



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

DT: April 7, 2010

TO: Honorable Mayor and Members of the Village Council

FR: Genaro "Chip" Iglesias, Village Manager

RE: Golf Cart Plan Project: Pathway from Fernwood Road to Galleria Shopping Center

Village Manager

Genaro "Chip" Iglesias

RECOMMENDATION

It is recommended that the Council approve the attached resolution which approves an agreement with the owner of the Galleria Shopping Center that would permit a pathway from Fernwood Road to the parking lot at the rear of the property. The agreement insures use of the pathway on private property by the general public.

BACKGROUND

The Golf Cart Plan includes a pathway from Fernwood Road to the rear parking lot of the Galleria Shopping Center. The attached agreement between Galleria of Key Biscayne, Inc. and the Village insures that the public will be able to use the pathway on private property. The plans for this project is attached. The Administration intends to obtain bids for these improvements as part of the next street paving project. In this manner, the cost will be reduced.

Ramon Castella estimates the construction of the Galleria Shopping Center pathway will cost \$15,000. The FY10 Capital Improvement Plan (CIP) allocates \$23,250 to implement the Golf Cart Plan. In association with this project, the Administration intends to construct the two (2) golf cart parking spaces in the Sonesta Drive right-of-way near the Library at an estimated cost of \$5000 (See attached plans). The remaining \$ 3,250 will be used for other projects in the Golf Cart Plan which require minor funding. Action is not required for the parking spaces or the other minor projects as the Council has already authorized the Administration to take all necessary steps to implement the Golf Cart Plan.

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, as such, the Village Council finds that it is necessary to approve 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;" 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

EXHIBIT "A"

ACCESS AGREEMENT

THIS ACCESS AGREEMENT (the "Agreement") is made this ____ day of April, 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 perpetual 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. **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.
4. **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.
5. **Village Maintenance.** The Village shall repair and maintain the Shell Path 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 Shell Path under this Agreement.

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 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.

10. **Amendment or Termination.** This Agreement 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 Agreement 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 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.

14. **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.

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: _____
Title: _____

Date Executed: _____

Date Executed: _____

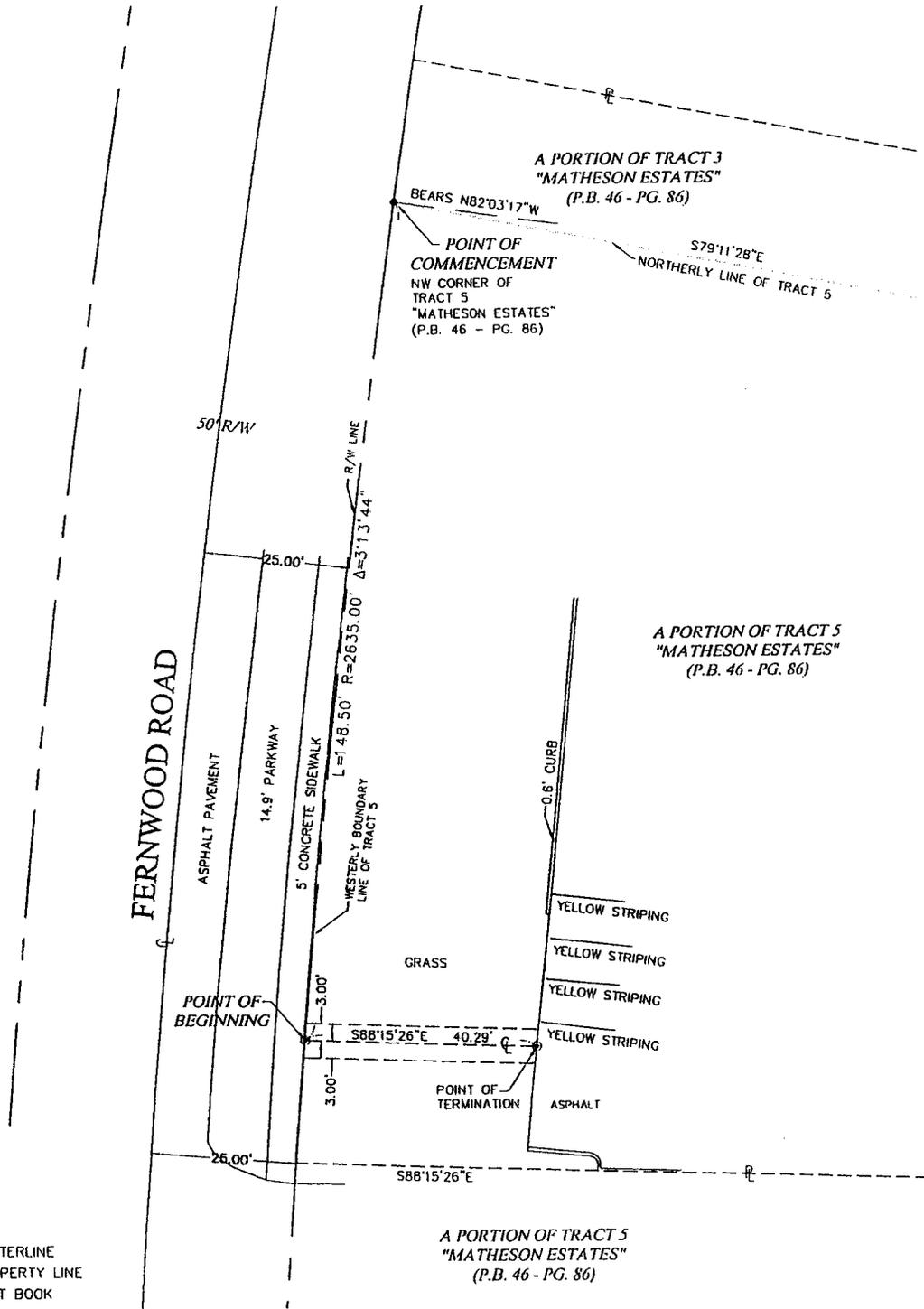
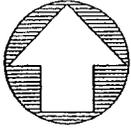
Attest: _____
Conchita Alvarez, Village Clerk

