



COUNTY ATTORNEY'S OFFICE  
MEMORANDUM

TO: Board of County Commissioners

THROUGH: Stephen P. Lee, Deputy County Attorney *[Signature]*

FROM: Lynn Vouis, Assistant County Attorney

CONCUR: Pam Hastings, Administrative Manager/Public Works Department *[Signature]*  
 Kathleen Myer, Principal Engineer/Major Projects *[Signature]*

DATE: August 24, 2004

SUBJECT: Purchase Agreement Authorization  
 Owners: Lewis M. and Carolyn R. Durak  
 Parcel ID Nos.: 16-19-30-5AC-0000-00B1;  
 16-19-30-5AC-0000-00B5; and  
 16-19-30-5AC-0000-00C0  
 Elder Creek/C-15 (Ponds) improvement project

This memorandum requests authorization by the Board of County Commissioners (BCC) and execution by the Chairman of a purchase agreement for Parcel ID Nos. 16-19-30-5AC-0000-00B1, 16-19-30-5AC-0000-00B5 and 16-19-30-5AC-0000-00C0. These parcels are required for the Elder Creek/C-15 (Ponds) improvement project. The purchase price is \$1,319,800.00, inclusive of all attorney's fees and expert costs incurred by the property owners.

**I THE PROPERTY**

**A. Location Data**

The property is located on the east side of Elder Road approximately 625 feet north of its intersection with Narcissus Avenue on the west side of Sanford, Seminole County, Florida.

1. Location Map (Exhibit A);
2. Sketch (Exhibit B); and
3. Purchase Agreement (Exhibit C)

**B. Address**

420 N. Elder Road  
Sanford, Florida 32771

**C. Description**

The parcels contain 15.820 acres, and are vacant.

**II AUTHORITY TO ACQUIRE**

The BCC adopted Resolution No. 2003-R-121 on July 22, 2003, authorizing the acquisition of the referenced properties, and finding that the construction of the Elder Creek/C-15 (Ponds) improvement project is necessary and serves a county and public purpose and is in the best interests of the citizens of Seminole County.

**III ACQUISITION/REMAINDER**

This is a whole take, so there is no remainder.

**IV APPRAISED VALUE**

The County obtained an appraisal and an update/reappraisal for the subject property. Both appraisals were prepared by Clayton, Roper & Marshall, PA., and approved by the County's MAI designated staff appraiser. The original appraisal was dated December 6, 2001 and valued the property at \$800,000.00. A second/updated appraisal was prepared on March 9, 2004, in preparation for filing suit. The updated value as of March 9, 2004, was \$950,000.00, an increase of \$150,000.00 in twenty-seven (27) months (an annual rate of approximately eight per cent (8%)). The property owners, through their attorney, James Spoonhour of Lowndes, Drosdick, Doster, Kantor & Reed, P.A., also had an appraisal of their property prepared. The owners' appraiser is Steve Matonis, MAI, of Integra Realty Resources. As of July 19, 2004, Mr. Matonis' value for the property was \$1,278,000.00.

**V BINDING OFFER/NEGOTIATIONS**

On August 8, 2002, County staff made an offer, contingent on BCC approval, in the amount of \$880,000.00. This offer was based on the first appraised value amount. Thereafter, protracted negotiations with the property owners failed to produce an agreement. In preparation for litigation to acquire the property, the County's appraiser updated the appraisal. On April 29, 2004, the County tendered a BCC approved, binding written offer in the amount of \$1,000,000.00, based on the \$950,000.00 updated appraisal. The property owners responded with a demand of \$1,438,458.00, based on their appraisal amount of \$1,278,000.00 and \$160,457.80 in fees and costs. Through

negotiations, the parties were able to agree on a proposed settlement amount of \$1,319,800.00, inclusive of all attorney's fees and expert costs incurred.

## **VI SETTLEMENT ANALYSIS/COST AVOIDANCE**

The proposed settlement is cost effective because it cuts off fees and costs and avoids the risk of paying more through an unfavorable jury verdict.

Comparison of the best and worst cases shows this settlement is reasonable under the circumstances.

- A. Best Case. The jury accepts the County's appraisal and awards the value as of the date of taking, most likely in December, 2004. Based upon the rate of increase in value in the neighborhood, the County's figure would probably be \$1,007,000.00, approximately six per cent (6%) more than the March, 2004 value. Added to that would be the owners attorneys fees and costs, estimated at \$85,000.00, a total of \$1,092,000.00.
- B. Worst Case. The jury accepts the Owners' appraisal which could increase to as much as \$1,500,000.00. Added to that would be interest of \$24,000.00,<sup>1</sup> costs of \$80,000.00 and attorneys fees of \$206,666.00,<sup>2</sup> a total of \$1,810,666.00.

