



**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

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

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

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

DATE: June 25, 2004

SUBJECT: Purchase Agreement Authorization
Owners: Daniel and Jacqueline Guenther
Parcel Nos. 151/751
Lake Drive Road Improvement Project

This memorandum requests authorization by the Board of County Commissioners (BCC) and execution by the Chairman of a purchase agreement for Parcel Nos. 151/751. The parcel is required for the Lake Drive road improvement project. The purchase price is \$180,000.00, inclusive of attorney fees and expert costs incurred by the property owner.

I THE PROPERTY

A. Location Data

The property is located on the west side of Azalea Avenue, approximately 434 ± feet north of Lake Drive, in unincorporated Seminole County, Florida.

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

B. Address

1440 Azalea Avenue
Casselberry, Florida 32707

C. Description

The property contains 12,573 ± square feet, and is improved with a single family residence.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2002-R-70 on April 23, 2002, authorizing the acquisition of the referenced property, and finding that the construction of the Lake Drive road improvement project is necessary and serves a county and public purpose and is in the best interest of the citizens of Seminole County.

III ACQUISITION/REMAINDER

The proposed acquisition of Parcel No. 151 is for 6,410 square feet. The acquisition, caused by the realignment of Azalea Avenue, encompasses almost the entire house. Parcel 751 is a 272 square foot temporary construction easement needed to demolish the remainder of the house structure, leaving the property owners with a 6,163 square foot vacant lot after the completion of the project.

IV APPRAISED VALUE

The County's appraised value amount, as of the date of value of January 13, 2004, was \$120,000.00. The County's appraisal was prepared by Clayton, Roper & Marshall, P.A., and was approved by the County's MAI designated staff appraiser.

V BINDING OFFER/NEGOTIATIONS

On April 13, 2004, the BCC authorized a binding written offer in the amount of \$140,000.00. Thereafter, County staff negotiated this proposed inclusive settlement agreement with the property owners and their attorney in the amount of \$180,000.00.

VI SETTLEMENT ANALYSIS/COST AVOIDANCE

The property owners had an appraisal prepared by Gary M. Pendergast of Florida Real Estate Analysts, Inc. He opined a value of \$165,000.00 for the acquisition as of the date of value of May 7, 2004. The difference in value for the property is based on different comparable sales used to value the home, as well as a higher per square foot land value. Both appraisers identify the remainder property as having basically no independent utility and identify its contributory value as nominal at \$100.00.

At this point, it would not be cost effective to litigate over this parcel to determine whether the appraised value is closer to the County's or the property owners' appraiser's estimated amount. The property owners are being forced to relocate, and will probably experience difficulty in finding a comparable place to live. Thus far, very little time has been expended by the owners' experts. The attorney for the property owners has agreed to accept less than the statutory rate. The property owners will receive \$165,000.00 from the settlement. Overall, this settlement proposal is reasonable.

VII RECOMMENDATION

County staff recommends that the BCC authorize settlement in the amount of \$180,000.00, inclusive of attorney's fees and expert's costs incurred.

