



# VILLAGE OF KEY BISCAINE

Office of the Village Manager

## MEMORANDUM

*Village Council*  
Robert L. Vernon, *Mayor*  
Enrique Garcia, *Vice Mayor*  
Michael W. Davey  
Robert Gusman  
Michael E. Kelly  
Jorge E. Mendia  
Thomas Thornton

DATE: June 1, 2010  
TO: Honorable Mayor and Members of the Village Council  
FROM: Genaro "Chip" Iglesias, Village Manager  
RE: Revised Galleria Access Agreement

*Village Manager*  
Genaro "Chip" Iglesias

A large, stylized handwritten signature in black ink, likely belonging to Genaro "Chip" Iglesias, is written over the "FROM" and "RE" fields of the memorandum.

### RECOMMENDATION

It is recommended that the Council approve the attached resolution which approves a revised Access Agreement with the owner of the Galleria Shopping Center. The Access Agreement provides for the construction of a golf cart pathway from Fernwood Rd. to the parking lot at the rear of the shopping center.

### BACKGROUND

Prior to submitting the Access Agreement to Council last month, the Administration obtained a verbal approval from the owner of the Galleria Shopping Center to enter into an Agreement with the Village. Although upon requesting the owner to execute the Access Agreement, the owner was advised by the mortgage holder to make the following changes to the agreement:

1. The term of the agreement was changed from "perpetual" to five (5) years that automatically renew for successive five (5) year periods of time; and,
2. A clause was added which permits either party to terminate the agreement with a 30 day written notice. Should the owner terminate the agreement, he is obligated to pay a prorated share of the cost of the improvements spread over a five (5) year period of time.

EXHIBIT "A-1"

GALLERIA ACCESS AGREEMENT

**RESOLUTION NO. 2010 - \_\_\_\_\_**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AN AGREEMENT BETWEEN THE VILLAGE AND GALLERIA OF KEY BISCAYNE INC. PERMITTING GOLF CART AND PEDESTRIAN ACCESS AND IMPROVEMENTS FOR A PORTION OF THE PROPERTY LOCATED AT 328 CRANDON BOULEVARD (GALLERIA SHOPPING CENTER); AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village Council adopted Ordinance 2009-4 that created the Golf Cart Safety Board for the purpose of providing recommendations to the Village Council and Village Manager regarding golf cart safety practices; and

**WHEREAS**, on January 12, 2010, the Village Council adopted Resolution 2010-1, which authorized the Village Manager to take any and all steps necessary to implement the improvements within the Golf Cart/Pedestrian/Bicycle Fernwood Road and Commercial Property Safety and Access Plan, dated August 24, 2009 (the "Plan"); and

**WHEREAS**, one of the recommended improvements within the Plan was to provide golf cart access from Fernwood Road to the Galleria Shopping Center; and

**WHEREAS**, on April 27, 2010, the Village Council approved an agreement to provide golf cart access from Fernwood Road to the Galleria Shopping Center, but subsequent to the approval, the Galleria Shopping Center requested modifications that were not substantially in the form of the approved agreement; and

**WHEREAS**, as such, the Village Council finds that it is necessary to approve the modified agreement between the Village and Galleria of Key Biscayne Inc. permitting golf cart and pedestrian access and improvements on a portion of the property located at 328 Crandon Boulevard, in substantially the form attached hereto as Exhibit "A-1;" and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

**Section 1. Recitals Adopted.** That each of the above-stated recitals is hereby adopted and confirmed.

**Section 2. Agreement Approved.** That the agreement between the Village and Galleria of Key Biscayne Inc. permitting golf cart and pedestrian access and improvements on a portion of the property located at 328 Crandon Boulevard, in substantially the form attached hereto as Exhibit "A," is hereby approved, and the Village Manager is hereby authorized to execute the Agreement on behalf of the Village, subject to approval of the Village Attorney as to form and legal sufficiency.