Added to either scenario are the costs of the County's trial preparation, mediation expenses, court reporters, deposition fees, exhibits, etc. These costs could easily exceed \$30,000.00, not including the time spent by County staff. Thus, the range is from \$1,122,000.00 to \$1,840,666.00. The settlement of \$1,319,800.00 is approximately \$140,000.00 less than the mid point of these two numbers.

In cases such as this one which involve large tracts of land and large dollar amounts, the amount of fees and costs the County must pay can quickly add up, making early settlement desirable in order to cut off fees and costs as soon as possible. This property is located in an area of rapidly escalating values, which also makes early settlement more cost effective.

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<sup>1</sup> Assuming a year between the trial on value and the order of taking at the statutory rate of seven per cent (7%).

<sup>2</sup> One-third of difference between the offer of \$880,000.00 and the verdict. Staff does not agree that this is the proper calculation, however, this is the worst case scenario.

## VII RECOMMENDATION

County staff recommends that the BCC authorize settlement in the amount of \$1,319,800.00, inclusive of all attorney's fees and expert costs incurred.

LV/krc

### Attachments:

- Location Map (Exhibit A)
- Sketch (Exhibit B)
- Purchase Agreement (Exhibit C)

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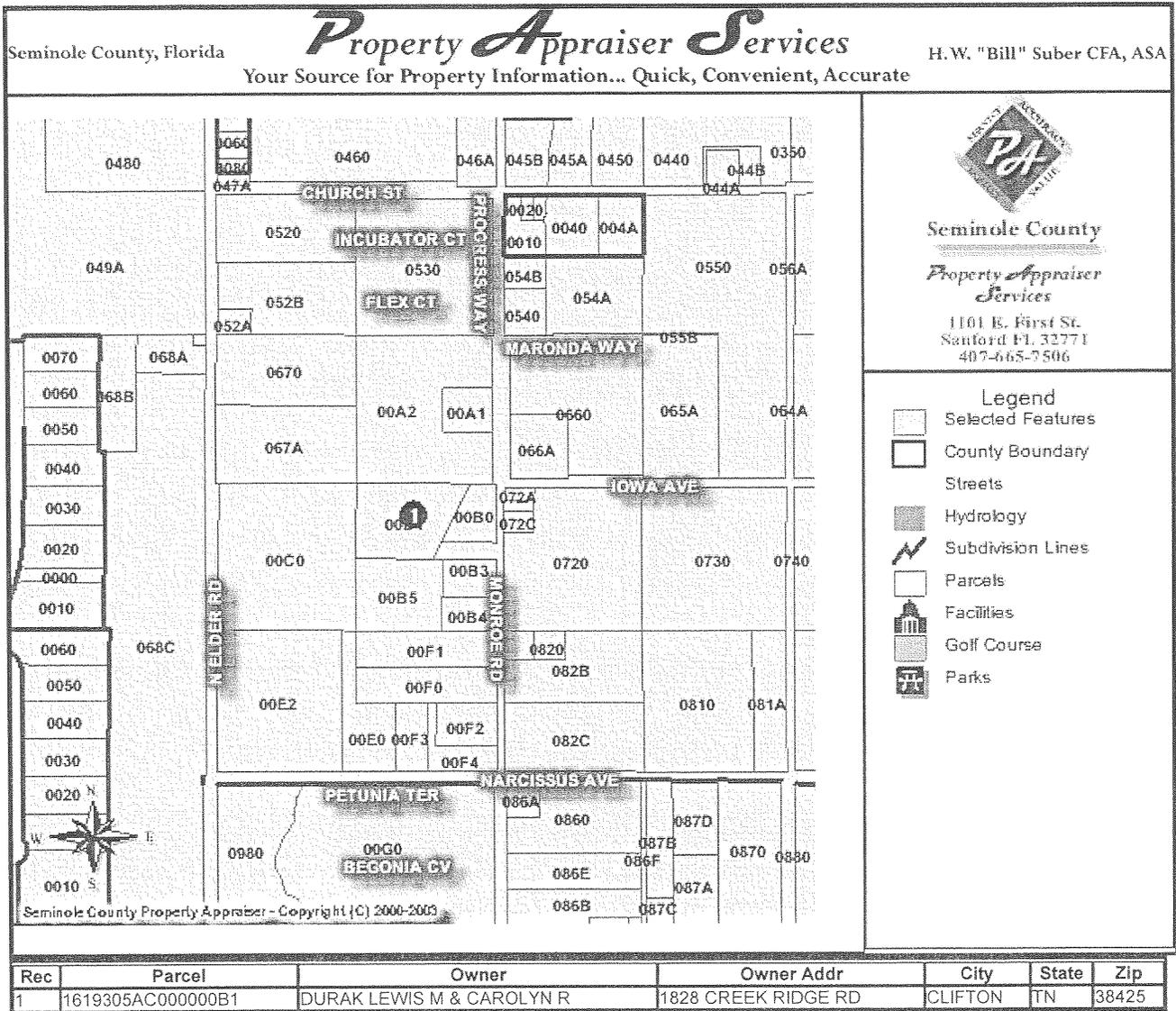


