

BOARD OF COUNTY COMMISSIONERS

AGENDA REVIEW SHEET

AGENDA: Permanent Roadway, Drainage, Sidewalk, and Utility Easement from The Oasis at West Melbourne, LLC as required by Brevard County Code – District 5.

AGENCY: Public Works Department / Land Acquisition

AGENCY CONTACT: Page Whittle, Land Acquisition Specialist

CONTACT PHONE: 321-690-6847 extension 58351

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Lucy Hamelers, Supervisor		_____	<u>4-24-2020</u>
COUNTY ATTORNEY Jad Brewer Assistant County Attorney		_____	<u>4-28-2020</u>

AGENDA DUE DATE: April 28, 2020 for the May 5, 2020 Board meeting

)
)

Prepared by and return to: Page R Whittle
Public Works Department, Land Acquisition
2725 Judge Fran Jamieson Way, A-204, Viera, Florida 32940
A portion of Interest in Tax Parcel I.D.: 28-36-02-00-0264

**PERMANENT ROADWAY, DRAINAGE, SIDEWALK, AND UTILITY EASEMENT
AGREEMENT**

THIS roadway, drainage, sidewalk and utility easement agreement (the "Easement") is made this 22 day of April, 2020, between The Oasis at West Melbourne, LLC, a Florida limited liability company ("Grantor"), and BREVARD COUNTY, Florida, a political subdivision of the State of Florida ("Grantee"), 2725 Judge Fran Jamieson Way, Viera, Florida 32940 for the use and benefit of BREVARD COUNTY, Florida.

WITNESSETH:

1. Grant of Easement. That the Grantor, in consideration of One Dollar (\$1.00) and other valuable consideration paid, the receipt of which is hereby acknowledged, hereby grant unto the Grantee, a perpetual non-exclusive right-of-way easement for roadway, drainage, sidewalk, and utilities commencing on the above date for the purposes of constructing, maintaining, reconstructing, or reconfiguring roadway, sidewalk, drainage, and utilities, including the right of ingress and egress onto the easement area as may be necessary for the full use and enjoyment by Grantee of its easement, and other allied uses pertaining thereto, over, under, upon, above, and through the following lands:.

The land affected by the granting of the easements is located in Section 02, Township 28 South, Range 36 East, County of Brevard, State of Florida, and being more particularly described on Exhibit "A" attached hereto (the "Easement Property").

The easement hereby granted is non-exclusive and is made subject to all easements, conditions and restrictions, reservations and other matters of public record.

2. Construction and Maintenance. Grantee shall be responsible, at its sole cost and expense, for constructing and maintaining roadway, drainage,

sidewalk and utility improvements (collectively the "Infrastructure Improvements") constructed by, or dedicated to, Grantee within the Easement Property. Grantee shall perform all construction and maintenance of the Infrastructure Improvements in a good and workmanlike manner, and such work shall be done in such a manner so as not to unreasonably interfere with Grantors' access to and from any property of Grantors lying adjacent to the Easement Property.

3. Applicable Law. This Easement shall be governed, enforced and construed in accordance with the laws of the State of Florida. If any provisions of this Easement or the application thereof shall be held to be invalid or unenforceable in a court of law, the remainder of this Easement shall not be affected thereby and each provision of this Easement shall otherwise remain valid and enforceable to the fullest extent permitted by law.

4. Enforcement and Remedies. If any party or parties hereto fails to perform or breaches any obligation, requirement, duty or covenant contained herein, the other non-defaulting party or parties shall have the right, at their option, in addition to any of their other rights, privileges or remedies otherwise stated elsewhere herein to (i) bring an action for the recovery of actual damages (not including punitive, consequential or incidental loss or damage) in a court of competent jurisdiction in and for Brevard County, Florida. Any trial shall be non-jury. The failure to enforce any of the terms or provisions of this Easement, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation occurring prior to or subsequent thereto.

Each Party is responsible for the negligent or wrongful acts or omissions of its own employees, agents or other representatives while acting within the scope of their employment or otherwise within their authorized capacity, arising from the activities encompassed by this Easement. To the extent allowable by law each party, and their successors and assigns, shall indemnify and hold the other party harmless from and against any and all loss, cause, damage, expense, injury, claim and liability (including reasonable attorney's fees and paraprofessional fees at any pre-trial, trial or appellate proceedings) which said other party may suffer or incur solely by reason of the negligent acts or omissions or intentional misconduct of the indemnifying party. Nothing in this agreement shall be considered a waiver of the Grantee's protections afforded to it under Florida's sovereign immunity provisions

contained within 768.28, Fla. Statutes and any amount paid under this provision shall not exceed the limits on damages pursuant to 768.28(5), Fla. Statutes.

