

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

**Blue Sheet No. 20041547**

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Adopt a Resolution of Exchange relating to property located at Estero/Bonita Community Park in Estero; authorize Chairman to execute all documents necessary to effectuate the exchange; authorize the Division of County Lands to handle and accept all documentation to complete this transaction, and approve payment for costs to close.

**WHY ACTION IS NECESSARY:** Exchange of County property must be approved by the Board of County Commissioners pursuant to Florida Statute.

**WHAT ACTION ACCOMPLISHES:** Approves the exchange of property between Lee County and Stephanie Miller, Trustee.

<b>2. DEPARTMENTAL CATEGORY:</b>	6	<b>3. MEETING DATE:</b>	
<b>COMMISSION DISTRICT #</b>	3 & 5 <i>C6A</i>		<i>01-25-2005</i>
<b>4. AGENDA:</b>	<b>5. REQUIREMENT/PURPOSE:</b> (Specify)	<b>6. REQUESTOR OF INFORMATION:</b>	
<input checked="" type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> STATUTE 125.37	A. COMMISSIONER	
<input type="checkbox"/> ADMINISTRATIVE	<input type="checkbox"/> ORDINANCE	B. DEPARTMENT	
<input type="checkbox"/> APPEALS	<input type="checkbox"/> ADMIN. CODE	C. DIVISION	
<input type="checkbox"/> PUBLIC	<input type="checkbox"/> OTHER	BY: <i>KLW</i>	
<input type="checkbox"/> WALK ON		County Lands <i>12-30-04</i>	
<b>TIME REQUIRED:</b>		Karen L.W. Forsyth, Director	

**7. BACKGROUND:** The proposed alignment of Sand Lane from Corkscrew Road south to Williams Road in Estero, bisects a portion of the Estero/Bonita Community Park, leaving a +/- .65 acre remnant adjacent to the Stephanie Miller, Trustee parcel. This same alignment bisects a portion of the Stephanie Miller, Trustee parcel, leaving a +/- .9 acre remnant adjacent to the Park. The proposed exchange is of these remnant parcels.

Costs to close are estimated at \$500.00.

Funds are available in Account No. 20-199918608.506110

Staff recommends Board approve the Requested Motion.

**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
					OA	OM	Risk	GC	
<i>K.P. Forsyth</i>	<i>N/A/C/L</i>		<i>by 12/16/04</i>	<i>12/16/04</i>	<i>12/20/04</i>	<i>12/20/04</i>	<i>12/20/04</i>	<i>12/20/04</i>	<i>12-2-04</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty

Date: *12/16/04*

Time: *10:20*

Forwarded To:  
Co. Adm.  
*12/16/04 4:24*

RECEIVED BY  
COUNTY ADMIN: *PK*

*12/17/04*

*9 AM*

COUNTY ADMIN  
FORWARDED TO: *PK*

*12/20/04*

*4:30 PM*

## RESOLUTION OF EXCHANGE

WHEREAS, the Sandy Lane alignment in Estero runs from Corkscrew Road to south of Williams Road. Due to the curvature of the alignment, a portion of the Estero/Bonita Community Park is bisected along its westerly boundary, creating a non-contiguous remnant adjacent to a tract of land owned by Stephanie Miller, Trustee (SMT). SMT owns a tract of land that is being bisected by the Sandy Lane alignment along its easterly boundary, creating a non-contiguous remnant adjacent to the Estero/Bonita Community Park.

WHEREAS, Lee County and SMT both have non-contiguous remnant parcels of land, each adjacent to the others property; and

WHEREAS, SMT's remnant is legally described at Exhibit "A"; and

WHEREAS, Lee County's remnant is legally described at Exhibit "B"; and

WHEREAS, Lee County's remnant parcel is +/- .65 acres and SMT's remnant parcel is +/- .975 acres and both will benefit by adjoining the others remnant to their respective property; and

WHEREAS, an exchange is of mutual benefit to Lee County and SMT; and

WHEREAS, the proposed exchange was advertised and approved after full consideration by the Board of County Commissioners.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

1. An exchange will be accomplished by preparation and execution of documents indicated below:

- A. Warranty Deed from SMT to Lee County, a political subdivision of the State of Florida, for land described at Exhibit "A"; and
- B. County Deed from Lee County to SMT for land described at Exhibit "B".

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:

Bob Janes	_____
Douglas R. St. Cerny	_____
Ray Judah	_____
Tammy Hall	_____
John Albion	_____

DULY PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

ATTEST:  
CHARLIE GREEN, CLERK

LEE COUNTY, FLORIDA BY ITS  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of County Attorney

# Exhibit "A"

HM PROJECT #1997079

9/23/2004

REF. DWG. #B-4970

Page 1 of 1

## LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN A PORTION OF THE SOUTH HALF LOT 17, BLOCK C, FLORIDA GULF LAND COMPANY'S SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1 AT PAGE 59 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF LOT 16, BLOCK C, FLORIDA GULF LAND COMPANY'S SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1 AT PAGE 59 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN N.01°09'58"W., ALONG THE WEST LINE OF SAID LOT 16, FOR A DISTANCE OF 1,323.55 FEET TO THE SOUTHWEST CORNER OF LOT 17, BLOCK C OF SAID FLORIDA GULF LAND COMPANY'S SUBDIVISION; THENCE RUN N.89°53'56"E., ALONG THE SOUTH LINE OF SAID LOT 17, FOR A DISTANCE OF 210.06 FEET, TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED, THE SAME BEING A POINT ON A CIRCULAR CURVE, CONCAVE WESTERLY, WHOSE RADIUS POINT BEARS N.60°53'46"W., A DISTANCE OF 766.00 FEET THEREFROM; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 766.00 FEET, THROUGH A CENTRAL ANGLE OF 51°16'47", SUBTENDED BY A CHORD OF 662.92 FEET AT A BEARING OF N.03°27'50"E., FOR A DISTANCE OF 685.57 FEET TO THE END OF SAID CURVE AND TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF SAID LOT 17; THENCE RUN N.89°54'18"E., ALONG THE NORTH LINE OF THE SOUTH HALF OF SAID LOT 17, FOR A DISTANCE OF 91.54 FEET TO THE NORTHEAST CORNER OF SAID LOT 17; THENCE RUN S.00°36'52"E., ALONG THE EAST LINE OF SAID LOT 17, FOR A DISTANCE OF 661.65 FEET TO THE SOUTHEAST CORNER OF SAID LOT 17; THENCE RUN S.89°53'56"W., ALONG THE SOUTH LINE OF SAID LOT 17, FOR A DISTANCE OF 138.69 FEET, TO THE POINT OF BEGINNING; CONTAINING 0.975 ACRES, MORE OR LESS.

THIS PROPERTY SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

BEARINGS SHOWN HEREON REFER TO THE WEST LINE OF LOT 16, BLOCK C, FLORIDA GULF LAND COMPANY'S SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1 AT PAGE 59 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AS BEING N.01°09'58"W.

