VILLAGE OF KEY BISCAYNE

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

Village Manager
Genaro "Chip" Iglesias

DATE: October 1, 2010

TO: Honorable Mayor and Members of the Village Council

FROM: Genaro "Chip" Iglesias, Village Manager

RE: 104 Crandon Golf Cart Access Agreement

RECOMMENDATION

It is recommended that the Council approve the attached resolution which approves an Access Agreement and improvements to property at 104 Crandon Boulevard (Key Executive Building).

BACKGROUND

The attached Access Agreement provides for the construction of a golf cart pathway (pavers) from Fernwood Rd. to the parking lot at the rear of the property and widening of an existing opening in the wall from 3 ft. to 6 ft. The widening is necessary to accommodate golf carts. The improvements are recommended in the approved Golf Cart Master Plan and the Capital Improvements Plan. The cost of the improvements is estimated at $ 4,000.00.

RESOLUTION NO. 2010 - _____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING AN ACCESS EASEMENT BETWEEN THE VILLAGE AND ST. MICHAEL PROPERTY HOLDINGS INC., PERMITTING GOLF CART AND PEDESTRIAN ACCESS AND IMPROVEMENTS ON A PORTION OF THE PROPERTY LOCATED AT 104 CRANDON BOULEVARD; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THIS EASEMENT; 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 contained 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 property owned by St. Michael Property Holdings Inc., which is located at 104 Crandon Boulevard, as further described in Exhibit "A" (the "Property"); and

WHEREAS, the Village Council finds it appropriate to approve the Access Easement, in substantially the form attached hereto as Exhibit "A," between the Village and St. Michael Property Holdings Inc. permitting golf cart and pedestrian access and improvements on the Property; 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.** Each of the above-stated recitals is hereby adopted and confirmed.

Section 2. **Easement Approved and Village Manager Authorization.** The Access Easement, in substantially the form attached hereto as Exhibit "A," is hereby approved between the Village and St. Michael Property Holdings Inc. permitting golf cart and pedestrian access and improvements on the Property, and that the Village Manager is hereby authorized to execute the Access Easement 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

EXHIBIT "A"

ACCESS EASEMENT

THIS ACCESS EASEMENT (the "Easement") is made this ____ day of _____, 2010 by St. Michael Property Holdings Inc, a Florida corporation, whose address is 2828 S.W. 22nd Street, Suite 304, Miami, Florida 33145 ("Owner"), in favor of 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 Schedule "A-1" attached hereto and made a part hereof (the "Owner Parcel"); and

WHEREAS, Owner has agreed to grant to the Village certain access rights over, across, and under the Owner Parcel 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 Easement as if fully set forth herein.

2. **Access Easement.** Owner does hereby grant and convey to the Village and its successors and assigns, a perpetual non-exclusive right of access, over, upon, across and through the Owner Parcel from the public right of way for golf cart and pedestrian ingress and egress.

3. **Golf Cart Path**. Owner hereby grants the Village full rights and authority to enter upon and excavate the Owner Parcel in order to install, construct, operate, relocate, replace, improve, remove, inspect, repair and maintain a paver or similar material golf cart path on the Owner Parcel.

4. **Public Access.** Owner expressly acknowledges and agrees that the general public shall have the right to use the Owner Parcel for golf cart and pedestrian ingress and egress from the public right of way to the adjacent parking lot.

5. **Village Maintenance.** The Village shall repair and maintain the Owner Parcel at its own cost and expense.

6. **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 Owner Parcel under this Easement.

7. **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.

8. **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.

9. **Severability.** Each provision of this Easement and the application thereof to the Owner Parcel are hereby declared to be independent of and severable from the remainder of this Easement. 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 Easement. In the event the validity or enforceability of any provision in this Easement 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.

10. **Amendment or Termination.** This Easement may be amended, modified or terminated only by a written instrument signed by both parties or their respective successors and assigns.

11. **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.

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

13. **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 Easement 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.

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

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

VILLAGE:

VILLAGE OF KEY BISCAYNE,
a Florida municipal corporation

By:_____
Genaro "Chip" Iglesias, Village Manager

Date Executed: _____

Attest:_____
Conchita Alvarez, Village Clerk

Approved as to Form and Legal Sufficiency:

_____
Village Attorney

OWNER:

ST. MICHAEL PROPERTY HOLDINGS INC, a Florida corporation

By: _____
Name: FABRIZIO DI CARLO
Title: BLDG MANAGER

Date Executed: 09/21/10

EASEMENT LEGAL DESCRIPTION

A PORTION OF TRACT "B", OF "MacFARLAND ESTATES", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 91, PAGE 67, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF TRACT "B", OF "MacFARLAND ESTATES" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 91 AT PAGE 67, 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 N73°02'55"W; THENCE SOUTHWESTERLY 39.78 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0°51'54" TO THE POINT OF BEGINNING OF A 11.00 FOOT WIDE INGRESS-EGRESS EASEMENT, LYING 5.50 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 S73°54'49"E FOR A DISTANCE OF 7.30 FEET TO THE POINT OF TERMINATION.

