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**COUNTY ATTORNEY'S OFFICE
MEMORANDUM**

TO: Board of County Commissioners

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

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

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

DATE: August 30, 2004

SUBJECT: Purchase Agreement Authorization
 Owners: Charles A. and Rita A. DeNave
 Parcel Nos. 107/707
 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. 107/707. The parcels are required for the Lake Drive road improvement project. The purchase price is \$127,500.00, inclusive of attorney fees and expert costs incurred by the property owners.

I THE PROPERTY

A. Location Data

The property is located on the south side of Lake Drive, approximately 2,000 feet west of Tuskawilla Road, within unincorporated Seminole County, Florida.

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

B. Address

4805 E. Lake Drive
 Winter Springs, FL 32708

C. Description

The parent tract property contains 90,997± square feet, and is improved with a single-family residence utilized for a congregate living facility. The facility is licensed for 16 persons and currently occupied by 13.

II AUTHORITY TO ACQUIRE

The BCC adopted Resolution No. 2002-R-70 on April 23, 2002 and Third Supplemental and Third Amended Resolution No. 2004-R-75 on April 13, 2004, 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 interests of the citizens of Seminole County.

III ACQUISITION/REMAINDER

The proposed acquisition of Parcel Nos. 107/707 consists of 7,330 square feet of land area. It is a strip take along Lake Drive and varies between 45' – 50' in depth. The property owners will retain 83,906 square feet after the completion of the project.

IV APPRAISED VALUE

The County's appraised value amount, as of the February 27, 2004, date of value, was \$66,475.00. 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 June 8, 2004, the BCC authorized a binding written offer in the amount of \$85,000.00. Thereafter, County staff negotiated this contingent settlement agreement with the property owners' attorney in the amount of \$127,500.00, inclusive of all fees and costs incurred.

VI SETTLEMENT ANALYSIS/COST AVOIDANCE

The property owners are extremely concerned about the impact the project will have on their business. Their large (4,741 square foot) home is currently being utilized as an upscale adult congregate living facility. The concrete block retaining wall and electric gate will have to be reestablished after construction is complete. The owners are not happy about being 50' closer to the new four lane roadway and fear increased traffic and noise, etc. The owners' attorney, Greg Rix, of Brigham, Moore, LLC, law firm has researched and prepared to opine much higher values for the land, damages, and also possible

business damages. Instead, the proposed settlement is \$42,500.00 more than the binding written offer, and includes all attorney fees and costs.

VII RECOMMENDATION

County staff recommends that the BCC authorize settlement in the amount of \$127,500.00, inclusive of fees, costs and expenses incurred.

LV/kc

Attachments:

Location Map (Exhibit A)

Sketch (Exhibit B)

Purchase Agreement (Exhibit C)

P:\USERS\ILVOUIS\SETTLEMENT MEMO\LAKE DRIVE\AGENDA ITEM LAKE DRIVE 107 707 DENAVE.DOC

Seminole County, Florida **Property Appraiser Services** H. W. "Bill" Suber CFA, ASA
 Your Source for Property Information... Quick, Convenient, Accurate



PA
 Seminole County
 Property Appraiser Services
 1161 E. First St.
 Sanford FL 32771
 407-665-7506

Legend

- Selected Features
- County Boundary
- Streets
- Hydrology
- Subdivision Lines
- Parcels
- Facilities
- Golf Course
- Parks

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

Rec	Parcel	Owner	Owner Addr	City	State	Zip
1	142130300005B0000	DE NAVE CHARLES A & RITA A	4805 E LAKE DR	WINTER SPRINGS	FL	32708

EXHIBIT A

GENERAL INFORMATION		
ZONING	STANDARD	PROVIDED
ZONING	A1 (AGRICULTURAL)	A1 (AGRICULTURAL)
ADVERSE		
TOTAL PARENT TRACT	2,088 +/- AC.	
AREA OF TAKING	7,298 S.F.	
AREA OF REMAINDER	1,288 +/- AC.	
AREA OF TOL.	239 S.F.	

