

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

**DATE CRITICAL
Blue Sheet No. 20040219**

1. REQUESTED MOTION:

ACTION REQUESTED: Pursuant to §125.37, F.S., to hear and act on a request to authorize an exchange of the County's real property interest in a portion of the Luckett Road right-of-way in return for a portion of property in the Billy Creek Commerce Center to supplement the current alignment of Luckett Road; to authorize the execution of an Agreement for the Exchange of Real Estate (Agreement) governing the terms of the exchange; and to authorize the Chairman to sign the necessary documents to complete the exchange according to the terms of the Agreement.

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: Authorizes an exchange of County-owned property under § 125.37, F.S.

2. DEPARTMENTAL CATEGORY: ●
COMMISSION DISTRICT # 2

A12A

3. MEETING DATE:

03-16-2004

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 Attorney's Office has received a request from Lee County Department of Transportation (LCDOT) to direct a request to exchange a portion of the County's real property interest in a portion of the Luckett Road right-of-way in return for a portion of property in the Billy Creek Commerce Center to supplement the current alignment of Luckett Road. Lee County will exchange approximately 0.39 acres of the Luckett Road right-of-way in Section 10, Township 44 South, Range 25 East, for a similar size portion of Tract "G" of the platted Billy Creek Commerce Center Unit Five and a Replat of Lot 39, Billy Creek Commerce Center Unit Two (recorded in Plat Book 34, Page 68), which plat is recorded in Plat Book 64, Page 24, currently owned by SDC Partners, Inc.

An Agreement has been prepared to facilitate an exchange under F.S. § 125.37 and is attached. LCDOT and SDC Partners, Inc., are seeking the Lee County Board of County Commissioners' approval of the requested exchange pursuant to the terms of the submitted Agreement. The exchange of property is the entire consideration for this transaction. LCDOT will be responsible for all costs of required publication and (if approved) all costs of document recording necessary to effect the exchange. [LCDOT CIP Project Number 4079. Funding from Account String 20407930700.506110.]

Attachment: Resolution Approving Exchange of Property Agreement for Exchange of Real Estate, with attachments and Sketch

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>[Signature]</i>	OA <i>[Signature]</i>	OM <i>[Signature]</i>	RISK <i>[Signature]</i>	GG <i>[Signature]</i>	<i>[Signature]</i> 2-26-04

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY
COUNTY ADMIN: *[Signature]*
02/24/04
4:25 pm
COUNTY ADMIN
FORWARDED TO: *[Signature]*
2/26/04
2:30 PM

RESOLUTION NO. _____

RESOLUTION APPROVING EXCHANGE OF PROPERTY

WHEREAS, Lee County, a political subdivision of the State of Florida, is the owner of rights in the right-of-way for Lockett Road, a portion of which is located in Section 10, Township 44 South, Range 25 East, Lee County, Florida; and

WHEREAS, SDC Partners, Inc., also owns real property in Section 10, Township 44 South, Range 25 East, Lee County, Florida, abutting the north side of the above referenced Lockett Road; and

WHEREAS, the proposed exchange will facilitate the widening of the Lockett Road right-of-way to accommodate future traffic needs of Lee County and improve the ability of SDC Partners, Inc., to use and develop their site; 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 convey to SDC Partners, Inc., by County Deed, all right, title and interest in the portion of the Lockett Road right-of-way described in Exhibit "A" of the attached Agreement for Exchange of Real Estate.

SDC Partners, Inc., a Florida Corporation, will convey to Lee County by Warranty Deed the following real property described in Exhibit "B" of the attached Agreement for Exchange of Real Estate.

