



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.2.

9/12/2023

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### Subject:

Adopt Resolution and Release Performance Bond: Aripeka at Viera, Phases 3 and 4 - District 4  
Developer: The Viera Company

### 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 September 13, 2022, for the above referenced project.

### Summary Explanation and Background:

The Aripeka at Viera, Phases 3 and 4 subdivision is located within the Viera Development of Regional Impact (DRI), east of the intersection at Lake Andrew Drive and Cuddington Drive. There are no public rights-of-way within the subdivision. Phase 3 of the subdivision contains 18 lots and phase 4 contains 40 lots on a combined 38.49 acres.

The Aripeka at Viera, Phases 3 and 4 subdivision received preliminary plat and final engineering plans on February 15, 2022, and final plat and contract approval September 13, 2022. 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 August 17, 2023, the Aripeka at Viera, Phases 3 and 4 subdivision infrastructure improvements have been completed.

Reference: 20SD00011, 22FM00009

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.



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

September 13, 2023

**MEMORANDUM**

**TO:** Marc Bernath, Public Works Director

**RE:** Item F.2., Adopt Resolution and Release Performance Bond: Aripeka at Viera, Phases 3 and 4  
Developer: The Viera Company

The Board of County Commissioners, in regular session on September 12, 2023, executed and adopted Resolution No. 23-094, releasing the Contract and Surety Performance Bond dated September 13, 2022, for the Aripeka at Viera, Phases 3 and 4. Developer: The Viera Company. Enclosed are two fully-executed Resolutions.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

*Kimberly Powell*  
Kimberly Powell, Clerk to the Board

/sm

Encls. (2)

## RESOLUTION 23-094

WHEREAS, the Board of County Commissioners of Brevard County, Florida and The Viera Company entered into a contract to guarantee the construction of improvements on property commonly known as Aripeka at Viera, Phases 3 and 4.

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, The Viera Company completed all of the infrastructure improvements and has requested that the executed contract approved on September 13, 2022, 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 Aripeka at Viera, Phases 3 and 4.
2. The Board of County Commissioners of Brevard County, Florida hereby releases the contract and performance bond executed on September 13, 2022.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 12<sup>th</sup> day of September 2023.

ATTEST:

  
Rachel Sadoff, Clerk of the Court

BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

By: 

Rita Pritchett, Chair

As approved by the Board on September 12, 2023

**Subdivision No. 20SD00011**

**Project Name Aripeka Subdivision - Village 2**

**Neighborhood 1 Phases 3 and 4**

**Subdivision Infrastructure  
Contract**

THIS CONTRACT entered into this 13 day of SEPTEMBER 20 22, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and The Viera Company, 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:

**Aripeka Subdivision – Village 2 Neighborhood 1, Phases 3 and 4.**

and all other improvements depicted in subdivision number 20SD00011. 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 non-defective 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 30<sup>th</sup> day of August, 2023.

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 \$2,627,731.06 . 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

Kristine Zonka, Chair

As approved by the Board on: Sept. 13, 2022.

WITNESSES:

PRINCIPAL: The Viera Company

Karen P. Prosser  
KAREN. P. PROSSER

Todd J. Pokrywa  
Todd J. Pokrywa, as President

Mary Ellen McKibben  
Mary Ellen McKibben

DATE August 10, 2022

State of: Florida

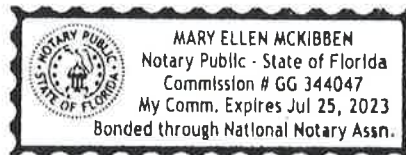
County of: Brevard

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of August 2022, by Todd J. Pokrywa, Pres. who is personally known to me or who has produced as identification and who did (did not) take an oath.

My commission expires:

Mary Ellen McKibben  
Notary Public

Commission Number:



Mary Ellen McKibben  
Notary Name printed, typed or stamped

## SURETY PERFORMANCE BOND

## KNOW ALL MEN BY THESE PRESENTS:

That we, THE VIERA COMPANY, hereinafter referred to as "Owner" and, TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, 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 \$2,627,731.06 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 13 day of SEPTEMBER, 2022, 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 August 30th, 2023 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 10<sup>th</sup> day of August, 2022.

OWNER: THE VIERA COMPANY



Todd J. Pokrywa, President

SURETY:

  
Christine Payne, Attorney-in-Fact







**Travelers Casualty and Surety Company of America**  
**Travelers Casualty and Surety Company**  
**St. Paul Fire and Marine Insurance Company**

# POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Christine Payne** of **ORLANDO, Florida**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April**, 2021.



State of Connecticut

City of Hartford ss.

By:   
 Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, 2021, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2026



  
 Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **8th** day of **August**, 2022.