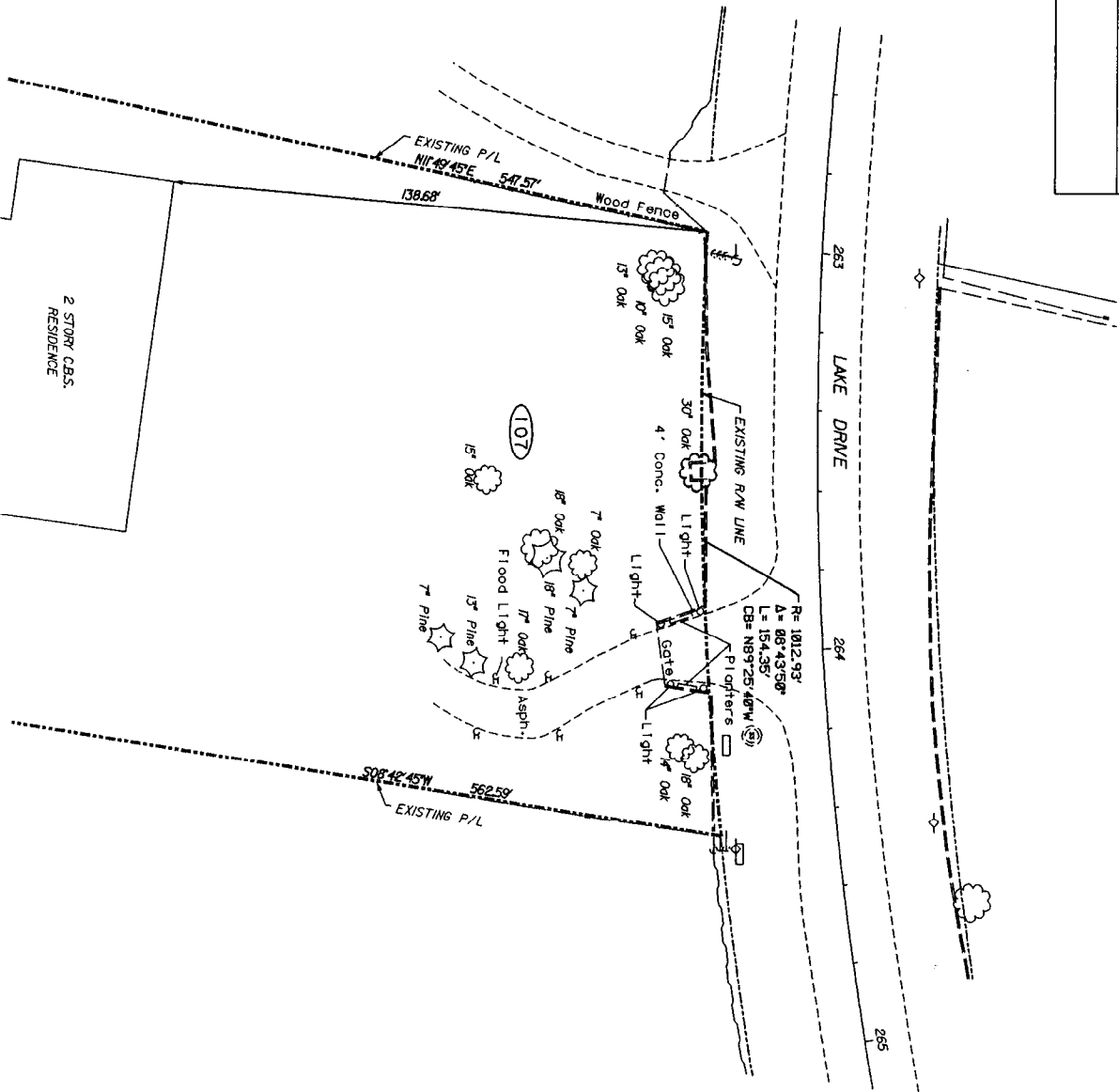
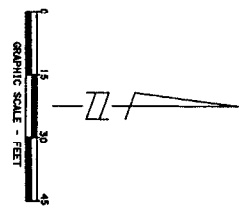


EXHIBIT B



NO.	REVISION	DATE

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 CHARLES A. DeNAVE and RITA A. DeNAVE, whose address is 4805 East Lake Drive, Winter Springs, Florida 32708 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