EXHIBIT A

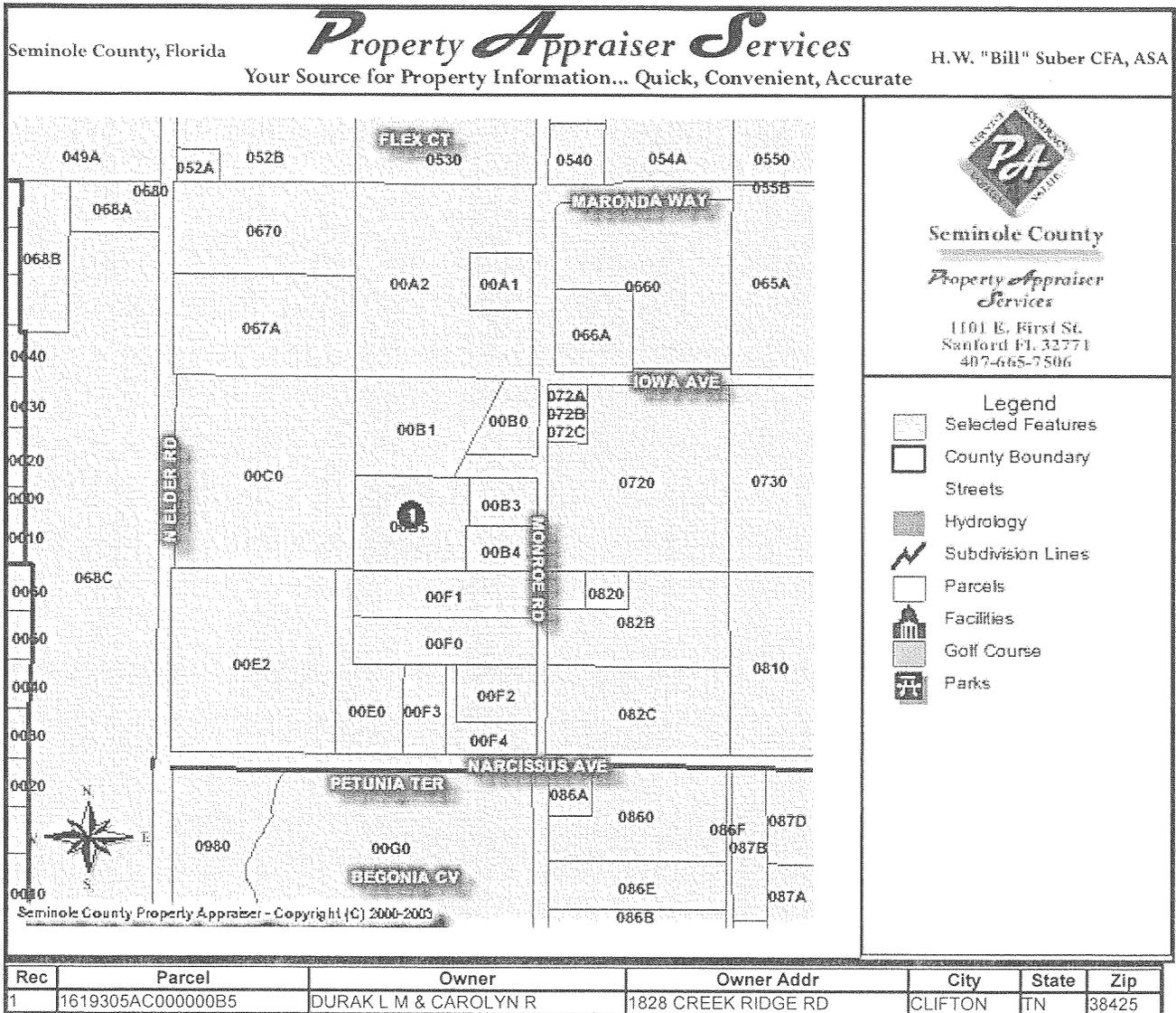