  
 Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.**  
**Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.**

**ARIPEKA AT VIERA - PHASES 3 AND 4**  
SECTIONS 21 AND 22, TOWNSHIP 26 SOUTH, RANGE 36 EAST  
BREVARD COUNTY, FLORIDA

## PLAT NOTES

- [illegible]

## STATE PLANE COORDINATE NOTE:

The coordinates shown herein are based on the STATE PLANE COORDINATE SYSTEM FOR FLORIDA'S EAST ZONE NORTH AMERICAN DATUM of 1983 and RECALCULATED in 1988 (NAD83/88).

PE	NO. OF TUBES	EASTING	N. FACTORS	W. LONGITUDE	COMBINED SCALE / FACTOR
407108	1 426 324 224	424 546 277	226 277 244	20° 12' 28" N 102° 07' 43" W	1:97 077 18.2
407204	1 423 346 489	423 022 242	225 754 544	20° 14' 11" N 102° 04' 18" W	1:97 077 27.3

ECT SCALE FACTOR CAN BE APPLIED TO CONVERT THE GROUND DISTANCE TO GRID DISTANCE. ALL OF THE VALUES SHOWN

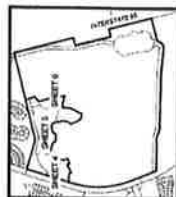
4. **IN ITS GRAPHIC FORM, IS THE OFFICIAL DESIGNATION OF THE SURROUNDED LANDS DESCRIBED HEREIN**

IS BE SUPPLANTED IN AUTHORITY BY ANY OTHER GRAPHIC OR DIGITAL FORM OF THE PLAT. THERE MAY  
WHAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.

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LOCATION MAP



**KEY MAP**

## ABBREVIATIONS

- INCHES  
FEET  
ECONOMICS  
LEGISLATION  
CROSS  
ING LENGTH  
CONCRETE CURVE  
AND DRAINAGE  
AND LENGTH  
CONCRETE MONUMENT  
PERMANENT DRAINAGE BASE  
INTRA-CLAY ANGLE  
ST  
OF CURVE

**clearing**

ATTIFY. That I have reviewed the foregoing plan and find that it is in Chapter 177, part 1, Florida Statutes and County Ordinance \_\_\_\_\_, \_\_\_\_\_.

**CERTIFICATE OF ACCEPTANCE OF DEDICATION**  
**BY BOARD OF COUNTY COMMISSIONERS**

TO CLARIFY, That the Board of County Commissioners hereby affirms that all public utility amounts and regulatory amounts for any vehicle included by a city are on this date.

**CERTIFICATE OF APPROVAL**

**BY BOARD OF COUNTY COMMISSIONERS**

**CERTIFICATE OF COMPLETION**

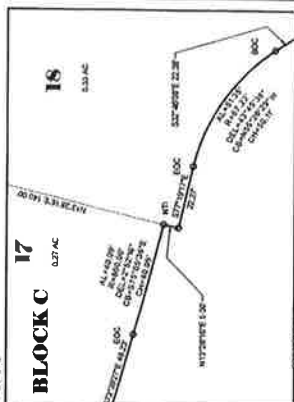
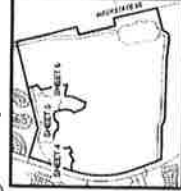
ONLY CERTIFY. That I have examined the foregoing plan and find that it complies with all the requirements of Chapter 177, part 1 Records Statutes, and was in

Form of the Contract shall be used for Standard Contract.









PLAT BOOK	PAGE
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SHEET 3 OF 8  
SECTIONS 21 AND 22, TOWNSHIP 28 SOUTH, RANGE 38 EAST



	B.E. CONSULTANTS, INC. 15000 The Woodlands (and) 15000-ETC 11100 Woodlands (and) 11100-ETC 11100 Woodlands (and) 11100-ETC 11100 Woodlands (and) 11100-ETC	DATE 10/01/2022
		PROJECT DESCRIPTION: 11100-ETC DRAWING NO: 11100-ETC

SURVEY SYMBOL LEGEND	
	SECTION CORNER, MARKED AS NOTED
	PERMANENT REFERENCE MONUMENT P180, SET 424 INCH CONCRETE P181, SET 424 INCH CONCRETE L182, UNLESS OTHERWISE NOTED
	PO PERMANENT REFERENCE MONUMENT P182, SET 424 INCH CONCRETE P183, SET 424 INCH CONCRETE L183, UNLESS OTHERWISE NOTED
	PERMANENT CONTROL POINT (PCP), 3" MAC NAIL AND DISK STAMPED PO 184 L184, UNLESS OTHERWISE NOTED
	SET 1/4" IRON ROD AND CAP STAMPED P185, UNLESS OTHER MADE NO L185, UNLESS OTHERWISE NOTED
	SET 1/4" IRON ROD AND CAP STAMPED P186, UNLESS OTHER MADE NO L186, UNLESS OTHERWISE NOTED

[illegible]