# Exhibit "B"

HM PROJECT #1997079

9/23/2004

REF. DWG. #B-4971

Page 1 of 1

## LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN A PORTION OF THE NORTH HALF OF LOT 17, BLOCK C, FLORIDA GULF LAND COMPANY'S SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1 AT PAGE 59 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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THIS INSTRUMENT PREPARED BY:

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

Strap No.: Part of 34-46-25-00-0000C.017A  
& .0170

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**AGREEMENT FOR EXCHANGE OF REAL ESTATE**

THIS AGREEMENT is for the exchange of real property between Stephanie Miller, Trustee of the Land Trust dated March 21, 1997, whose address is 12651 McGregor Boulevard 4-403, Fort Myers, Florida 33919 (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 the Estero/Bonita Community Park.
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".
  - 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: 10/18/04

OWNER: Stephanie Miller, Trustee of the Land Trust dated March 21, 1997

*Steven Messersmith*  
*Steven Messersmith*

By: *Stephanie Miller Justice*  
Stephanie Miller, Trustee

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



HM PROJECT #1997079

9/23/2004

REF. DWG. #B-4970

Page 1 of 1

## LEGAL DESCRIPTION:

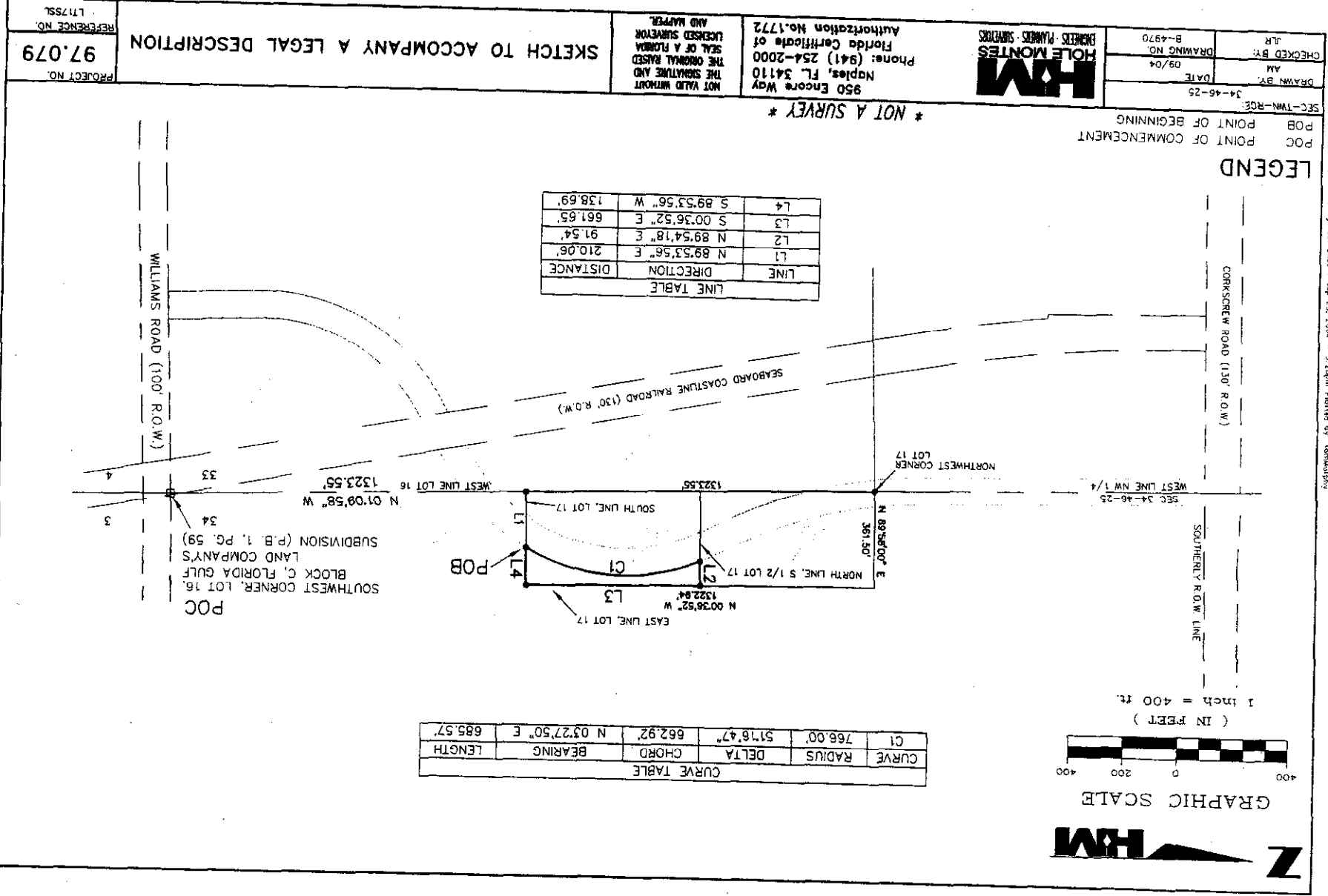
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\\ms02\wms05\1987\198707\117551.dwg Job: SHEET 1 of 21, 2004 - 3:26pm Plotted by: tomography



\* NOT A SURVEY \*

HM PROJECT #1997079  
9/23/2004  
REF. DWG. #B-4971  
Page 1 of 1

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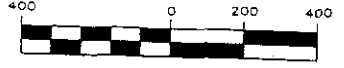
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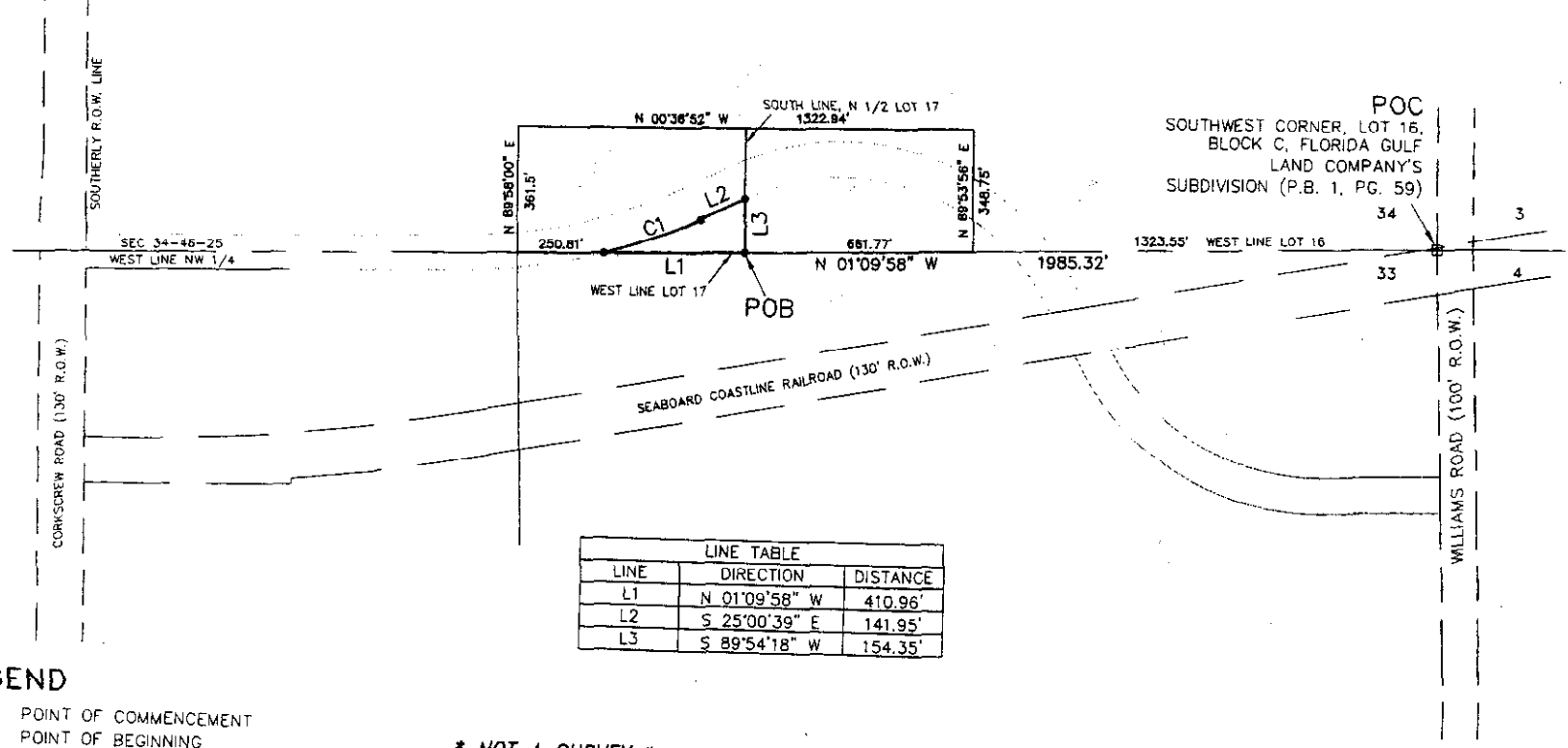


GRAPHIC SCALE



( IN FEET )  
1 inch = 400 ft.