**Section 3. Effective Date.** That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
MAYOR ROBERT L. VERNON

ATTEST:

\_\_\_\_\_  
CONCHITA H. ALVAREZ, CMC,  
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
VILLAGE ATTORNEY

## ACCESS AGREEMENT

**THIS ACCESS AGREEMENT** (the "Agreement") is made this 27<sup>th</sup> day of May, 2010 by Galleria of Key Biscayne Inc., a Florida corporation, whose address is 328 Crandon Blvd, Key Biscayne Florida 33149 ("Owner") and the Village of Key Biscayne, Florida, a Florida municipal corporation, whose address is 88 W. McIntyre Street, Key Biscayne, Florida 33149 (the "Village").

### RECITALS:

**WHEREAS**, Owner is the fee simple owner of certain real property located in Miami-Dade County, Florida, more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Shell Path"); and

**WHEREAS**, Owner has agreed to grant to the Village certain access rights over, across, and under the Shell Path to the adjacent parking lot from the right of way.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the Village and Owner agree as follows:

1. **Recitals**. The parties acknowledge that the foregoing recitals are true and correct and hereby incorporated into this Agreement as if fully set forth herein.
2. **Access Agreement**. Owner does hereby grant and convey to the Village and its successors and assigns, a non-exclusive right of access, over, upon, across and through the Shell Path to the adjacent parking lot for golf cart and pedestrian ingress and egress.
3. **Term**. The term of this Agreement shall begin on the date it is fully executed by both parties and shall extend for a five (5) year term. The term shall automatically renew for successive five (5) year periods.
4. **Path Construction**. Owner hereby grants the Village full rights and authority to enter upon and excavate the Shell Path in order to install, construct, operate, relocate, replace, improve, remove, inspect, repair and maintain a crushed seashell or similar material path to the adjacent parking lot.
5. **Public Access**. Owner expressly acknowledges and agrees that the general public shall have the right to use the Shell Path for golf cart and pedestrian ingress and egress from the public right of way to the adjacent parking lot.
6. **Village Maintenance**. The Village shall repair and maintain the Shell Path at its own cost and expense.
7. **Indemnification**. Subject to the provisions and monetary limitations of Section 768.28 (5), Florida Statutes, which limitations shall be applicable regardless of whether such provisions would otherwise apply, and to the extent permitted by law, the Village shall, at all times,

indemnify, save, defend and keep the Owner free and harmless from any and all loss, cost, damage, liability or suit occasioned by any act of the Village arising out of or in connection with its exercise of its right and privileges to the Shell Path under this Agreement.

8. **No Obstruction of Traffic.** Owner shall not cause or permit any obstruction to the free flow of golf cart and pedestrian traffic or use of the access rights granted herein, without the prior written consent of the Village.

9. **Attorney's Fees.** In the event a party institutes any legal action or proceedings for the enforcement of any right or obligation herein contained, the prevailing party shall be entitled to recover its cost and reasonable attorney's fees incurred in the preparation and prosecution of such action or proceeding.

10. **Severability.** Each provision of this Agreement and the application thereof to the Shell Path are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision in this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared.

11. **Amendment or Modification.** This Agreement may be amended or modified only by a written instrument signed by both parties or their respective successors and assigns.

12. **Termination.** The Village or Owner may terminate this Agreement at its discretion either with or without cause, provided that the requesting party provides the other with 30 days written notice. Termination of the Agreement shall not be effective until the 30<sup>th</sup> day after the receipt of the written notice by the non-requesting party. In the event the Owner terminates the Agreement within the first term of the Agreement, the Owner shall pay the Village the prorated costs of the improvements as shown in Exhibit "A."

13. **Governing Laws.** The laws of the State of Florida shall govern the interpretation, validity, performance and enforcement of this Declaration. Venue for any action brought hereunder shall be proper exclusively in Miami-Dade County, Florida.

14. **Successors and Assigns.** The covenants, conditions and agreements contained in this Agreement will inure to the benefit of and be binding upon the successors and assigns of Owner and the Village.