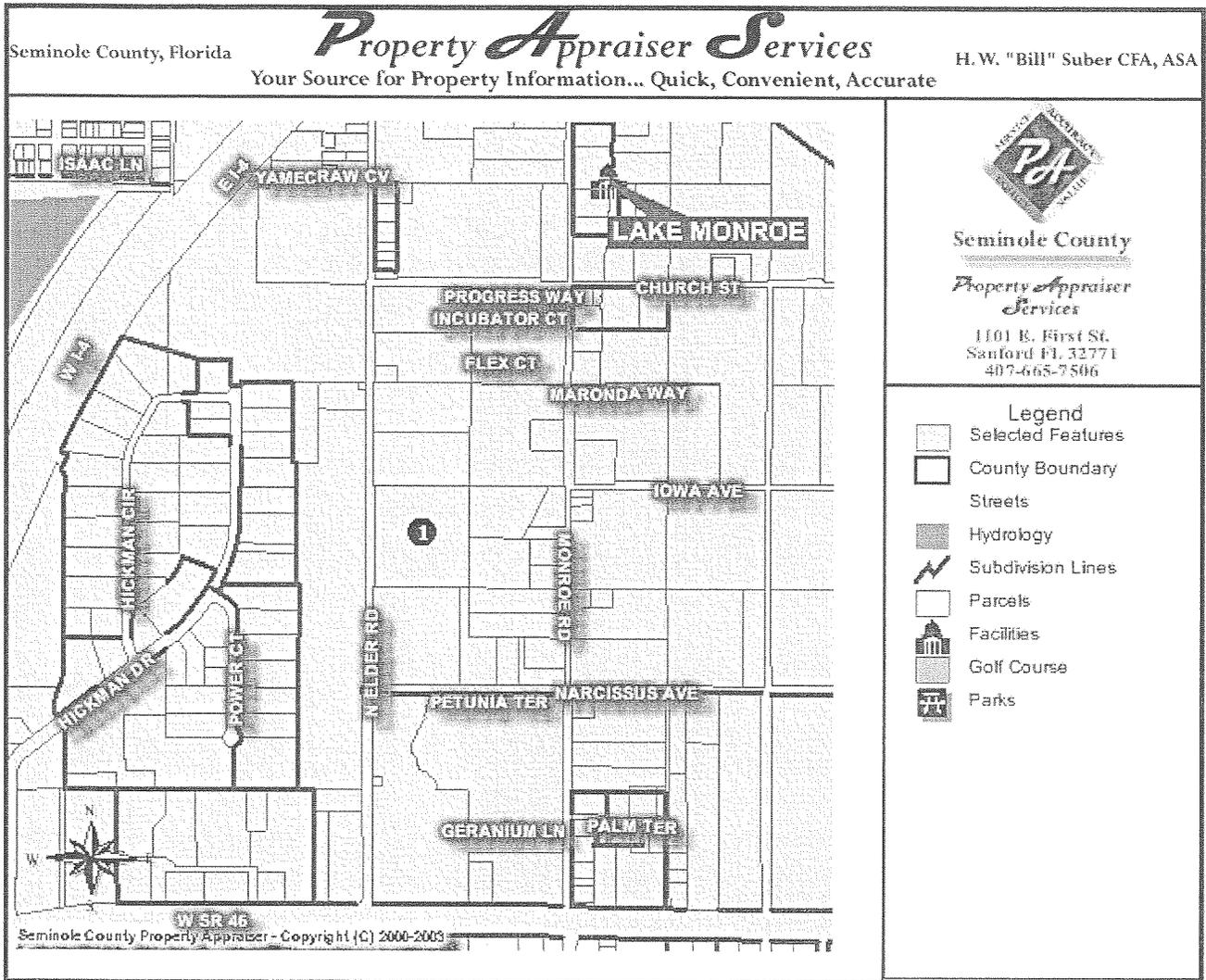