CURVE TABLE					
CURVE	RADIUS	DELTA	CHORD	BEARING	LENGTH
C1	1722.00'	09°59'52"	300.10'	S 20°00'43" E	300.48'



LINE TABLE		
LINE	DIRECTION	DISTANCE
L1	N 01°09'58" W	410.96'
L2	S 25°00'39" E	141.95'
L3	S 89°54'18" W	154.35'

LEGEND

- POC POINT OF COMMENCEMENT
- POB POINT OF BEGINNING

\* NOT A SURVEY \*

SEC-TWN-RGE: 34-46-25	
DRAWN BY: AM	DATE 09/04
CHECKED BY: J.R.	DRAWING NO. B-4971



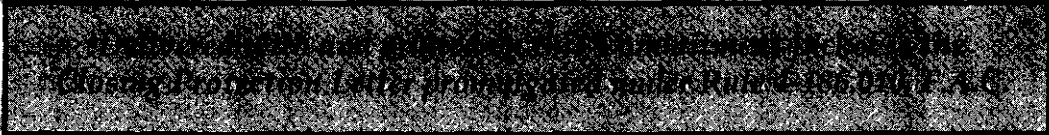
950 Encore Way  
Naples, FL 34110  
Phone: (941) 254-2000  
Florida Certificate of  
Authorization No.1772

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

SKETCH TO ACCOMPANY A LEGAL DESCRIPTION

PROJECT NO. 97.079
REFERENCE NO. LT17NSL

\\vmap2\dwg\997\987079\LT17NSL.dwg Job SHEET Sep 23, 2004 - 3:12pm Plotted by Tom Murphy



COMMITMENT  
AND  
CLOSING PROTECTION LETTER

**Attorneys' Title Insurance Fund, Inc.**

ORLANDO, FLORIDA

**Commitment To Insure Title**

ATTORNEYS' TITLE INSURANCE FUND, INC., a Florida corporation, herein called THE FUND, for a valuable consideration, hereby commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest covered hereby in the land described or referred to in Schedule A; subject to the provisions of Schedules A and B and to the Conditions and Stipulations hereof.

This Commitment shall be effective only when the identity of the proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A hereof by THE FUND, either at the time of the issuance of this Commitment or by subsequent endorsement.

This Commitment is preliminary to the issuance of such policy or policies of title insurance and all liability and obligations hereunder shall cease and terminate six months after the effective date hereof or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue such policy or policies is not the fault of THE FUND.

*In Witness Whereof*, ATTORNEYS' TITLE INSURANCE FUND, INC. has caused this Commitment to be signed and sealed as of the effective date of Commitment shown in Schedule A, the Commitment to become valid when countersigned by an authorized signatory.



Attorneys' Title Insurance Fund, Inc.

By

Charles J. Kovaleski  
President

SERIAL

CF - 1501598

FUND COMMITMENT FORM

**Schedule A**

Commitment Number: CF-1501598

Effective Date: September 14, 2004 @ 11:00 P.M.

Agent's File #:

1. Policy or Policies to be issued: Proposed Amount of Insurance

**OWNER'S:** ALTA Owner's Policy (10/17/92). \$ 50,000.00  
(If other, specify)

**Proposed Insured:** Lee County, Florida, a Political Subdivision of the State of Florida.

**MORTGAGEE:** ALTA Loan Policy (10/17/92). \$  
(If other, specify)

**Proposed Insured:**

2. The estate or interest in the land described or referred to in this commitment is a fee simple (if other, specify same) and title thereto is at the effective date hereof vested in:

Stephanie Miller, Trustee under Land Trust Agreement dated March 21, 1997.

3. The land referred to in this commitment is described as follows:

See Attached Exhibit "A"

**ISSUED BY**

Truman J. Costello, P.A.  
Post Office Drawer 60205  
Fort Myers, Florida 33906  
(239) 939-2222



Agent's Signature

Agent's Member No. 6365

HM PROJECT #1997079  
9/23/2004  
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Page 1 of 1

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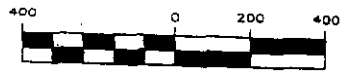
COMMENCE AT THE SOUTHWEST CORNER OF LOT 16, BLOCK C, FLORIDA GULF LAND COMPANY'S SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1 AT PAGE 59 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN N.01°09'58"W., ALONG THE WEST LINE OF SAID LOT 16, FOR A DISTANCE OF 1,323.55 FEET TO THE SOUTHWEST CORNER OF LOT 17, BLOCK C OF SAID FLORIDA GULF LAND COMPANY'S SUBDIVISION; THENCE RUN N.89°53'56"E., ALONG THE SOUTH LINE OF SAID LOT 17, FOR A DISTANCE OF 210.06 FEET, TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED, THE SAME BEING A POINT ON A CIRCULAR CURVE, CONCAVE WESTERLY, WHOSE RADIUS POINT BEARS N.60°53'46"W., A DISTANCE OF 766.00 FEET THEREFROM; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 766.00 FEET, THROUGH A CENTRAL ANGLE OF 51°16'47", SUBTENDED BY A CHORD OF 662.92 FEET AT A BEARING OF N.03°27'50"E., FOR A DISTANCE OF 685.57 FEET TO THE END OF SAID CURVE AND TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF SAID LOT 17; THENCE RUN N.89°54'18"E., ALONG THE NORTH LINE OF THE SOUTH HALF OF SAID LOT 17, FOR A DISTANCE OF 91.54 FEET TO THE NORTHEAST CORNER OF SAID LOT 17; THENCE RUN S.00°36'52"E., ALONG THE EAST LINE OF SAID LOT 17, FOR A DISTANCE OF 661.65 FEET TO THE SOUTHEAST CORNER OF SAID LOT 17; THENCE RUN S.89°53'56"W., ALONG THE SOUTH LINE OF SAID LOT 17, FOR A DISTANCE OF 138.69 FEET, TO THE POINT OF BEGINNING; CONTAINING 0.975 ACRES, MORE OR LESS.

THIS PROPERTY SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

BEARINGS SHOWN HEREON REFER TO THE WEST LINE OF LOT 16, BLOCK C, FLORIDA GULF LAND COMPANY'S SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1 AT PAGE 59 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AS BEING N.01°09'58"W.

