

**Lee County Board of County Commissioners
Agenda Item Summary**

**DATE CRITICAL
Blue Sheet No. 20040078**

1. REQUESTED MOTION:

ACTION REQUESTED: Approve an exchange of the County's real property interest in a 6-foot wide public walkway easement from Estero Boulevard to the beach (Gulf of Mexico) on property known as the Pink Shell Resort in Fort Myers Beach, Florida, with a replacement easement to be located just south of the current walkway; and authorize the Chairman to sign the necessary documents to complete the exchange.

WHY ACTION IS NECESSARY: An exchange of County-owned property under §125.37, F.S., requires approval by the Board of County Commissioners.

WHAT ACTION ACCOMPLISHES: The exchange will allow the relocation and improvement of a pedestrian walkway for beach access.

2. DEPARTMENTAL CATEGORY: ~~_____~~
COMMISSION DISTRICT #3

A12A

3. MEETING DATE:

02-17-2004

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:**
10 Minutes

5. REQUIREMENT/PURPOSE:

- (Specify)*
- STATUTE §125.37
 - ORDINANCE _____
 - ADMIN. CODE _____
 - OTHER _____

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER** _____
- B. DEPARTMENT** County Attorney
- C. DIVISION** Land Use
- BY:** *John J. Fredyma*
John J. Fredyma, Asst. County Atty

7. BACKGROUND:

The County has received an exchange request from Boykin Hotel Properties, L.P. ("Boykin") and Captiva Villas Development, LLC ("Captiva Villas"), the owners of property located on the south side of Estero Boulevard in the Town of Fort Myers Beach, Florida, a/k/a the Pink Shell Resort. Boykin and Captiva Villas seek to exchange the County's interest in a 6-foot wide public walkway from Estero Boulevard to the Gulf of Mexico for a replacement 6-foot wide public walkway to be located just south of the current walkway easement. The relocation of the easement will facilitate Boykin and Captiva Villas' re-development of the property. Boykin and Captiva Villas will construct the new walkway at no cost to the County. The new walkway will be for pedestrian access by the public from Estero Boulevard to the Gulf of Mexico.

(Continued on Page 2)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>DMK</i>	OA	OM	RISK	GC	<i>[Signature]</i>
					<i>1/28/04</i>	<i>1/28/04</i>	<i>1/28/04</i>	<i>1/21/04</i>	

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

DO NOT
FORWARD
TO CO. ADMIN.
1/28/04 49 AM

RECEIVED BY
COUNTY ADMIN: *[Signature]*
1/28/04
10:55 am 501
COUNTY ADMIN
FORWARDED TO: *[Signature]*
1/29/04
10 AM

Boykin and Captiva Villas will be responsible for the costs of permitting and construction of the replacement walkway. Boykin and Captiva Villas will also be responsible for the permanent maintenance of the relocated walkway, although the County will have the right to maintain the walkway if Boykin or Captiva Villas fail to do so.

The exchange of property is the entire consideration for this transaction. The property owner or developer will be responsible for all costs of required publication and (if approved) all costs of document recording necessary to effect the exchange. No funding is required.

The proposed exchange has been reviewed and approved by County staff.

Attachments: (1) Resolution Approving Exchange of Property
(2) Sketch of properties to be exchanged.

RESOLUTION NO. _____

RESOLUTION APPROVING EXCHANGE OF PROPERTY

WHEREAS, Lee County, a political subdivision of the State of Florida, is the holder of rights in an easement for a public walkway to and from Estero Boulevard and the Gulf of Mexico, as recorded in the Official Records (O.R.) of the Public Records of Lee County, Florida at O.R. Book 1782, Page 1814, and Section 24, Township 46 South, Range 23 East, Range 26 East, Lee County, Florida; and

WHEREAS, the aforesaid public walkway easement is located on property owned by Captiva Villas Development, LLC, an Ohio limited liability company, registered to do business in the State of Florida, and located on the southerly side of Estero Boulevard in the Town of Fort Myers Beach, Lee County, Florida, in Section 24, Township 46 South, Range 23 East; and

