



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## New Business - Add-On

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J.3.

1/10/2023

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### Subject:

Final Plat and Contract Approval, Re: Fox Glen Subdivision  
Developer: D.R. Horton                      District 1

### Fiscal Impact:

None

### Dept/Office:

Planning and Development

### Requested Action:

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

### Summary Explanation and Background:

There are three stages of review for subdivision plan approval: the pre-application conference, the preliminary plat/final engineering plan review, and the final plat review. The pre-application conference for the Fox Glen Subdivision was held on September 24, 2020. The preliminary plat and final engineering plans, which is the second stage of approval, were approved on January 11, 2022. The third stage of review is the final plat approval for recordation. The applicant is posting a performance bond and contract for guarantee of the completion of the infrastructure improvements.

Staff has reviewed the final plat and contract for the Fox Glen Subdivision, and has determined that it complies with the applicable ordinances.

This parcel is zoned RU-1-7 with BDP under zoning action 18PZ00072. It is located in a Residential 4 District designated by Brevard County's Future Land Use Map. The proposal is for 100 units on 28.17 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: 22FM00007, 20SD00016

Contact: Tim Craven, Planner II, Ext. 58266

### Clerk to the Board Instructions:

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





January 11, 2023

**MEMORANDUM**

TO: Tad Calkins, Planning and Development Director Attn: Timothy Craven

RE: Item J.3., Final Plat and Contract Approval for Fox Glen Subdivision, Developer: D. R. Horton

The Board of County Commissioners, in regular session on January 10, 2023, granted final plat approval; and authorized the Chair to execute the final Plat and the Contract for Fox Glen Subdivision, subject to minor engineering changes as applicable, and does not relieve developer from obtaining all other necessary jurisdictional permits. Enclosed is a fully-executed and certified copy of the Contract.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

Encls. (2)

cc: Contracts Administration

J.B.  
1/10/2023

3430

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Reference: 22FM00007, 20SD00016

Contact: Tim Craven, Planner II, Ext. 58266

**Clerk to the Board Instructions:**

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

Subdivision No. 20SD00016

Project Name Fox Glen Subdivision

**Subdivision Infrastructure  
Contract**

THIS CONTRACT entered into this 10 day of JANUARY 2023, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and DR Horton, Inc., 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:

Infrastructure improvements consisting of water, sewer, storm drainage, roadways, sidewalks and all other improvements depicted in subdivision number 20SD00016. 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 10th day of January, 2024.


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 \$ 5,783,648.73 . 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:

  
Rachel M. Sadoff, Clerk

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

  
Rita Pritchett, Chair

As approved by the Board on: Jan. 10, 2023.

WITNESSES:

AW 1/5/23

[Signature] 1/5/23

PRINCIPAL:

  
John T. Lynch, Assistant Secretary

1.5.23  
DATE

State of: Florida

County of: Brevard

The foregoing instrument was acknowledged before me this 5 day of January 2023, by John T. Lynch who is personally known to me or who has produced as identification and who did (did not) take an oath.

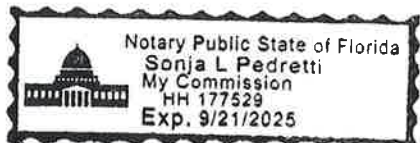
My commission expires:

S E A L

Commission Number:

  
Notary Public

Sonja Pedretti  
Notary Name printed, typed or stamped



SURETY PERFORMANCE BOND

Bond No. SU1180832

KNOW ALL MEN BY THESE PRESENTS:

That we, D.R. Horton, Inc., hereinafter referred to as "Owner" and, Arch 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 \$5,783,648.73, 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 10 day of JANUARY, 2023, 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 \_\_\_\_\_, 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.

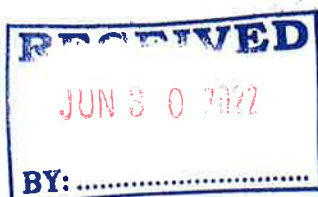
EXECUTED this 31st day of May, 2022.

OWNER: D.R. Horton, Inc.