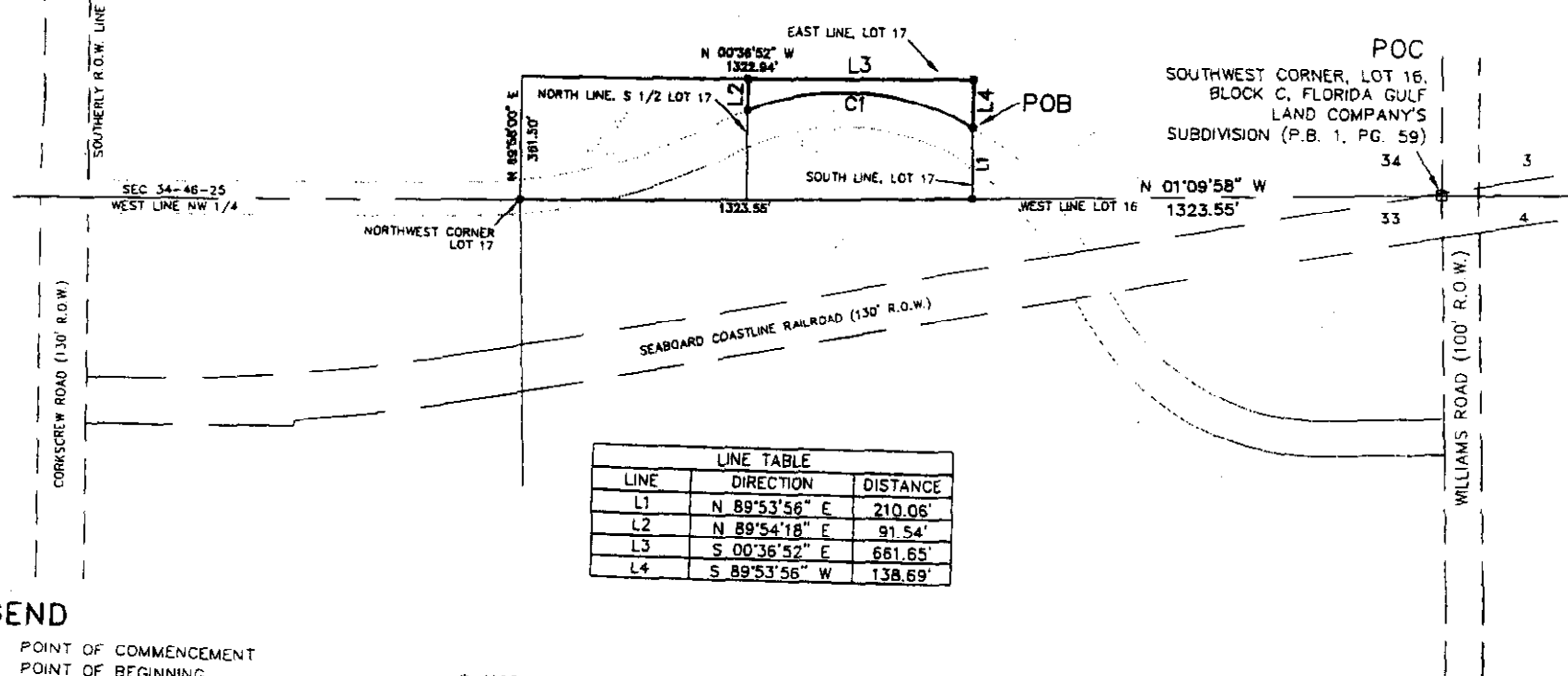


GRAPHIC SCALE



( IN FEET )  
1 inch = 400 ft.

CURVE TABLE					
CURVE	RADIUS	DELTA	CHORD	BEARING	LENGTH
C1	766.00'	51°16'47"	662.92'	N 03°27'50" E	685.57'



LINE TABLE		
LINE	DIRECTION	DISTANCE
L1	N 89°53'56" E	210.06'
L2	N 89°54'18" E	91.54'
L3	S 00°36'52" E	661.65'
L4	S 89°53'56" W	138.69'

LEGEND

POC POINT OF COMMENCEMENT  
POB POINT OF BEGINNING

\* NOT A SURVEY \*

SEC-TWN-RGE: 34-46-25	
DRAWN BY: AM	DATE 09/04
CHECKED BY: JLR	DRAWING NO. 8-4970



950 Encore Way  
Naples, FL 34110  
Phone: (941) 254-2000  
Florida Certificate of  
Authorization No. 1772

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

SKETCH TO ACCOMPANY A LEGAL DESCRIPTION

PROJECT NO. 97.079
REFERENCE NO. L1755L

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## FUND COMMITMENT FORM

### Schedule B

Commitment Number: CF-1501598

I. The following are the requirements to be complied with:

1. Payment of the full consideration to, or for the account of, the grantors or mortgagors.
2. Instruments creating the estate or interest to be insured which must be executed, delivered and filed for record:
  - a. Deed to be given by Stephanie Miller, Trustee under Land Trust dated March 21, 1997 conveying the real property described in the attached Exhibit "A" to the proposed insured.
  - b. Payment of 2004 real property taxes.
3. Affidavit to be executed by Seller stating: (i) there are no matters pending against the Affiant that could give rise to a lien that would attach to the property between the Effective Date of this commitment and the recording of the interest to be insured; and (ii) that the Affiant has not and will not execute any instruments that would adversely affect the interest to be insured.
4. A search commencing with the Effective Date of this commitment will be performed at or shortly prior to the closing of this transaction. If this search reveals a title defect or other objectionable matters, an endorsement will be issued requiring that this defect or objection be cleared on or before closing.
5. A survey meeting the Fund's requirements must be furnished. If such survey reveals any encroachments, overlaps, boundary line disputes, or other adverse matters, they will appear as exceptions in the policy to be issued based upon this commitment.
6. The policy to be issued based upon this commitment will not contain an exception for easements or claims of easements not shown by the public records, provided that (i) the survey, meeting the Fund's requirements, does not disclose the existence of any unrecorded easements; and (ii) the affidavit of the owner, or other person with actual knowledge, establishes that there are no unrecorded easements or claims of easements in existence.
7. Affidavit from a reliable person must be furnished establishing that more than ninety (90) days has elapsed since the completion of all improvements for which payment has not been made

in full.

II. Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of The Fund:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.

2. Any owner and mortgagee policies issued pursuant hereto will contain under Schedule B the standard exceptions set forth at the inside cover hereof unless an affidavit of possession and a satisfactory current survey are submitted, an inspection of the premises is made, it is determined the current year's taxes or special assessments have been paid, and it is determined there is nothing of record which would give rise to construction liens which could take priority over the interests insured hereunder (where the liens would otherwise take priority, submission of waivers is necessary).

3. Federal liens and judgment liens, if any, filed with the Florida Department of State pursuant to Sec. 713.901, et seq., F.S. and Sec. 55.201 et seq., F.S., respectively, which designate the Florida Department of State as the place for filing federal liens and judgment liens against personal property. For insuring purposes:

- (a) Pursuant to Sec. 713.901 et seq., F.S., personal property includes, but is not limited to, mortgages, leaseholds, mortgages on leaseholds, interests in cooperative associations, vendees' interests, and options when those interests are held by a partnership, corporation, trust or decedent's estate; and
- (b) Pursuant to Sec. 55.201 et seq., F.S., personal property includes, but is not limited to, leaseholds, interests in cooperative associations, vendees' interests, and options regardless of the type of entity holding such interests, including individuals. (Note: Mortgages have been specifically excluded from the personal property interests in which a judgment lien may be acquired under the provisions of Sec. 55.201, et seq., F.S.)

NOTE: Item number 1 and 2, Schedule B, Section II will be deleted upon compliance with Items 3 through 7, Schedule B, Section I. (The Fund reserves the right to add any special exceptions upon review of matters required in said items.)

4. Taxes for the year 2005 and subsequent years, which are not yet due and payable.

5. Lee County Ordinance 86-14 recorded November 30, 1990, in O.R. Book 2189, Page 3281; and amended by Ordinance No. 86-38 in O.R. Book 2189, page 3334, Public Records of Lee County, Florida.

6. Restrictions, conditions, reservations, easements, and other matters contained on the Plat of Florida Gulf Land Company's Subdivision, as recorded in Plat Book 1, Page 59, Public Records of Lee County, Florida.