WHEREAS, Boykin Hotel Properties, L.P., and Captiva Villas Development, LLC, seek to relocate and reconstruct the aforesaid public walkway easement at a location to the south of the current location and has requested the County to exchange interests in the aforesaid easement in accordance with §125.37, F.S., to facilitate development of the site and improvement of the easement; and

WHEREAS, each of the parties will exchange their respective interests in the real property described herein; and

WHEREAS, the Board believes it is in the best interest of the public to exchange the real property interests described herein.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Lee County, Florida, that, in consideration of the mutual covenants and commitments contained herein, the parties hereby agree to the following as the operative provision to effect a property exchange addressing each of the above referenced concerns:

Lee County will release to Captiva Villas Development, LLC, all right, title and interest in the walkway easement described O.R. Book 1782, Page 1814, utilizing the Release of Easement attached as Exhibit "A".

Boykin Hotel Properties, L.P., an Ohio limited partnership, and Captiva Villas Development, LLC, an Ohio limited liability company, both registered to do business in the State of Florida, will convey to Lee County by Easement Grant, a replacement public walkway easement over their respective properties to and from Estero Boulevard and the Gulf of Mexico, subject to certain conditions and with the benefit of certain covenants described in the Easement Grant attached as Exhibit "B."

The Chairman, on behalf of the Board of County Commissioners, is hereby authorized to execute the Release of Easement necessary to convey to Captiva Villas Development, LLC, the real property interest described in attached Exhibit "A"; and to accept the conveyance of the real property interests from Boykin Hotel Properties, L.P., and Captiva Villas Development, LLC, described in attached Exhibit "B"; and to do those things necessary and appropriate to complete the exchange of real property interests under §125.37, Florida Statutes.

This exchange has been duly noticed and complies with §125.37, Florida Statutes (2003).

The foregoing resolution was offered by Commissioner _____ to move its adoption. The motion was seconded by Commissioner _____, and being put to a vote, the vote was as follows:

Robert P. Janes _____
Douglas R. St. Cerny _____
Ray Judah _____
Andrew W. Coy _____
John E. Albion _____

Duly passed and adopted this _____ day of February, 2004.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chairman

Approved as to form by:

County Attorney's Office

Attachments: Exhibit "A" - Release of Easement
(Lee County to Captiva Villas Development, LLC)
Exhibit "B" - Easement Grant
(Boykin Hotel Properties, L.P., and
Captiva Villas Development, LLC, to Lee County)

This Instrument Prepared by:

Lee County Attorney's Office
P.O. Box 398
Fort Myers, FL 33902-0398
941/335-2236

STRAP Number: 24-46-23-W1-00700.0350

This Space for Recording

RELEASE OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS that this Release of Easement is given by **LEE COUNTY**, a political subdivision of the State of Florida, to **CAPTIVA VILLAS DEVELOPMENT, LLC**, an Ohio limited liability company, authorized to do business in the State of Florida, Guildhall Building, Suite 1500, 45 West Prospect Avenue, Cleveland, Ohio 44115, its successors and assigns.

WITNESSETH:

WHEREAS, Lee County is the holder of rights in a public walkway easement for access from Estero Boulevard to the Gulf of Mexico, recorded in Official Records (O.R.) Book 1782, at Page 1814, of the Public Records of Lee County, Florida, described as follows:

A SIX (6) FOOT WIDE EASEMENT FOR A PUBLIC WALKWAY AS RECORDED IN OFFICIAL RECORDS (O.R.) BOOK 1782, PAGE 1814 OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA, THE CENTERLINE BEING THE COMMON LOT LINE BETWEEN LOTS 37 AND 38, ISLAND SHORES CLUB SECTION AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

and

WHEREAS, Captiva Villas Development, LLC., is the owner of the underlying fee on which the above-described public walkway easement is located; and

WHEREAS, Captiva Villas Development, LLC, joined by Boykin Hotel Properties, L.P., an Ohio limited partnership, also authorized to do business in the State of Florida, have requested Lee County to exchange its real property interest in the above-described public walkway easement for another public walkway easement at another location on properties owned by Captiva Villas Development, LLC, and Boykin Hotel Properties, L.P.; and

WHEREAS, Lee County has approved the requested exchange or real property interests pursuant to §125.37, F.S.; and

WHEREAS, it is the intent of Lee County to release to Captiva Villas Development, LLC, all of the County's rights in the public walkway easement recorded in O.R. Book 1782, Page 1814 of the Public Records of Lee County, Florida.