The Chairman, on behalf of the Board of County Commissioners, is hereby authorized to execute the Agreement for Exchange of Real Estate with SDC Partners, Inc., a copy of which is attached, and the County Deed necessary to convey to SDC Partners, Inc., the real property interest described in Exhibit "A" of said agreement; and to accept the conveyance of the real property interests from SDC Partners, Inc., described in Exhibit "B" of said agreement; 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 March, 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: Agreement for Exchange of Real Estate; with Exhibit "A" - (*Lee County to SDC Properties, Inc.*); and Exhibit "B" - (*SDC Properties, Inc., to Lee County*)

THIS INSTRUMENT PREPARED BY:

Lee County
County Lands
Post Office Box 398
Fort Myers, Florida 33902

Strap No.: Part of 10-44-25-10-0000G.0000

AGREEMENT FOR EXCHANGE OF REAL ESTATE

THIS AGREEMENT is for the exchange of real property between SDC Partners, Inc., a Florida corporation, whose address is 1725 University Drive, Suite 450, Coral Springs, Florida 33071 (Owner), and Lee County, a political subdivision of the State of Florida, whose mailing address is Post Office Box 398, Fort Myers, Florida 33902-0398 (County), as follows:

1. **PURPOSE:** The purpose of this Agreement is to facilitate the smooth exchange of property relating to roadway right of way.
2. **AGREEMENT TO EXCHANGE:** In consideration of this Agreement and subject to the terms and conditions set forth below, the parties agree to exchange the following parcels:
 - a. **Owner to County:** Owner will convey by Warranty Deed to County that property legally described in attached Exhibit "A". Owner and Owners heirs and assigns will forever be responsible for any and all expenses and costs associated with subject property pursuant to the Declaration of Covenants and Restrictions for Billy Creek Commerce Center, recorded in Official Record Book 1456, Page 618 and as subsequently modified.
 - b. **County to Owner:** County will convey by County Deed to Owner that property legally described in attached Exhibit "B".
3. **EVIDENCE OF TITLE:** Owner will provide certification of title for Owner's property in a form satisfactory to the Lee County Attorney's Office. Certification must show title to be good and marketable with legal access, subject only to real estate taxes for the current year, zoning and use restrictions imposed by governmental authority, and restrictions and easements common to the area. One copy of each document constituting an exception to good and marketable title must accompany the certificate.

Prior to closing, County will have a reasonable time to examine the title and documents establishing legal access to the property. If County discovers defects in the title or legal access, County will notify Owner in writing of the defects. Owner will make a prompt and diligent effort to correct the defects. If Owner fails to correct the defects within sixty (60) days after notice, County may elect to accept the property in its existing condition or terminate this Agreement without obligation.

4. CONDITION OF PROPERTY; RISK OF LOSS: The parties have inspected the property to be conveyed and agree to accept it as is, or as otherwise provided in this Agreement. Any loss or damage to the property to be conveyed occurring between the date this Agreement is executed and the closing date will be at the current property Owner's sole risk and expense. In the event the property to be conveyed is damaged, either or both parties may agree to accept the damaged property or cancel this Agreement without objection.

5. DOCUMENTS AND EXPENSES:

a. It is Owner's responsibility to pay for and provide:

- (1) a statutory Warranty Deed and an affidavit regarding liens, possession and withholding under FIRPTA in a form sufficient to allow "gap" coverage by title insurance;
- (2) any documents necessary to effect a partial release or satisfaction of mortgage;
- (3) any utility services attributable to the property described in Exhibit "A", up to, but not including, the closing date;
- (4) all taxes or special assessments attributable to the property described in Exhibit "A", due and payable on or before the closing date;
- (5) documentary stamp taxes on the deed from the County to Owner;
- (6) Owner's attorney's fees or real estate broker fees;

b. It is the County's responsibility to provide and pay for:

- (1) a statutory County Deed;
- (2) recording fees for both deeds;
- (3) documentary stamp taxes on deed from Owner to County;
- (4) survey (if desired by County).

6. SURVEY: Either party may, at their own expense, survey the Property to be conveyed. If the survey reveals a discrepancy in the size or dimensions of the Property or shows encroachments onto the property, or that property improvements encroach onto adjacent lands, or identifies violations of recorded covenants or the terms of this Agreement, then upon notice, either party may elect to treat the discrepancies, violations or encroachments as a title defect.

7. ENVIRONMENTAL AUDIT: Either party may, at their own expense, perform or have performed an environmental audit of the property to be conveyed. If the audit identifies environmental problems unacceptable to the party performing the audit, that party

may elect to accept the property in its existing condition or terminate this Agreement without obligation.