7. Resolution of Board of County Commissioners recorded in O.R. Book 2816, Page 551, Public Records of Lee County, Florida. *Full doc.*

## Standard Exceptions

The owner policy will be subject to the mortgage, if any, noted under item two of Section I of Schedule B hereof. All policies will be subject to the following exceptions: (1) taxes for the year of the effective date of this Commitment and taxes or special assessments which are not shown as existing liens by the public records; (2) rights or claims of parties in possession not shown by the public records; (3) encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises; (4) easements, or claims of easements, not shown by the public records; (5) any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

## Conditions and Stipulations

1. The term "mortgage," when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquires actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to THE FUND in writing, THE FUND shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent THE FUND is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to THE FUND, or if THE FUND otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, THE FUND at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve THE FUND from liability previously incurred pursuant to paragraph 3 of these Conditions and Stipulations.
3. Liability of THE FUND under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions, the Exclusions from Coverage and the Conditions and Stipulations of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. Any action or actions or rights of action that the proposed Insured may have or may bring against THE FUND arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

# Closing Protection Letter

The operation and scope of the following Closing Protection Letter ("Letter") is limited to the transaction which is the subject of the commitment to which this Letter is attached and is also directed to those person(s) and/or entity (ies) set forth in the Letter and identified as a proposed insured in the commitment.

RE: Issuing Agent: Agent countersigning the attached commitment.

When title insurance of Attorneys' Title Insurance Fund, Inc. is specified for your protection in connection with closings of real estate transactions in which you are to be the lessee or purchaser of an interest in land or a lender secured by a mortgage (including any other security instrument) of an interest in land, Attorneys' Title Insurance Fund, Inc., subject to the Conditions and Exclusions set forth below, hereby agrees to reimburse you for actual loss incurred by you in connection with such closing when conducted by said Issuing Agent when such loss arises out of:

1. Failure of said Issuing Agent to comply with your written closing instructions to the extent that they relate to (a) the status of the title to said interest in land or the validity, enforceability and priority of the lien of said mortgage on said interest in land, including the obtaining of documents and the disbursement of funds necessary to establish such status of title or lien, or (b) the obtaining of any other document, specifically required by you, but not to the extent that said instructions require a determination of the validity, enforceability or effectiveness of such other document, or (c) the collection and payment of funds due you, or
2. Fraud or dishonesty of said Issuing Agent in handling your funds or documents in connection with such closing.

If you are a lender protected under the foregoing paragraph, your borrower in connection with a loan secured by a mortgage on a one-to-four family dwelling shall be protected as if this letter were addressed to your borrower.

## Conditions and Exclusions

- A. Attorneys' Title Insurance Fund, Inc. will not be liable to you for loss arising out of:
  1. Failure of said Issuing Agent to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by Attorneys' Title Insurance Fund, Inc. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in said binder or commitment shall not be deemed to be inconsistent.
  2. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except such as shall result from failure of said Issuing Agent to comply with your written closing instructions to deposit the funds in a bank which you designated by name.
  3. Mechanics' and materialmen's liens in connection with your purchase or lease or construction loan transactions, except to the extent that protection against such liens is afforded by a title insurance binder, commitment or policy of Attorneys' Title Insurance Fund, Inc.
  4. The periodic disbursement of construction loan proceeds or funds furnished by the owner to pay for construction costs during the construction of improvements on the land to be insured, unless an officer of the company has specifically accepted the responsibility to you for such disbursement program in writing.
- B. When Attorneys' Title Insurance Fund, Inc. shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of Attorneys' Title Insurance Fund, Inc. for such reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of such right of subrogation.
- C. Any liability of Attorneys' Title Insurance Fund, Inc. for loss incurred by you in connection with closings of real estate transactions by said Issuing Agent shall be limited to the protection provided by this letter. However, this letter shall not affect the protection afforded by a title insurance binder, commitment or policy of Attorneys' Title Insurance Fund, Inc. The dollar amount of liability hereby incurred shall not be greater than the amount of the title insurance binder, commitment or policy of title insurance to be issued, and liability hereunder as to any particular loan transaction shall be coextensive with liability under the policy issued to you in connection with such transaction. Payment in accordance with the terms of this letter shall reduce by the same amount the liability under such policy and payment under such policy shall reduce by the same amount the company's liability under the terms of this letter.
- D. Claims of loss shall be made promptly to Attorneys' Title Insurance Fund, Inc. at its principal office at 6545 Corporate Centre Boulevard, P.O. Box 628600, Orlando, Florida 32862-8600. When the failure to give prompt notice shall prejudice Attorneys' Title Insurance Fund, Inc., then liability of Attorneys' Title Insurance Fund, Inc., hereunder shall be reduced to the extent of such prejudice. Attorneys' Title Insurance Fund, Inc. shall not be liable hereunder unless notice of loss in writing is received by Attorneys' Title Insurance Fund, Inc. within ninety (90) days from the date of discovery of such loss.
- E. Nothing contained herein shall be construed as authorizing compliance by any issuing agent with any such closing instructions, compliance with which would constitute a violation of any applicable law, rule or regulation relating to the activity of title insurers, their issuing agents, and their failure to comply with any such closing instructions shall not create any liability under the terms of this letter.
- F. The protection herein offered will be effective until cancelled by written notice from Attorneys' Title Insurance Fund, Inc. Any previous insured Closing Service letter or similar agreement is hereby cancelled, except as to closings of your real estate transactions regarding which you have previously sent (or within 30 days hereafter send) written closing instructions to said Issuing Agent.

COMMITMENT  
to  
INSURE TITLE



Attorneys'  
Title Insurance Fund,  
Inc.

ORLANDO, FLORIDA

For information about coverage  
or assistance in resolving complaints,  
call (407) 240-3863.

Offices at 6545 Corporate Centre Boulevard  
Orlando, Florida 32822  
(407) 240-3863 • (800) 336-3863

AFFIDAVIT OF INTEREST IN REAL PROPERTY

THIS AFFIDAVIT OF INTEREST IN REAL PROPERTY is made and entered this \_\_\_ day of \_\_\_  
\_, 20\_\_ for the sole purpose of compliance with Section 286.23 of the Florida Statutes.

The undersigned hereby swears and affirms under oath, subject to the penalties prescribed for perjury, that the following is true:

The Name and Address of the Grantor is:

Stephanie Miller, Trustee of the Land Trust dated March 21, 1997

12651 McGregor Blvd. 4-403, Fort Myers, FL 33919

The name(s) and address(es) of every person having a beneficial interest in real property that will be conveyed to Lee County are:

1. Stephanie Miller, 12651 McGregor Blvd. 4-403, Fort Myers, FL 33919

2. William B. Gess, Jr., 229 Barrow Road, Lexington, KY 40502

3. J.W. Davis, Jr. 3319 Tates Creek Road, Lexington, KY 40502

4. \_\_\_\_\_

5. \_\_\_\_\_

6. \_\_\_\_\_

The real property to be conveyed to Lee County is known as: see Exhibit "A" attached hereto and made a part hereof.

FURTHER AFFIANT SAYETH NAUGHT.

Signed, sealed and delivered  
in our presences:

John P. Messersmith  
Witness Signature

Gwen R. Messersmith  
Printed Name

Brenda Lawmaster  
Witness Signature

BRENDA LAWMASTER  
Printed Name

Stephanie Miller Trustee  
Signature of Affiant

Stephanie Miller, Trustee  
Printed Name

Affidavit of Interest in Real Property  
STRAP: 34-46-25-00-0000C.0170  
Project: Estero/Bonita Community Park, No. 1999

STATE OF FL

COUNTY OF Lee

SWORN TO AND SUBSCRIBED before me this 10 day of October, 2004 by Stephanie Miller, Trustee  
(name of person acknowledged)

Gwen R Messersmith  
(Notary Signature)

(SEAL)



GWEN R. MESSERSMITH  
MY COMMISSION # DD 212108  
EXPIRES: June 13, 2007  
Bonded Thru Budget Notary Services

\_\_\_\_\_  
(Print, type or stamp name of Notary)

Personally known  \_\_\_\_\_  
OR Produced Identification \_\_\_\_\_  
Type of Identification \_\_\_\_\_



HM PROJECT #1997079

9/23/2004

REF. DWG. #B-4970

Page 1 of 1

## LEGAL DESCRIPTION:

A PARCEL OF LAND LOCATED IN A PORTION OF THE SOUTH HALF LOT 17, BLOCK C, FLORIDA GULF LAND COMPANY'S SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1 AT PAGE 59 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