LV/kc

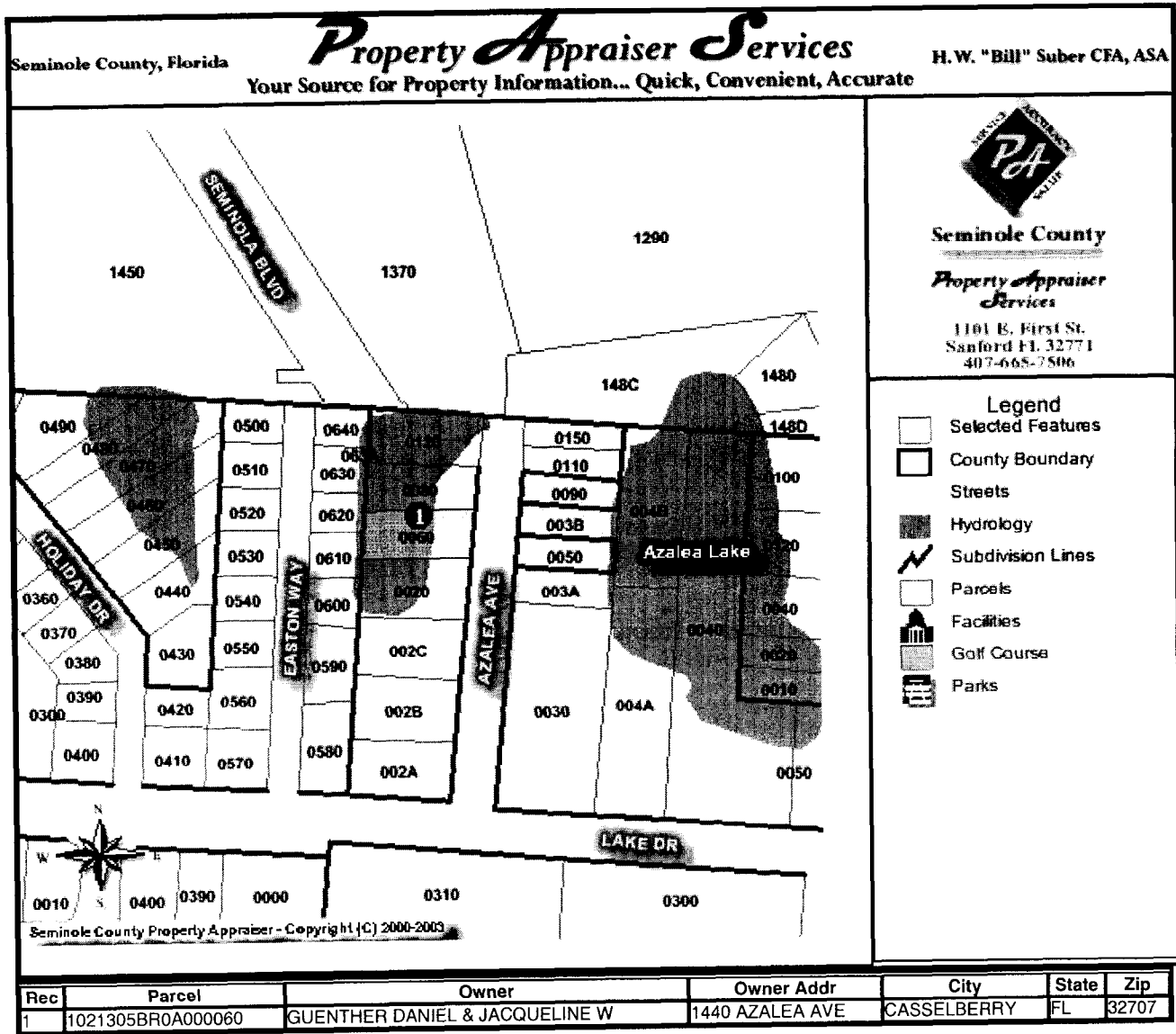
Attachments:

Location Map (Exhibit A)

Sketch (Exhibit B)

Purchase Agreement (Exhibit C)

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Seminole County Property Appraiser - Copyright (C) 2000-2003

Rec	Parcel	Owner	Owner Addr	City	State	Zip
1	1021305BR0A000060	GUENTHER DANIEL & JACQUELINE W	1440 AZALEA AVE	CASSELBERRY	FL	32707

