

Prepared by/please return to:
Kris Davis, Esq.
Office of General Counsel
St. Johns River Water Management District
P.O. Box 1429
Palatka, Florida 32178-1429

PERPETUAL ACCESS EASEMENT AGREEMENT

THIS PERPETUAL ACCESS EASEMENT AGREEMENT (Easement Agreement) is granted this 12 day of May, 2020, (Effective Date), by **MELBOURNE SQUARE, LLC**, an Indiana limited liability company, whose mailing address is 180 E. Broad Street, 21st Floor, Columbus, OH 43215 (Grantor), to the **ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**, a public body existing under Chapter 373, Florida Statutes, whose address is 4049 Reid Street, Palatka, Florida 32177 (Grantee).

RECITALS

A. Grantor owns certain real property located in Brevard County, Florida, as more particularly described on Exhibit “A”, attached hereto and incorporated herein by reference (Grantor’s Property); and

B. Grantee is constructing the Crane Creek/M-1 Canal Flow Restoration Project (Project) to reduce nitrogen and phosphorus in the Indian River Lagoon and to restore historic drainage patterns.

C. As part of the Project, an operable weir structure (Weir) will be constructed within a portion of the Crane Creek M-1 Canal within a Brevard County right-of-way and adjacent to Grantor’s Property, as depicted on Exhibit “B” attached hereto and incorporated herein by reference (Weir Location).

D. In order to construct, operate, maintain, repair and replace the Weir, Grantee desires a perpetual access easement for ingress and egress to the Weir Location across that portion of

Grantor's Property described and depicted on Exhibit "C" attached hereto and incorporated herein by reference (Easement Area), and Grantor has agreed to grant the District an access easement for those purposes.

NOW THEREFORE, Grantor, in consideration of the sum of Ten Dollars (\$10.00) and the mutual covenants and promises hereinafter contained, and other good and valuable considerations, the receipt of which is hereby acknowledged, grants and conveys to Grantee a perpetual non-exclusive access easement for the purposes of ingress and egress access over, under, through, upon and across the Easement Area as set forth herein.

1. RECITALS and EXHIBITS. The foregoing recitals and the attached exhibits are true and correct and are incorporated herein by this reference.

2. GRANT OF PERPETUAL ACCESS EASEMENT. Grantor grants to Grantee, its agents, representatives, employees, and contractors, a perpetual, non-exclusive access easement over, under, through, upon and across the Easement Area for ingress and egress access to the Weir Location to construct, operate, maintain, repair and replace the Weir and to conduct such other activities as set forth in this Easement Agreement. Grantor warrants to Grantee that Grantor is lawfully seized of the real property described in Exhibit "C" and that it has the power and authority to grant this Easement Agreement and the uses granted herein. Grantor retains the right to use the Easement Area in any manner not inconsistent with the rights granted to Grantee.

3. CONSIDERATION. Following completion of construction of the Weir and removal of Project-related construction equipment and materials, as consideration for Grantor entering into this Easement Agreement, Grantee agrees to repair or replace the following materials within the Easement Area that may have been damaged by Grantee's activities: (i) asphalt surfaces, (ii) stormwater fencing, (iii) landscaping and; (iv) any other areas or materials mutually agreed upon by Grantor and Grantee.

4. COVENANTS RUNNING WITH THE LAND and SUCCESSORS and ASSIGNS. The rights, duties, obligations and easements set forth in this Easement Agreement

shall run with the land and shall bind and burden Grantor's Property in perpetuity. This Easement Agreement shall be binding upon and shall inure to the benefit of the parties specified herein, and their successors, assigns and legal representatives.

5. NON-WAIVER OF GRANTEE'S REGULATORY POWERS. Nothing contained in this Easement Agreement shall be construed as a waiver of or contract with respect to the regulatory and permitting authority of the Grantee as it now or hereafter exists under applicable laws, rules and regulations.

6. NON-WAIVER OF SOVEREIGN IMMUNITY. Nothing contained in this Easement Agreement shall be construed or interpreted as an indemnity or a waiver of any right, privilege or immunity, whether in contract or tort, that Grantee may enjoy under the doctrine of sovereign immunity, or the limitations of liability under the constitution and laws of the state of Florida, including Section 768.28, Florida Statutes, as amended from time to time, or any other law providing limitations on claims.

7. MODIFICATION. This Easement Agreement may not be modified or amended in any respect whatsoever, or rescinded, in whole or in part, except with the consent of the Grantor and Grantee and then only by a written instrument duly executed and acknowledged by Grantor and Grantee and recorded in the public records of Brevard County, Florida.