15. **Waiver.** No express or implied consent or waiver by a party to or of any breach or default by the other party in the performance by such other party of its obligations under this Agreement will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such other party hereunder. Failure by a party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues will not constitute a waiver

by such party of its rights hereunder. The giving of consent by a party in any one instance will not limit or waive the necessity to obtain such party's consent in any future instance.

16. **Authority to Execute.** Owner warrants and represents to the Village that the individuals signing this Agreement on behalf of Owner have full power and authority to execute and deliver the Agreement and to bind Owner.

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

**ACCESS AGREEMENT**

**IN WITNESS WHEREOF**, Owner and Village have executed this Agreement the day and year first above written.

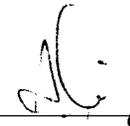
**VILLAGE:**

**OWNER:**

**VILLAGE OF KEY BISCAYNE, a  
Florida municipal corporation**

**GALLERIA OF KEY BISCAYNE INC., a  
Florida corporation**

By: \_\_\_\_\_  
Genaro "Chip" Iglesias, Village Manager

By:  \_\_\_\_\_  
Name: Adib Chamsouari  
Title: Resident

Date Executed: \_\_\_\_\_

Date Executed: 5.28.10

Attest: \_\_\_\_\_  
Conchita Alvarez, Village Clerk

Approved as to Form and Legal Sufficiency:

\_\_\_\_\_  
Village Attorney

EXHIBIT "A"

SHELL PATH

# EASEMENT LEGAL DESCRIPTION

## EXHIBIT "A"

A PARCEL OF LAND LYING IN SECTION 32, TOWNSHIP 54 SOUTH, RANGE 42 EAST, ALL LYING AND BEING IN MIAMI-DADE COUNTY, FLORIDA, AS IT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF TRACT 5 OF "MATHESON ESTATES" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 46 AT PAGE 86. OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; SAID POINT ALSO BEING THE BEGINNING OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 2635.00 FEET; AND TO WHICH POINT A RADIAL LINE BEARS N82°03'17"W; THENCE SOUTHWESTERLY 148.50 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 3°13'44" TO THE POINT OF BEGINNING OF A 6.00 FOOT WIDE INGRESS-EGRESS ACCESS AREA, LYING 3.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE (SHORTENING OR EXTENDING THE SIDE LINES THEREOF, SO AS TO CREATE A CONTINUOUS STRIP OF LAND); THENCE S88°15'26"E FOR A DISTANCE OF 40.29 FEET TO THE POINT OF TERMINATION.

P(3)SM, L.L.C.

PROFESSIONAL SURVEYORS & MAPPERS

3900 NW 79 AVENUE, SUITE 235 DORAL, FLORIDA 33166 PHONE:(305) 463-0912 FAX:(305) 463-0913

L.B. No. 7335

SKETCH AND LEGAL DESCRIPTION FOR A 6 FOOT WIDE INGRESS- EGRESS ACCESS AREA

DATE:  
04-01-10

DRAWN BY  
JP

SCALE:  
N/A

JOB No.  
1003-00023-002

SHEET:  
3 of 4

# SURVEYOR'S NOTES AND CERTIFICATE

## SURVEYOR'S NOTES:

- 1) This is not a Boundary Survey, but only a GRAPHIC DEPICTION of the description shown hereon.
- 2) North arrow direction and bearing shown hereon are based on an assumed meridian of  $S79^{\circ}11'28''E$ , along the northern boundary line of Tract 5 of "Matheson Estates", Plot Book 46 at Page 86 of the public records of Miami-Dade County, Florida.
- 3) Not valid without the signature and the original raised seal of a Florida Licensed Surveyor and Mapper. Additions or deletions to survey maps or reports by other than the signing party or parties is prohibited without written consent of the signing party or parties.
- 4) There may be additional restrictions not shown on this Sketch & Logo that may be found in the Public Records of this County. Examination of the ABSTRACT OF TITLE will have to be made to determine recorded instruments, if any affecting this property.
- 5) No title research has been performed to determine if there are any conflict existing or arising out of the creation of the easements, Right-of-Ways, Parcel Descriptions, or any other type of encumbrances that the herein described legal may be utilized for.
- 6) The intent of this description is to encompass a 6 foot wide INGRESS-EGRESS ACCESS AREA.