EXHIBIT A



Rec	Parcel	Owner	Owner Addr	City	State	Zip
1	1619305AC000000C0	DURAK LEWIS M & CAROLYN R	1828 CREEK RIDGE RD	CLIFTON	TN	38425

EXHIBIT A

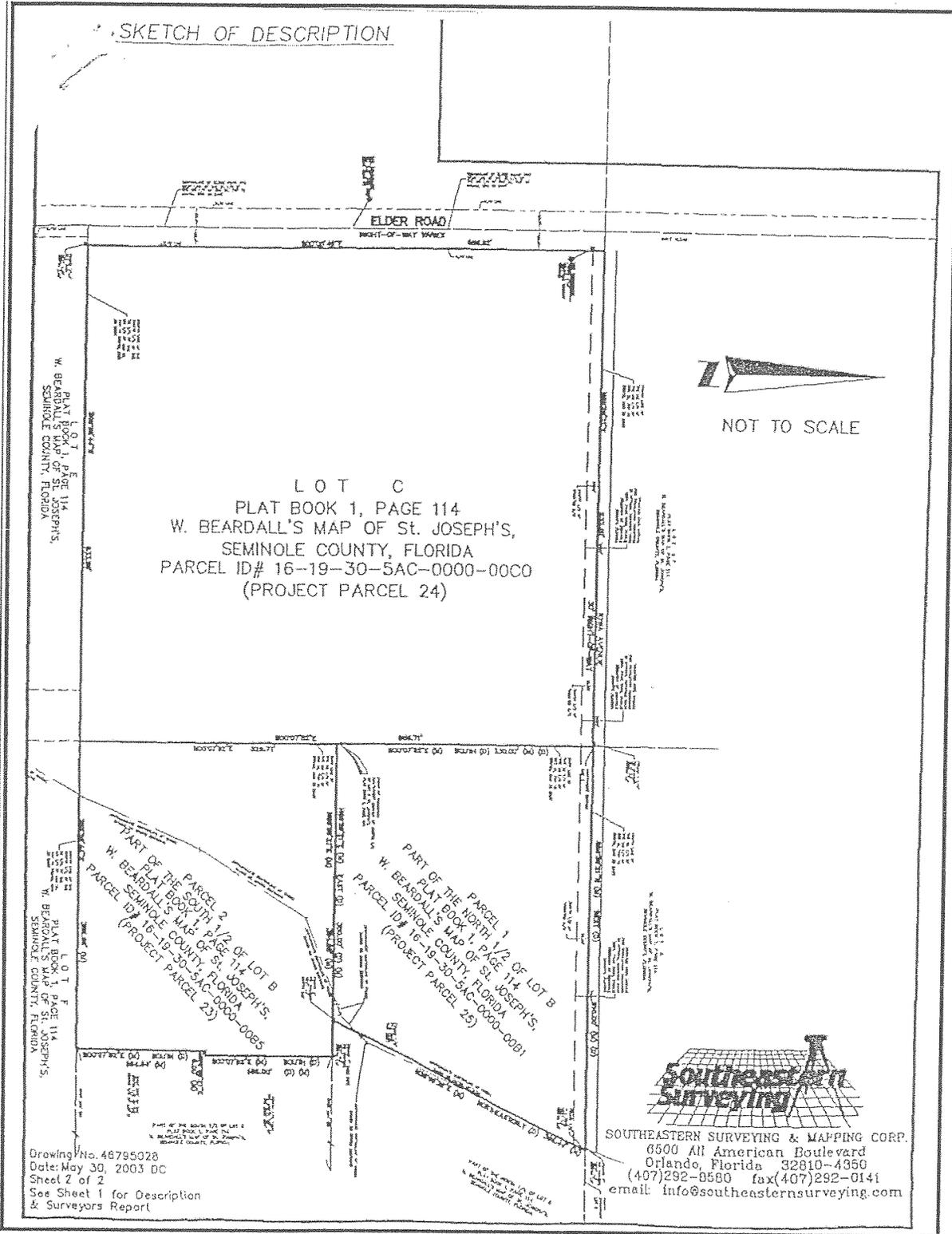


EXHIBIT B

**PURCHASE AGREEMENT  
FEE SIMPLE**

STATE OF FLORIDA        )  
COUNTY OF SEMINOLE    )

**THIS AGREEMENT** is made and entered into this 2<sup>nd</sup> day of August, 2004, by and between LEWIS M. DURAK AND CAROLYN R. DURAK, whose address is 1828 Creek Ridge Road, Clifton, TN 38425, hereinafter referred to as "OWNER," and SEMINOLE COUNTY, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter referred to as "COUNTY."

**WITNESSETH:**

**WHEREAS**, the COUNTY requires the hereinafter described property for a road project in Seminole County;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions herein contained, OWNER hereby agrees to sell and COUNTY hereby agrees to buy the following property upon the following terms and conditions:

**I. LEGAL DESCRIPTION**

See, attached Exhibit A

Parcel I. D. Number:  
16-19-30-5AC-0000-00B1  
16-19-30-5AC-0000-00B5  
16-19-30-5AC-0000-00C0

**II. PURCHASE PRICE**

(a) OWNER agrees to sell and convey the above described property of the above referenced project by Warranty Deed, free of liens and encumbrances, unto COUNTY for the sum of ONE MILLION, THREE HUNDRED NINETEEN THOUSAND EIGHT HUNDRED DOLLARS (\$1,319,800.00). The above amount includes all compensation due as a result of this acquisition to the OWNER for any reason and for any account whatsoever.