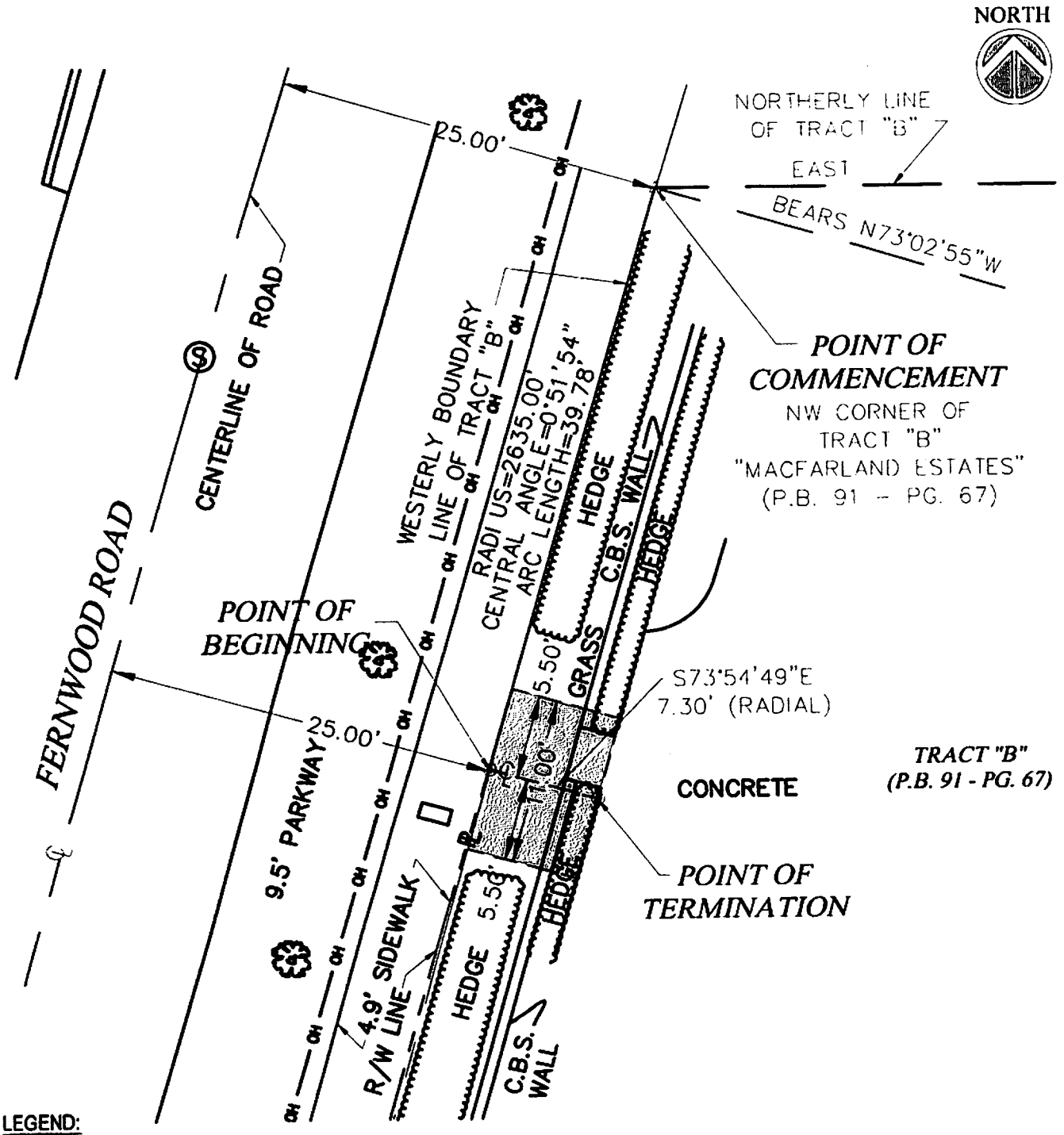
CONTAINING 80.27 sq. ft. MORE OR LESS.

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 EASEMENT

DATE:	DRAWN BY	SCALE:	JOB No.	SHEET:
06-08-10	LRT	N/A	1005-00032-001	3 of 4

SKETCH TO ACCOMPANY LEGAL DESCRIPTION



LEGEND:

℄ =DENOTES CENTERLINE
R =DENOTES PROPERTY LINE
P.B =DENOTES PLAT BOOK
PG =DENOTES PAGE

P(3)SM, L.L.C. — L.B. No. 7335

PROFESSIONAL SURVEYORS & MAPPERS

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

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

DATE:	DRAWN BY	SCALE:	JOB No.	SHEET:
06-08-10	LRT	1" =10'	1005-00032-001	4 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 SOUTH, along the centerline of Fernwood Road, a well established monumented line.

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 & Legal 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 conflicts 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 INGRESS-EGRESS EASEMENT.