EXHIBIT A

SKETCH(S): PROPERTY SKETCH - TAKING

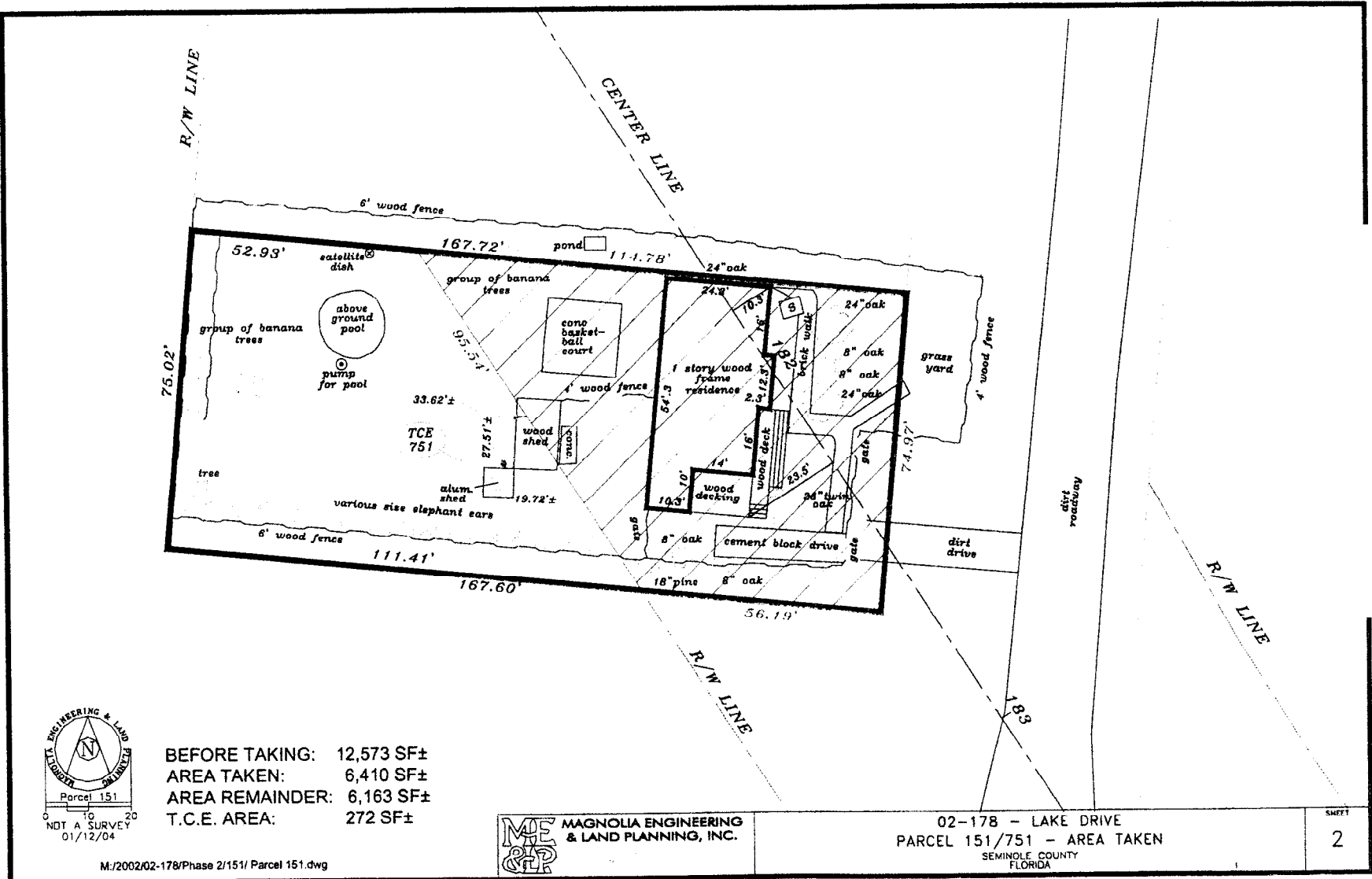


EXHIBIT B

**PURCHASE AGREEMENT
FEE SIMPLE/TEMPORARY CONSTRUCTION EASEMENT**

STATE OF FLORIDA)
COUNTY OF SEMINOLE)

THIS AGREEMENT is made and entered into this ____ day of _____, 2004, by and between DANIEL GUENTHER and JACQUELINE GUENTHER, whose address is 1440 Azalea Avenue, Casselberry, FL 32707, 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 construction and maintenance of an authorized 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 convey, and COUNTY hereby agrees to purchase the following property upon the following terms and conditions:

I. LEGAL DESCRIPTION -

RIGHT-OF-WAY FEE SIMPLE
PROJECT: Lake Drive
R/W PARCEL NO.: 151

A portion of Lot 6 and a portion of the South 25.00 feet of Lot 8, Block "A", Amended Plat of Button's Subdivision, according to the plat thereof recorded in Plat Book 9, page 25 and a part of that parcel of land described in Official Records Book 1466, Page 422 as recorded in the Public Records of Seminole County, Florida, being that portion of Section 10, Township 21 South, Range 30 East of Seminole County, Florida,

described as follows:

Begin at the Southeast corner of Lot 6, Block "A", Amended Plat of Button's Subdivision, according to the Plat thereof, as recorded in Plat Book 9, Page 25, Public Records of Seminole County, Florida; thence N84°29'03"W along the South line of said Lot 6 a distance of 56.19 feet; thence, departing said South line, N32°45'27"W a distance of 95.54 feet to a point on the North line of the South 25 feet of Lot 8, Block "A" of said Amended Plat of Button's Subdivision; thence S84°28'06"E along said North line a distance of 114.78 feet

to a point on the existing Westerly Right of Way line of Azalea Avenue as shown and recorded on said Amended Plat of Button's Subdivision; thence S05°04'02"W along said existing westerly Right of Way line a distance of 74.97 feet to the Point of Beginning.

Containing 6410 square feet, more or less.

