

Meeting Date
July 26, 2016



AGENDA	
Section	Consent
Item No.	<i>II A.6</i>

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	FINAL PLAT AND CONTRACT APPROVAL RE: ADELAIDE PHASE 2 SUBDIVISION DEVELOPER: THE VIERA COMPANY FISCAL IMPACT: NONE DISTRICT 4
DEPT/OFFICE:	PLANNING & DEVELOPMENT DEPARTMENT

Requested Action:

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

Summary Explanation & Background:

There are three stages of review of subdivision plan approval: the pre-application conference, the preliminary plat/final engineering plan review, and the final plat review. The pre-application conference for the above project was held on May 29, 2014. The preliminary plat and final engineering plans, which is the second stage of approval was approved by the Board on July 21, 2015. 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 Adelaide Phase 2 subdivision and has determined that it is in compliance with the applicable ordinances.

The proposed subdivision is located within the Viera DRI on the west side of Stadium Parkway approximately 1/2 mile south of the Fiske Boulevard interchange at Interstate 95 containing contains 8 lots on approximately 7.05 acres.

This approval is subject to minor changes, if necessary, and receipt of all documents required for recording. Board approval of this project does not relieve the developer from obtaining all other necessary jurisdictional permits.

Reference: 14SD-00425, 16SD00007

Contact: Tad Calkins

Phone: 321-633-2065

Clerk to the Board instruction: Please have the contract signed and return the original and a certified copy to Planning and Development.

Exhibits Attached: location maps, bond, and contract

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager

Stockton Whitten

Department Director / Extension
Robin M. DiFabio, AICP
Planning & Development Department Ext. 5-2069

Robin M. DiFabio



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

July 27, 2016

M E M O R A N D U M

TO: Robin DiFabio, Planning and Development Department Director Attn: Tad Calkins

RE: Item II.A.6., Final Plat and Contract Approval for Adelaide Phase 2 Subdivision – The Viera Company

The Board of County Commissioners, in regular session on July 26, 2016, granted final plat approval, subject to minor engineering changes as applicable, and developer is responsible for obtaining all other necessary jurisdictional permits; and authorized the Chairman to execute the final plat and contract. Enclosed is a fully-executed Contract.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/cm

Encl. (1)

cc: Contracts Administration
Finance
Budget



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 229354

Certificate No. 006599408

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Thomas M. Cotton, Irma F. Platt, and Christine St John

of the City of Orlando, State of Florida, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, 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 9th day of December, 2015.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
Robert L. Raney, Senior Vice President

On this the 9th day of December, 2015, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed 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 hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, 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 Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which 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 20th day of June, 2016


Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

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 **\$251,128.19** for the payment of which we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents:

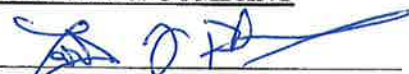
WHEREAS, Owner has entered into a contract with the County dated the 26 day of July, 2016, which contract is made a part hereof by reference.

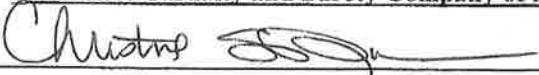
NOW THEREFORE, the condition of this obligation is such that if Owner shall promptly and faithfully perform said contract and complete the work contemplated therein by **June 24, 2017** then this obligation shall be null and void, otherwise it shall remain in full force and effect.

If the Owner shall be declared in default 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 11th day of July, 2016.

OWNER: THE VIERA COMPANY

Todd J. Pokrywa, Sr. Vice President

SURETY: Travelers Casualty and Surety Company of America
By: 
Christine St John, Attorney-In-Fact

Subdivision No. 14SD-00425 Project Name ADELAIDE PHASE 2

**Subdivision Infrastructure
Contract**

THIS CONTRACT, entered into this 26 day of JULY 2016, 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 "OWNER".

WITNESSETH:

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

1. The OWNER agrees to construct the improvements described below:

and all other improvements depicted in subdivision number 14SD-00425. A copy of said plat to be recorded in the Plat Books of the Public Records of Brevard County.
2. The OWNER agrees to construct said improvements strictly in accordance with the plans and specifications on file in the office of the Land Development Division, which have been incorporated herein by this reference.
3. The OWNER agrees to complete said construction on or before the 24th day of June 2017.
4. In order to guarantee performance of OWNER'S obligations herein contained, OWNER shall furnish to the COUNTY cash, letter of credit, certificate of deposit or surety bond in a form approved by the COUNTY, in the amount of \$251,128.19. Said bond shall be 125% of the estimated cost of construction, as determined by the Land Development Division. OWNER 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, OWNER fails to complete said improvements within the time prescribed, the COUNTY may elect to take all or any of the following actions:

**SUBDIVISION INFRASTRUCTURE
CONTRACT**

Page 2

- 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 Owner,
 - C. Request the surety on said performance bond to complete such improvements,
 - D. Contract for completion of said improvements and request payment from the Bond or Owner, or
 - E. Request Letter of Credit, Cash Bond, or Certificate of Deposit.
7. The OWNER 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 OWNER defaults on this contract.
8. In the performance of this Agreement, the Owner 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 Owner 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, 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 Owner 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:

[Signature]
Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

[Signature]
Jim Barfield, Chairman

Approved by the Board on: 7-26, 2016.