NOT TO SCALE  
VSD MEDIA STEWARDSHIP DISTRICT









## PLAT BOOK \_\_\_\_, PAGE \_\_\_\_



## +

- DEGREES
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- ACRES

- CHORD LENGTH

- CENTRAL-Delta Angle
- 
- = EAST

- FOUND

- NOT TO SCALE
- 
- NON-TANGENT INTERSECTIONS

- FLAT BOOK  
POINT OF COMPOUND CURVE

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- PUBLIC SIDEWALK LIGHTING
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- PLANNING UNIT OF THE U.S. DEPT. OF TRANSPORTATION

- ROAD PLAT BOOK
- 
- RIGHT-OF-WAY

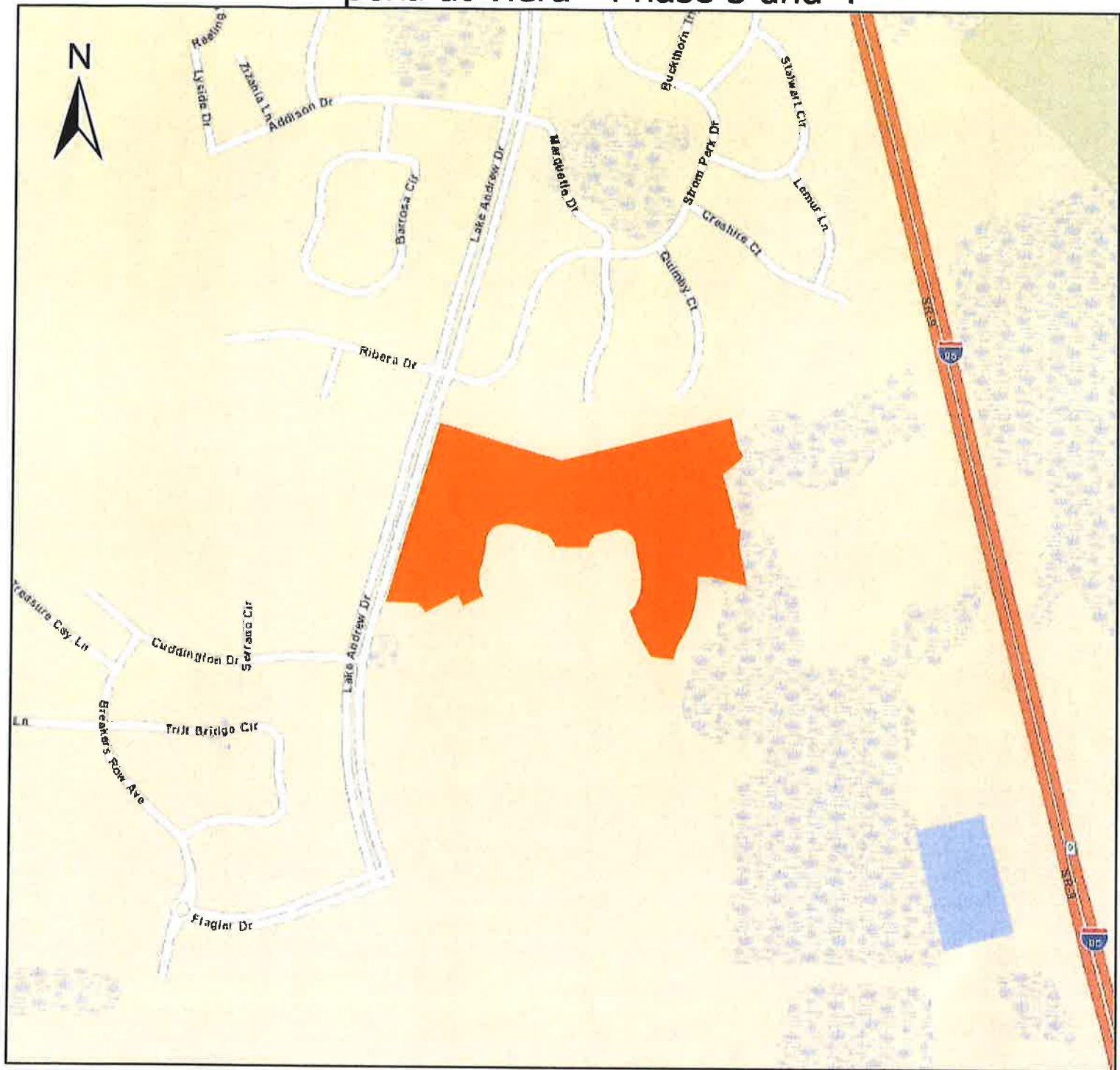
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# Aripeka at Viera - Phase 3 and 4

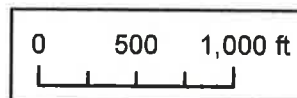


Buffer Boundary in Dark Orange

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



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