NOW, THEREFORE, the undersigned, for and in consideration of the sum of Ten Dollars (\$10.00) and other consideration, receipt of which is hereby acknowledged, hereby conveys, sets over, remises and releases to CAPTIVA VILLAS DEVELOPMENT, LLC, its successors and assigns, all of LEE COUNTY's right, title and interest in the public walkway easement described in O.R. Book 1782, Page 1814 of the Public Records of Lee County, Florida, more particularly described as follows:

A SIX (6) FOOT WIDE EASEMENT FOR A PUBLIC WALKWAY AS RECORDED IN OFFICIAL RECORDS (O.R.) BOOK 1782, PAGE 1814 OF THE PUBLIC RECORDS OF LEE COUNTY FLORIDA, THE CENTERLINE BEING THE COMMON LOT LINE BETWEEN LOTS 37 AND 38, ISLAND SHORES CLUB SECTION AS RECORDED IN PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

IN WITNESS WHEREOF, the Chairman of the Lee County Board of County Commissioners has executed this Release of Easement on the _____ day of February, 2004.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

[Type or print name]

APPROVED AS TO FORM:

County Attorney's Office

EXHIBIT "B"

This Instrument Prepared by:

Lee County Attorney's Office
P.O. Box 398
Fort Myers, FL 33902-0398
STRAP Number: 24-46-23-W1-00700.0350 &
24-46-23-W1-007900.330

This Space for Recording

EASEMENT GRANT

This Easement Grant is given by **BOYKIN HOTEL PROPERTIES, L.P.**, an Ohio Limited Partnership, registered to do business in the State of Florida, whose address is Guildhall Building, Suite 1500, 45 West Prospect Avenue, Cleveland, Ohio 44115, and **CAPTIVA VILLAS DEVELOPMENT, LLC**, an Ohio Limited Liability Company, registered to business in the State of Florida, whose address is c/o Bellboy, Inc., Guildhall Building, Suite 1500, 45 West Prospect Avenue, Cleveland, Ohio 44115 (together, the "Grantors"), to **LEE COUNTY**, a political subdivision of the State of Florida, whose address is P.O. Box 398, Fort Myers, Florida 33902-0398 ("Grantee"), as follows:

1. In consideration of the sum of one dollar and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantors grant to Grantee, its successors and assigns, a non-exclusive pedestrian walkway easement to and from Estero Boulevard and the Gulf of Mexico, over and across that portion of each Grantors' respective share or interest in the property legally described in Exhibit "A" ("Easement Area").

2. The Grantors reserve the right to improve the Easement Area and to maintain, repair and replace all improvements within the Easement Area, subject; however, to the Grantee's prior approval, which will not be unreasonably withheld. Additionally, the Grantors may not construct, install or maintain any improvement (including vegetation) in a manner that will otherwise hinder, prevent or preclude the Grantee's use of the full width of Easement Area for pedestrian travel to and from Estero Boulevard and the Gulf of Mexico. The public will at all times have the right to use the Easement Area for pedestrian access to the Gulf of Mexico (including for handicapped use), subject only to reasonable interruption during periods of construction, maintenance and repair.

3. The Grantee has the right and authority to construct and maintain pedestrian walkway facilities (including for handicapped use) within the easement area in accordance with appropriate permits issued for construction and maintenance. Grantee also has the right and authority to remove or trim any roots, trees or other vegetation or structures, that grow or encroach into the Easement Area.

4. The Grantee has the right and authority to place identification signage at each end of the Easement Area to identify the public's ability to use the Easement Area for public beach access.

5. The Grantors also covenant to and with the Grantee that the Grantors each have good and lawful title to their respective portion or share of the Easement Area with the right to

encumber any and all interests therein such that the Grantors will forever warrant and defend the title and terms of this Easement Grant against any claims. If either Grantor makes this Easement Grant subject to any mortgages, liens or other encumbrances, then a properly executed Subordination of Encumbrance for each such matter is added to this instrument.

