

RESOLUTION NO. 08- 605

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, PROVIDING FOR ACCEPTANCE OF AN EASEMENT FOR A BUS SHELTER FROM THE GRAHAM COMPANIES; AUTHORIZING THE TOWN MANAGER TO OBTAIN THE EASEMENT; AUTHORIZING ACCEPTANCE OF THE EASEMENT; AUTHORIZING TOWN OFFICIALS TO TAKE ALL STEPS NECESSARY TO IMPLEMENT THE TERMS OF THE EASEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE EASEMENT; DIRECTING THE TOWN CLERK TO RECORD THE EASEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, The Graham Companies, a Florida corporation (the "Owner"), owner of certain real property located in Miami-Dade County, Florida, has executed an easement to the Town of Miami Lakes (the "Town"), for the installation, operation and maintenance of certain improvements consisting primarily of a bus shelter; and

WHEREAS, the Town finds that it is appropriate and in the best interest of the public to accept the easement from the Owner for bus shelter improvements, attached hereto as Exhibit "A" (the "Easement").

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The foregoing Recitals are true and correct and are incorporated herein by this reference.

**Section 2. Approval of the Easement.** The Easement, a copy of which is attached as Exhibit "A", is hereby approved by the Town.

**Section 3. Acceptance of the Easement.** The Town Manager is hereby authorized to take all action necessary to complete the acceptance of the Easement from the Owner.

**Section 4. Authorization of Town Officials.** The Town Manager and Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the Easement.

**Section 5. Authorization of Fund Expenditure.** Notwithstanding the limitations imposed upon the Town Manager pursuant to the Town's Purchasing Procedures Ordinance, the Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Easement.

**Section 6. Execution of the Easement.** The Town Manager is authorized to execute the Easement on behalf of the Town, and to execute any required agreements and/or documents to implement the terms and conditions of the Easement and to execute any extensions and/or amendments to the Easement, subject to the approval as to form and legality by the Town Attorney.

**Section 7. Recordation of the Easement.** The Town Clerk is directed to record the Easement in the Public Records of Miami-Dade County.

**Section 8. Effective Date.** This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 15 day of JANUARY, 2008.

Motion to adopt by Mary Collins, second by Michael Pizzi.

FINAL VOTE AT ADOPTION

Mayor Wayne Slaton	<u>yes</u>
Vice Mayor Nancy Simon	<u>yes</u>
Councilmember Roberto Alonso	<u>yes</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember Robert Meador	<u>yes</u>
Councilmember Michael Pizzi	<u>yes</u>
Councilmember Richard Pulido	<u>yes</u>

Wayne Slaton  
Wayne Slaton  
MAYOR

ATTEST:

Debra Carter  
TOWN CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

[Signature]  
TOWN ATTORNEY  
Weiss, Serota, Helfman, Pastoriza,  
Cole & Boniske, P.L.

**THIS INSTRUMENT PREPARED BY  
AND SHOULD BE RETURNED TO:**

John J. Kendrick III, Esq.  
Weiss Serota Helfman  
Pastoriza Cole & Boniske P.A.  
2525 Ponce De Leon Blvd.  
Suite 700  
Miami, FL 33134  
(305) 854-0800

For Recording Purposes Only

**EASEMENT AGREEMENT**

**THIS EASEMENT AGREEMENT** (the "Agreement") is made this 21<sup>st</sup> day of MAY, 2007, by and between **THE GRAHAM COMPANIES**, a Florida corporation, having an address at 6843 Main Street, Miami Lakes, FL 33014 (hereinafter referred to as the "GRANTOR"), and the **TOWN OF MIAMI LAKES**, a Florida municipal corporation, having an address at 15700 NW 67<sup>th</sup> Avenue, Miami Lakes, FL 33014 (hereinafter referred to as the "GRANTEE").

**RECITALS:**

1. GRANTOR, successor by merger to The Graham Company, owns fee simple title to certain real property containing approximately 5.27 acres and located in Miami-Dade County, Florida, more particularly described as Tract B, Block 1 Miami Lakes Town Center Section One according to the plat thereof as recorded in Plat Book 94, page 12, in the public records of Miami-Dade County, Florida (the "Property").
2. GRANTEE desires to install, operate and maintain certain bus shelter improvements and facilities including all conveyances, equipment and appurtenances related thereto (the "Bus Shelter Improvements") as shown on the attached and incorporated **Exhibit "A"** within the Bus Shelter Area (as hereinafter defined).
3. GRANTOR desires to grant certain non-exclusive easement rights to GRANTEE in that certain portion of the Property ("Bus Shelter Area") containing approximately 152 square feet, as more particularly described (and marked as the "Easement") in **Exhibit "B"** attached hereto and by this reference made a part hereof, in conjunction with the Bus Shelter Improvements, subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, for and in consideration of the premises and the sum of TEN AND

NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby 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. **Grant of Easement; License.** GRANTOR does hereby grant and convey to the GRANTEE a non-exclusive, perpetual easement in, over, under, upon and through the Bus Shelter Area to install, construct, reconstruct, operate, relocate, replace, improve, remove, inspect, repair and maintain the Bus Shelter Improvements. Notwithstanding anything herein to the contrary, GRANTEE acknowledges and agrees that GRANTEE, at its sole cost and expense) shall connect the Bus Shelter Improvements as appropriate (including without limitation the Americans with Disabilities Act of 1990 (42 U.S.C. §12101, et seq.) and regulations and guidelines promulgated thereunder, all as amended and supplemented from time to time) to the applicable paths of travel established on the Property by GRANTOR from time to time. Subject to the restoration provisions set forth in Section 3 hereof, GRANTOR also grants GRANTEE a non-exclusive license to temporarily locate its equipment ("Equipment") on the Property immediately adjoining the Bus Shelter Area as may be necessary to perform the foregoing; notwithstanding; provided, however, GRANTOR shall inform GRANTEE in writing prior to its location of the Equipment on the Property and shall only locate such Equipment in the areas on GRANTOR's Property as designated by GRANTOR in writing; furthermore GRANTEE acknowledges and agrees that certain business use is being made of the Property and GRANTEE's use and location of equipment upon the Property shall be conducted at all times so as to mitigate any impact on such business use.

Should the Bus Shelter Area ever be removed or cease to be used as described herein for a period exceeding One Hundred Eighty (180) consecutive days, except as reasonably required to repair or replace the Bus Shelter Improvements, GRANTEE shall vacate the Bus Shelter Area, remove the Bus Shelter Improvements and restore the Bus Shelter Area to its original condition and grade; furthermore, if requested by GRANTOR at GRANTOR's option, release the grant of easement created herein and convey said rights back to GRANTOR with ninety (90) days written notice given to GRANTEE.

3. **Improvements and Restoration.** GRANTOR and its successors and assigns agree not to build, construct or create, or permit others to build, construct or create any buildings or vertical structures on the Bus Shelter Area that may interfere with the maintenance, repair and/or replacement of the Bus Shelter Improvements and/or any rights of excavation and ingress and egress set forth herein. Notwithstanding the foregoing, GRANTOR reserves the right and privilege to use the Bus Shelter Area in common with the GRANTEE for all purposes except as herein granted or as might interfere with GRANTEE's use, occupation or enjoyment thereof; including without limitation installation of certain improvements, such as paving, curbing, landscaping, light posts, irrigation, sidewalks and other similar improvements (the "Acceptable Improvements") that may be installed on the Bus Shelter Area (and shall not be deemed to violate the foregoing sentence). The Acceptable Improvements shall be restored to their pre-existing condition by the GRANTEE if damaged in connection with any rights exercised or work performed by or for the GRANTEE pursuant to this Agreement unless such restoration is required due to the

negligent acts or omissions of GRANTOR. Furthermore, GRANTEE shall restore to its pre-existing condition (including replacement using new or completely reconditioned material) any of GRANTOR's Property (or any improvements thereon) damaged by GRANTEE, except to the extent such damage was caused by the negligent acts or omissions of GRANTOR. GRANTEE shall use reasonable efforts to minimize any impacts to GRANTOR's ongoing activities on the Property in exercising its rights hereunder. Notwithstanding anything herein to the contrary, should GRANTEE desire to or otherwise be required to materially modify the Bus Shelter Improvements from that as shown on Exhibit "A", GRANTEE shall provide GRANTOR with written notice of said material modifications and GRANTOR shall have thirty (30) days from its receipt thereof to approve said material modifications, in GRANTOR's reasonable discretion; provided, however, should GRANTOR not respond within said 30-day period GRANTOR will be deemed to have consented to said material modification.