5. **Binding Effect.** This Easement, and the rights and interests created herein, runs with the land and shall be binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding anything in the foregoing provisions of this Easement to the contrary, Grantors shall have no duties, responsibilities or liabilities hereunder after Grantors have conveyed title to the Easement Property to a third party, except for any duties, responsibilities or liabilities that may have arisen prior to such conveyance. The Grantor does hereby covenant with the Grantee that it is lawfully seized and possessed of the Easement Property and that it has a good and lawful right to grant the Easement. Grantor(s) shall not make any improvements within the Easement Property which will conflict or interfere with the Easement granted herein.

(Signatures and Notary on next page)

IN WITNESS WHEREOF, the parties having set their hand and seal this, the day and year first above written,

Signed, sealed, and delivered in the presence of:

Alma Austin
Witness
SOMIA P. BUSTOSA
(Print Name)

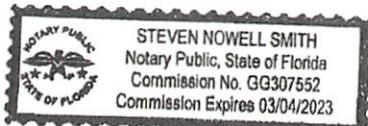
The Oasis at West Melbourne, LLC
a Florida limited liability company

Julie Schreder
Witness
Julie Schreder
(Print Name)


Richard R. Haley
Executive Vice President

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 22 day of April, 2020, by **RICHARD R. HALEY, as the Executive Vice President of The Oasis at West Melbourne, LLC, a Florida limited liability company**, on behalf of the company. He is either personally known to me or produced _____ as identification.




Notary Public

Print Name: Steven Smith
My commission expires: 3/4/23

Acceptance

The Grantee hereby accepts the PERMANENT RIGHT OF WAY, DRAINAGE, SIDEWALK, AND UTILITY EASEMENT AGREEMENT and agrees to be bound by its terms.

Dated: _____ day of _____, 2020.

ATTEST:

GRANTEE:
BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk of the Board

Bryan Lober, Chair

Agenda Item # _____
Board Meeting Date _____

LEGAL DESCRIPTION
PARCEL #801

PARENT PARCEL ID#: 28-36-02-00-0264

PURPOSE: PERMANENT ROADWAY, DRAINAGE,
SIDWALK, AND UTILITY EASEMENT

LEGAL DESCRIPTION: EASEMENT (BY SURVEYOR)

A STRIP OF LAND, 12.00 FEET IN WIDTH, BEING A PORTION OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8319, PAGE 32 AND OFFICIAL RECORDS BOOK 8319, PAGE 19, LYING IN SECTION 2, TOWNSHIP 28 SOUTH, RANGE 36 EAST, ALSO BEING A PORTION OF LOT 23, FLORIDA-INDIAN RIVER LAND COMPANY ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 80 ALL OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8319, PAGE 32, SAID POINT LYING ON THE WEST RIGHT OF WAY LINE OF JOHN RODES BOULEVARD; THENCE RUN NORTH 00°08'26" WEST ALONG SAID WEST RIGHT OF WAY LINE FOR A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID WEST RIGHT OF WAY LINE RUN SOUTH 89°34'01" WEST FOR A DISTANCE OF 12.00 FEET; THENCE RUN NORTH 00°08'26" WEST FOR A DISTANCE OF 239.35 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 23; THENCE RUN NORTH 89°34'01" EAST ALONG SAID NORTH LINE FOR A DISTANCE OF 12.00 FEET TO SAID WEST RIGHT OF WAY LINE; THENCE RUN SOUTH 00°08'26" EAST ALONG SAID WEST RIGHT OF WAY LINE FOR A DISTANCE OF 239.35 FEET TO THE POINT OF BEGINNING.

CONTAINING: 2,872 SQUARE FEET OR 0.07 ACRES OF LAND, MORE OR LESS.

SURVEYOR'S NOTES:

1. THE LEGAL DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR AT THE CLIENT'S REQUEST.
2. THIS SKETCH IS NOT VALID UNLESS SIGNED AND SEALED WITH AN EMBOSSED SURVEYOR'S SEAL.
3. BEARINGS SHOWN HEREON ARE ASSUMED AND BASED ON THE WEST RIGHT-OF-WAY LINE OF SOUTH JOHN RODES BOULEVARD, BEING SOUTH 00°08'26" EAST.
4. DELINEATION OF THE LANDS SHOWN HEREON ARE ACCORDING TO THE CLIENT'S INSTRUCTIONS.
5. ADJOINING PARCEL OWNER AND RECORDING INFORMATION DELINEATED HEREON WAS OBTAINED FROM THE BREVARD COUNTY PROPERTY APPRAISER'S PUBLIC ACCESS SYSTEM.
6. WE HAVE REVIEWED THE OWNERSHIP AND ENCUMBRANCE REPORT PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY, FILE NO. 2037-4690986. THOSE INSTRUMENTS LISTED HAVE BEEN EXAMINED AND ARE REFLECTED HEREON TO THE EXTENT THE AFFECT THE SUBJECT PROPERTY. BELOW ARE THE EXCEPTIONS AS THEY APPEAR IN THE REPORT.