8. DURATION OF EASEMENT. This Easement Agreement shall remain in full force and effect so long as Grantee or its successor(s) and assigns continues to operate or maintain the Project. Upon termination or abandonment of the Project, Grantee shall record a notice of termination of this Easement Agreement in the Official Records of Brevard County, Florida and thereafter shall provide Grantor with a copy of the recorded notice of termination.

9. WORK WITHIN THE EASEMENT AREA. Grantee will be responsible for repairing any existing irrigation lines in the Easement Area damaged by Grantee's activities in the Easement Area. Grantee, at its expense, will perform any earthwork needed to stabilize the Easement Area for Project-related vehicular use. Grantee shall have the ability to install project

related gravel, lime rock, and temporary matting during construction and repair and replacement of the Weir as needed. Grantee will be responsible for mowing the Easement Area only during the time period the Weir is being constructed. Following Weir construction completion, Grantee will remove Project-related gravel, lime rock, and temporary matting from the Easement Area restoring the area to its condition prior to initiation of construction. Grantee will be responsible for repairing damage to the Easement Area caused by Grantee's direct use of the Easement Area, including repairing or replacing the materials set forth in paragraph 3 herein.

10. RECORDING OF EASEMENT AGREEMENT. Grantee, at its own expense, shall record the Easement Agreement in the public records of Brevard County, Florida and thereafter will provide a recorded copy of the Easement Agreement to Grantor.

11. GOVERNING LAW AND ATTORNEY'S FEES. This Easement Agreement, its validity, construction, interpretation, and enforcement, and the rights of the parties hereto shall be determined under, governed by, and construed in accordance with the laws of the State of Florida. Each party shall be responsible for its own attorney's fees and costs related to this Easement Agreement.

12. NOTICE. Any notice, demand, consent, or communication that either party may be required to give to the other hereunder shall be in writing and either served personally by hand-delivery, next-day courier delivery, or by registered or certified mail, postage prepaid, addressed as follows:

To Grantor:

Melbourne Square, LLC
180 E. Broad Street, 21st Floor
Columbus, OH 43215
Attn: General Counsel

With a copy to:

Melbourne Square, LLC
180 E. Broad Street, 21st Floor
Columbus, OH 43215
Attn: Legal Department

To Grantee:

St. Johns River Water Management District
Attn: Director, Real Estate Services Program
4049 Reid Street
Palatka, Florida 32177

13. SECTION CAPTIONS. Articles, subsections and other captions contained in this Easement Agreement are for reference purposes only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Easement Agreement or any provisions thereof.

14. CONSTRUCTION OF EASEMENT AGREEMENT. This Easement Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties.

15. PARTIAL INVALIDITY. If any term, covenant, condition or provision of this Easement Agreement shall be ruled by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

16. ENTIRE UNDERSTANDING. This Easement Agreement sets forth the entire understanding of the parties and shall only be amended upon written agreement of the parties.

17. EFFECTIVE DATE. The effective date of this Easement Agreement shall be the date when the last of the Grantor or the Grantee has executed the same, and that date shall be inserted at the top of the first page hereof.

18. EXECUTION. This Easement Agreement may be executed in counterparts, each of which shall be deemed an original and which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement on the day and year indicated below.

[Remainder of page intentionally left blank; signature pages follow]

WITNESSES

Signed, sealed and delivered
in the presence of:

[Signature]
Signature
Michael G. Zevorcher
Print Name

[Signature]
Signature
Rene Cravens
Print Name

GRANTOR

Melbourne Square, LLC,
an Indiana limited liability company

By: [Signature]

Name: Robert P. Demchak

Its: Executive Vice President
General Counsel & Corporate Secretary

STATE OF Indiana
COUNTY OF Marion

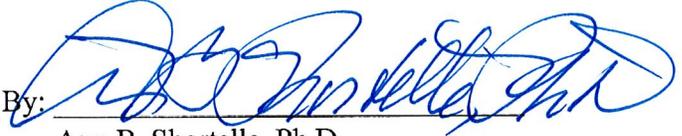
The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 20th day of April, 2020 by Robert P. Demchak, the EVP, General Counsel & Corp. Sec. of Melbourne Square, LLC, on behalf of the limited liability company, who is personally known to me.