TAX I.D. NO.: 10-21-30-5BR-0A00-0060

TEMPORARY CONSTRUCTION EASEMENT

PROJECT: Lake Drive

PARCEL NO.:751

A portion of Lot 6 and a portion of the South 25.00 feet of Lot 8, Block "A", Amended Plat of Button's Subdivision, according to the plat thereof recorded in Plat Book 9, page 25 and a part of that parcel of land described in Official Record Book 1466, Page 422 as recorded in the Public Records of Seminole County, Florida, being that portion of Section 10, Township 21 South, Range 30 East of Seminole County, Florida,

described as follows:

Commence at the Southeast corner of Lot 6, Block "A", Amended Plat of Button's Subdivision, according to the Plat thereof, as recorded in Plat Book 9, Page 25, Public Records of Seminole County, Florida; thence N84°29'03"W along the South line of said Lot 6 a distance of 56.19 feet; thence, departing said South line, N32°45'27"W a distance of 27.81 feet for a Point of Beginning; thence N87°40'26"W a distance of 19.72 feet; thence N03°09'40"E a distance of 27.51 feet; thence S32°45'27"E a distance of 33.62 feet to the Point of Beginning.

Containing 271 square feet, more or less.

TAX I.D. NO.: 10-21-30-5BR-0A00-0060

II. PURCHASE PRICE

(a) OWNER agrees to sell and convey the above-described property of the above referenced project by Warranty Deed on Parcel No. 151, free of liens and encumbrances, and by Temporary Construction Easement on Parcel No. 751 unto COUNTY for the sum of ONE HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$180,000.00). The above amount includes all compensation due as a result of this acquisition to the OWNER for any reason and for any account whatsoever including

attorney's fees and costs in the amount of \$15,000.00 for Joseph M. Hanratty. OWNER agrees to execute a Temporary Construction Easement for a period of five (5) years from date of commencement of construction on Parcel No. 151.

(b) COUNTY shall only 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, all costs to prepare and all expenses to record instruments necessary to provide title unto COUNTY, free and clear of all liens and encumbrances, and the 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 COUNTY's designated closing agent. The OWNER agrees to close within seven (7) days of notice by the COUNTY's closing agent that a closing is ready to occur.

(b) OWNER agrees to vacate and surrender possession of the property upon the date of delivery of the instruments and closing on this purchase. 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 the 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 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 and to have exclusive possession of the property described in Exhibit A to this Agreement. 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 Lake Drive 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.

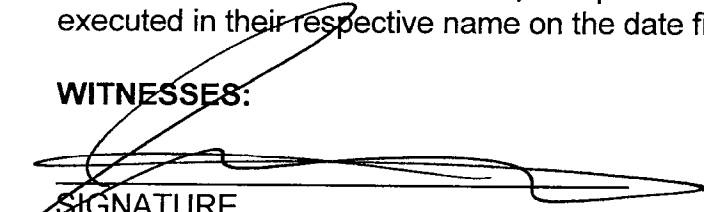
(j) The OWNER shall indemnify and save the COUNTY harmless from and against all liability, claims for damages, and suits for any injury to any person or persons, or damages to any property of any kind whatsoever arising out of or in any way connected with this Agreement or in any act or omission in any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

(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 name on the date first above written.

WITNESSES:



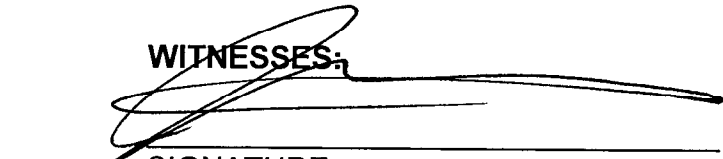
SIGNATURE

Joseph Hanratty
PRINT NAME

Victoria A. Leaver
SIGNATURE

Victoria A. Leaver
PRINT NAME

WITNESSES:



SIGNATURE

Joseph Hanratty
PRINT NAME

Victoria A. Leaver
SIGNATURE

Victoria A. Leaver
PRINT NAME

PROPERTY OWNER:

Daniel Guenther
DANIEL GUENTHER

ADDRESS: 1440 Azalea Avenue
Casselberry, FL 32707

PROPERTY OWNER:

Jacqueline Guenther
JACQUELINE GUENTHER

ADDRESS: 1440 Azalea Avenue
Casselberry, FL 32707

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 County Commissioners at its _____,
2004, regular meeting.



County Attorney

LX/sb

06/09/04 (dre)

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