate of deposit or surety bond in a form approved by the COUNTY, in the amount of \$ 93,180. 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. PRINCIPALS 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. The plat shall not be recorded until the security described above has been delivered.

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, PRINCIPALS fail 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 PRINCIPALS,
 - C. Request the surety on said performance bond to complete such improvements, or
 - D. Contract for completion of said improvements.
7. The PRINCIPALS 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 PRINCIPALS 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 PRINCIPALS 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 the PRINCIPALS in the United States or any other country.

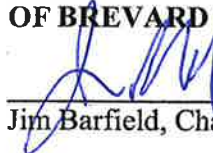
IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:



Scott Ellis, Clerk

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



Jim Barfield, Chairman

As approved by the Board on: May 17, 2016.

WITNESSES:

James Downey
Michelle Winkler

PRINCIPAL:

Andre Santamaria
VP, Amada US INC.
DATE 5/5/16

State of: FL

County of: Brevard



The foregoing instrument was acknowledged before me this 5 day of May 2016, by Andre Santamaria 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:



Karli Michelle Winkler
Notary Public

Karli Michelle Winkler
Notary Name printed, typed or stamped

WITNESSES:

James Downey
Michelle Winkler

PRINCIPAL:

Alex Santamaria per Alex Santamaria family, Trustee.
DATE 5/5/16

State of: FL

County of: Brevard

The foregoing instrument was acknowledged before me this 5 day of May 2016, by Alex Santamaria 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:

Karli Michelle Winkler
Notary Public

Karli Michelle Winkler
Notary Name printed, typed or stamped

Revised 05/04/16



WITNESSES:

[Signature]
[Signature]

CONTRACTOR:

[Signature], as President
DATE 5/5/16

State of: FL

County of: Brevard

The foregoing instrument was acknowledged before me this 5 day of May 2016, by [Signature] 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

[Signature]
Notary Name printed, typed or stamped



ATTEST:

Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

JIM BARFIELD, CHAIRMAN

As approved by the Board on: May 17, 2016.

WITNESSES:

PRINCIPAL: Dan Winkler, President, CBC

REBEKAH J HALL
REBEKAH J HALL

[Signature]
, as President

4-26-16
DATE

State of FL
County of Brevard

The foregoing instrument was acknowledged before me this 26 day of April 2016, by DAN 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:

[Signature]
Notary Public

Notary Name printed, typed or stamped



LIZABETH A. CASSELLA
MY COMMISSION # FF 224189
EXPIRES: May 7, 2019
Bonded Thru Budget Notary Services

**CASH
PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That ARMADA US, INC., hereinafter referred to as "Owner" is held and firmly bound unto the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as "County" in the sum of \$93,182.00 cash, for the payment of which he binds himself, his heirs, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, Owner has agreed to construct the improvements listed below in MATANILLA REEF subdivision. Improvements to be constructed, are as follows: SIDEWALKS AND FINAL PAVEMENT

NOW THEREFORE, the condition of this obligation is such that if Owner shall promptly and faithfully construct the Improvements listed above by MAY 5TH, 2017, 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 by the County, the Owner hereby authorizes the County or its representative to enter upon the land and the County shall have the right to complete the improvements described above and the Owner shall pay all costs of completing the improvements 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. The County shall have the additional right to contract for the completion of the improvement upon which the Owner has defaulted and upon the County's acceptance of the lowest responsible bid for completion of said contract, the Owner 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 therefore, interest shall accrue at the rate of six percent (6%) per annum beginning with the commencement of such legal proceedings. The County may use the Cash Performance Bond to pay the cost of construction or completion of the improvements listed. Owner shall remain liable for any costs in excess of this payment bond.


In the event that the County commences suit for the collection of any sums due hereunder, the Owner agrees to pay all costs incurred by the County, including attorney's fees.

EXECUTED this 5th day of May 2017.

WITNESS:



OWNER:

BY:  Angie Santamaria
TITLE: Vice President

Harbor Community Bank
3940 20th St
Vero Beach, Florida 32966
www.harborcb.com

L/C Number: 317

RE: IRREVOCABLE STANDBY COMMERCIAL LETTER OF CREDIT

Board of County Commissioners of Brevard County, Florida
2725 Judge Fran Jamison Way
Viera, FL 32948

Attention: **Christine Verrett**
Representative Title: **Special Projects Coordinator**
E-Mail: **Christine.Verrett@brevardcounty.us**

Sr, Madam:

Upon the request of Armada US Inc, we, Harbor Community Bank (the Issuing Institution) have established this Irrevocable Standby Commercial Letter of Credit in your (Beneficiary) favor, up to an aggregate amount of Ninety-three Thousand One Hundred Eighty-two and 00/100 Dollars (\$93,182.00).