8. TIME AND BINDING AGREEMENT: Time is of the essence for closing this transaction. Execution of this document constitutes an agreement for the exchange of property binding upon the parties, their successors and assigns.

9. DATE AND LOCATION OF CLOSING: The closing for this transaction will take place at the Lee County Office of County Lands on or before 90 days from the date this Agreement is executed, or as otherwise mutually agreed by the parties. Closing will occur after the statutory public notice for Resolution of Exchange has been published and the Board adopts a Resolution authorizing the exchange.

10. ATTORNEY'S FEES: The prevailing party in any litigation concerning this Agreement is entitled to recover reasonable attorney's fees and costs.

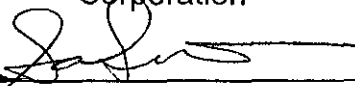
11. REAL ESTATE BROKERS: Owner agrees to indemnify and hold County harmless for any real estate broker claims made by or through owner.

12. AMENDMENT; OTHER AGREEMENTS: Any amendments to the provisions of the Agreement must be in writing, attached and incorporated into this document and signed or initialed by all parties. This Agreement represents the entire agreement between the parties.

DATED: 1/9/04

OWNER: SDC Partners, Inc., a Florida Corporation

SAMUEL R. SUTTON

By: 
Samuel R. Sutton, its President

Printed name

ATTEST:
CHARLIE GREEN, CLERK

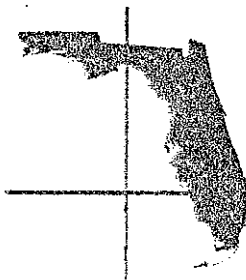
LEE COUNTY, FLORIDA, by its
BOARD OF COUNTY COMMISSIONS

BY: _____
Deputy Clerk

BY: _____
Chairman

Approved as to form by:

County Attorney's Office



METRON
SURVEYING & MAPPING, LLC
LAND SURVEYORS • PLANNERS

LEGAL DESCRIPTION
OF A PARCEL LYING IN
SECTION 10, TOWNSHIP 44 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA

(PARCEL "B", TRACT G, BILLY CREEK COMMERCE CENTER UNIT FIVE
AND A REPLAT OF LOT 39, BILLY CREEK COMMERCE CENTER UNIT TWO)

A PARCEL OF LAND LYING IN THE STATE OF FLORIDA, COUNTY OF LEE, LYING IN SECTION 10, TOWNSHIP 44 SOUTH, RANGE 25 EAST, BEING PART OF TRACT "G", BILLY CREEK COMMERCE CENTER UNIT FIVE AND A REPLAT OF LOT 39, BILLY CREEK COMMERCE CENTER UNIT TWO, AS RECORDED IN PLAT BOOK 64, PAGE 23 & 24 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING FURTHER DESCRIBED AS FOLLOWS:

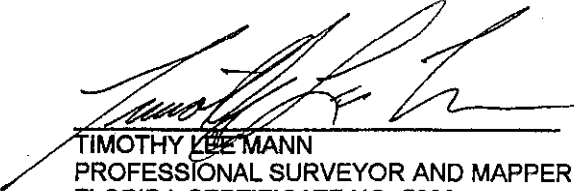
COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT "G" OF BILLY CREEK COMMERCE CENTER UNIT FIVE AND A REPLAT OF LOT 39, BILLY CREEK COMMERCE CENTER UNIT TWO, AS RECORDED IN PLAT BOOK 64, PAGES 23 & 24; THENCE S.89°07'14"W. ALONG THE SOUTH LINE OF SAID TRACT "G", A DISTANCE OF 352.37 FEET; THENCE S.00°52'46"E., A DISTANCE OF 52.00 FEET TO THE **POINT OF BEGINNING**; THENCE CONTINUE S.00°52'46"E., A DISTANCE OF 46.00 FEET; THENCE S.89°07'14"W. ALONG THE SOUTH LINE OF SAID TRACT "G", A DISTANCE OF 398.99 FEET; THENCE N.47°14'53"E., ALONG THE WEST LINE OF SAID TRACT "G", A DISTANCE OF 68.92 FEET; THENCE N.89°07'14"E., A DISTANCE OF 347.67 FEET TO THE **POINT OF BEGINNING**;

PARCEL CONTAINS 17,173 SQUARE FEET, OR 0.39 ACRES, MORE OR LESS.

BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH LINE OF TRACT "G", BILLY CREEK COMMERCE CENTER UNIT FIVE AS BEARING S.89°07'14"W.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

METRON SURVEYING & MAPPING, LLC
FLORIDA CERTIFICATE OF AUTHORIZATION LB# 7071


TIMOTHY LEE MANN
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5838

SHEET 1 OF 2

SKETCH OF DESCRIPTION

OF
A PARCEL OF LAND
LYING IN
SECTION 10, TOWNSHIP 44 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA

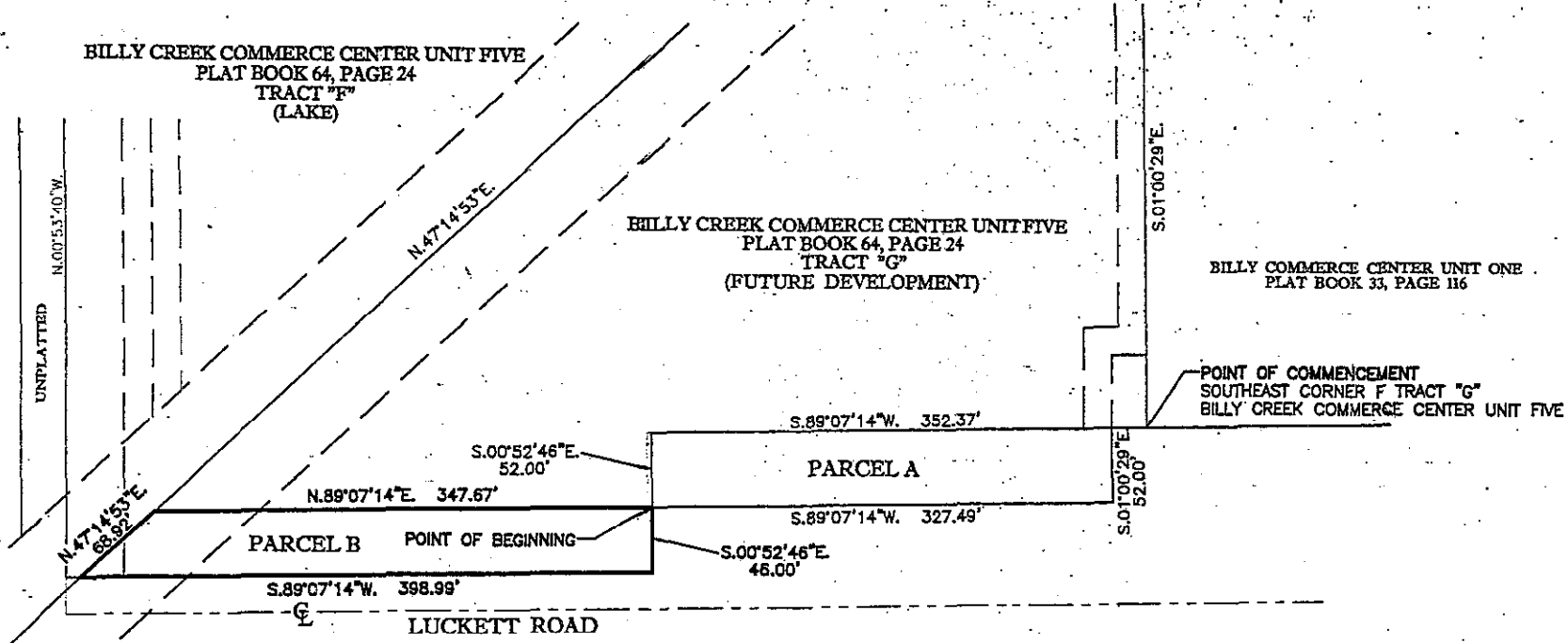
SUNNYACRES ESTATES
PLAT BOOK 10, PAGE 52

BILLY CREEK COMMERCE CENTER UNIT FIVE
PLAT BOOK 64, PAGE 24
TRACT "F"
(LAKE)