6. This easement is binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, this Easement Grant is executed this ____ day of _____, 2004.

Signed, Sealed and Delivered In the Presence of both Witnesses:

Boykin Hotel Properties, L.P.
By: Boykin Lodging Company,
its General Partner

[1st Witness' Signature]

[Type or Print Name]

[2nd Witness' Signature]

[Type or Print Name]

BY: _____

[Signature]

[Type or Print Name]

[Corporate Office or Title]

COUNTY OF _____ :

STATE OF _____ :

The foregoing instrument was acknowledged before me this ____ day of _____, 2004, by _____, the _____ of Boykin Lodging
[Name] [Corporate Office or Title]

Company, an Ohio Corporation, as the General Partner of Boykin Hotel Properties, L.P., an Ohio Limited Partnership, both entities registered to do business in the State of Florida, on behalf of the corporation and the limited partnership. He/she is personally known to me, or has produced _____ as identification

[stamp or seal]

[Signature of Notary]

[Typed or printed name]

[Title]

[Serial number, if any]

Captiva Villas Development, LLC
By: Bellboy, Inc.
its Sole Managing Member

[1st Witness' Signature]

[Type or Print Name]

[2nd Witness' Signature]

[Type or Print Name]

BY: _____
[Signature]

[Type or Print Name]

[Corporate Office or Title]

COUNTY OF _____ :
STATE OF _____ :

The foregoing instrument was acknowledged before me this ____ day of _____, 2004, by _____, the _____ of Bellboy, Inc.,
[Name] [Corporate Office or Title]
an Ohio Corporation, as the Sole Managing Member of Captiva Villas Development, LLC, an Ohio Limited Liability Company, both entities registered to do business in the State of Florida, on behalf of the corporation and the limited liability company. He/she is personally known to me, or has produced _____ as identification

[stamp or seal]

[Signature of Notary]

[Typed or printed name]

[Title]

[Serial number, if any]

Approved and accepted for and on behalf of Lee County, Florida, this ____ day of February, 2004.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

[Type or Print Name]

BY: _____
Chairman

Approved as to form by:

County Attorney's Office

Easement Grant - Exhibit "A"
Page One of Two

**Ink
Engineering**

A Division of
LBFH, Inc.

JANUARY 6, 2004
JOB # 03-7021A
FILE # 03-7021ASK6LGL

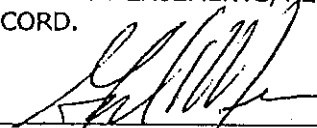
SHEET 1 OF 2

A SIX (6) FOOT WIDE WALKWAY EASEMENT LYING ON LOT 36 OF UNIT NO. 4, ISLAND SHORES, PLAT BOOK 9, PAGE 37 AND LOT 37 OF ISLAND SHORES CLUB SECTION, PLAT BOOK 9, PAGE 41 OF THE PUBLIC RECORD OF LEE COUNTY, FLORIDA, THE CENTERLINE OF WHICH IS DESCRIBED AS FOLLOWS:

DESCRIPTION:

COMMENCE AT THE INTERSECTION OF THE SOUTHEASTERLY LINE OF SAID LOT 37 AND THE SOUTHWESTERLY RIGHT OF WAY OF ESTERO BOULEVARD 25 FEET FROM THE CENTERLINE; THENCE N.42°07'25"W. ALONG THE SAID RIGHT OF WAY FOR 7.01 FEET TO THE POINT OF BEGINNING : THENCE S.47°52'35"W. FOR 11.09 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A RADIUS OF 7.00 FEET, CENTRAL ANGLE OF 27°42'24"; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE FOR 3.38 FEET TO THE POINT OF TANGENCY; THENCE S.20°10'11"W. FOR 7.95 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 13.00 FEET, CENTRAL ANGLE OF 27°42'24"; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE FOR 6.29 FEET TO THE POINT OF TANGENCY; THENCE S.47°52'35"W. ALONG A LINE 1.02 FEET PERPENDICULAR TO AND PARALLEL WITH A LINE COMMON TO SAID LOTS 36, AND 37 FOR 69.68 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A RADIUS OF 13.00 FEET, CENTRAL ANGLE OF 27°42'24"; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE FOR 5.19 FEET TO THE POINT OF INTERSECTION OF SAID LINE COMMON TO LOTS 36 AND 37; THENCE CONTINUE ALONG THE ARC OF SAID CURVE FOR 1.10 FEET TO THE POINT OF TANGENCY; THENCE S.20°10'11"W. FOR 10.45 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 13.00 FEET, CENTRAL ANGLE OF 27°42'24"; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE FOR 6.29 FEET TO THE POINT OF TANGENCY; THENCE S.47°52'35"W. ALONG A LINE 6.82 FEET PERPENDICULAR TO AND PARALLEL WITH SAID LINE COMMON TO LOTS 36 AND 37 FOR 111.62 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 40.00 FEET, CENTRAL ANGLE OF 41°00'55"; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE FOR 23.70 FEET TO THE POINT OF INTERSECTION OF SAID LINE COMMON TO LOTS 36 AND 37; THENCE CONTINUE ALONG THE ARC OF SAID CURVE FOR 4.93 FEET TO THE END OF SAID CURVE; THENCE S.47°52'35"W. ALONG A LINE 3.00 FEET PERPENDICULAR TO AND PARALLEL WITH SAID LINE COMMON TO LOT 36 AND 37, FOR 205 FEET MORE OR LESS TO THE APPROXIMATE LOCATION OF THE MEAN HIGH WATER LINE AND EROSION CONTROL LINE AS RECORDED IN PLAT BOOK 70, PAGE 25 OF SAID PUBLIC RECORDS AND POINT OF TERMINUS OF SAID EASEMENT, THE SIDE LINES OF SAID EASEMENT TO BE SHORTENED OR PROLONGED TO MEET AT SAID MEAN HIGH WATER LINE AND RECORDED EROSION CONTROL LINE.

SUBJECT TO EASEMENTS, RESTRICTION, RESERVATIONS AND RIGHTS OF WAY OF RECORD.


GORDON D. MEIERS, FOR THE FIRM
PROFESSIONAL LAND SURVEYOR
FL. CERT. # 2858

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SKETCH (NOT A SURVEY)

A PARCEL OF LAND LYING IN
SECTION 24, TOWNSHIP 46 S., RANGE 23 E.
LEE COUNTY, FLORIDA

DATE	9/24/03
SCALE	NOTED
DRAWN	CP
CHECK	
APPROVED	

Ink Engineering
CONSULTING CIVIL ENGINEERS,
SURVEYORS & MAPPERS
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A Division of LBFH, Inc.
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BPR & FBPE License No: 959
www.lbfh.com

JOB NO.:
03-7021ASK6
03-7021A

- REFER TO ATTACHED DESCRIPTION
- SURVEYOR'S NOTES
1. BEARINGS SHOWN HEREON ARE BASED ON THE CENTERLINE OF ESTERO BLVD. BEING N.42°07'25"W.
 3. MEAN HIGH TIDE LINE SHOWN HEREON IS APPROXIMATE AS OF DATE SHOWN. ELEVATION WAS PROVIDED VERBALLY BY STATE OF FLORIDA DEPARTMENT OF SURVEYING AND MAPPING.
 5. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
 6. SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS OF WAY OF RECORD.

REVISED 1/6/04

SHEET 2 OF 2

GORDON D. MEYERS, FOR THE FIRM
PROFESSIONAL LAND SURVEYOR
FLA. CERTIFICATE NO. 2858

(Signature)