## SURVEYOR'S CERTIFICATE:

I hereby certify to the best of my knowledge and belief that this drawing is a true and correct representation of the SKETCH AND LEGAL DESCRIPTION, of the real property described hereon.

I further certify that this survey was prepared in accordance with the applicable provisions of Chapter 50-17.05 Florida Administrative Code.

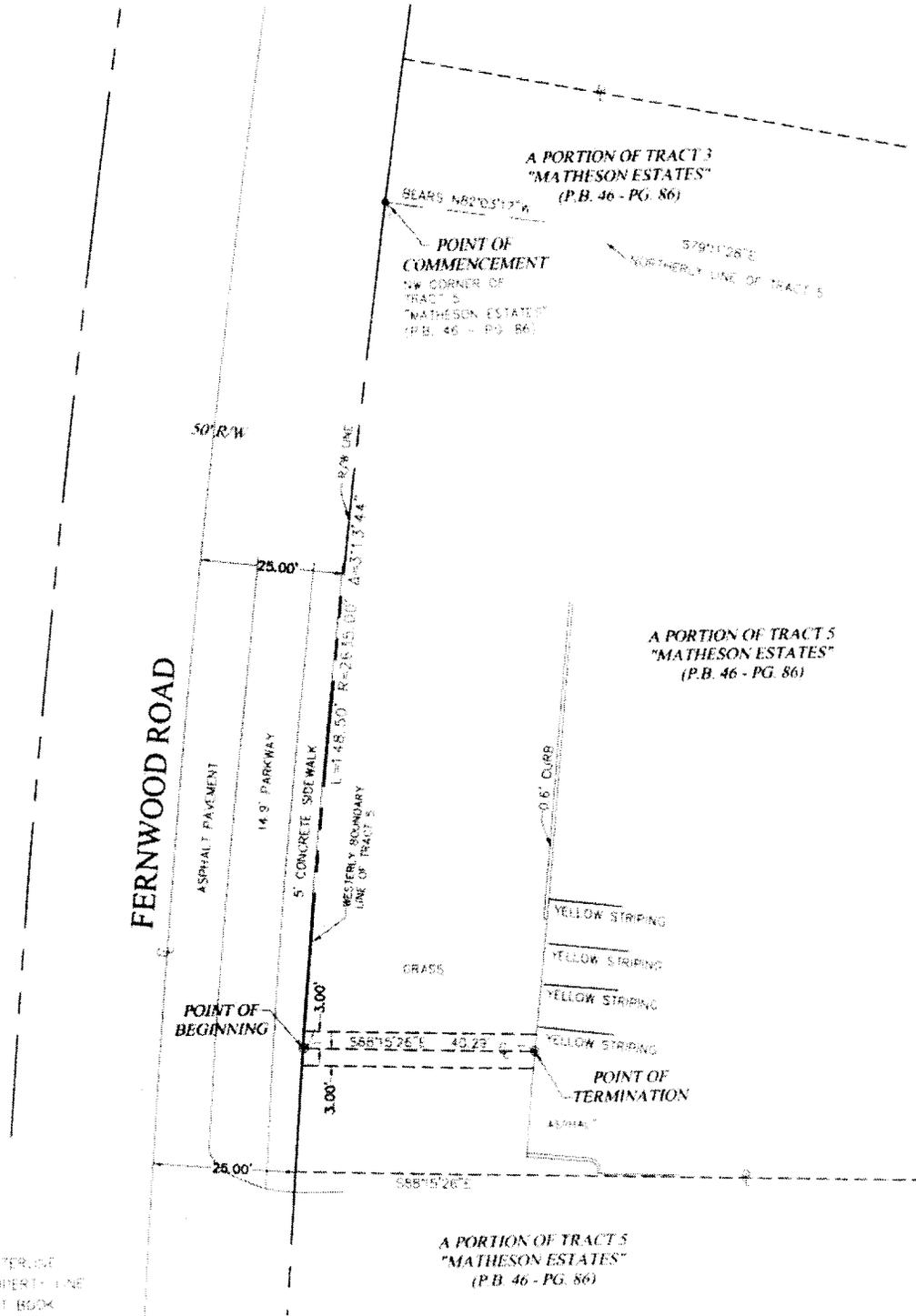
Date: April 1, 2010

EDUARDO M. SUAREZ, P.S.M.  
Professional Surveyor and Mapper  
State of Florida, Registration No. 6313

<b>P(3)SM, L.L.C.</b>				<b>L.B. No. 7335</b>
<b>PROFESSIONAL SURVEYORS &amp; MAPPERS</b>				
3900 NW 79 AVENUE, SUITE 235 DORAL, FLORIDA 33166 PHONE:(305) 463-0912 FAX:(305) 463-0913				
<b>SKETCH AND LEGAL DESCRIPTION FOR A 6 FOOT WIDE INGRESS- EGRESS ACCESS AREA</b>				
DATE:	DRAWN BY	SCALE:	JOB No.	SHEET:
04-01-10	JP	N/A	1003-00023-002	2 of 4