SURETY: Arch Insurance Company

Noah William Pierce  
Noah William Pierce, Attorney-In-Fact

SCANNED





*This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated. Not valid for Note, Loan, Letter of Credit, Currency Rate, Interest Rate or Residential Value Guarantees.*

# POWER OF ATTORNEY

## Know All Persons By These Presents:

That the Arch Insurance Company, a corporation organized and existing under the laws of the State of Missouri, having its principal administrative office in Jersey City, New Jersey (hereinafter referred to as the "Company") does hereby appoint:

**Amy R. Waugh, Carol S. Card, Catherine Thompson, Jennifer B. Gullett, Jynell Whitehead and Noah William Pierce of Charlotte, NC (EACH)**

its true and lawful Attorney(s) in-Fact, to make, execute, seal, and deliver from the date of issuance of this power for and on its behalf as surety, and as its act and deed: Any and all bonds, undertakings, recognizances and other surety obligations, in the penal sum not exceeding Ninety Million Dollars (\$90,000,000.00). This authority does not permit the same obligation to be split into two or more bonds in order to bring each such bond within the dollar limit of authority as set forth herein.

The execution of such bonds, undertakings, recognizances and other surety obligations in pursuance of these presents shall be as binding upon the said Company as fully and amply to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal administrative office in Jersey City, New Jersey.

This Power of Attorney is executed by authority of resolutions adopted by unanimous consent of the Board of Directors of the Company on December 10, 2020, true and accurate copies of which are hereinafter set forth and are hereby certified to by the undersigned Secretary as being in full force and effect:

**"VOTED**, That the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, or the Secretary shall have the power and authority to appoint agents and attorneys-in-fact, and to authorize them subject to the limitations set forth in their respective powers of attorney, to execute on behalf of the Company, and attach the seal of the Company thereto, bonds, undertakings, recognizances and other surety obligations obligatory in the nature thereof, and any such officers of the Company may appoint agents for acceptance of process."

This Power of Attorney is signed, sealed and certified by facsimile under and by authority of the following resolution adopted by the unanimous consent of the Board of Directors of the Company on December 10, 2020:

**VOTED**, That the signature of the Chairman of the Board, the President, or the Executive Vice President, or any Senior Vice President, of the Surety Business Division, or their appointees designated in writing and filed with the Secretary, and the signature of the Secretary, the seal of the Company, and certifications by the Secretary, may be affixed by facsimile on any power of attorney or bond executed pursuant to the resolution adopted by the Board of Directors on December 10, 2020, and any such power so executed, sealed and certified with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding upon the Company. **In Testimony Whereof**, the Company has caused this instrument to be signed and its corporate seal to be affixed by their authorized officers, this **18<sup>th</sup> day of November, 2021**.

## Attested and Certified

*Regan A. Shulman*

Regan A. Shulman, Secretary

STATE OF PENNSYLVANIA SS  
COUNTY OF PHILADELPHIA SS

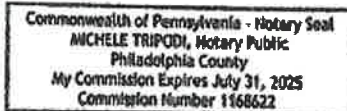


Arch Insurance Company

*Stephen C. Ruschak*

Stephen C. Ruschak, Executive Vice President

I, **Michele Tripodi**, a Notary Public, do hereby certify that Regan A. Shulman and Stephen C. Ruschak personally known to me to be the same persons whose names are respectively as Secretary and Executive Vice President of the Arch Insurance Company, a Corporation organized and existing under the laws of the State of Missouri, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they being thereunto duly authorized signed, sealed with the corporate seal and delivered the said instrument as the free and voluntary act of said corporation and as their own free and voluntary acts for the uses and purposes therein set forth.



*Michele Tripodi*

Michele Tripodi, Notary Public  
My commission expires 07/31/2025

## CERTIFICATION

I, **Regan A. Shulman**, Secretary of the Arch Insurance Company, do hereby certify that the attached **Power of Attorney dated November 18, 2021** on behalf of the person(s) as listed above is a true and correct copy and that the same has been in full force and effect since the date thereof and is in full force and effect on the date of this certificate; and I do further certify that the said Stephen C. Ruschak, who executed the Power of Attorney as Executive Vice President, was on the date of execution of the attached Power of Attorney the duly elected Executive Vice President of the Arch Insurance Company.

**IN TESTIMONY WHEREOF**, I have hereunto subscribed my name and affixed the corporate seal of the Arch Insurance Company on this 31<sup>st</sup> day of May, 2022.