Payment to you will be made upon presentation of a sight draft drawn on us.

This Letter of Credit must be presented with your drawing and the Conditions for Draw(s) set forth below must be satisfied. A draft must bear upon its face the statement "Drawn under Letter of Credit No. 317."

CONDITIONS FOR DRAWS. PLEASE REMIT REQUEST FOR PAYMENT TO:

HARBOR COMMUNITY BANK
ATTN: LOAN OPERATIONS
680 EDWARDS RD
FORT PIERCE FL 34950

This Credit is not transferable. Any successor or assignee of the Beneficiary will not constitute a transferee of Credit.

We will honor a draft drawn and presented under and in compliance with the terms of this Letter of Credit if presented to us at our address set forth above at or before May 5, 2017.

The Uniform Customs and Practice for Documentary Credits (hereinafter called the "UCP") as most recently published by the International Chamber of Commerce (ICC) shall in all respects be deemed a part hereof as fully as if incorporated herein and shall apply to the Credit. This Agreement shall be governed by and construed in accordance with the laws of the state of Florida, United States of America, except in the extent such laws are inconsistent with the UCP.

Harbor Community Bank
  (Seal)
By: **Brian Hartman** Date
Its: **Commercial Loan Officer**

PERFORMANCE BOND

IRREVOCABLE LETTER OF CREDIT

KNOW ALL MEN BY THESE PRESENTS:

That Acmada Us Inc, hereinafter referred to as "Owner", is held and firmly bound unto the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as "County" in the sum of 93,182 for the payment of which he binds himself, his heirs, successors and assigns, jointly and severally, firmly by these presents. In lieu of \$ 93,182 cash, Acmada Us Inc has delivered to the County, an Irrevocable Letter of Credit No. _____ from Harbor Community Bank, a copy of which is attached hereto and made a part hereof by this reference.

WHEREAS, Owner has entered into a contract with the County dated 5/5/16, for the construction of improvements in Side Walks + Pavement, which contract is incorporated herein and made a part hereof by this 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 _____ 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 Owner 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 arrangement have been made by the Owner satisfactory to the County for the completion of said contract, and charge the cost thereof, including but not limited to, engineering, legal and other costs, together with any damages, either direct or consequential, which the County may draw against the Irrevocable Letter of Credit No. 16068560. 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 County shall have the right to charge the cost thereof against and receive payment from Harbor Community Bank, Irrevocable Letter of Credit/Certificate of Deposit No. 16068560. 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.

In the event that the County commences suit for the collection of any sums due hereunder, the Owner agrees to pay all costs incurred by the County, including attorney's fees.

EXECUTED this 5 day of May, 2016.

WITNESS:

[Signature]
[Signature]

OWNER:

[Signature]
UP ARMOA US INC.

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

**CASH
PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

That ARMADA US, INC., hereinafter referred to as "Owner" is held and firmly bound unto the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as "County" in the sum of \$93,182.00 cash, for the payment of which he binds himself, his heirs, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, Owner has agreed to construct the improvements listed below in MATANILLA REEF subdivision. Improvements to be constructed, are as follows: SIDEWALKS AND FINAL PAVEMENT

NOW THEREFORE, the condition of this obligation is such that if Owner shall promptly and faithfully construct the Improvements listed above by MAY 5TH, 2017, 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 by the County, the Owner hereby authorizes the County or its representative to enter upon the land and the County shall have the right to complete the improvements described above and the Owner shall pay all costs of completing the improvements 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. The County shall have the additional right to contract for the completion of the improvement upon which the Owner has defaulted and upon the County's acceptance of the lowest responsible bid for completion of said contract, the Owner 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 therefore, interest shall accrue at the rate of six percent (6%) per annum beginning with the commencement of such legal proceedings. The County may use the Cash Performance Bond to pay the cost of construction or completion of the improvements listed. Owner shall remain liable for any costs in excess of this payment bond.

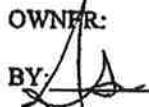
In the event that the County commences suit for the collection of any sums due hereunder, the Owner agrees to pay all costs incurred by the County, including attorney's fees.