(b) COUNTY shall be responsible for the following closing costs: recording fees for Warranty Deed and Title Insurance Policy issued to the COUNTY by a title insurance company of the COUNTY's choice.

**EXHIBIT C**

(c) OWNER shall be responsible for OWNER's own attorney's fees and expert fees, cost to prepare and all expenses to record instruments necessary to provide title unto COUNTY, free and clear of all liens and encumbrances, and OWNER's share of the pro-rata property taxes outstanding, up to and including the date of closing. The before mentioned closing costs and pro-rata real estate taxes shall be withheld by the COUNTY's closing agent from the proceeds of this sale and paid to the proper authority on behalf of the OWNER. The aforesaid sum shall be paid to the trust account of OWNER's legal counsel for proper disbursement.

(d) OWNER covenants that there are no real estate commissions due any licensed real estate broker and further agrees to defend against and pay any valid claims made in regard to this purchase relating to covenants made herein by the OWNER.

### III. CONDITIONS

(a) COUNTY shall pay to the OWNER the sum as described in Item II., above, upon the proper execution and delivery of all the instruments required to complete the above purchase and sale to the designated closing agent. The OWNER agrees to close within seven (7) days of notice by the COUNTY or the COUNTY's closing agent that a closing is ready to occur but, in no event, later than September 30, 2004 or such other date on which the parties may mutually agree.

(b) OWNER agrees to vacate and surrender possession of the property upon the date of delivery of the instruments and closing of this Agreement. COUNTY may, but is not obligated to, extend possession of the property by OWNER; provided, however, that such approval will be evidenced by a written document of equal dignity herewith. During the period from the date of the execution of this Agreement by both parties and the closing, OWNER agrees to exercise diligent care in protecting the property from theft and vandalism. All windows, doors, bathroom fixtures, electrical outlets, heaters and other similar items included in the purchase price, as well as the land itself, shall be preserved in normal conditions and turned over to the COUNTY by the OWNER, intact, if applicable.

(c) Any and all encroachments existing upon the property, other than those improvements included in the purchase price, are to be removed by the OWNER at the expense of the OWNER prior to closing.

(d) OWNER warrants that there are no facts known to OWNER materially affecting the value of the properties which are not readily observable by COUNTY or which have not been disclosed to COUNTY.

(e) The instrument(s) of conveyance to be utilized at closing shall, in addition to containing all other common law covenants through the use of a warranty deed, also include the covenant of further assurances.

(f) The OWNER shall fully comply with *Section 286.23, Florida Statutes*, to the extent that said statute is applicable.

(g) In the event that COUNTY subsequently abandons this project after execution of this Agreement, but before closing, this Agreement shall be null and void.

(h) In the event that difficulties arise as to clearing title sufficient to consummate a closing of this Purchase Agreement or difficulties occur in the issuance of a title insurance commitment which is acceptable to the COUNTY; this Agreement shall survive the filing of any eminent domain action by the COUNTY and shall serve as a joint stipulation regarding all valuation issues and fees and costs matters in any condemnation proceeding initiated by the COUNTY relating to the real property herein described. The OWNER agrees that, in accordance with any request made by the COUNTY, the OWNER shall execute any and all instruments, pleadings, documents and agreements upon litigation reflecting the full settlement as set forth herein. The OWNER agrees not to oppose the COUNTY's condemnation proceedings in any way. The OWNER, may however, assert OWNER's rights against other claimants in apportionment proceedings.

(i) As part of the consideration for this Purchase Agreement, OWNER hereby grants to COUNTY, its employees, agents, consulting engineers, contractors and other representatives the right to enter upon the property described in Exhibit A to this Agreement for purposes of inspection, testing, surveys and the like. The right of entry shall commence ninety (90) days after the execution of this Agreement by COUNTY, and shall continue until closing occurs, or if closing cannot occur, until the condemnation proceedings to acquire the property have been completed. Aside from this Agreement, no further notification of COUNTY's intent to enter the property is required. This right of entry is for the purpose of construction of the Elder Creek/C-15 road improvement project and so that the COUNTY's construction schedule can be maintained notwithstanding issues which may delay closing in a timely manner. OWNER will not receive from COUNTY any additional compensation beyond that set forth in this Purchase Agreement during the period of time the COUNTY occupies the above described property for the purpose set forth above for the right to enter the property before conveyance of title.

(j) The OWNER shall indemnify and save the COUNTY harmless from and against all liability, claims for damages, and suits for any injury to any person or persons, or damages to any property of any kind whatsoever arising out of or in any way connected with this Agreement or in any act or omission in any manner related to said Agreement.

