



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## New Business - Development and Environmental Services Group

J.2

4/20/2021

### Subject:

Final Plat and Contract Approval, Re: Melbourne Beach Homes  
Developer: Oceanfront D & M, LLC.

### 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 Melbourne Beach Homes.

### 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 above project was held on July 25, 2019 along with the site plan. The preliminary plat and final engineering plans, which is the second stage of approval, was approved on January 13, 2020. 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 for the Melbourne Beach Homes subdivision, and has determined that it is in compliance with the applicable ordinances.

Melbourne Beach Homes is south of Melbourne Beach, across from Seaview Street on the east side Highway A1A. The proposed subdivision contains four lots on 1.2163 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: 20FM00011, 21WV00003, 19SP00020

Contact: Amanda Elmore, Assistant Director Ext. 58996

### Clerk to the Board Instructions:

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



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

April 21, 2021

**M E M O R A N D U M**

**TO:** Tad Calkins, Planning and Development Director    Attn: Amanda Elmore

**RE:** Item J.2., Final Plat and Contract Approval for Melbourne Beach Homes  
Developer – Oceanfront D & M, LLC

The Board of County Commissioners, in regular session on April 20, 2021, granted final plat approval; and authorized the Chair to sign the final plat and contract for Melbourne Beach Homes – Developer – Oceanfront D & M, LLC, subject to minor changes, if necessary, receipt of all documents required for recording, and developer responsible for obtaining all other necessary jurisdictional permits. Enclosed are fully-executed Contract and certified copy.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script that reads "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/sm

Encls. (2)

**Subdivision No.** 20FM00011

**Project Name** Melbourne Beach Homes

**Subdivision Infrastructure  
Contract**

THIS CONTRACT entered into this 20<sup>th</sup> day of April, 2021, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and Oceanfront D&M LLC, 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:

(completing pavement, stormwater, etc)

and all other improvements depicted in subdivision number 20FM00011. 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.

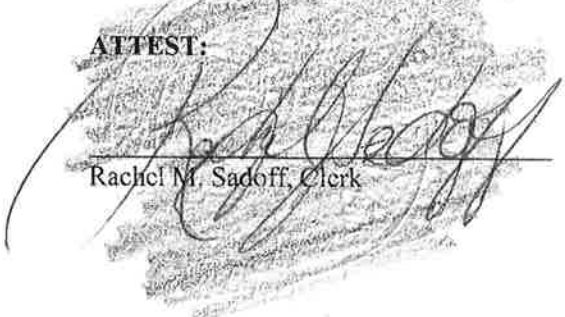
To the extent assignable, Principal assigns to County all of Principal's warranty rights under its construction contract with the contractor constructing the improvements (including all warranties provided by law of in equity with respect to such construction contract), which warranties may be asserted 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 20 day of April, 2022.


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 \$ 224,656.26. 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: April 20, 2021.

WITNESSES:

PRINCIPAL:

Daniel Winkler   
Oceanfront D&M LLC, as President

3/26/2021  
DATE

State of: Florida

County of: Brevard

The foregoing instrument was acknowledged before me this 26 day of MARCH 2021, 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:

  
Notary Public

Notary Name printed, typed or stamped



**SURETY PERFORMANCE BOND**

Bond #41K235044

KNOW ALL MEN BY THESE PRESENTS:

That we, Oceanfront D&M, LLC, hereinafter referred to as "Owner" and, The Ohio Casualty 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 \$ 224,656.26, 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 20th day of April, 2021, 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 March 26, 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 30th day of March, 2021.

OWNER: Oceanfront D&M, LLC



Seal No. 3212

SURETY: The Ohio Casualty Insurance Company

Cindy L. Mirisola, Attorney-in-Fact &  
Florida Resident Agent

INQUIRIES: (407)389-3588

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



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.

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company

Certificate No: **8202911-964018**

### POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Robert II Bond; Heather Bradley; Shelley Fane; Cindy L. Mirisola; Louis G. Mitchell; Gerald K. Sihle

all of the city of Altamonte Springs state of FL, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 15th day of January, 2020.



Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss.  
County of MONTGOMERY

On this 15th day of January, 2020 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Upper Merion Twp., Montgomery County  
My Commission Expires March 28, 2021  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

#### ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

#### ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 30th day of MARCH, 2021.



By: Renee C. Llewellyn  
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



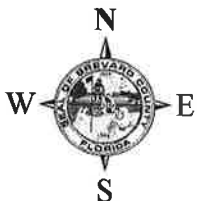
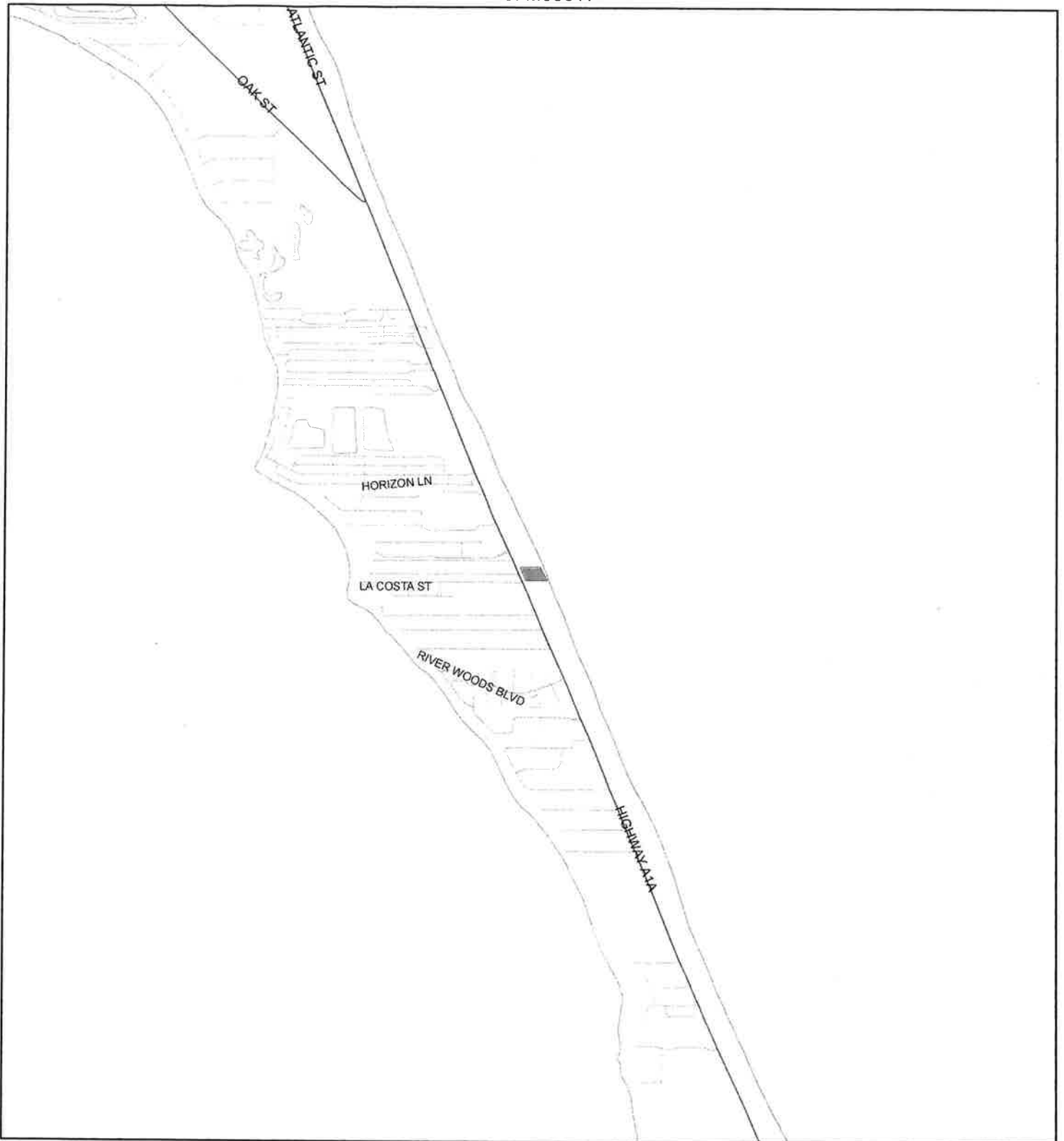




# LOCATION MAP

MELBOURNE BEACH HOMES

20FM00011



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: 3/30/2021