[Signature]
Notary Public - State of Indiana
Print Name: Tracy Reinholt
My Commission Expires: 12/28/2023

ACCEPTANCE BY GRANTEE

**ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT**

By: 

Ann B. Shortelle, Ph.D.
Its Executive Director

ATTEST:



William Abrams, General Counsel

Approved as to Form and Legality
For reliance only by SJRWMD

By: *Kris Davis*

Kris Davis, Asst. General Counsel

EXHIBIT "A"

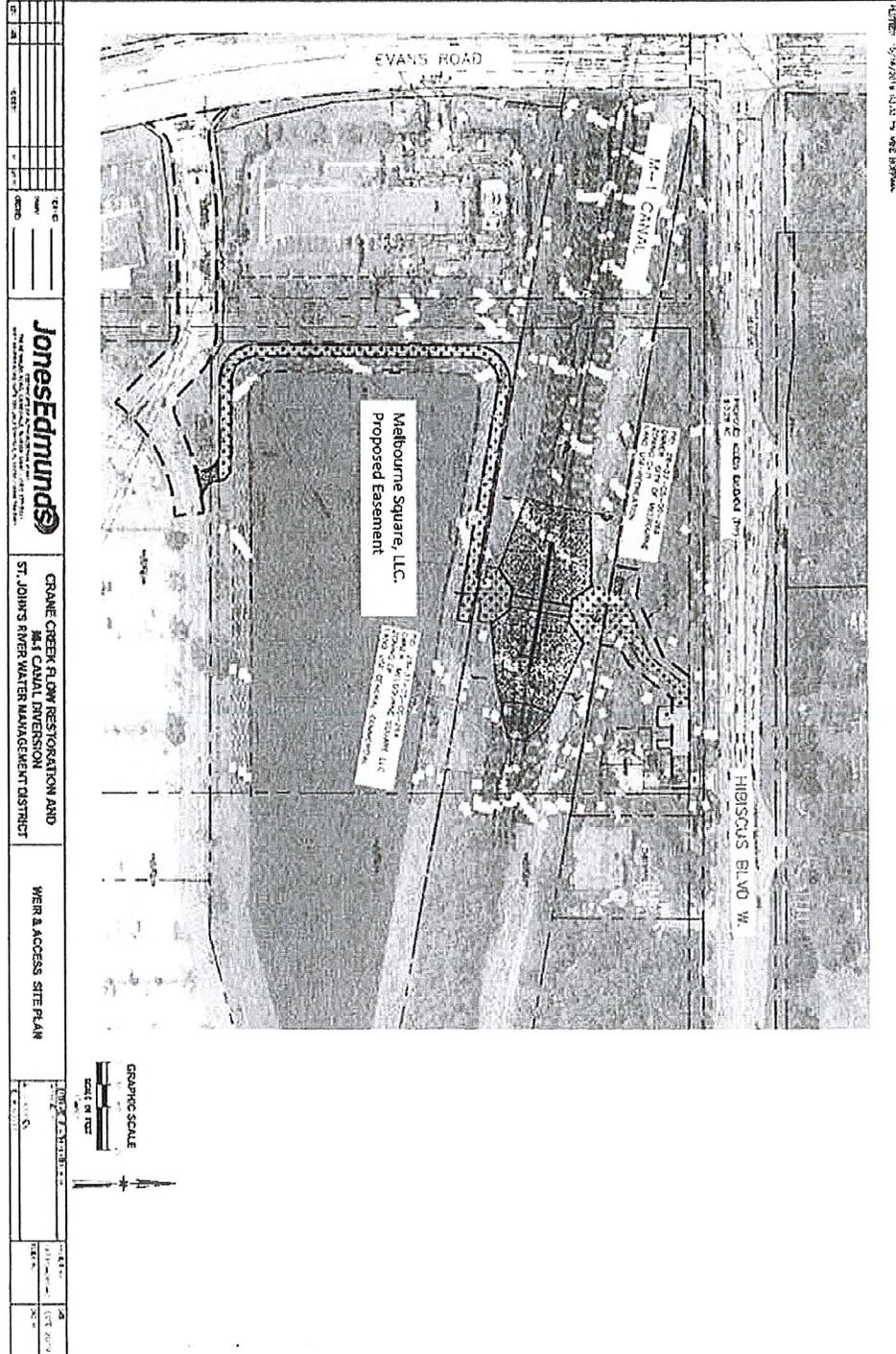
Legal Description of Grantor's Property

A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER (NW 1/4) OF SECTION 5, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER (NW 1/4) OF SECTION 5: THENCE; SOUTH 00 01' 45" EAST ALONG THE WEST LINE OF SAID SECTION 5, A DISTANCE OF 247.79 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF M -1 CANAL; THENCE SOUTH 80 06' 00" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 41.83 FEET TO THE PRINCIPAL POINT AND PLACE OF BEGINNING OF THE FOLLOWING DESCRIPTION: THENCE CONTINUING SOUTH 80 06' 00" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 1175.99 FEET TO A POINT; THENCE DUE SOUTH, A DISTANCE OF 134.28 FEET TO A POINT; THENCE SOUTH 75 00' 00" WEST, A DISTANCE OF 352.96 FEET TO A POINT; THENCE DUE WEST, A DISTANCE OF 788.25 FEET TO A POINT; THENCE NORTH 60 00' 00" WEST, A DISTANCE OF 33.82 FEET TO A POINT; THENCE DUE NORTH, A DISTANCE OF 410.91 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF M-1 CANAL SAID POINT ALSO BEING THE PRINCIPAL POINT AND PLACE OF BEGINNING