Approved as to Form and Legal Sufficiency:

Village Attorney

SKETCH TO ACCOMPANY LEGAL DESCRIPTION

EXHIBIT "A"



LEGEND:

- ⊕ = DENOTES CENTERLINE
- ⊔ = DENOTES PROPERTY LINE
- P.B. = DENOTES PLAT BOOK
- PG. = 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 EASEMENT

DATE:	DRAWN BY	SCALE:	JOB No.	SHEET:
04-01-10	JP	1" = 30'	1003-00023-002	4 of 4

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 EASEMENT, 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

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L.B. No. 7335

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

DATE:	DRAWN BY	SCALE:	JOB No.	SHEET:
04-01-10	JP	N/A	1003-00023-002	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°11'28"E, along the northerly boundary line of Tract 5 of "Matheson Estates", Plat 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 & 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 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 EASEMENT.

SURVEYOR'S CERTIFICATE:

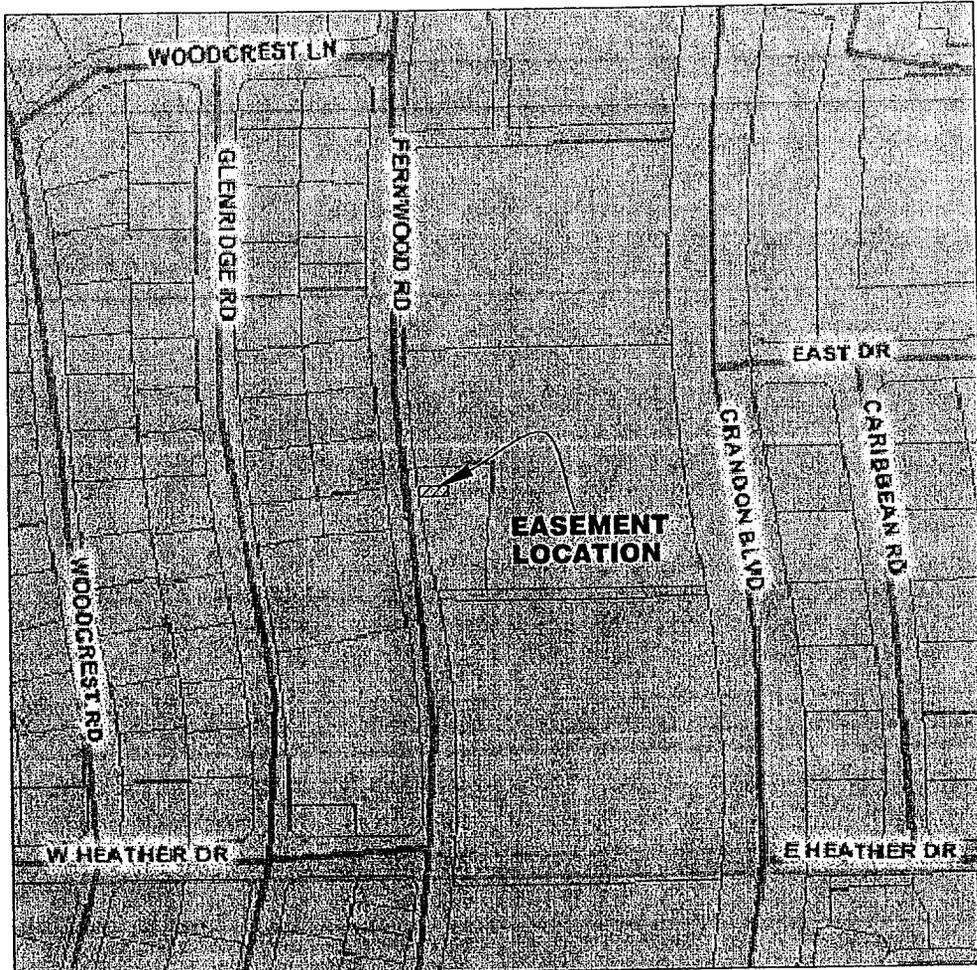
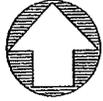
I hereby certify to the best of my knowledge and belief that this drawing is a true and correct representation of the SKETCH AND LEGAL DESCRIPTION, of the real property described hereon.