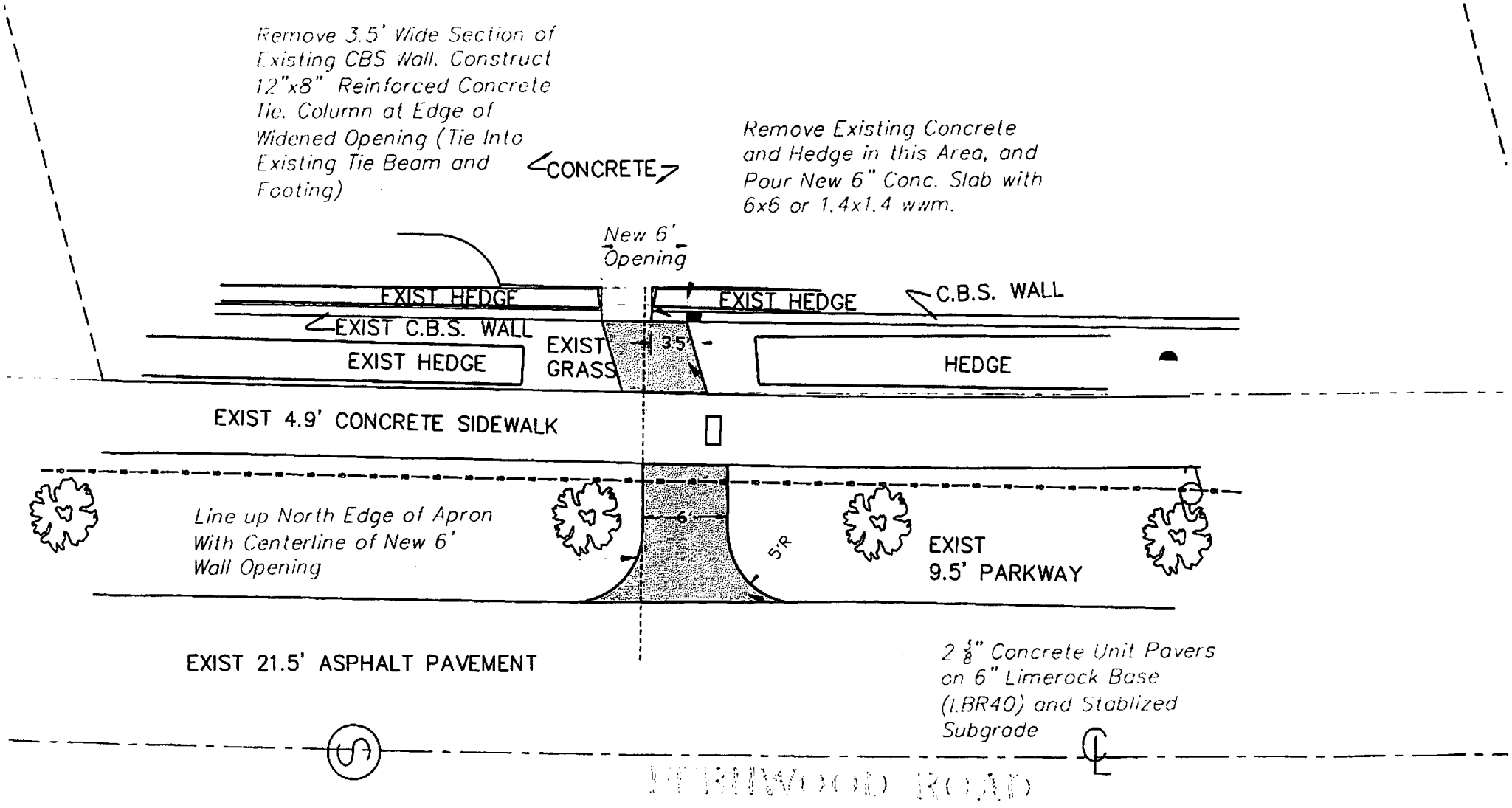
SURVEYOR'S CERTIFICATE:

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 5J-17.05 Florida Administrative Code, pursuant to Section 472.027 Florida Statutes.

Date: May 26, 2010

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


Remove 3.5' Wide Section of Existing CBS Wall. Construct 12"x8" Reinforced Concrete Tie. Column at Edge of Widened Opening (Tie Into Existing Tie Beam and Footing)
CONCRETE
Remove Existing Concrete and Hedge in this Area, and Pour New 6" Conc. Slab with 6x6 or 1.4x1.4 wwm.
New 6' Opening
EXIST HEDGE
EXIST HEDGE
C.B.S. WALL
EXIST C.B.S. WALL
EXIST HEDGE
EXIST GRASS
3.5'
HEDGE
EXIST 4.9' CONCRETE SIDEWALK
Line up North Edge of Apron With Centerline of New 6' Wall Opening
5'R
EXIST 9.5' PARKWAY
EXIST 21.5' ASPHALT PAVEMENT
2 3/8" Concrete Unit Pavers on 6" Limerock Base (LBR40) and Stablized Subgrade
HERRIWOOD ROAD