4. **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, GRANTEE hereby agrees that it will indemnify and hold harmless GRANTOR from any claim brought or made for or on account of any injuries or damages received or sustained by any person or persons or property, arising out of, or occasioned by, the negligence of GRANTEE in connection with the Bus Shelter Improvements, the Equipment, the Bus Shelter Area or any combination thereof. GRANTEE further acknowledges that under the "Underground Facility Damage Prevention and Safety Act" (F.S. §556), that GRANTEE is obligated to notify "Sunshine State One-Call of Florida, Inc." of its intent to engage in excavation or demolition prior to commencing any work and that this notification system shall provide member operations an opportunity to identify and locate if applicable, their underground Facilities prior to said excavation or demolition. In the event GRANTEE fails to notify as set forth above, GRANTEE may be held responsible for costs and expenses incurred due to resulting damage of GRANTOR's Property.

5 **Warranties and Representations.** GRANTOR does hereby warrant and represent to GRANTEE, that (a) it is lawfully seized and possessed of the Property; (b) it has good and lawful right to enter into this Agreement and convey said easement; (c) all applicable corporate, partnership, trust or other required authorizations, approvals or consents have been obtained and no other authorizations, approvals or consents are required to effectuate GRANTOR's execution and delivery of this Agreement. GRANTOR acknowledges and agrees that GRANTEE is materially relying upon the warranties and representation made by GRANTOR in this Agreement.

6 **Covenants Running with the Land.** This Agreement, and the rights and interests created herein, shall run with the land and shall be binding upon and inuring to the benefit of the parties hereto and their respective successors and assigns.

7 **Miscellaneous.**

(a) **Construction:** This Agreement shall be construed under the laws of the State of Florida. GRANTEE shall, at GRANTEE's cost and expense, record this Easement and any amendments hereto in the Public Records of Miami-Dade County, Florida.

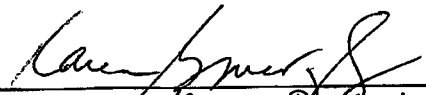
(b) Amendment: This Agreement may only be modified, supplemented or revised in writing signed by the parties, or their successors or assigns, and any modification shall be effective only upon recordation in the Public Records of Miami-Dade County, Florida.

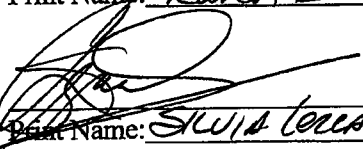
(c) Entire Agreement: This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

[THE REST OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by its duly authorized officer or representative as of the day and year first above written.


WITNESSES:

  
Print Name: Karen B. Hastingly

  
Print Name: Silvia Lucciano

GRANTOR:

THE GRAHAM COMPANIES, a Florida corporation

By:   
Print Name: STU WILLIE  
Its: PRESIDENT

Executed on 5/1/07, 2007

WITNESSES:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

GRANTEE:

TOWN OF MIAMI LAKES,  
a Florida municipal corporation

By: \_\_\_\_\_  
Alex Rey, Town Manager

Executed on \_\_\_\_\_, 2007

ATTEST:

By: \_\_\_\_\_  
Town Clerk

Approved as to form and legal sufficiency  
for the use and reliance of Town of Miami Lakes only:

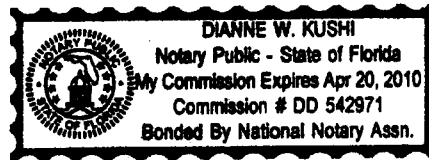
By: \_\_\_\_\_  
Town Attorney



STATE OF FLORIDA )  
 ) .SS  
COUNTY OF MIAMI-DADE )

**THIS IS TO CERTIFY**, that on this 21 day of May, 2007, before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared Stu Wyllie as President of The Graham Companies, a Florida corporation, on behalf of the corporation, who (check one) [] is personally known to me or [  ] produced \_\_\_\_\_ as identification.

Dianne W. Kushi  
NOTARY PUBLIC  
Print Name: DIANNE W. KUSHI  
My Commission Expires: 4/20/10