OWNERSHIP AND ENCUMBRANCE REPORT EXCEPTIONS:

1. PROVISIONS ON THE PLAT OF FLORIDA INDIAN RIVER LAND CO. RECORDED AUGUST 10, 1917 IN PLAT BOOK 2, PAGE 80. AFFECT THE SUBJECT PROPERTY, NOTHING TO NOTE OR SHOW.
2. PRIVATE UTILITY SERVICES AND FIRE HYDRANT AGREEMENT BY AND BETWEEN THE CITY OF WEST MELBOURNE, FLORIDA, A FLORIDA MUNICIPAL CORPORATION AND THE OASIS AT WEST MELBOURNE, LLC, A FLORIDA LIMITED LIABILITY COMPANY RECORDED NOVEMBER 28, 2018 IN BOOK 8316, PAGE 737. AFFECTS THE SUBJECT PROPERTY BUT CANNOT BE SHOWN, BLANKET IN NATURE.
3. DRAINAGE AND PUBLIC UTILITY EASEMENT IN FAVOR OF THE CITY OF WEST MELBOURNE, A FLORIDA MUNICIPAL CORPORATION RECORDED NOVEMBER 28, 2018 IN BOOK 8316, PAGE 748. (NOTE: NO LEGAL DESCRIPTION ATTACHED TO DOCUMENT. UNABLE TO DETERMINE LOCATION OF EASEMENT.) DOES NOT AFFECT THE SUBJECT PROPERTY (SEE ORB 8319, PG. 45).
4. ASSIGNMENT OF PERMITS AND APPROVALS TO THE OASIS AT WEST MELBOURNE, LLC, A FLORIDA LIMITED LIABILITY COMPANY RECORDED NOVEMBER 30, 2018 IN BOOK 8319, PAGE 39. AFFECTS THE SUBJECT PROPERTY BUT CANNOT BE SHOWN, BLANKET IN NATURE.
5. MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT AND ASSIGNMENT OF RENTS EXECUTED BY THE OASIS AT WEST MELBOURNE, LLC, A FLORIDA LIMITED LIABILITY COMPANY TO VALLEY NATIONAL BANK RECORDED NOVEMBER 30, 2018 IN BOOK 8319, PAGE 67 IN THE ORIGINAL PRINCIPAL AMOUNT OF \$35,475,000.00. AFFECTS THE SUBJECT PROPERTY BUT CANNOT BE SHOWN, BLANKET IN NATURE.
6. RECORDED NOTICE OF ENVIRONMENTAL RESOURCE PERMIT BY ST. JOHNS RIVER WATER MANAGEMENT DISTRICT RECORDED JUNE 14, 2019 IN BOOK 8463, PAGE 2737. AFFECTS THE SUBJECT PROPERTY BUT CANNOT BE SHOWN, BLANKET IN NATURE.
7. EASEMENT IN FAVOR OF FLORIDA POWER & LIGHT COMPANY RECORDED JANUARY 15, 2019 IN BOOK 8648, PAGE 303. AFFECTS THE SUBJECT PROPERTY AND IS SHOWN HEREON.

PREPARED FOR AND CERTIFIED TO:
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

PREPARED BY: ALLEN & COMPANY, INC.

EXHIBIT 'A'
SHEET 1 OF 2
NOT VALID WITHOUT SHEET 2 OF 2
THIS IS NOT A SURVEY

FOR THE EMBOSSED BUSINESS #6723 BY:
JAMES FLORIDA S.M. #5633
PROFESSIONAL SURVEYOR & MAPPER
NOTARIAL PRACTICE SIGNED AND SEALED

DRAWN BY: BRH	CHECKED BY: SEJ	PROJECT NO. 18RW00609			SECTION 2
DATE: 3/6/2020	DRAWING: 20170356	REVISIONS	DATE	DESCRIPTION	TOWNSHIP 28 SOUTH
			4/20/20	ADDRESS COMMENTS	RANGE 36 EAST