*Regan A. Shulman*

Regan A. Shulman, Secretary

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

**PLEASE SEND ALL CLAIM INQUIRIES RELATING TO THIS BOND TO THE FOLLOWING ADDRESS:**

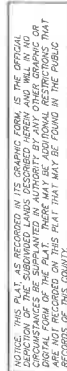
Arch Insurance - Surety Division  
3 Parkway, Suite 1500  
Philadelphia, PA 19102



**To verify the authenticity of this Power of Attorney, please contact Arch Insurance Company at [SuretyAuthentic@archinsurance.com](mailto:SuretyAuthentic@archinsurance.com). Please refer to the above named Attorney-in-Fact and the details of the bond to which the power is attached.**



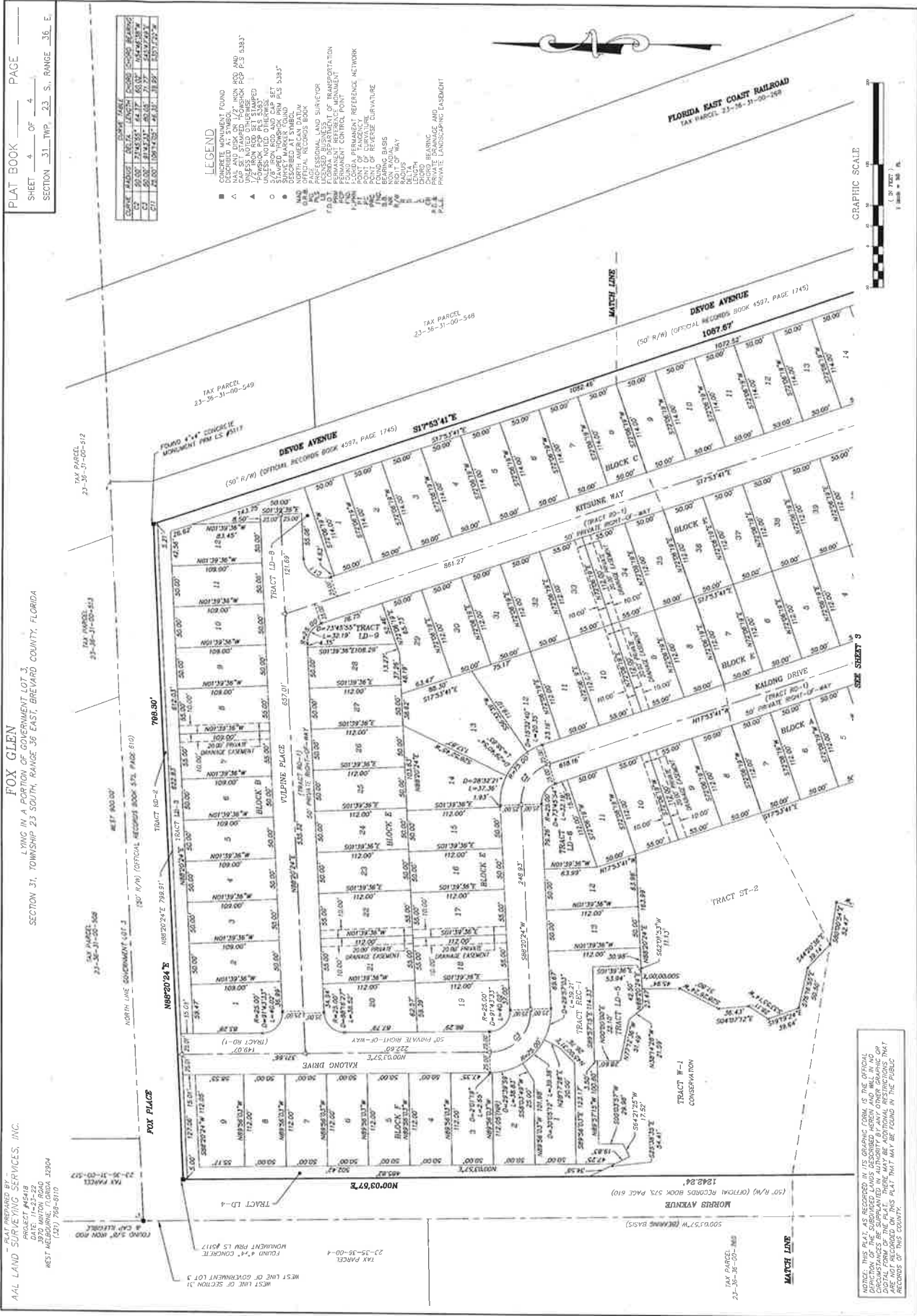