# SKETCH TO ACCOMPANY LEGAL DESCRIPTION

## EXHIBIT "A"



**LEGEND:**

- = DENOTES CENTERLINE
- - - = DENOTES PROPERTY LINE
- P.B. = DENOTES PLAT BOOK
- P.C. = DENOTES PAGE

**P(3)SM, L.L.C.**

PROFESSIONAL SURVEYORS & MAPPERS

3900 NW 79 AVENUE, SUITE 235 DORAL, FLORIDA 33166 PHONE:(305) 463-0912 FAX:(305) 463-0913

**L.B. No. 7335**

SKETCH AND LEGAL DESCRIPTION FOR A 6 FOOT WIDE INGRESS- EGRESS ACCESS AREA

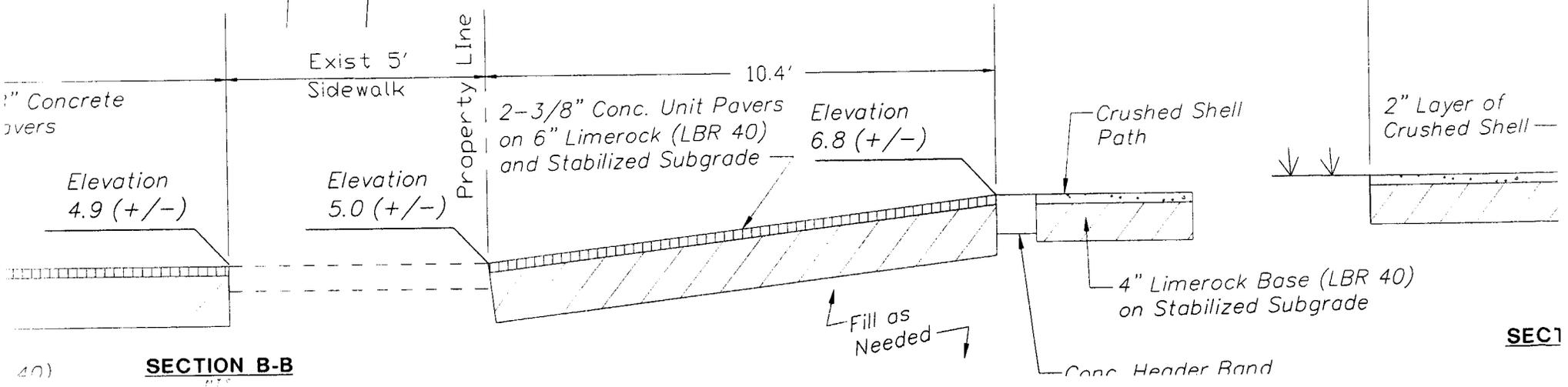
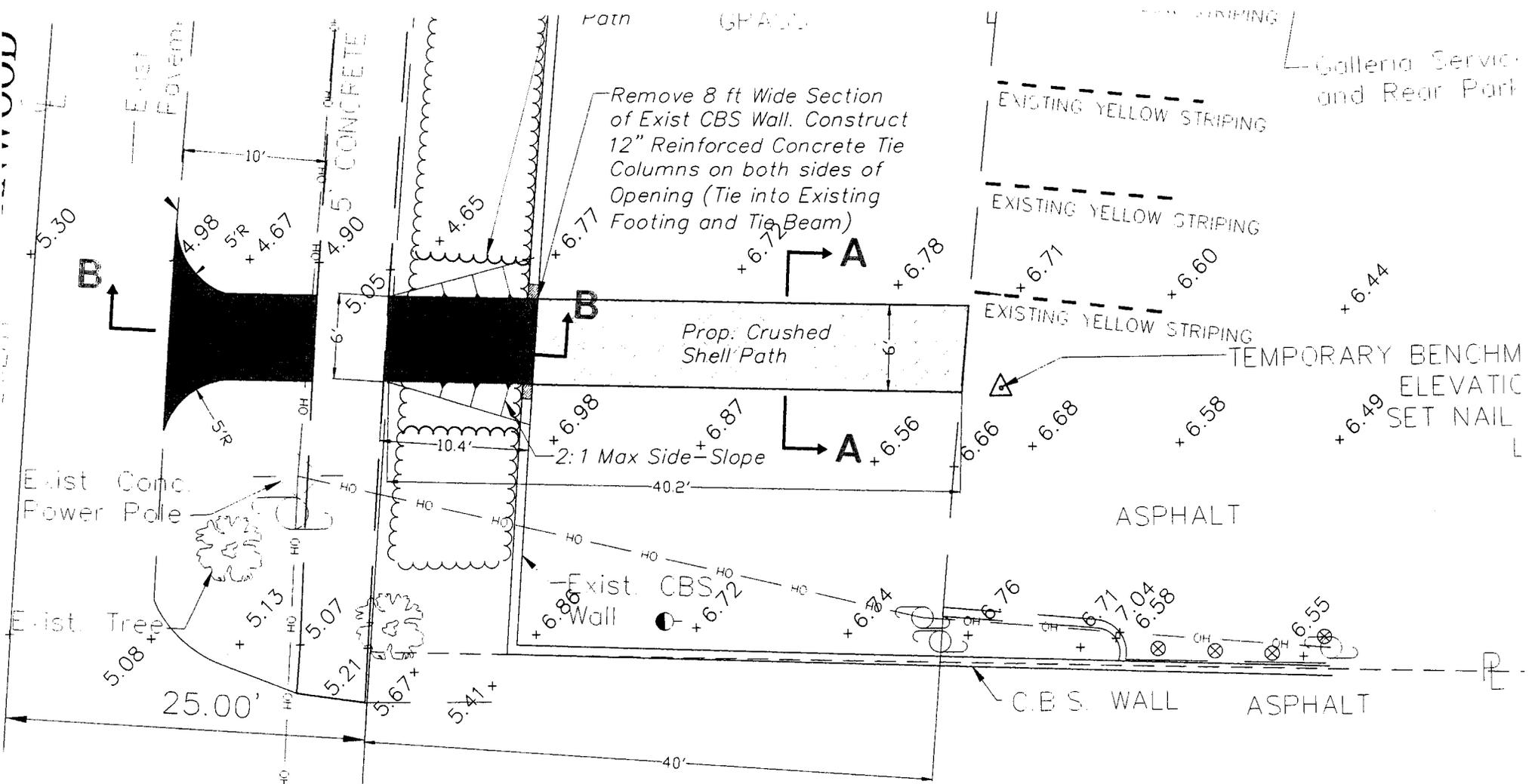
DATE:  
04-01-10