I further certify that this survey was prepared in accordance with the applicable provisions of Chapter 5J-17.05 Florida Administrative Code.

Date: April 1, 2010

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

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.
04-01-10	JP	N/A	1003-00023-002
			SHEET: 2 of 4



LOCATION MAP

A PORTION OF
SECTION 32, TOWNSHIP 54 SOUTH, RANGE 42 EAST
VILLAGE OF KEY BISWAYNE, 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 EASEMENT

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

Jud Kurlancheek

From: Ramon Castella [rcastella@c3ts.com]
Sent: Friday, April 02, 2010 12:33 PM
To: Jud Kurlancheek
Subject: Galleria Golfcart Pathway
Attachments: Galleria Golfcart Path.pdf; AR-M277_20100402_052303.pdf

Hi Jud, here are the Galleria Pathway drawings and the easement description and sketch. We estimate the construction cost will be around \$15,000. Thanks,

Ramon

Ramon Castella, P.E., LEED AP
Principal

Corzo Castella Carballo Thompson Salman P.A.
901 Ponce de Leon Blvd., Suite 900
Coral Gables, Florida 33134
Voice 305.445.2900 ext.2235
Email rcastella@c3ts.com

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-----Original Message-----

From: Marlon Medina
Sent: Friday, April 02, 2010 12:30 PM
To: Ramon Castella
Subject: Galleria's Golfcart Pathway

Jud Kurlancheek

From: Ramon Castella [rcastella@c3ts.com]
Sent: Friday, April 02, 2010 12:29 PM
To: Jud Kurlancheek
Subject: FW: Library Golfcart
Attachments: Library_Golfcart Parking pdf.pdf

Jud, here are the drawings for the Library Golf cart parking. We estimate the construction cost to be less than \$5,000.
Thanks,