(k) The COUNTY shall be solely responsible for all of COUNTY activities conducted on the property. OWNER shall not be considered an agent or employee of COUNTY for any reason whatsoever on account of the Agreement.

(l) The OWNER states that the OWNER has not engaged in any action that would create a conflict of interest in the performance of OWNER's obligations under this Agreement with the COUNTY which would violate or cause others to violate the provisions of *Part III, Chapter 112, Florida Statutes*, relating to ethics in government.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names on the date first above written.

WITNESSES:

Ann Garrard  
SIGNATURE  
Ann Garrard

Douglas W George  
SIGNATURE  
DOUGLAS W GEORGE  
PRINT NAME

PROPERTY OWNER:

Lewis M. Durak  
LEWIS M. DURAK

ADDRESS: 1828 Creek Ridge Road  
Clifton, TN 38425

WITNESSES:

Ann Garrard  
SIGNATURE  
Ann Garrard

Douglas W George  
SIGNATURE  
DOUGLAS W GEORGE  
PRINT NAME

PROPERTY OWNER:

Carolyn R Durak  
CAROLYN R. DURAK

ADDRESS: 1828 Creek Ridge Road  
Clifton, TN 38425

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_, Chairman

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

For the use and reliance of  
Seminole County only. Ap-  
proved as to form and legal  
sufficiency.

As authorized for execution by the Board of  
of County Commissioners at its \_\_\_\_\_,  
2004, regular meeting.

[Signature]  
County Attorney

LV/sb  
04/28/04

EXHIBIT "A"

PROJECT PARCELS: 23, 24 & 25  
LEGAL DESCRIPTION:

Lot C, St. Joseph's according to the plat thereof as recorded in Plat Book 1, Page 114, Public Records of Seminole County, Florida, together with that part of the South 1/2 of vacated Iowa Avenue abutting the North line of said Lot C.

And

Parcel 1:

That part of the North 1/2 of Lot B, St. Joseph's according to the plat thereof as recorded in Plat Book 1, Pages 114, Public Records of Seminole County, Florida, described as: Beginning at the Southwest corner of said North 1/2 of Lot B, thence run East 350 feet, thence run in a Northeasterly direction to a point on the North boundary of Lot B 510 feet East of the Northwest corner of Lot B, thence run West 510 feet to the said Northwest corner, thence run South 330 feet to point of beginning.

And

That part of Iowa Avenue bounded on the East by the extension of the West right of way line of Monroe Road (County Road 15), and on the West by the extension of the East right of way line of Elder Road, in W. Beardall's map of St. Joseph's, as recorded in Plat Book 1, Page 114, Public Records of Seminole County, Florida, lying within the aforementioned Parcel 1.

And

Parcel 2:

The South 1/2 of Lot B, St. Joseph's, according to the plat thereof as recorded in Plat Book 1, Page 114, Public Records of Seminole County, Florida, LESS North 165 feet of East 264 feet, and LESS the East 270.00 feet of the South 1/2, LESS the North 165.00 feet of Lot B, W. Beardall's map of St. Joseph's, according to the plat thereof as recorded in Plat Book 1, Page 114, Public Records of Seminole County, Florida.

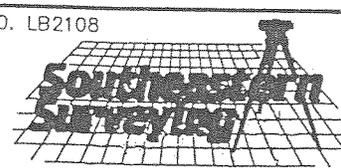
Containing 15.82 acres, more or less.

