



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.19.

8/25/2020

Subject:

Adopt Resolution and Release Performance Bond: Panther Ridge, Phase 3 - District 1
Developer: D.R. Horton, Inc.

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 March 24, 2020 for the above referenced project.

Summary Explanation and Background:

Panther Ridge, Phase 3 subdivision is located in the Sharpes area, about .25 miles south of Camp Road. The proposed subdivision contains 66 residential lots on 12.68 acres.

The Panther Ridge, Phase 3 subdivision received preliminary plat and final engineering plans on October 24, 2017, and final plat and contract approval on March 24, 2020. 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 a 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 July 27, 2020, The Panther Ridge, Phase 3 subdivision infrastructure improvements have been completed.

Reference: 17SD00006 and 20SD00002

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.



August 26, 2020

M E M O R A N D U M

TO: Marc Bernath, Public Works Director Attn: Christine Verrett

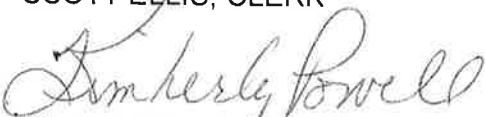
RE: Item F.19., Resolution and Release Performance Bond for Panther Ridge, Phase 3 – D.R. Horton, Inc.

The Board of County Commissioners, in regular session on August 25, 2020, adopted and executed Resolution No. 20-087, releasing the Contract and Surety Performance Bond dated March 24, 2020, for Panther Ridge, Phase 3 – D.R. Horton, Inc. Enclosed are two fully-executed Resolutions.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK


Kimberly Powell, Clerk to the Board

Encls. (2)

RESOLUTION 20- 087

WHEREAS, the Board of County Commissioners of Brevard County, Florida and D.R. Horton, Inc. entered into a contract to guarantee the construction of improvements on property commonly known as Panther Ridge, Phase 3.

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, D.R. Horton, Inc. completed all of the infrastructure improvements and has requested that the executed contract approved on March 24, 2020 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 Panther Ridge, Phase 3.
2. The Board of County Commissioners of Brevard County, Florida hereby releases the contract and performance bond executed on March 24, 2020.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 25th day of August 2020.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: 

Bryan Andrew Lober, Chair

As approved by the Board on August 25, 2020

Subdivision No. 20SD000002/17SD000006 Project Name Partner Budget

**Subdivision Infrastructure
Contract**

THIS CONTRACT entered into this 3 day of March, 2020, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and D.H. 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: All water, sanitary sewer, paving, drainage, grading, site work, pavement marking and signage and all other improvements depicted in subdivision number 17SD000006 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 June, 2021

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 \$935,555.43. 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**

Bryan Andrew Lober
Bryan Lober, Chair

As approved by the Board on: March 24, 2020.

WITNESSES:

Aaron Demmer
Aaron Demmer

Ricardo Corona
Ricardo Corona

PRINCIPAL:

Daniel Liparini
Daniel Liparini, as President
Assistant Secretary

3/3/2020
DATE

State of: Florida

County of: Brevard

The foregoing instrument was acknowledged before me this 3rd day of March, 2020, by
Daniel Liparini 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:

Sonja Pedretti
Notary Public

Sonja Pedretti

Notary Name printed, typed or stamped



SURETY PERFORMANCE BOND

Bond No. 30095850

KNOW ALL MEN BY THESE PRESENTS:

That we, D.R. HORTON, INC., hereinafter referred to as "Owner" and, The Continental 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 \$ 899,966.99 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 28 day of Feb., 2020, 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 February 2, 2022, 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 28th day of February, 2020.

OWNER: D.R. Horton, Inc.

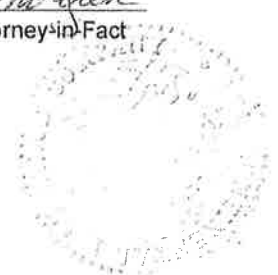


SURETY: The Continental Insurance Company



Dawn L. Morgan, Attorney-in-Fact

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



POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That The Continental Insurance Company, a Pennsylvania insurance company, is a duly organized and existing insurance company having its principal office in the City of Chicago, and State of Illinois, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

James I Moore, Kevin J Scanlon, R L Mc Wethy, Stephen T Kazmer, Dawn L Morgan, Kelly A Gardner, Melissa Schmidt, Elaine Marcus, Jennifer J Mc Comb, Tariese M Pisciotto, Amy Wickett, Diane M Rubright, Individually

of Downers Grove, IL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the insurance company and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Board of Directors of the insurance company.