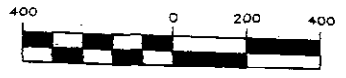
COMMENCE AT THE SOUTHWEST CORNER OF LOT 16, BLOCK C, FLORIDA GULF LAND COMPANY'S SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1 AT PAGE 59 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA; THENCE RUN N.01°09'58"W., ALONG THE WEST LINE OF SAID LOT 16, FOR A DISTANCE OF 1,323.55 FEET TO THE SOUTHWEST CORNER OF LOT 17, BLOCK C OF SAID FLORIDA GULF LAND COMPANY'S SUBDIVISION; THENCE RUN N.89°53'56"E., ALONG THE SOUTH LINE OF SAID LOT 17, FOR A DISTANCE OF 210.06 FEET, TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED, THE SAME BEING A POINT ON A CIRCULAR CURVE, CONCAVE WESTERLY, WHOSE RADIUS POINT BEARS N.60°53'46"W., A DISTANCE OF 766.00 FEET THEREFROM; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE TO THE LEFT, HAVING A RADIUS OF 766.00 FEET, THROUGH A CENTRAL ANGLE OF 51°16'47", SUBTENDED BY A CHORD OF 662.92 FEET AT A BEARING OF N.03°27'50"E., FOR A DISTANCE OF 685.57 FEET TO THE END OF SAID CURVE AND TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF SAID LOT 17; THENCE RUN N.89°54'18"E., ALONG THE NORTH LINE OF THE SOUTH HALF OF SAID LOT 17, FOR A DISTANCE OF 91.54 FEET TO THE NORTHEAST CORNER OF SAID LOT 17; THENCE RUN S.00°38'52"E., ALONG THE EAST LINE OF SAID LOT 17, FOR A DISTANCE OF 661.65 FEET TO THE SOUTHEAST CORNER OF SAID LOT 17; THENCE RUN S.89°53'56"W., ALONG THE SOUTH LINE OF SAID LOT 17, FOR A DISTANCE OF 138.69 FEET, TO THE POINT OF BEGINNING; CONTAINING 0.975 ACRES, MORE OR LESS.

THIS PROPERTY SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS OF RECORD.

BEARINGS SHOWN HEREON REFER TO THE WEST LINE OF LOT 16, BLOCK C, FLORIDA GULF LAND COMPANY'S SUBDIVISION ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1 AT PAGE 59 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AS BEING N.01°09'58"W.

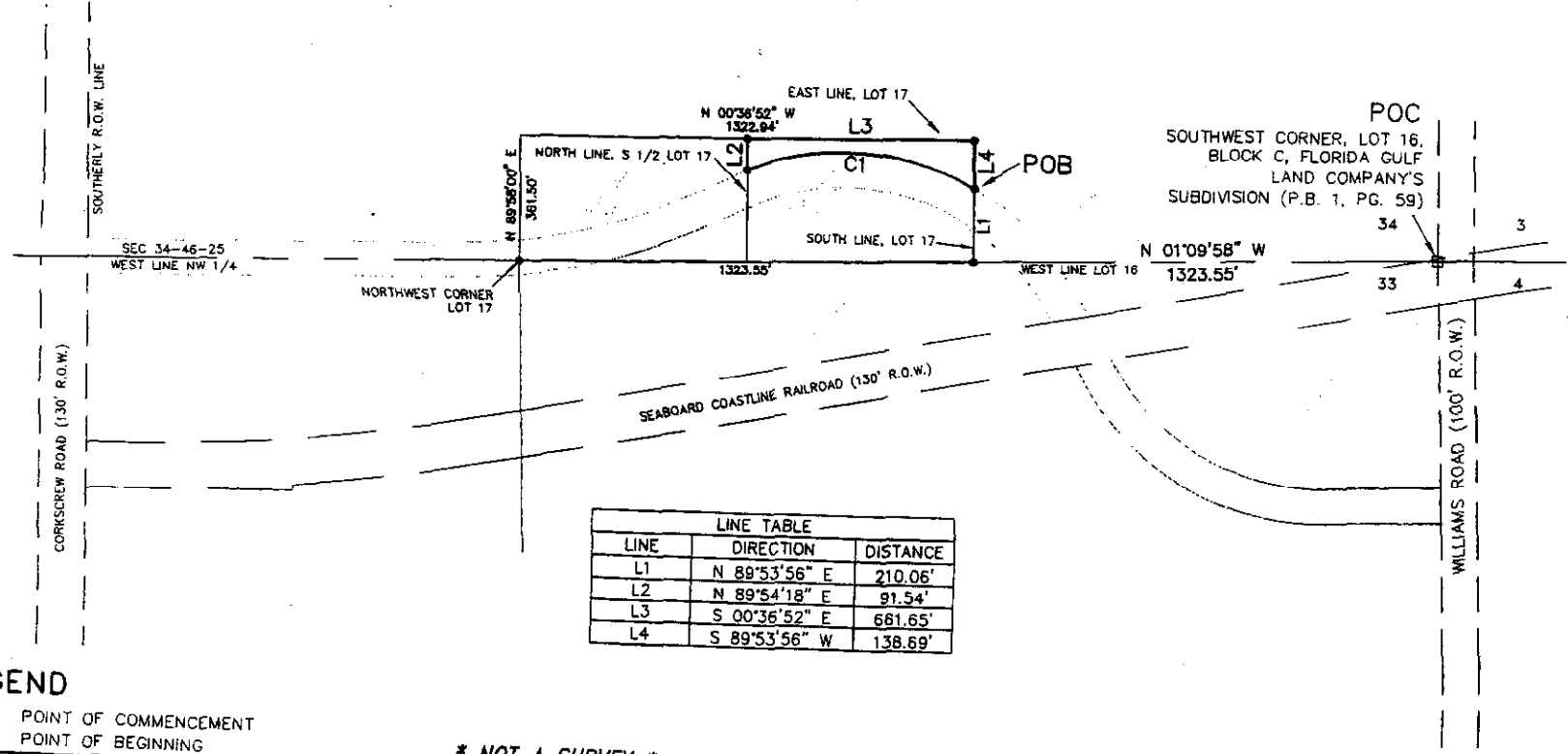


GRAPHIC SCALE



( IN FEET )  
1 inch = 400 ft.

CURVE TABLE					
CURVE	RADIUS	DELTA	CHORD	BEARING	LENGTH
C1	766.00'	51°16'47"	662.92'	N 03°27'50" E	685.57'



LINE TABLE		
LINE	DIRECTION	DISTANCE
L1	N 89°53'56" E	210.06'
L2	N 89°54'18" E	91.54'
L3	S 00°36'52" E	661.65'
L4	S 89°53'56" W	138.69'