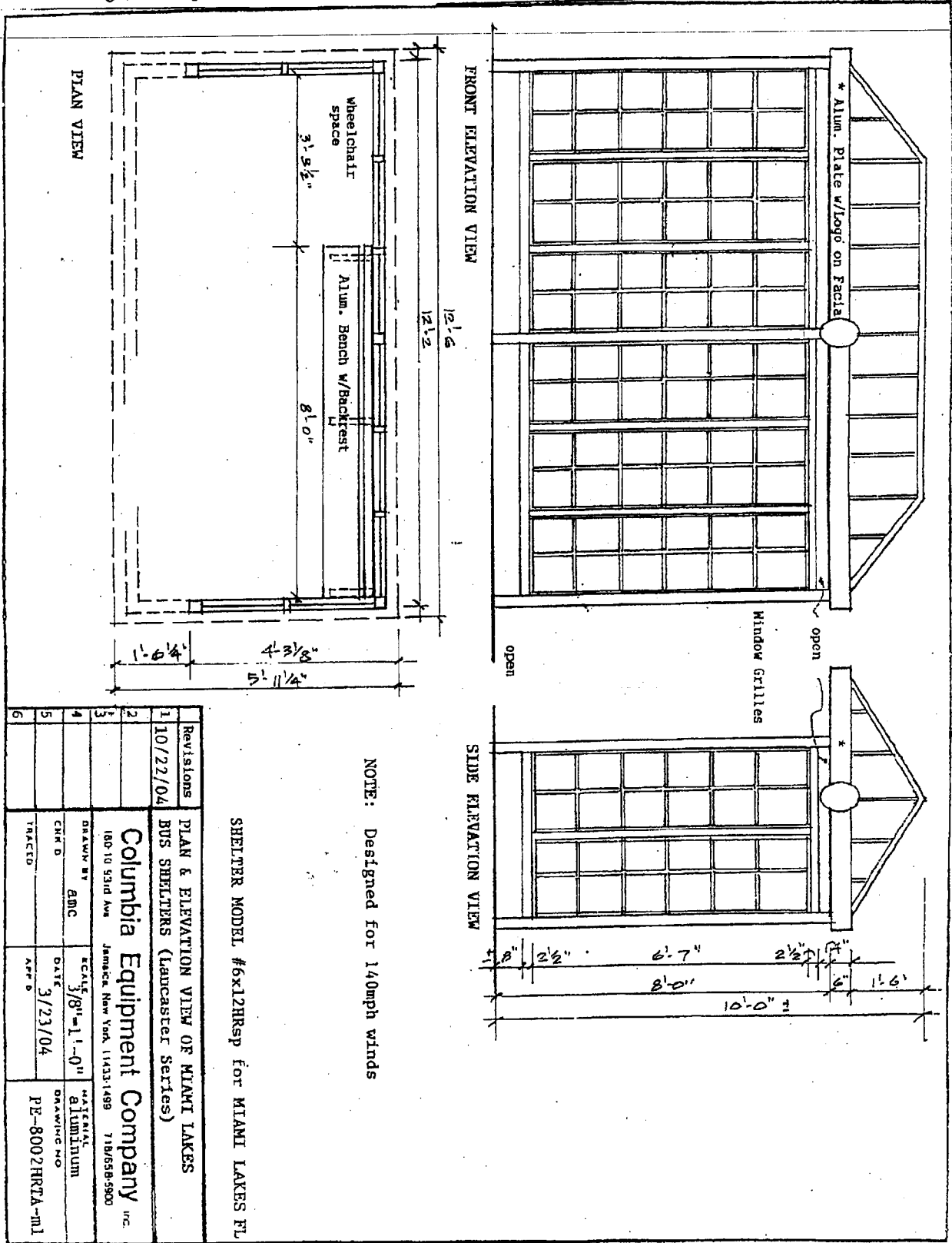
STATE OF FLORIDA )  
 ) .SS  
COUNTY OF MIAMI-DADE )

**THIS IS TO CERTIFY**, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared Alex Rey as Town Manager of the Town of Miami Lakes, a Florida municipal corporation, on behalf of the corporation, who (check one) [  ] is personally known to me or [  ] produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
**[BUS SHELTER IMPROVEMENTS]**

The bus shelter installation consists of a "Lancaster" bus shelter mounted on a concrete slab with metal roof and tinted tempered safety glass, green powder coated paint, aluminum benches, Town of Miami Lakes logo, and hinged bus route map panels; all more particularly described as follows:



1	10/22/04	Revisions	PLAN & ELEVATION VIEW OF MIAMI LAKES BUS SHELTERS (Lancaster Series)
2			
3			
4			
5			
6			