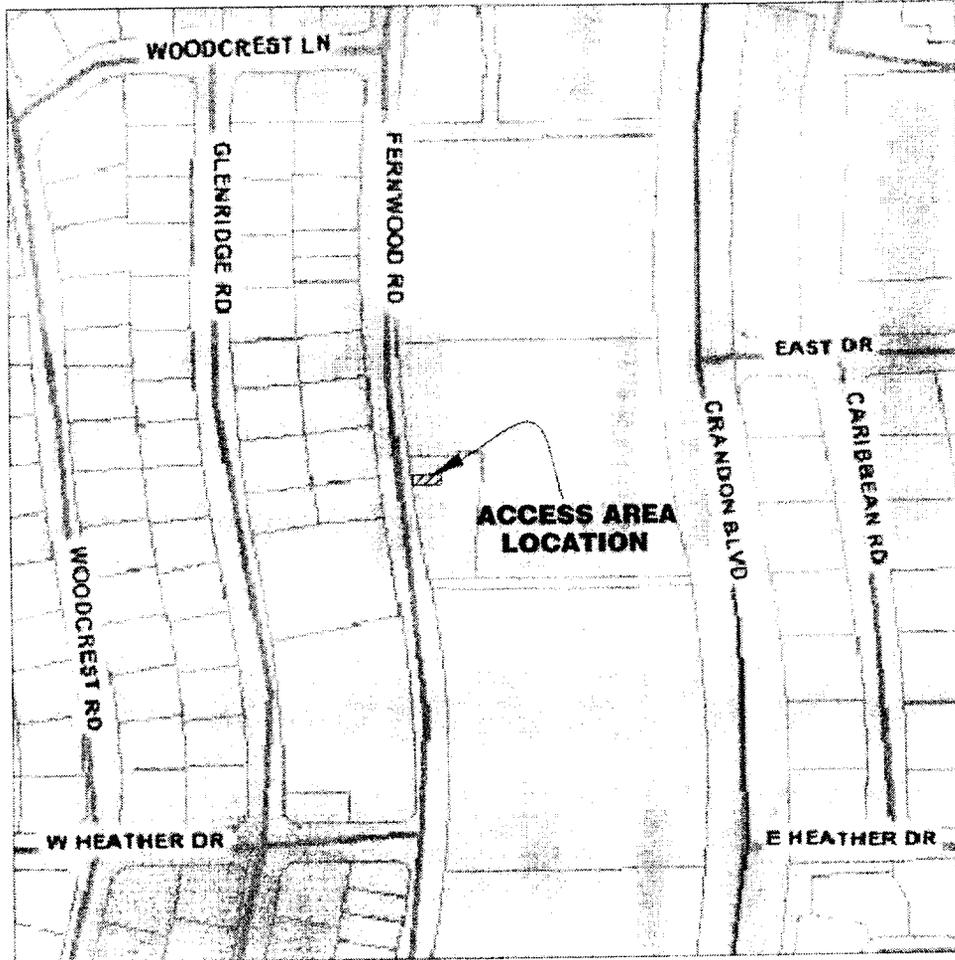
DRAWN BY  
JP

SCALE:  
1" = 30'

JOB No.  
1003-00023-002

SHEET:  
4 of 4





### LOCATION MAP

A PORTION OF  
SECTION 32, TOWNSHIP 54 SOUTH, RANGE 42 EAST  
VILLAGE OF KEY BISCAYNE, MIAMI-DADE COUNTY, FLORIDA

P(3)SM, L.L.C.

PROFESSIONAL SURVEYORS & MAPPERS

3900 NW 79 AVENUE, SUITE 235 DORAL, FLORIDA 33166 PHONE: (305) 463-0912 FAX: (305) 463-0913

L.B. No. 7335

SKETCH AND LEGAL DESCRIPTION FOR A 6 FOOT WIDE INGRESS- EGRESS ACCESS AREA

DATE: 04-01-10	DRAWN BY JP	SCALE: N/A	JOB No. 1003-00023-002	SHEET: 1 of 4
-------------------	----------------	---------------	---------------------------	------------------