BILLY CREEK COMMERCE CENTER UNIT FIVE
PLAT BOOK 64, PAGE 24
TRACT "G"
(FUTURE DEVELOPMENT)

BILLY COMMERCE CENTER UNIT ONE
PLAT BOOK 33, PAGE 116

POINT OF COMMENCEMENT
SOUTHEAST CORNER F TRACT "G"
BILLY CREEK COMMERCE CENTER UNIT FIVE



TRACT "G", - PARCEL B
BILLY CREEK COMMERCE CENTER UNIT FIVE

TITLE: SKETCH OF DESCRIPTION

METRON
SURVEYING & MAPPING, LLC
LAND SURVEYORS-PLANNERS
LIB# 7071

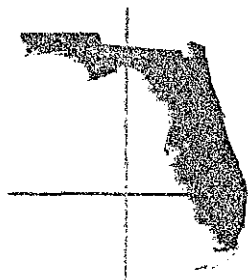
2245 RAMSEY WAY, SUITE #2
FORT MYERS, FLORIDA 33907
PHONE: (239) 275-8575
FAX: (239) 275-8457
www.metronfl.com

*** THIS IS NOT A SURVEY ***

BY: *[Signature]* 10/14/03
DENIS W. DORRILL, JR., PROFESSIONAL SURVEYOR AND MAPPER LS# 5440 DATE SIGNED

FILE NAME: 4144SK.DWG	FIELD BOOK/PAGE: N/A	PROJECT NO.:	4144	SHEET: 1 OF 1
SURVEY DATE: 09-29-2003	DRAWN BY: SM/DJO	SCALE: 1" = 100'	CHECKED BY: DJO	FILE NO. (P-T-0) 10-44-25

Exhibit "A"
Sheet 2 of 2



METRON
SURVEYING & MAPPING, LLC
LAND SURVEYORS • PLANNERS

LEGAL DESCRIPTION
OF A PARCEL LYING IN
SECTION 10, TOWNSHIP 44 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA

(PARCEL "A", TRACT G, BILLY CREEK COMMERCE CENTER UNIT FIVE
AND A REPLAT OF LOT 39, BILLY CREEK COMMERCE CENTER UNIT TWO)

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COMMENCING AT THE SOUTHEAST CORNER OF SAID TRACT "G" OF BILLY CREEK COMMERCE CENTER UNIT FIVE AND A REPLAT OF LOT 39, BILLY CREEK COMMERCE CENTER UNIT TWO, AS RECORDED IN PLAT BOOK 64, PAGE 23 & 24; THENCE S.89°07'14"W. ALONG THE SOUTH LINE OF SAID TRACT "G", A DISTANCE OF 25.00 FEET TO THE **POINT OF BEGINNING**; THENCE S.01°00'29"E., A DISTANCE OF 52.00 FEET; THENCE S.89°07'14"W., A DISTANCE OF 327.49 FEET; THENCE N.00°52'46"W., A DISTANCE OF 52.00 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT "G"; THENCE N.89°07'14"E. ALONG THE SOUTH LINE OF SAID TRACT "G", A DISTANCE OF 327.37 FEET TO THE **POINT OF BEGINNING**;

PARCEL CONTAINS 17,026 SQUARE FEET, OR 0.39 ACRES, MORE OR LESS.

BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH LINE OF TRACT "G", BILLY CREEK COMMERCE CENTER UNIT FIVE AS BEARING S.89°07'14"W.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).