SHELTER MODEL #6x12HRSP for MIAMI LAKES FL

NOTE: Designed for 140mph winds

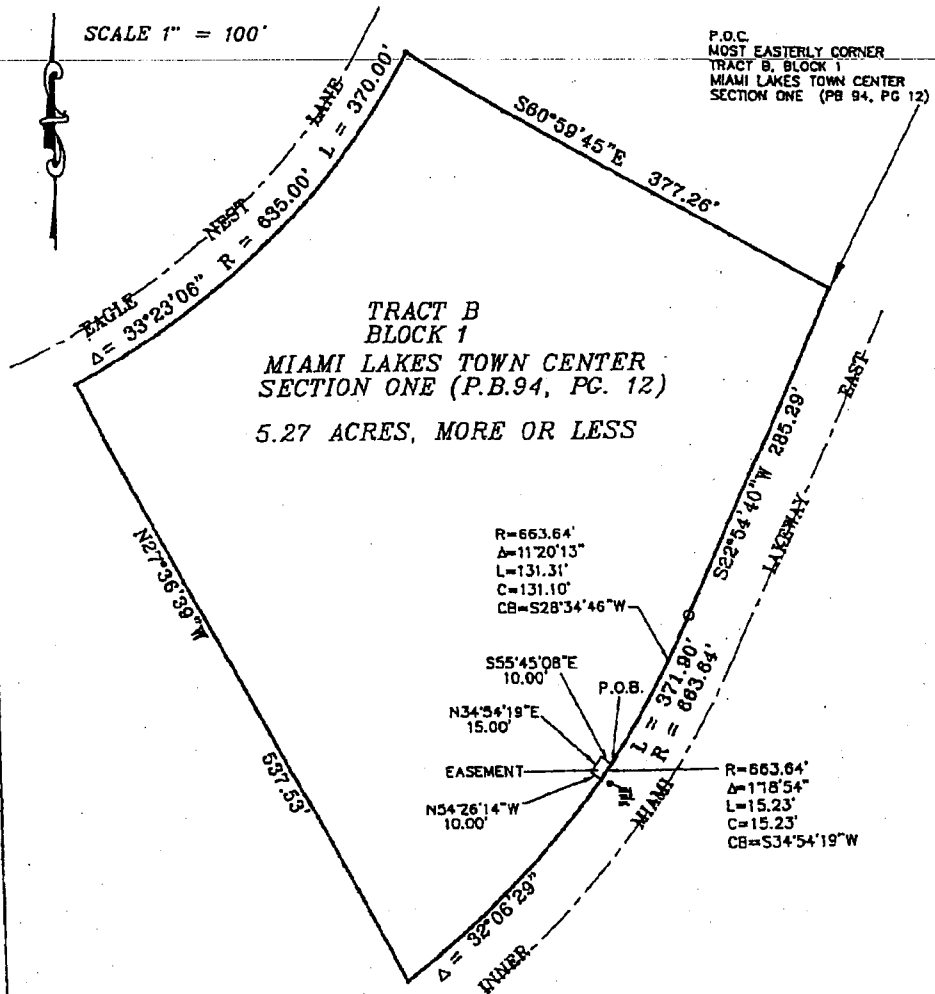
<b>Columbia Equipment Company</b> INC. 180-10 53rd Ave Jamaica, New York 11433-1489 718/658-8900		DRAWN BY AMC CND TRACTO	SCALE 3/8" = 1'-0" DATE 3/23/04 APP'D	MATERIAL ALUMINIUM DRAWING NO PE-8002HRTA-M1
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(End of Exhibit "A")

**EXHIBIT "B"**  
**[BUS SHELTER AREA]**

**DESCRIPTION SKETCH**

SCALE 1" = 100'



**TRACT B  
 BLOCK 1  
 MIAMI LAKES TOWN CENTER  
 SECTION ONE (P.B.94, PG. 12)  
 5.27 ACRES, MORE OR LESS**

**DESCRIPTION:**

COMMENCE AT THE MOST EASTERLY CORNER OF TRACT B, BLOCK 1, MIAMI LAKES TOWN CENTER SECTION ONE ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 94, PAGE 12, OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA; THENCE RUN S22°54'40\"W ALONG THE EASTERLY BOUNDARY OF SAID TRACT B FOR 285.29 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT, HAVING AS ITS ELEMENTS A RADIUS OF 663.64 FEET, A CENTRAL ANGLE OF 11°20'13\", A CHORD OF 131.10 FEET, AND WHOSE CHORD BEARS S28°34'46\"W; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE FOR 131.31 FEET TO THE POINT OF BEGINNING SAID POINT ALSO BEING THE BEGINNING OF A TANGENT CURVE TO THE RIGHT, HAVING AS ITS ELEMENTS A RADIUS OF 663.64 FEET, A CENTRAL ANGLE OF 1°18'54\", A CHORD OF 15.23 FEET, AND WHOSE CHORD BEARS S34°54'19\"W; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE FOR 15.23 FEET; THENCE N54°26'14\"W FOR 10.00 FEET; THENCE N34°54'19\"E FOR 15.00 FEET; THENCE S55°45'08\"E FOR 10.00 FEET TO THE POINT OF BEGINNING EASEMENT CONTAINING 152 SQUARE FEET MORE OR LESS.

