



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

THROUGH: Stephen P. Lee, Deputy County Attorney *HMP for Steve*

FROM: Lynn Vouis, Assistant County Attorney *[Signature]*

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

DATE: August 24, 2004

SUBJECT: Purchase Agreement Authorization
 Owners: Joseph F. and Rosemary M. Cepuran
 Parcel ID Nos.: 16-19-30-5AC-0000-00E1 and
 16-19-30-5AC-0000-00E2
 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-0000-00E1 and 16-19-30-5AC-0000-00E2. These parcels are required for the Elder Creek/C-15 (Ponds) improvement project. The purchase price is \$843,678.00, inclusive of all attorney's fees and expert costs incurred by the property owners.

I THE PROPERTY

A. Location Data

The property is located in the northeast quadrant of the intersection of Elder Road and Narcissus Avenue approximately 1/4 of a mile north of S.R. 46 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

395 N. Elder Road
Sanford, Florida 32771

C. Description

The parent tract property contains 8.570 acres, and is improved with an old (circa 1930) single family wood-framed residence and a 480 square foot pole barn. The property has a future land use of higher intensity planned development, with 2.4 acres of wetland conservation.

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

The proposed acquisition of Parcel ID Nos. 16-19-30-5AC-0000-E1 and 16-19-30-5AC-0000-E2 consists of 8.570 acres of land area. Although the property has two parcel ID numbers, it satisfies the unity requirements and thus must legally be considered a single parent tract. The proposed acquisition is thus considered a whole take of the owners' property.

IV APPRAISED VALUE

The County obtained an appraisal and an update/reappraisal for the subject property. Both appraisals were prepared by Clayton, Roper & Marshall, P.A., and approved by the County's MAI designated staff appraiser. The original appraisal was dated December 6, 2001 and valued the property at \$500,000.00. A second/updated appraisal was prepared on March 9, 2004, in preparation for filing suit. The appraised value amount, as of the March 9, 2004 date of value, was \$650,000.00. 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 \$777,000.00, which is \$77,000.00 more than the County's April 29, 2004 binding written offer of \$700,000.00.

V BINDING OFFER/NEGOTIATIONS

County staff made an offer, contingent on BCC approval, in the amount of \$550,000.00 on August 8, 2002. This offer was based on the first appraised

value amount. Thereafter, protracted negotiations with the property owners failed to produce an agreement as to a purchase price for the property. 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 \$700,000.00, based on the \$650,000.00 updated appraisal. The property owners demanded \$895,280.00, based on their appraisal of \$777,000.00 and \$118,279.80 in fees and costs. Through negotiations, the parties were able to agree on a proposed settlement of \$843,678.00, 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 would be similar to the scenario discussed in the Durak Parcel memo, and would show that this settlement is reasonable under the circumstances.

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.

VII RECOMMENDATION

County staff recommends that the BCC authorize settlement in the amount of \$843,678.00, 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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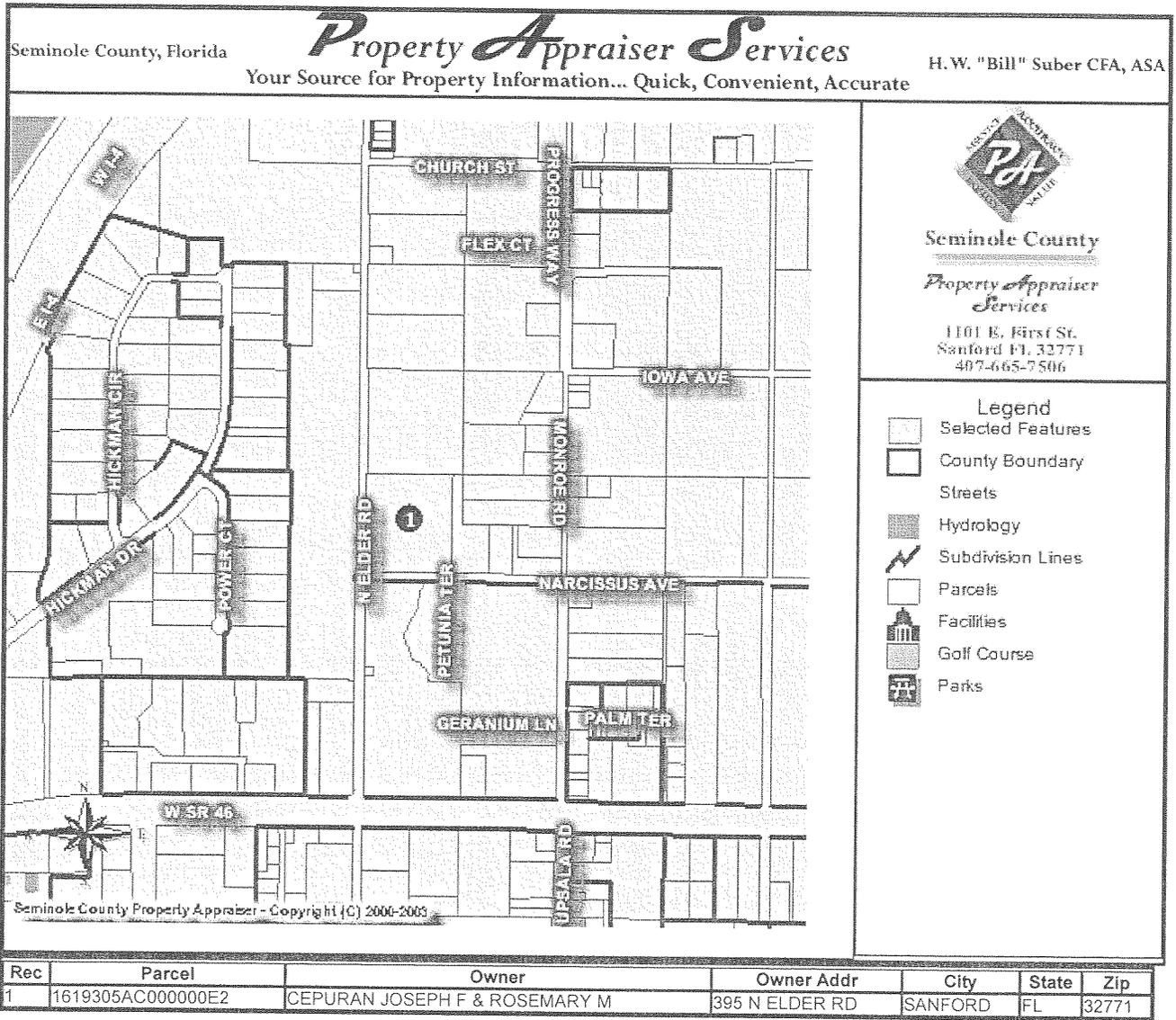