SRVEYORS REPORT

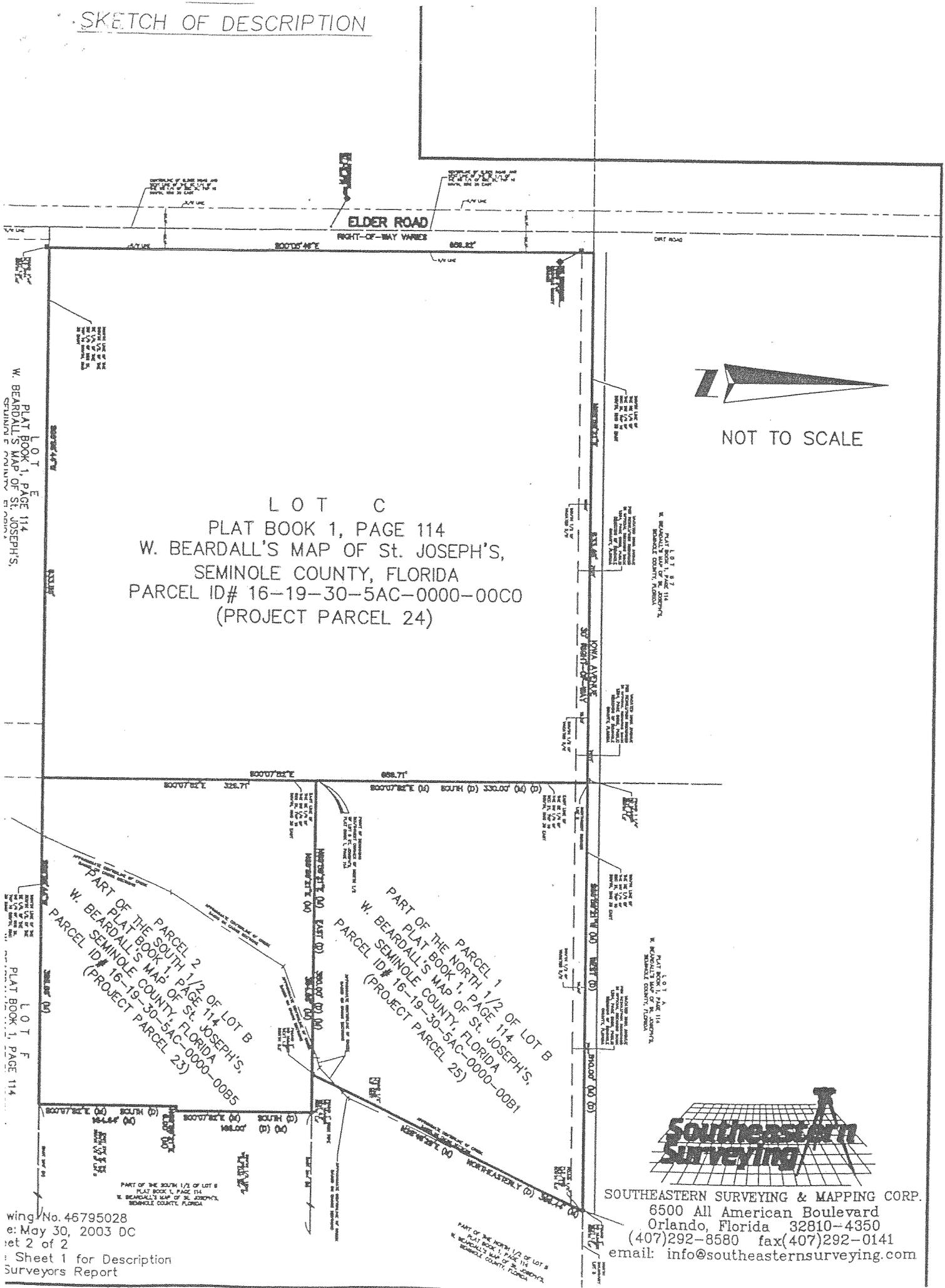
The bearings shown hereon are based on the North line of the South 1/2 of the Southeast 1/4, of the Southwest 1/4 of Section 21, Township 19 South, Range 30 East, being S 89°58'44" W. (Assumed)

Not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.

I hereby certify that the "Sketch of Description" of the above described property is true and correct to the best of my knowledge and belief as recently drawn under my direction and that it meets the Minimum Technical Standards for Land Surveying CH. 61G17-6 requirements.

<p><b>Sketch &amp; Description</b></p> <p>FOR</p> <p>Seminole County</p>	Date: <b>May 30, 2003 DC</b>		<p>CERT. NO. LB2108 46795028</p>  <p><b>SOUTHEASTERN SURVEYING &amp; MAPPING CORP.</b>          6500 All American Boulevard          Orlando, Florida 32810-4350          (407)292-8580 fax(407)292-0141          email: info@southeasternsurveying.com</p> <p><i>Gary G. Krick</i>  <b>GARY G. KRICK P.S.M.</b>          REGISTERED LAND SURVEYOR NO. 4245</p>
	Job No.: <b>46795</b>	Scale: <b>Not to Scale</b>	
	<p>CH. 61G17-6, Florida Administrative Code requires that a legal description drawing bear the notation that  <b>THIS IS NOT A SURVEY.</b></p>		
<p>SHEET 1 OF 2          SEE SHEET 2 FOR SKETCH</p>			

SKETCH OF DESCRIPTION



LOT C  
 PLAT BOOK 1, PAGE 114  
 W. BEARDALL'S MAP OF St. JOSEPH'S,  
 SEMINOLE COUNTY, FLORIDA  
 PARCEL ID# 16-19-30-5AC-0000-00C0  
 (PROJECT PARCEL 24)



NOT TO SCALE



SOUTHEASTERN SURVEYING & MAPPING CORP.  
 6500 All American Boulevard  
 Orlando, Florida 32810-4350  
 (407)292-8580 fax(407)292-0141  
 email: info@southeasternsurveying.com