**CERTIFICATION:**

I hereby certify that this drawing correctly depicts the description shown hereon as prepared under my direction and this drawing was made in accordance with minimum technical standards adopted by the State of Florida Department of Business and Professional Regulation, Board of Professional Surveyors and Mappers, Chapter 61C17-6 of the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

**PREPARED FOR:**  
 EQUITY VENTURE REALTY

**DATE OF SKETCH:**  
 7/25/2006

7-25-2006  
 Robert P. Schuler  
 Professional Surveyor and Mapper  
 Florida Certificate #2930  
 CHASTAIN-SKILLMAN, INC.  
 Certificate Number LB 262  
 363 U.S. Highway 27 South  
 Sebring, Florida 3870  
 (863) 382-4160

THIS IS NOT A SURVEY.  
 NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED  
 SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

DRAWN BY: RPS	FIELD BOOK PAGE	PREPARED BY: CHASTAIN SKILLMAN, INC.	ASS 7769.11
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**JOINDER AND CONSENT**

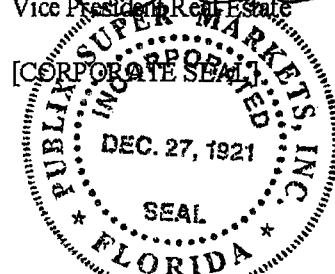
As of this 23 day of AUGUST, 2007, PUBLIX SUPER MARKETS, INC., a Florida corporation, does join in and consent to the foregoing EASEMENT AGREEMENT by and between The Graham Companies and the Town of Miami Lakes regarding certain bus shelter improvements as more particularly described therein.

Witnesses:

Vicki Brekke  
Name: VICKI BREKKE  
Erin Kiddey  
Name: Erin Kiddey

PUBLIX SUPER MARKET, INC.  
a Florida corporation

John Frazier  
John Frazier  
Vice President Real Estate  
[CORPORATE SEAL]



STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was signed, sealed, delivered, and acknowledged before me this 23<sup>RD</sup> day of AUGUST, 2007, by JOHN FRAZIER, as Vice President Real Estate of PUBLIX SUPER MARKETS, INC., a Florida corporation, on behalf of the corporation. He is personally known to me.

.....  
BETTYE H. WINOKER  
Comm# DD0633338  
Expires 2/7/2011  
Florida Notary Assn., Inc  
.....

Bettye H. Winoker  
Notary Public, State of Florida  
Name: BETTYE H. WINOKER  
My Commission Expires: \_\_\_\_\_  
My Commission Number is: \_\_\_\_\_

**JOINDER AND CONSENT OF LENDER**

THIS JOINDER AND CONSENT OF LENDER ("Consent") is made this \_\_\_\_ day of December, 2007 by THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, ("Lender"). Lender is the owner and holder of a mortgage from The Graham Companies ("Owner") encumbering a portion of the property legally described as follows: Tract B, in Block 1, of MIAMI LAKES TOWN CENTER SECTION ONE, according to the Plat thereof, as recorded in Plat Book 94, Page 12, of the Public Records of Miami-Dade County, Florida (the "Property"). In this regard, Lender hereby joins and consents to the terms and provisions of that certain easement ("Easement"), to which this Consent is attached, and subordinates its mortgage to the terms and provisions of the Easement. No liability is undertaken by the undersigned by the execution and delivery of this Consent.

Signed, sealed and delivered in the presence of the following two witnesses:

Lisa A. Taken  
(Signed name of witness one)

Lisa A. Taken  
(Printed name of witness one)

Scott Brkovich  
(Signed name of witness two)

SCOTT BRKOVICH  
(Printed name of witness two)

**LENDER:**

**THE PRUDENTIAL INSURANCE COMPANY OF AMERICA**, a New Jersey corporation

By: Hal Collett

Name: Hal Collett  
Title: Vice President

*PN*

[CORPORATE SEAL]

STATE OF TEXAS

COUNTY OF Dallas

The foregoing instrument was acknowledged before me this 1 day of December 2007 by Hal Collett, a Vice President of The Prudential Insurance Company of America, on behalf of the company. He/she is personally known to me or has produced PN (type of identification) as identification.

Vicki A Boyd  
Notary Public

VICKI A BOYD  
Printed Name

8/30/2010

My Commission expires

AFFIX NOTARY SEAL