EXHIBIT A

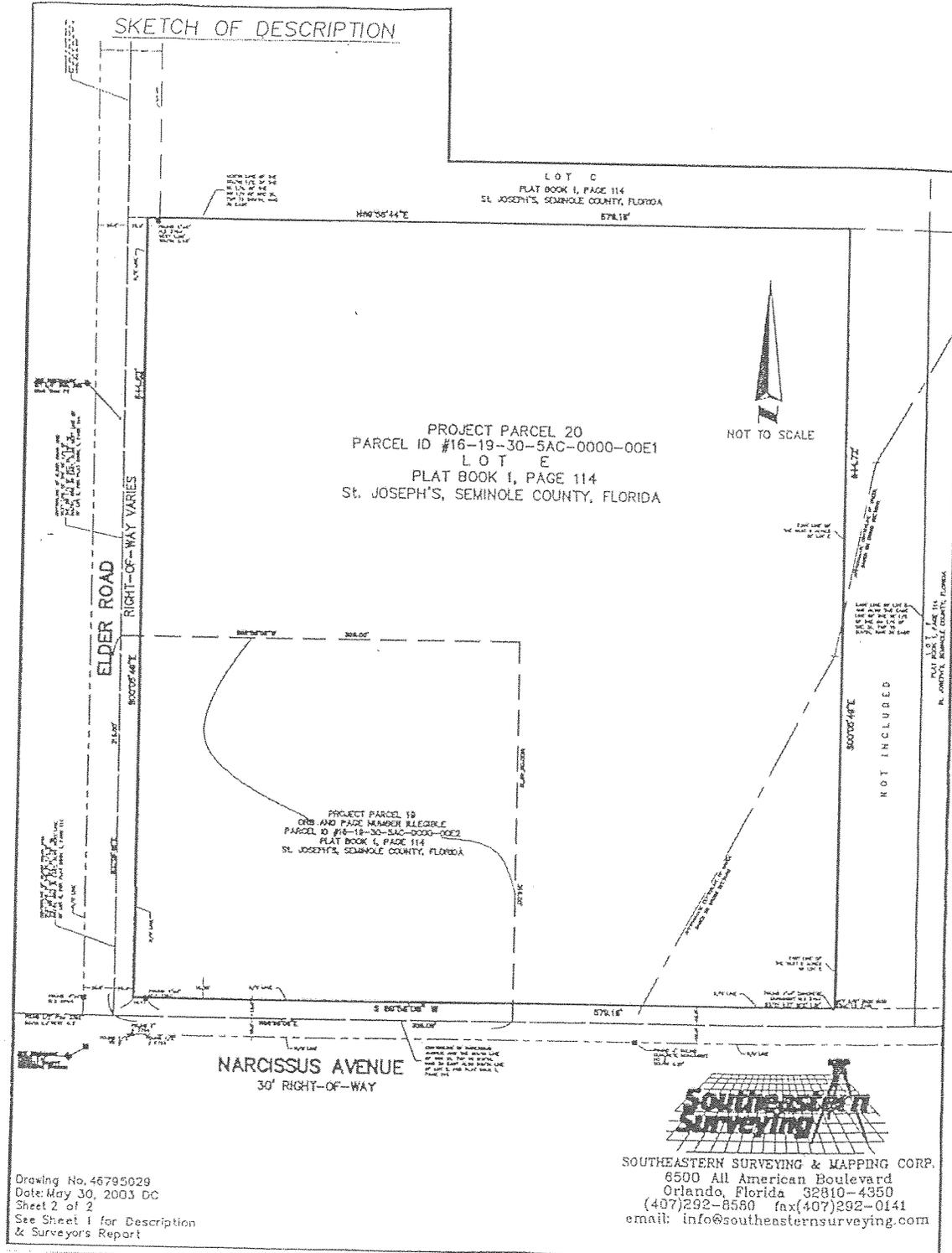


EXHIBIT B

CLAYTON, ROPER & MARSHALL

**PURCHASE AGREEMENT
FEE SIMPLE**

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

THIS AGREEMENT is made and entered into this 31 day of July, 2004, by and between **JOSEPH F. CEPURAN AND ROSEMARY M. CEPURAN**, whose address is 395 North Elder Road, Sanford, Florida 32771, 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. Numbers:

16-19-30-5AC-0000-00E1 AND
16-19-30-5AC-0000+00E2

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 EIGHT HUNDRED FORTY-THREE THOUSAND SIX HUNDRED SEVENTY-EIGHT DOLLARS (\$843,678.00). 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.

(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.

(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. Said sum, less any prorated property taxes, shall be paid to the Trust Account of OWNER's legal counsel for property disbursement of those sums. 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 that September 30, 2004 or such other date as agreed upon by the parties.

(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) The OWNER covenants that there are no hazardous wastes or other forms of environmental contamination located in, on or upon the property being acquired by the 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 and possess 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.

(i) 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:

WN Wendy Nelson
SIGNATURE

Wendy Nelson
PRINT NAME

SJ Sherry Jones
SIGNATURE

Sherry Jones
PRINT NAME

Joseph Cepuran
JOSEPH F. CEPURAN

Rosemary Cepuran
ROSEMARY M. CEPURAN

ADDRESS: 395 North Elder Road
Sanford, FL 32771

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

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

By: _____
DARYL G. McLAIN, 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 County Commissioners at its _____,
2004, regular meeting.