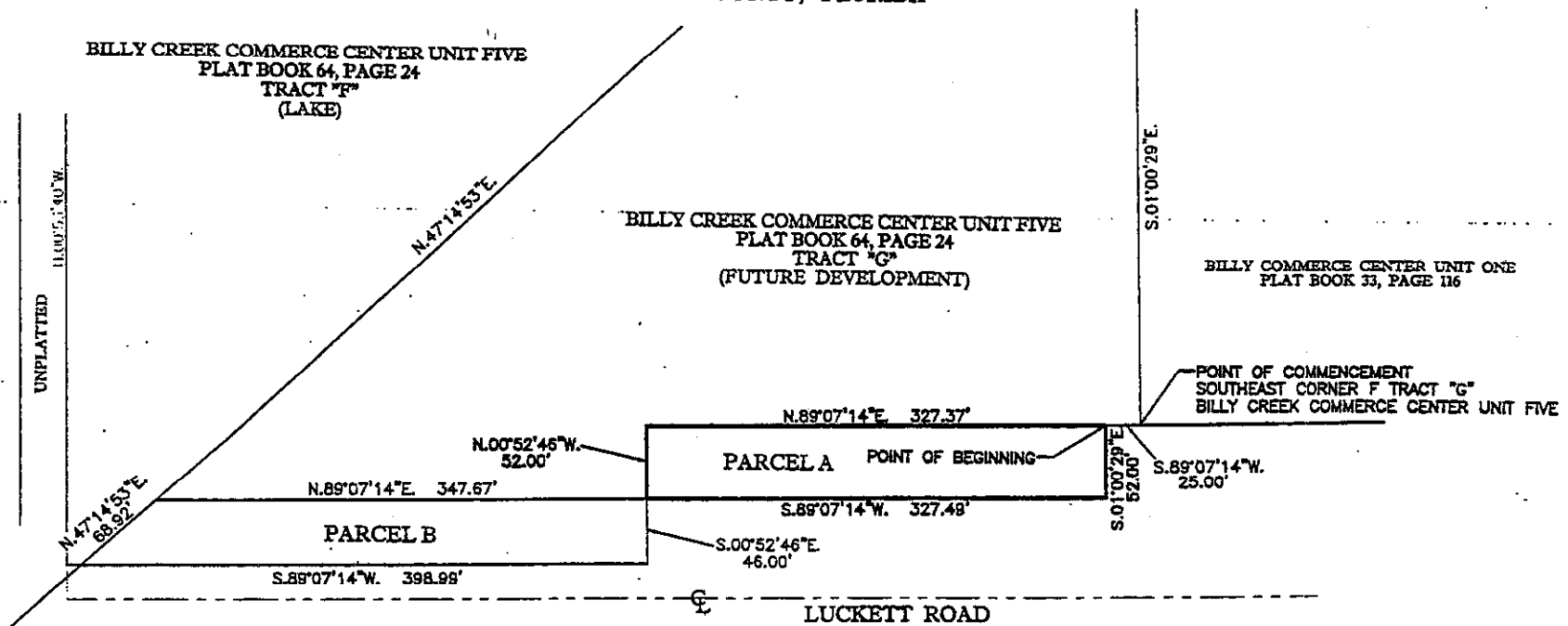
METRON SURVEYING & MAPPING, LLC
FLORIDA CERTIFICATE OF AUTHORIZATION LB# 7071

TIMOTHY LEE MANN
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5838



SKETCH OF DESCRIPTION

OF
A PARCEL OF LAND
LYING IN
SECTION 10, TOWNSHIP 44 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA



THIS IS NOT A SURVEY

J. O'Connell Jr.

BY: DENIS J. O'CONNELL JR., PROFESSIONAL SURVEYOR AND MAPPER L&P 5430 DATE SIGNED 10/19/03

**TRACT "G", - PARCEL A
BILLY CREEK COMMERCE CENTER UNIT FIVE**

TITLE: SKETCH OF DESCRIPTION

METRON
SURVEYING & MAPPING, LLC
LAND SURVEYORS-PLANNERS
L&P 7071
www.metron.com

2245 RAMSEY WAY, SUITE #2
FORT MYERS, FLORIDA 33907
PHONE: (238) 270-8575
FAX: (238) 275-8457

FILE NAME 4144SK1.DWG	FIELD BOOK/PAGE N/A	PROJECT NO. 4144	SHEET 1 OF 1
SURVEY DATE 08-28-2003	DRAWN BY SM/DJO	SCALE 1" = 100'	CHECKED BY DJO
		FILE NO. (P-1-0)	10-44-25

SKETCH OF PROPERTIES TO BE EXCHANGED

Parcels in Section 10, Township 44 South, Range 25 East
Lee County, Florida



SUNNYACRES ESTATES
PLAT BOOK 10, PAGE 52