LEGAL DESCRIPTION
PARCEL #801

PARENT PARCEL ID#: 28-36-02-00-0264

PURPOSE: PERMANENT ROADWAY, DRAINAGE,
SIDEWALK, AND UTILITY EASEMENT

PARCEL ID:
28-36-02-00-0269
PORTION OF LOT 26
FLORIDA-INDIAN RIVER
LAND CO.
PLAT BOOK 2, PAGE 80

OFFICIAL RECORDS BOOK
3576, PAGE 1683

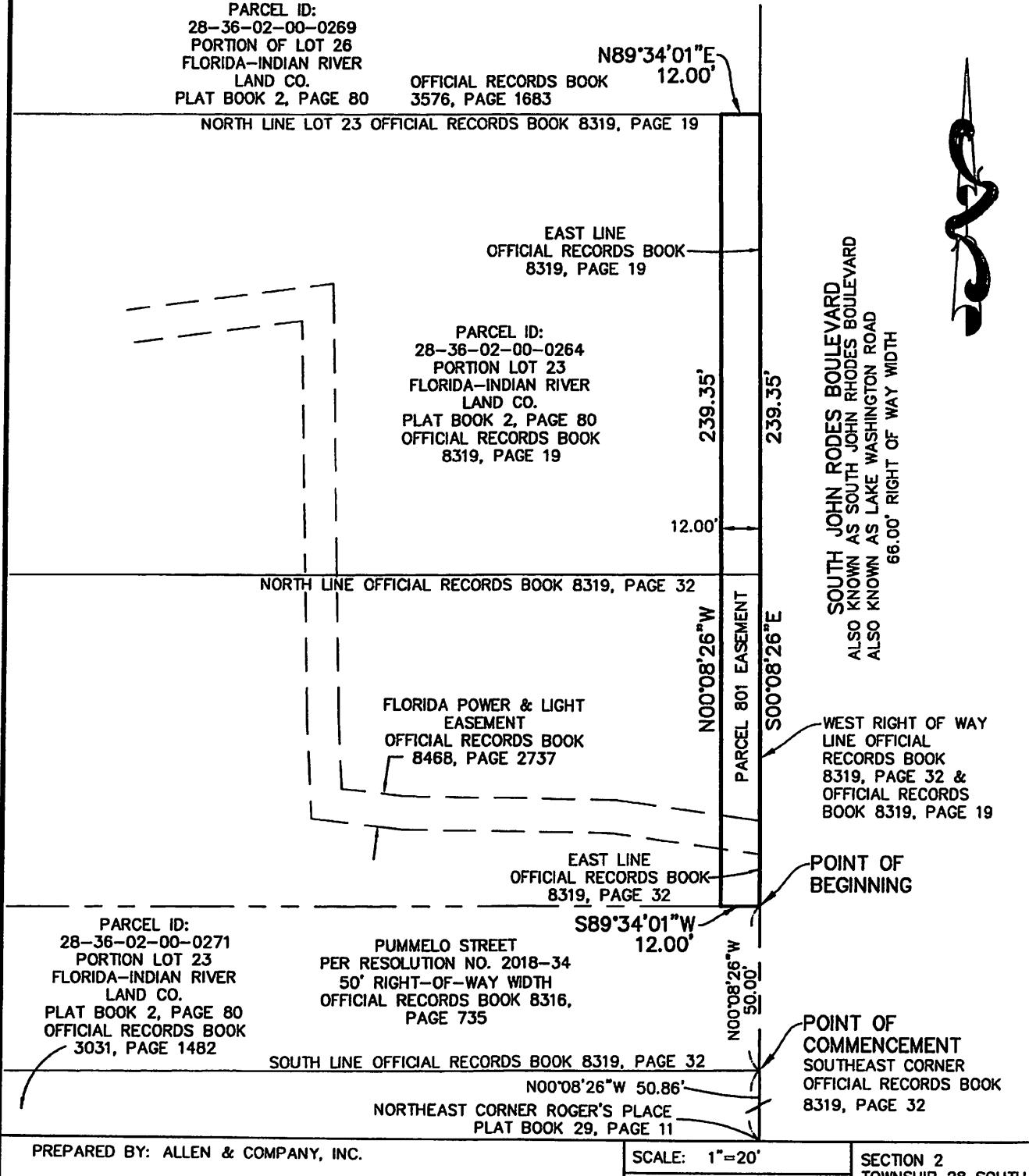
N89°34'01"E
12.00'

NORTH LINE LOT 23 OFFICIAL RECORDS BOOK 8319, PAGE 19

EXHIBIT 'A'

SHEET 2 OF 2

NOT VALID WITHOUT SHEET 1 OF 2
THIS IS NOT A SURVEY



LOCATION MAP

Section 02, Township 28 South, Range 36 East District: 5

PROPERTY LOCATION: North of W. New Haven Avenue, East of I 95, located on S. John Rodes Blvd in West Melbourne

OWNERS NAME: The Oasis at West Melbourne, LLC

S. John Rodes Blvd.