County Attorney

lv/sb

08/08/02

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EXHIBIT "A"

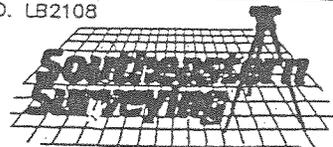
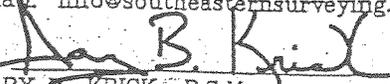
PROJECT PARCELS 19 & 20
LEGAL DESCRIPTION:

The West 9 acres of Lot E, Plat of St. Joseph's, according to the plat thereof as recorded in Plat Book 1, Page 114, Public Records of Seminole County, Florida.

Containing 8.57 acres, more or less.

SURVEYORS REPORT

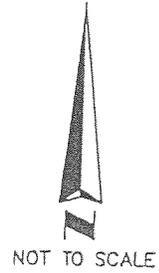
1. The bearings and coordinates shown hereon are based on Florida State Plane Coordinates NAD 83/90 Florida East Zone.
2. Not valid without the signature and the original raised seal of a Florida licensed surveyor and mapper.
3. I hereby certify that the "Sketch of Description" of the above described 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.

Sketch & Description	Date: May 30, 2003 DC		CERT. NO. LB2108 46795029
	Job No.: 46795	Scale: Not to Scale	
FOR	CH. 61G17-6, Florida Administrative Code requires that a legal description drawing bear the notation that THIS IS NOT A SURVEY.		 SOUTHEASTERN SURVEYING & MAPPING CORP. 6500 All American Boulevard Orlando, Florida 32810-4350 (407)292-8580 fax(407)292-0141 email: info@southeasternsurveying.com  GARY C. KRICK P.S.M.
Seminole County	SHEET 1 OF 2 SEE SHEET 2 FOR SKETCH		

SKETCH OF DESCRIPTION

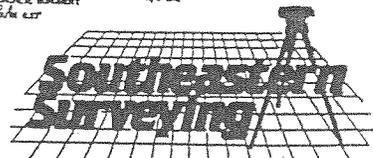
LOT C
 PLAT BOOK 1, PAGE 114
 ST. JOSEPH'S, SEMINOLE COUNTY, FLORIDA
 572.16'

PROJECT PARCEL 20
 PARCEL ID #16-19-30-5AC-0000-00E1
 LOT E
 PLAT BOOK 1, PAGE 114
 ST. JOSEPH'S, SEMINOLE COUNTY, FLORIDA



PROJECT PARCEL 19
 ORB AND PAGE NUMBER ILLEGIBLE
 PARCEL ID #16-19-30-5AC-0000-00E2
 PLAT BOOK 1, PAGE 114
 ST. JOSEPH'S, SEMINOLE COUNTY, FLORIDA

NARCISSUS AVENUE
 30' RIGHT-OF-WAY



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

Drawing No. 46795029
 Date: May 30, 2003 DC
 Sheet 2 of 2
 See Sheet 1 for Description