**LEGEND**

POC POINT OF COMMENCEMENT  
 POB POINT OF BEGINNING

*\* NOT A SURVEY \**

SEC-TWN-RGE: 34-45-25	
DRAWN BY: AM	DATE 09/04
CHECKED BY: JLR	DRAWING NO. B-4970



950 Encore Way  
 Naples, FL 34110  
 Phone: (941) 254-2000  
 Florida Certificate of  
 Authorization No.1772

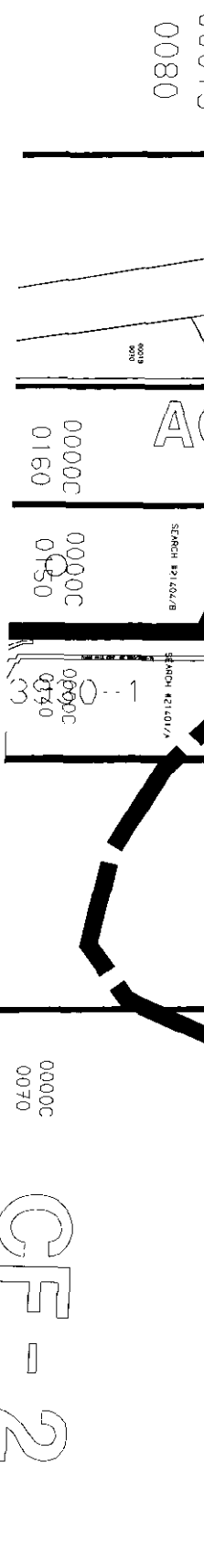
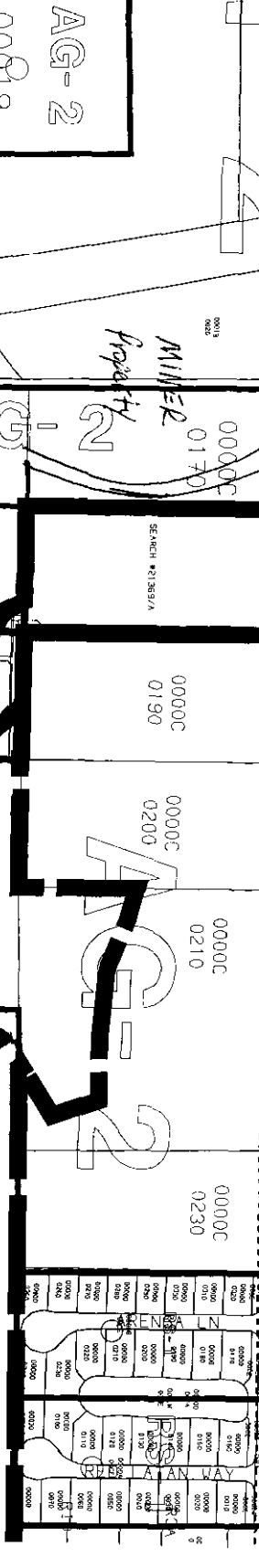
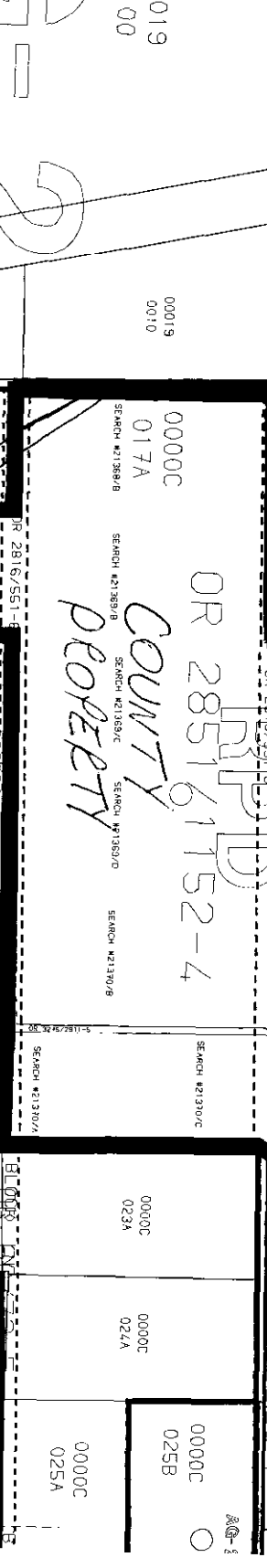
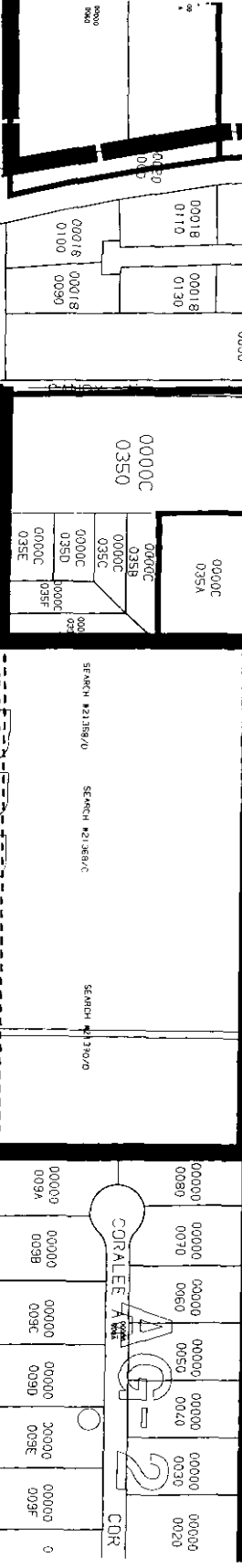
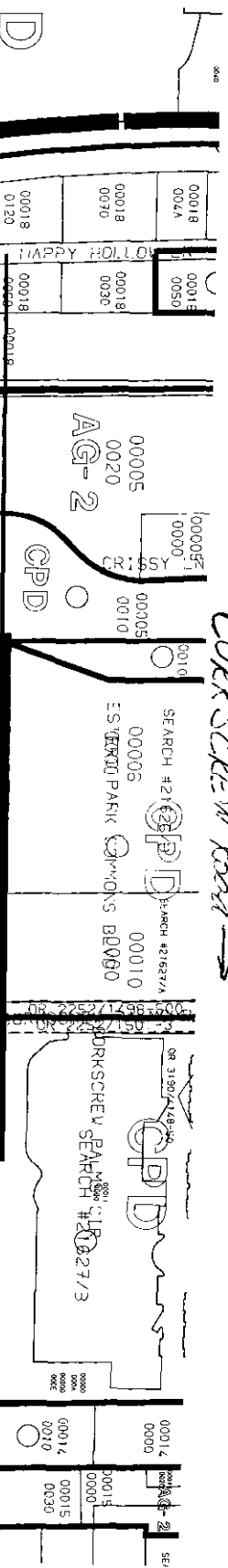
NOT VALID WITHOUT  
 THE SIGNATURE AND  
 THE ORIGINAL RAISED  
 SEAL OF A FLORIDA  
 LICENSED SURVEYOR  
 AND MAPPER.

SKETCH TO ACCOMPANY A LEGAL DESCRIPTION

PROJECT NO. <b>97.079</b>
REFERENCE NO. LT17SSL

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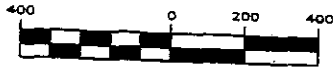
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CF-2