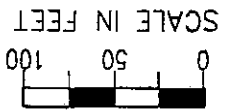
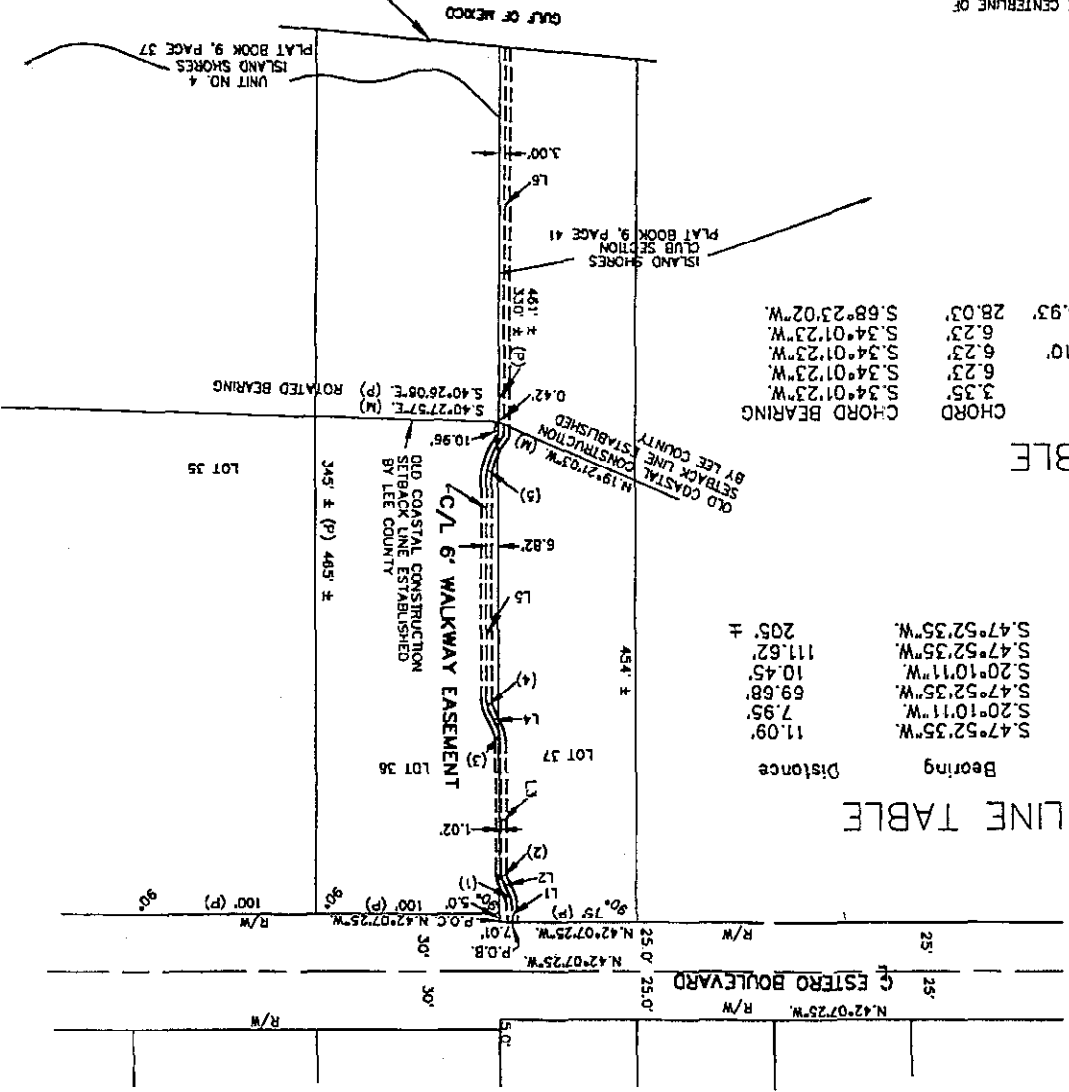
Easement Grant - Exhibit "A"
Page Two of Two

CURVE TABLE

NO.	RADIUS	DELTA	ARC	CHORD	CHORD BEARING
1	7.00'	27°42'24"	3.38'	5.34°01'23"W	3.35'
2	13.00'	27°42'24"	6.23'	5.34°01'23"W	6.23'
3	13.00'	27°42'24"	5.19', 1.10'	5.34°01'23"W	6.23'
4	13.00'	27°42'24"	6.23'	5.34°01'23"W	6.23'
5	40.00'	41°00'55"	23.70', 4.93'	5.68°23'02"W	28.03'