EXECUTED this 5th day of May 2017.

WITNESS:



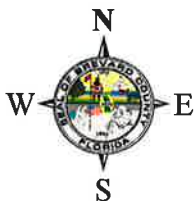
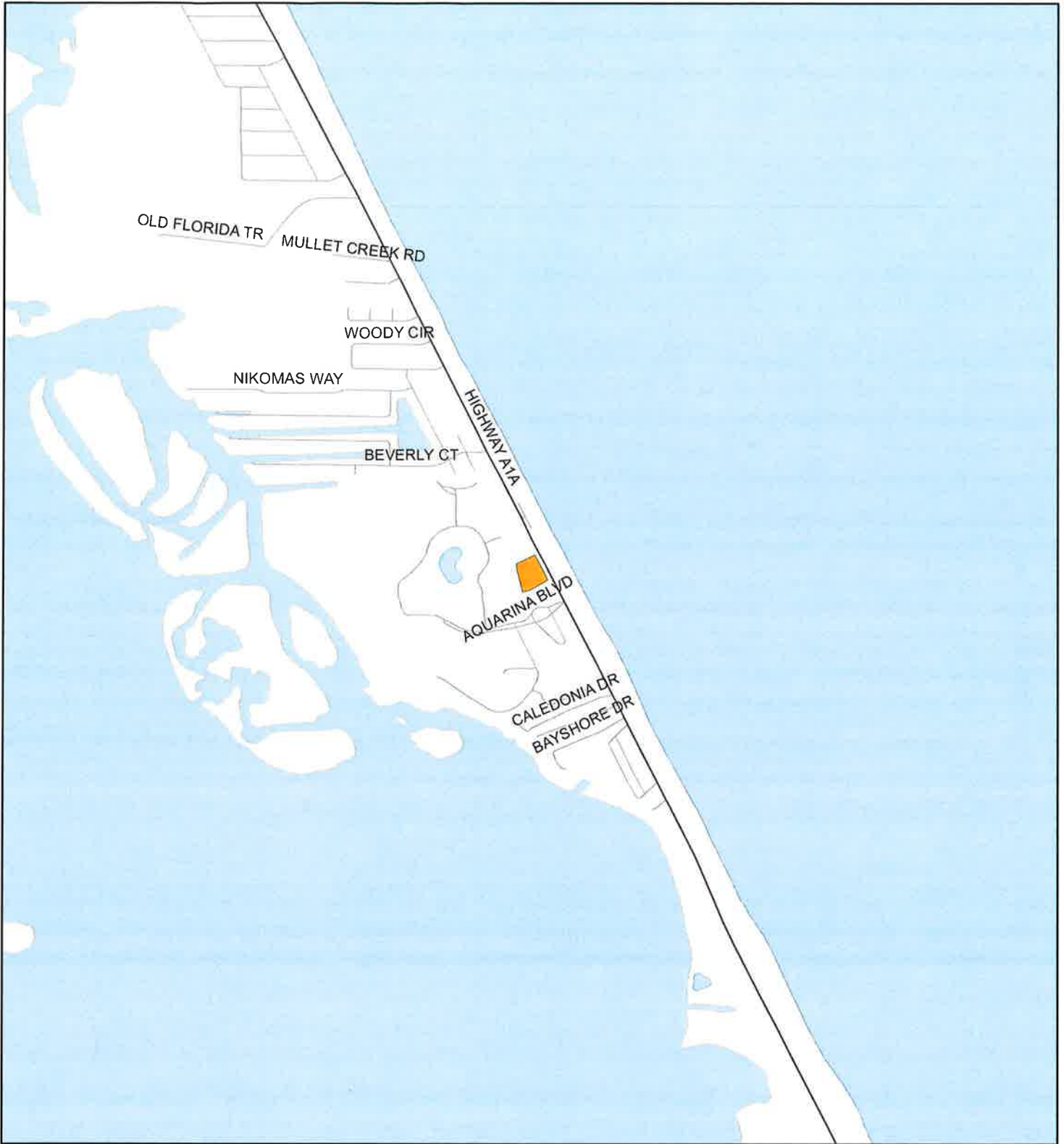
OWNER:

BY:  Angie Santanero

TITLE: Vice President

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

LOCATION MAP
MATANILLA REEF AT AQUARINA
15SD00019



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: 5/2/2016