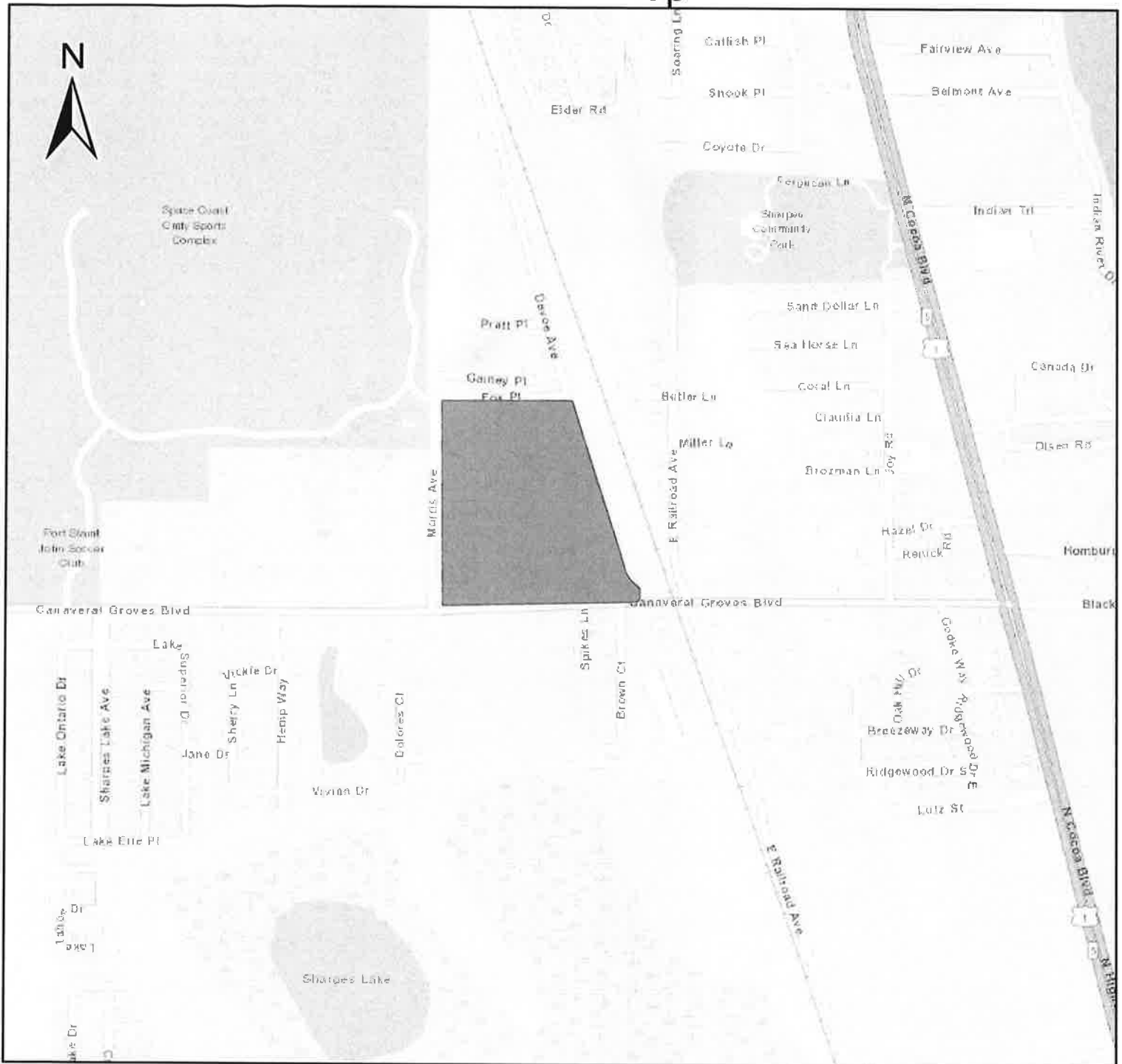
### LEGEND

- [illegible]



NOTICE: THIS PLAT, AS RECORDED IN ITS GRAPHIC FORM, IS THE OFFICIAL DEFINITION OF THE SUBDIVIDED LANDS DESCRIBED HEREIN AND WILL IN NO CIRCUMSTANCES BE SUPPLANTED IN AUTHORITY BY ANY OTHER GRAPHIC OR DIGITAL FORM OF THE PLAT. THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTRY.

# Location Map

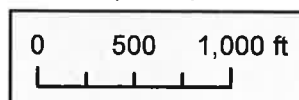


Buffer Boundary in Dark Orange

Subject Property in Orange

Disclaimer: 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.

Scale: 1:12,000  
1 inch equals 1,000 feet



Print Time: 12/13/2022 1:50 PM