In Witness Whereof, The Continental Insurance Company has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 26th day of June, 2018.



The Continental Insurance Company



Paul T. Bruffat Vice President

State of South Dakota, County of Minnehaha, ss:

On this 26th day of June, 2018, before me personally came Paul T. Bruffat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of The Continental Insurance Company, a Pennsylvania insurance company, described in and which executed the above instrument; that he knows the seal of said insurance company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said insurance company and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance company.



My Commission Expires June 23, 2021


J. Mohr Notary Public

CERTIFICATE

I, D. Johnson, Assistant Secretary of The Continental Insurance Company, a Pennsylvania insurance company, do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Law and Resolution of the Board of Directors of the insurance company printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance company this 28th day of February, 2020.



The Continental Insurance Company


D. Johnson Assistant Secretary

Form F6850-4/2012

Go to www.cnasurety.com > Owner / Obligee Services > Validate Bond Coverage, If you want to verify bond authenticity.

Authorizing Resolutions

ADOPTED BY THE BOARD OF DIRECTORS OF THE CONTINENTAL INSURANCE COMPANY:

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the Board of Directors of the Company at a meeting held on May 10, 1995.

"RESOLVED: That any Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed by Paul T. Bruffat, Vice President, who has been authorized pursuant to the above resolution to execution power of attorneys on behalf of The Continental Insurance Company.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 25th day of April, 2012:

"Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers") to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

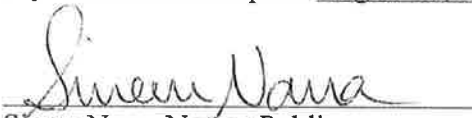
Whereas, from time to time, the signature of the Authorized Officers in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company."

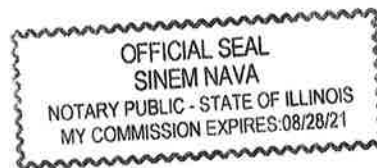
State of Illinois }
 } ss.
County of DuPage }

On February 28, 2020, before me, Sinem Nava, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Dawn L. Morgan known to me to be Attorney-in-Fact of The Continental Insurance Company the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires August 28, 2021


Sinem Nava, Notary Public



Commission No. 859777

RIDER

To be attached to and form a part of Bond No. **30095850**

Effective: **February 28, 2020**

Bond Amount: **\$899,966.99**

Executed by: **D.R. Horton, Inc.** as Principal

and by: **The Continental Insurance Company** as Surety

in favor of: **Board of County Commissioners of Brevard County, Florida**
as Obligee

In consideration of the mutual agreements herein contained, the Principal and the Surety hereby consent to **increase the bond amount to:**

Nine Hundred Thirty Five Thousand Five Hundred Fifty Five and 43/100 Dollars (\$935,555.43)

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider is effective: **March 3, 2020**

Signed and Sealed: **March 4, 2020**

Principal: **D.R. Horton, Inc.**

By:  Principal

Surety: **The Continental Insurance Company**

By: 
Dawn L. Morgan, Attorney-in-Fact



POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That The Continental Insurance Company, a Pennsylvania insurance company, is a duly organized and existing insurance company having its principal office in the City of Chicago, and State of Illinois, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

James I Moore, Kevin J Scanlon, R L Mc Wethy, Stephen T Kazmer, Dawn L Morgan, Kelly A Gardner, Melissa Schmidt, Elaine Marcus, Jennifer J Mc Comb, Tariese M Pisciotto, Amy Wickett, Diane M Rubright, Individually

of Downers Grove, IL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -


and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the insurance company and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law and Resolutions, printed on the reverse hereof, duly adopted, as indicated, by the Board of Directors of the insurance company.

In Witness Whereof, The Continental Insurance Company has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 26th day of June, 2018.



The Continental Insurance Company


Paul T. Bruffat Vice President

State of South Dakota, County of Minnehaha, ss:

On this 26th day of June, 2018, before me personally came Paul T. Bruffat to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of The Continental Insurance Company, a Pennsylvania insurance company, described in and which executed the above instrument; that he knows the seal of said insurance company; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said insurance company and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance company.



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J. Mohr Notary Public

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The Continental Insurance Company


D. Johnson Assistant Secretary

Form F6850-4/2012

Go to www.cnasurety.com > Owner / Obligee Services > Validate Bond Coverage, If you want to verify bond authenticity.