Ramon

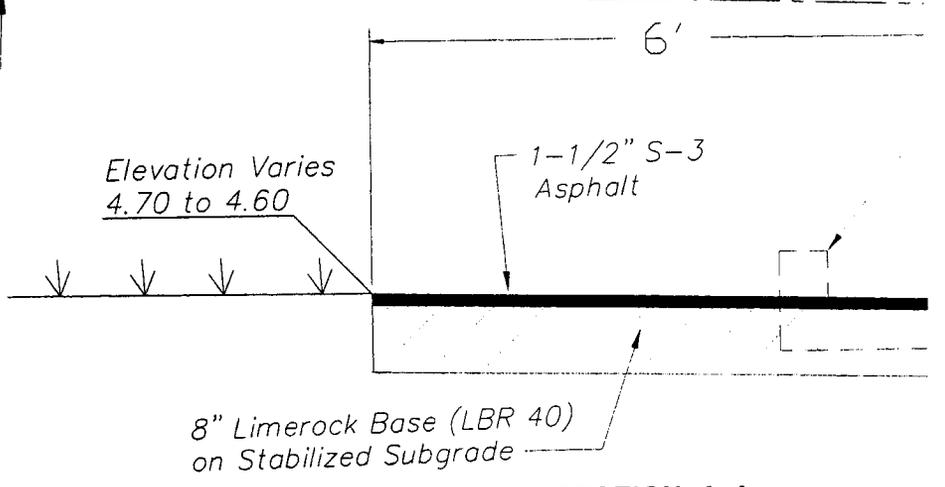
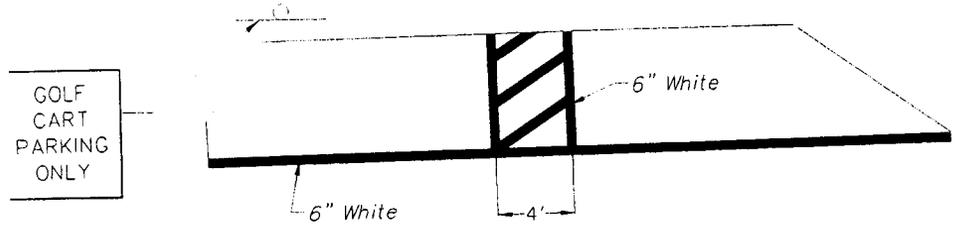
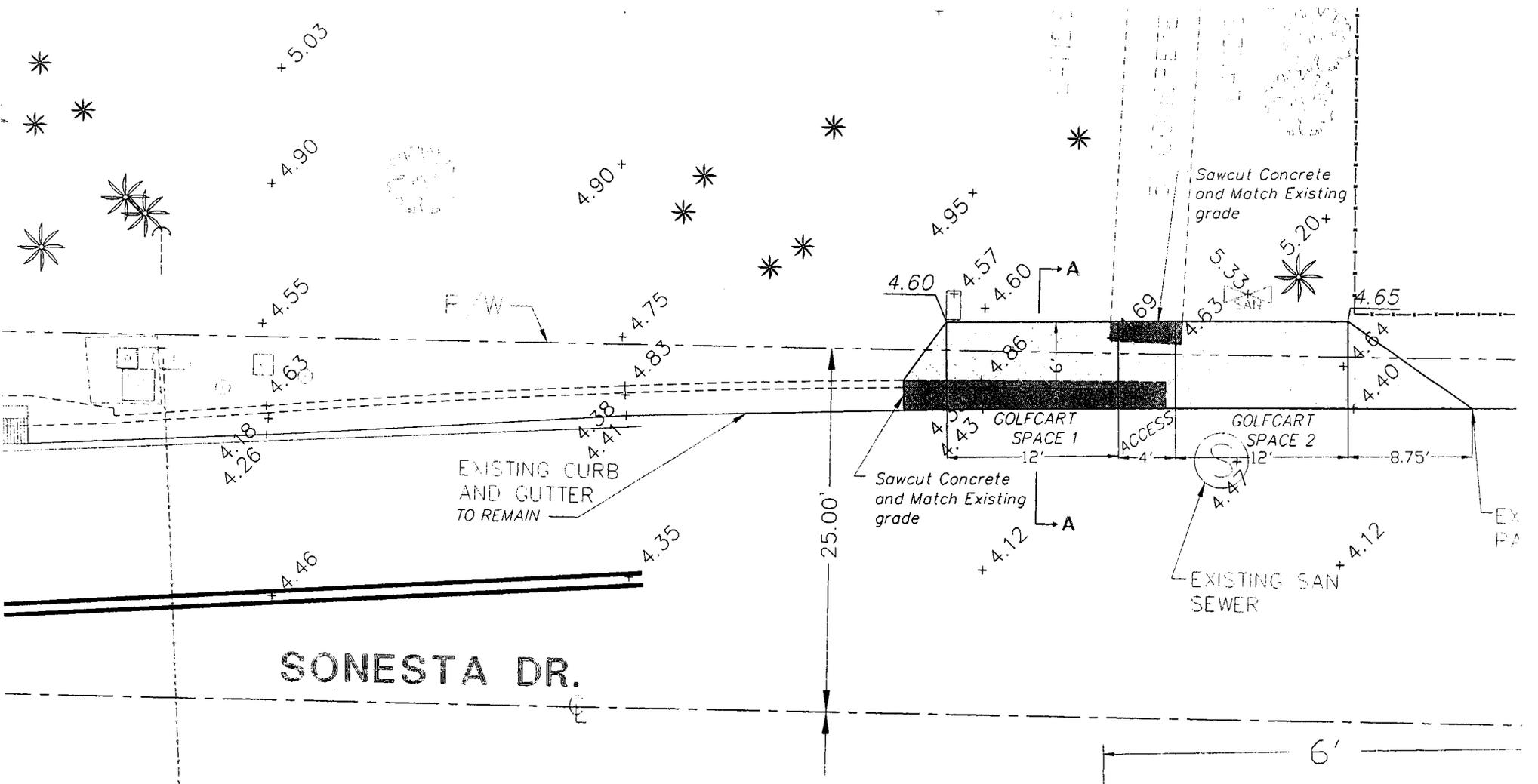
Ramon Castella, P.E., LEED AP
Principal

Corzo Castella Carballo Thompson Salman P.A.
901 Ponce de Leon Blvd., Suite 900
Coral Gables, Florida 33134
Voice 305.445.2900 ext.2235
Email rcastella@c3ts.com

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-----Original Message-----

From: Marlon Medina
Sent: Friday, April 02, 2010 12:08 PM
To: Ramon Castella
Subject: Library Golfcart



STRIPING & SIGNING PLAN
NTS

SECTION A-A
NTS