LINE TABLE

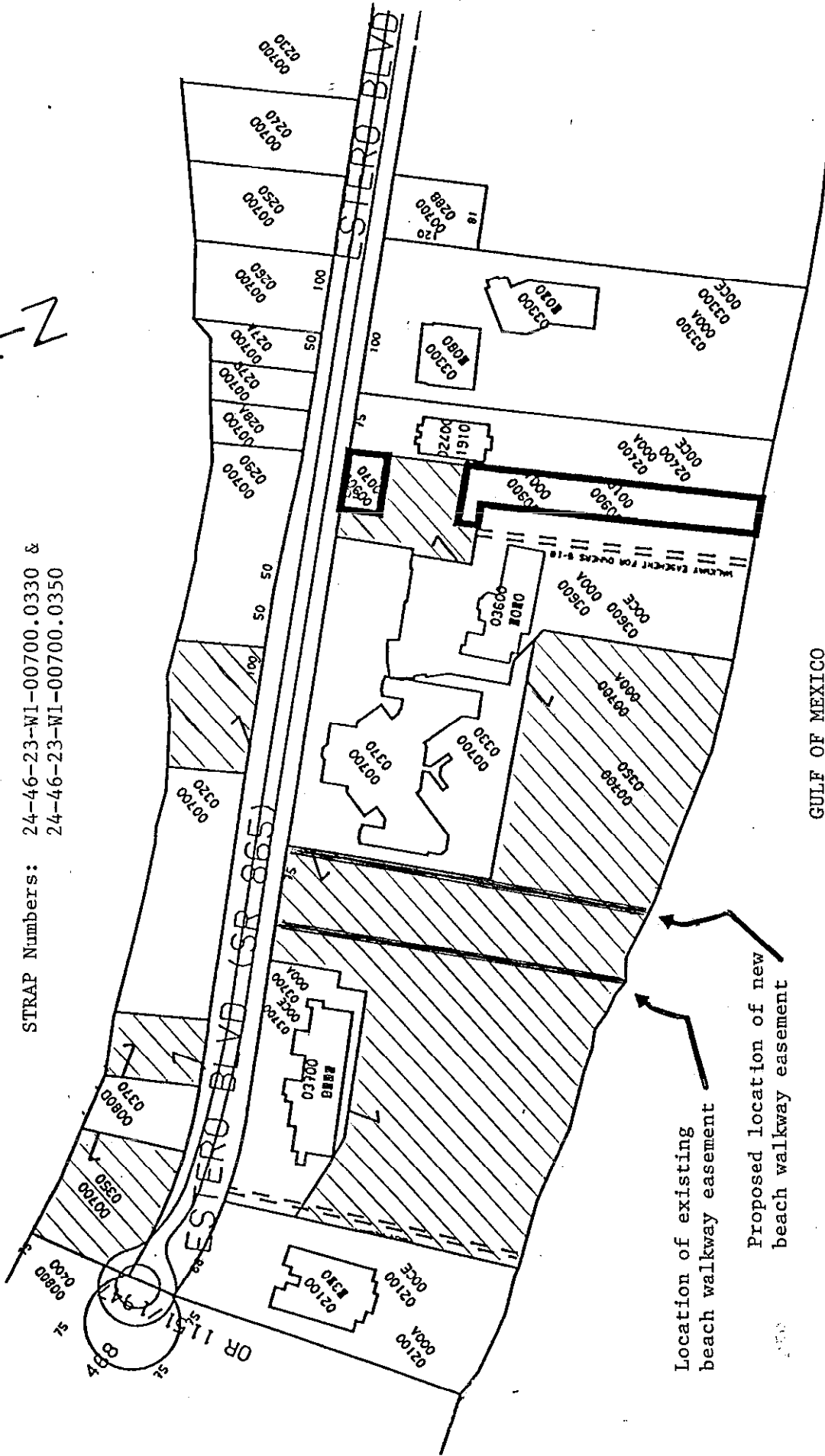
Line	Bearing	Distance
L1	S.47°52'35"W	11.09'
L2	S.20°10'11"W	7.95'
L3	S.47°52'35"W	69.68'
L4	S.20°10'11"W	10.45'
L5	S.47°52'35"W	111.62'
L6	S.47°52'35"W	205.4'



Boykin Hotel Properties, L.P.
a/k/a the Pink Shell Resort

Captiva Villas Development, LLC

STRAP Numbers: 24-46-23-WI-00700.0330 &
24-46-23-WI-00700.0350



Location of existing beach walkway easement

Proposed location of new beach walkway easement

GULF OF MEXICO