Authorizing Resolutions

ADOPTED BY THE BOARD OF DIRECTORS OF THE CONTINENTAL INSURANCE COMPANY:

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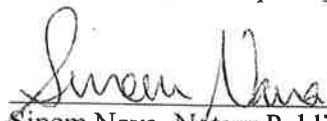
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State of Illinois }
 } ss.
County of DuPage }

On March 4, 2020, before me, Sinem Nava, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Dawn L. Morgan known to me to be Attorney-in-Fact of The Continental Insurance Company the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires August 28, 2021



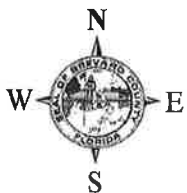
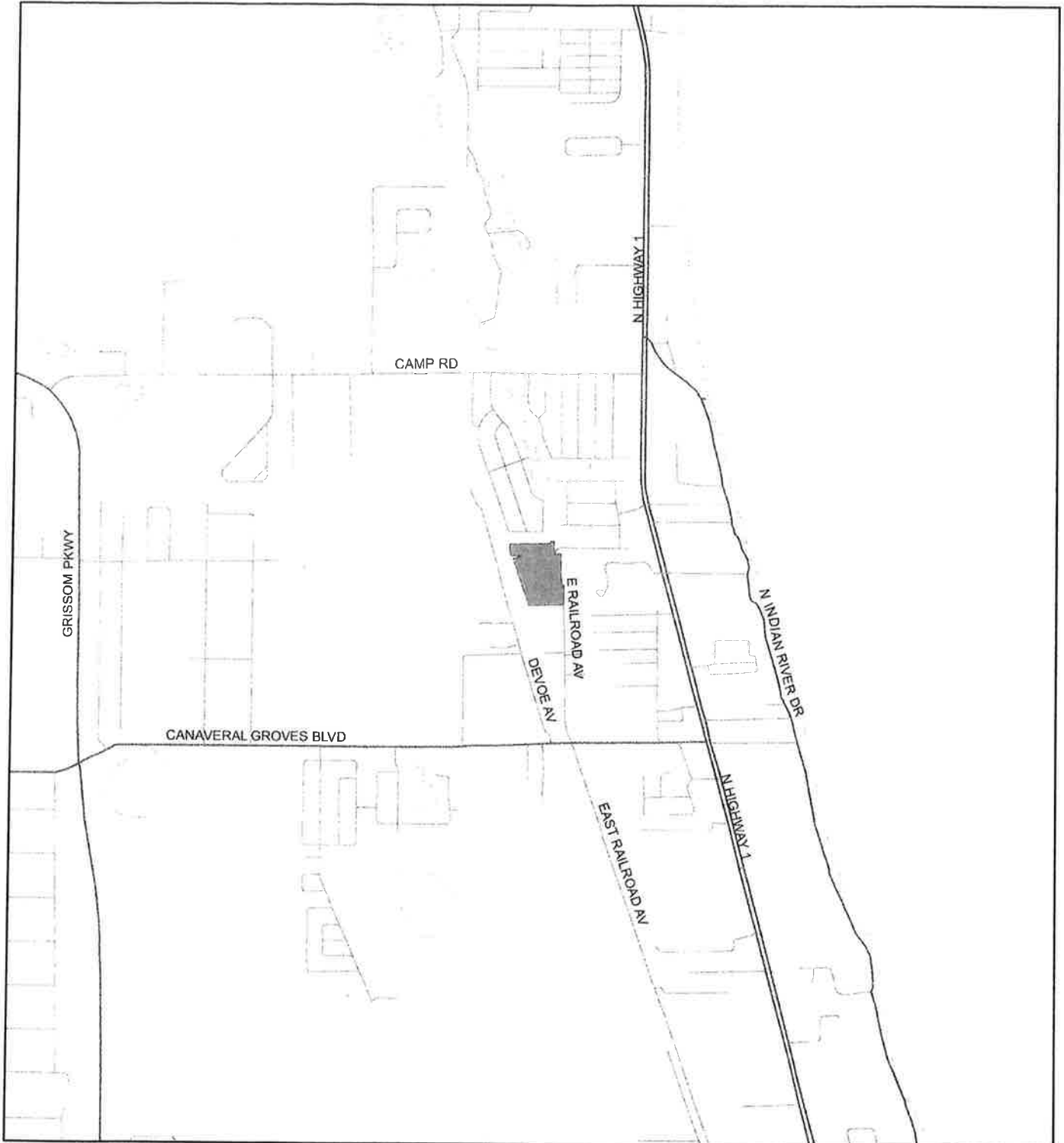
Sinem Nava, Notary Public



Commission No. 859777



LOCATION MAP
PANTHER RIDGE PHASE THREE
20SD00002



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: 3/3/2020