WITNESSES:

PRINCIPAL: The Viewa Company

[Signature]
Mary Ellen McKibben

[Signature]
Todd J. Pokrywa, Senior Vice President

[Signature]

7-11-16
DATE

State of Florida
County of Brevard

The foregoing instrument was acknowledged before me this 11th day of July 2016, by Todd J. Pokrywa who is personally known to me and who did not take an oath.

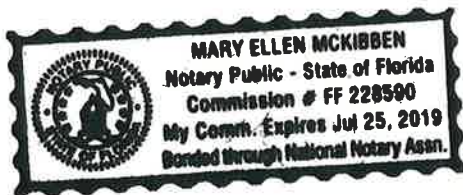
My commission expires:

[Signature]
Notary Public

S E A L

Commission Number:

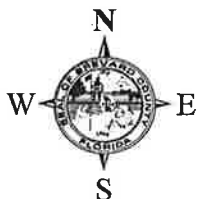
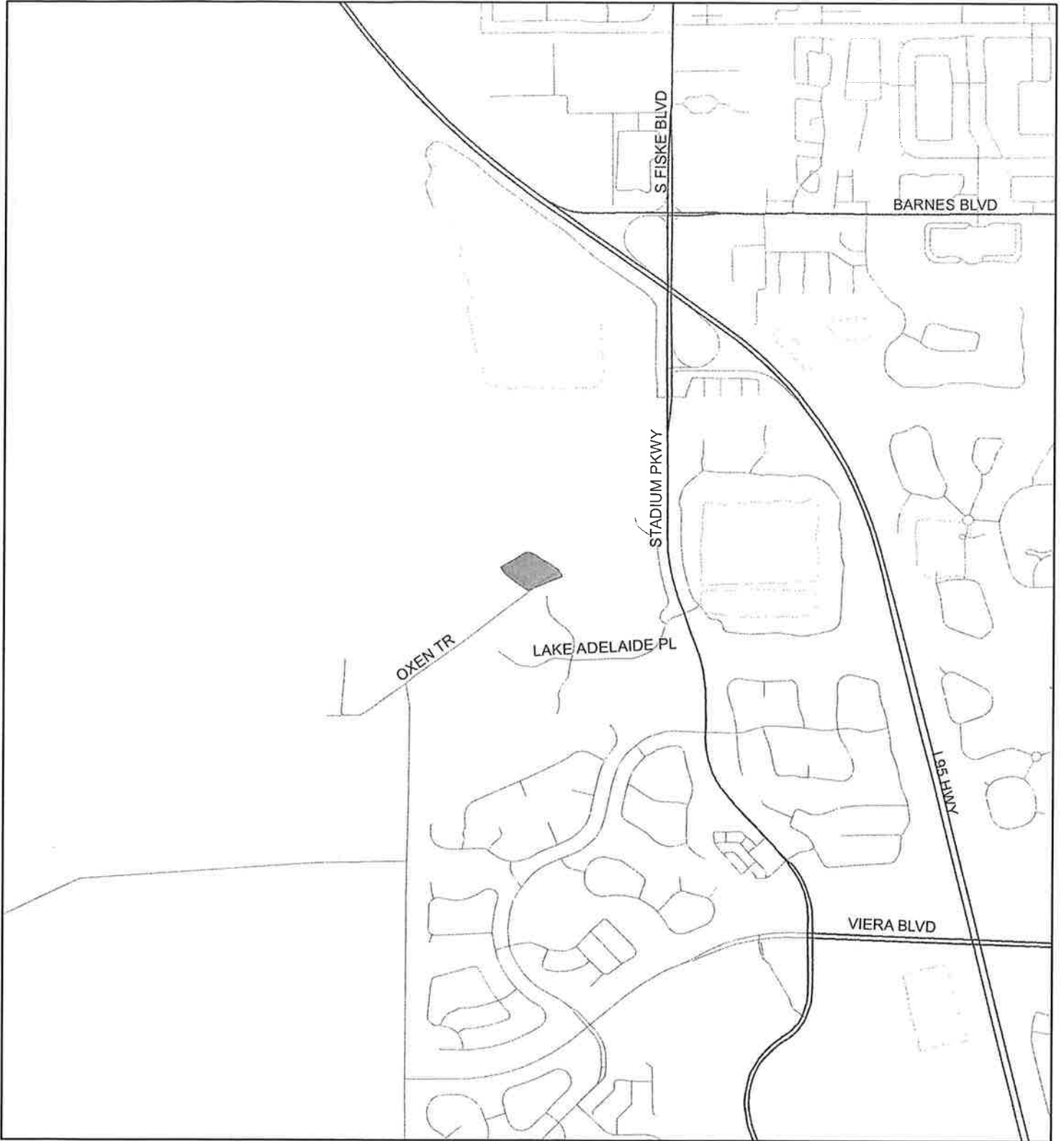
Mary Ellen McKibben
Notary Name printed, typed or stamped



LOCATION MAP

ADELAIDE PHASE 2

16SD00007



1:24,000 or 1 inch = 2,000 feet

 Subject Property

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 6/20/2016