EXHIBIT "B"

Weir Structure Location and Easement Route

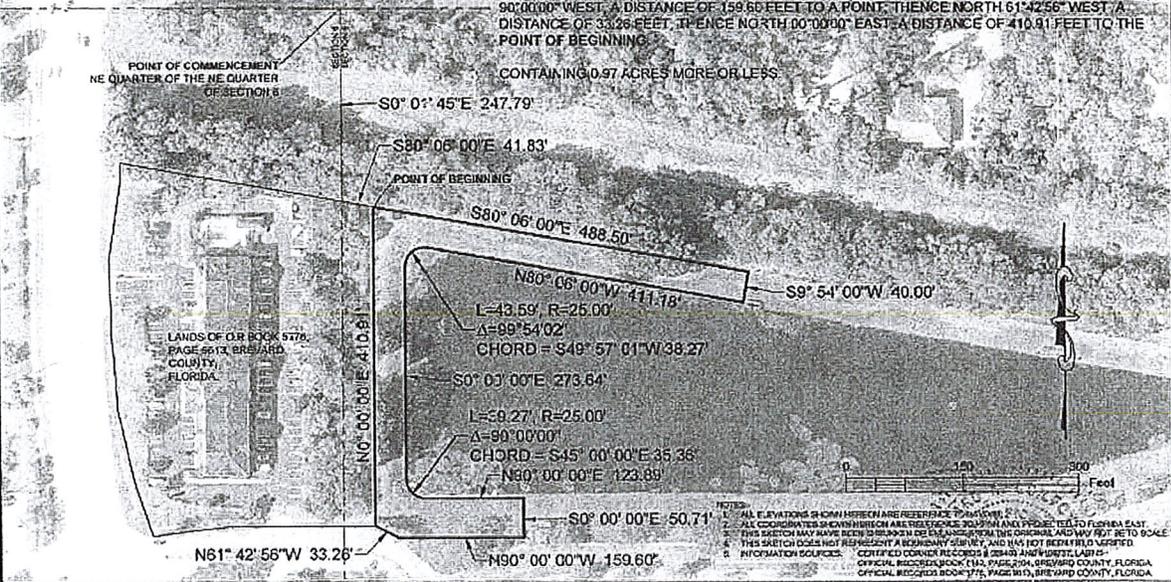


SKETCH OF DESCRIPTION

AN EASEMENT SITUATED IN AND LYING IN SECTION 6, TOWNSHIP 28 SOUTH, RANGE 37 EAST, BREVARD COUNTY, FLORIDA

COMMENCE AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 6; THENCE SOUTH 00°01'45" EAST, A DISTANCE OF 247.75 FEET TO A POINT; THENCE SOUTH 80°05'00" EAST, A DISTANCE OF 41.83 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 80°05'00" EAST, A DISTANCE OF 488.50 FEET TO A POINT; THENCE SOUTH 09°54'00" WEST, A DISTANCE OF 40 FEET TO A POINT; THENCE NORTH 80°08'50" WEST, A DISTANCE OF 411.18 FEET TO A POINT ON A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 25.00 FEET; THENCE ALONG THE ARC OF SAID CURVE, THROUGH AN ANGLE OF 89°54'02", AN ARC DISTANCE OF 43.59 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 49°57'01" WEST, 38.27 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 273.84 FEET TO A POINT ON A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 25.00 FEET; THENCE ALONG THE ARC OF SAID CURVE, THROUGH AN ANGLE OF 90°00'00", AN ARC DISTANCE OF 39.27 FEET AND A CHORD BEARING AND DISTANCE OF SOUTH 45°00'00" EAST, 35.36 FEET; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 123.89 FEET TO A POINT; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 50.71 FEET TO A POINT; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 159.60 FEET TO A POINT; THENCE NORTH 61°42'56" WEST, A DISTANCE OF 33.26 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 410.91 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.97 ACRES MORE OR LESS



ST. JOHNS RIVER
WATER MANAGEMENT DISTRICT

CRANE CREEK / M-1 CANAL FLOW RESTORATION PROJECT EASEMENT
SECTION 5, TOWNSHIP 28 SOUTH, RANGE 37 EAST
BREVARD COUNTY, FLORIDA

NO.	DESCRIPTION	DATE

APPROVED FOR RECORD
DATE: 02/15/2019

BY: [Signature]
DATE: 02/15/2019

Exhibit "C"