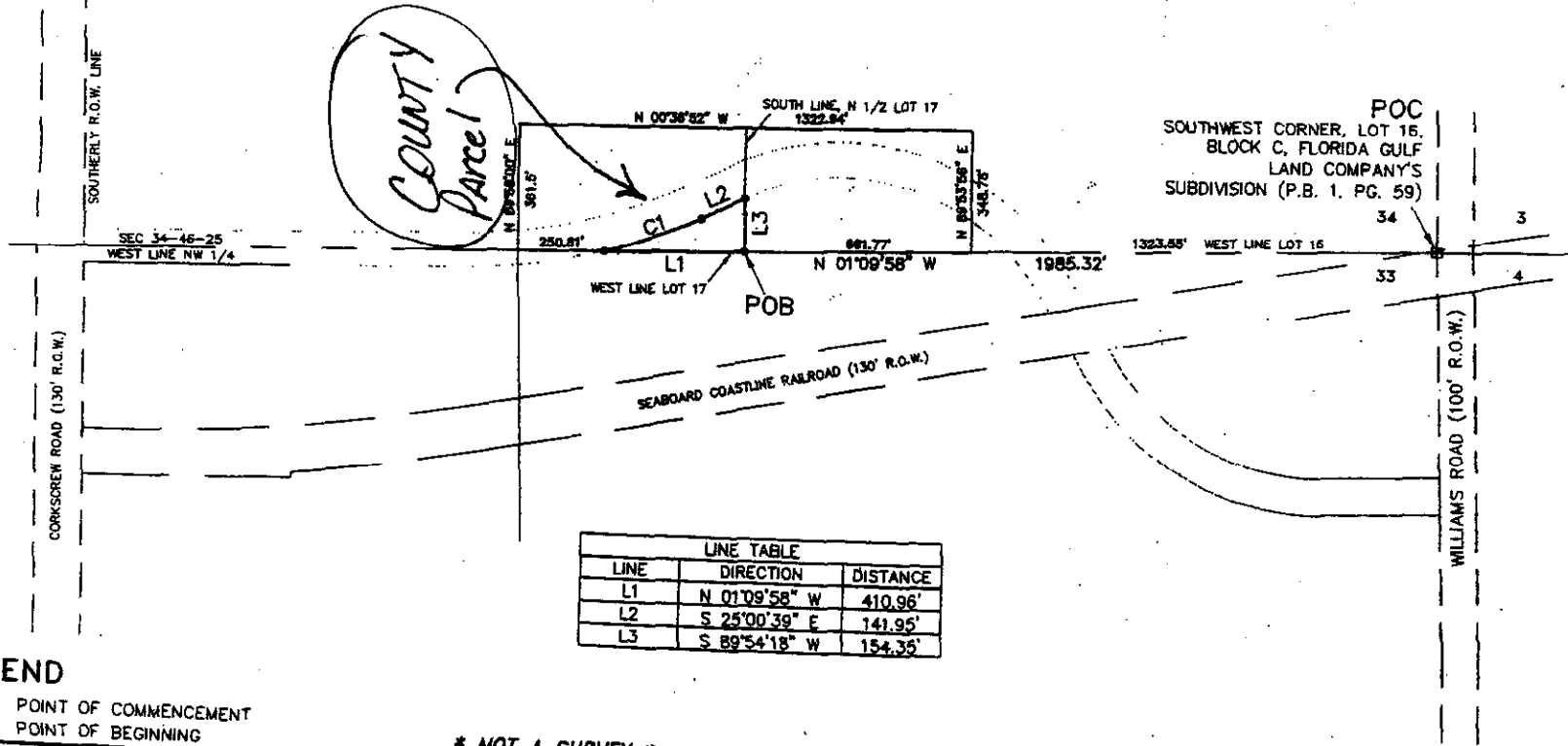
GRAPHIC SCALE



( IN FEET )  
1 inch = 400 ft.

CURVE TABLE					
CURVE	RADIUS	DELTA	CHORD	BEARING	LENGTH
C1	1722.00'	09°59'52"	300.10'	S 20°00'43" E	300.48'

COUNTY Parcel



LINE TABLE		
LINE	DIRECTION	DISTANCE
L1	N 01°09'58" W	410.96'
L2	S 25°00'39" E	141.95'
L3	S 89°54'18" W	154.35'

LEGEND

POC POINT OF COMMENCEMENT  
POB POINT OF BEGINNING

\* NOT A SURVEY \*

DRAWN BY: AM		DATE 09/04
CHECKED BY: JLR		DRAWING NO. B-4971



950 Encore Way  
Naples, FL 34110  
Phone: (841) 254-2000  
Florida Certificate of  
Authorization No. 1772

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AND MAPLE

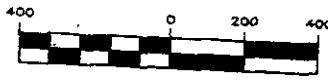
SKETCH TO ACCOMPANY A LEGAL DESCRIPTION

PROJECT NO. 97.079
REFERENCE NO. LT17NSL

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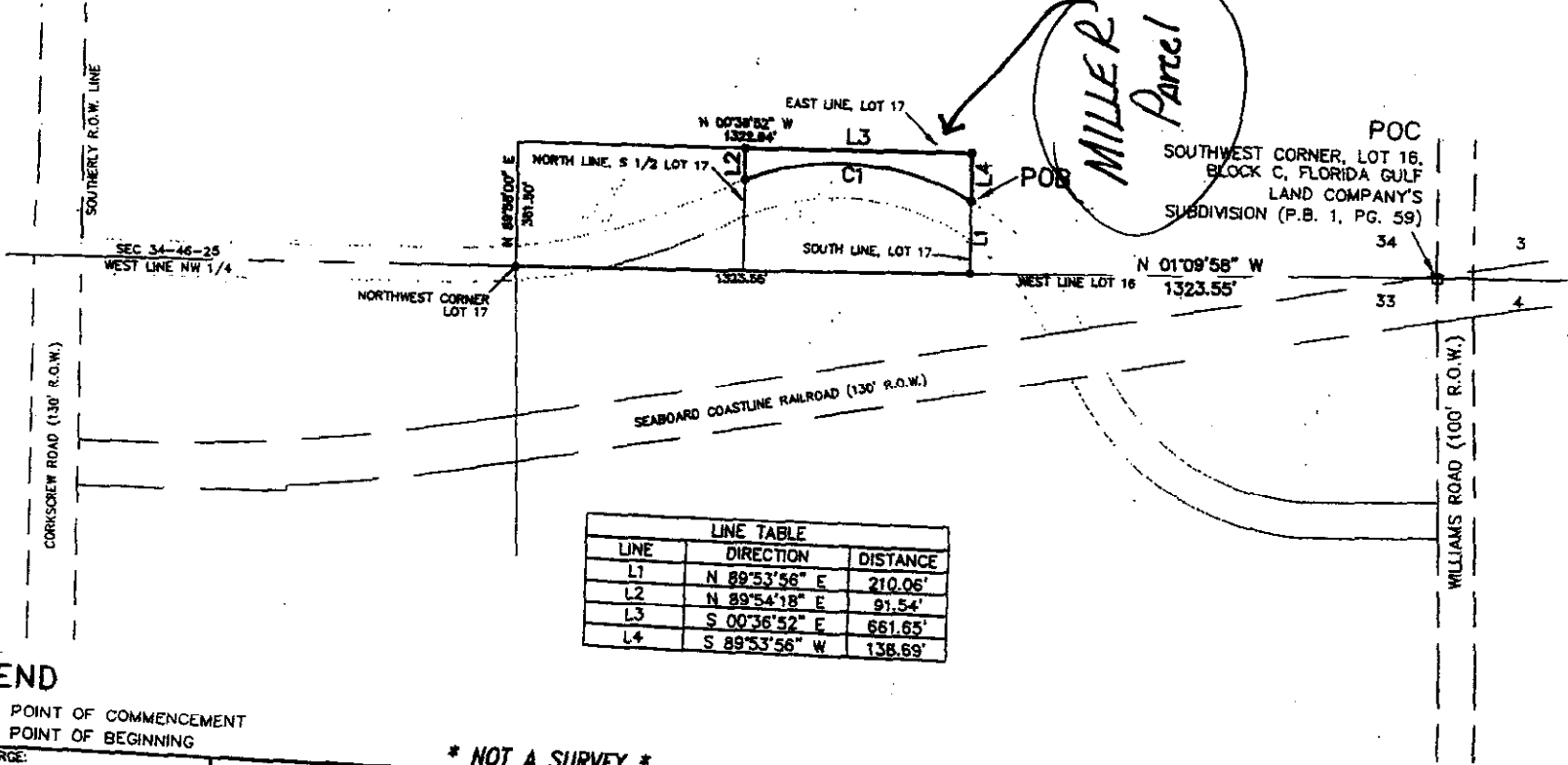
GRAPHIC SCALE



( IN FEET )

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LEGEND

POC POINT OF COMMENCEMENT  
 POB POINT OF BEGINNING

\* NOT A SURVEY \*

SEC-TWN-RGE: 34-46-25	
DRAWN BY: AM	DATE 09/04
CHECKED BY: JLR	DRAWING NO. B-4970



950 Encore Way  
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SKETCH TO ACCOMPANY A LEGAL DESCRIPTION

PROJECT NO. 97.079
REFERENCE NO. LT17SS

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