OWNER: Charles A. DeNave and Rita A. DeNave

R/W PARCEL NO.: 107

A part of that parcel of land described in Official Record Book 1896, page 909 and Official Record Book 2121, page 1141 and Official Record Book 2121, page 1146 as recorded in the Public Records of Seminole County, Florida being that portion of Section 14, Township 21 South, Range 30 East of Seminole County, Florida,

described as follows:

Commence at the Northwest corner of Government Lot 4, Section 13, Township 21 South, Range 30 East, said corner being the intersection of the West line of said Section 13 and the Southerly Grant line of the Philip R. Young Grant; thence N84°55'54"W along said Southerly Grant line a distance of 700.78 feet to a point on the East line of that parcel of land described in Official Record Book 2121, page 1146, Public Records of Seminole County, Florida; thence N11°49'45"E along said East parcel line a distance of 503.22

feet for a Point of Beginning; thence continue N11°49'45"E along said East parcel line a distance of 44.35 feet to a point on the Right of Way line of Lake Drive as recorded in Deed Book 196, page 327, Public Records of Seminole County, Florida, said point being on a non-tangent curve concave Northerly, having a radius of 984.93 feet; thence, from a chord bearing of N88°25'01"E, run along said Right of Way line an arc length of 152.85 feet through a central angle of 08°53'29" to a point on the West line of that parcel of land described in Official Record Book 2823, page 50, Public Records of Seminole County, Florida; thence S08°42'45"W along said West parcel line a distance of 49.74 feet to a point on a non-tangent curve concave Northerly, having a radius of 1,012.93 feet; thence, from a chord bearing of N89°25'40"W, run along said curve an arc length of 154.35 feet through a central angle of 08°43'50" to the Point of Beginning.

Containing 7,091 square feet, more or less.

PARCEL I.D. NO.: 14-21-30-300-005B-0000

TEMPORARY CONSTRUCTION EASEMENT

PROJECT: Lake Drive

OWNER: Charles A. DeNave and Rita A. DeNave

TEMPORARY CONSTRUCTION EASEMENT NO.: 707

A part of that parcel of land described in Official Record Book 1896, page 909 and Official Record Book 2121, page 1141 and Official Record Book 2121, page 1146 as recorded in the Public Records of Seminole County, Florida being that portion of Section 14, Township 21 South, Range 30 East of Seminole County, Florida,

described as follows:

Commence at the Northwest corner of Government Lot 4, Section 13, Township 21 South, Range 30 East, said corner being the intersection of the West line of said Section 13 and the Southerly Grant line of the Philip R. Young Grant; thence N84°55'54"W along said Southerly Grant line a distance of 700.78 feet to a point on the East line of that parcel of land described in Official Record Book 2121, page 1146, Public Records of Seminole County, Florida; thence N11°49'45"E along said East parcel line a distance of 547.57 feet to a point on the Right of Way line of Lake Drive as recorded in Deed Book 196, page 327, Public Records of Seminole County, Florida, said point being on a non-tangent curve concave Northerly, having a radius of 984.93 feet; thence, from a chord bearing of

N88°25'01"E, run along said Right of Way line an arc length of 152.85 feet through a central angle of 08°53'29" to a point on the West line of that parcel of land described in Official Record Book 2823, page 50, Public Records of Seminole County, Florida; thence S08°42'45"W along said West parcel line a distance of 49.74 feet to a point on a non-tangent curve concave Northerly, having a radius of 1,012.93 feet; thence, from a chord bearing of S86°31'30"W, run along the arc of said curve an arc length of 11.46 feet through a central angle of 00°38'53" for a Point of Beginning; thence departing said curve, run S02°31'53"E, a distance of 10.00 feet; thence run S87°31'59"W, a distance of 24.00 feet; thence run N02°31'26"W, a distance of 10.00 feet to a point on a non-tangent curve concave Northerly, having a radius of 1,012.93 feet; thence, from a chord bearing of N87°32'01"E, run along the arc of said curve an arc length of 24.00 feet through a central angle of 01°21'28" to the Point of Beginning.

Containing 239 square feet, more or less.

PARCEL I.D. NO.: 14-21-30-300-005B-0000

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. 107, free of liens and encumbrances, and by Temporary Construction Easement on Parcel No. 707 unto COUNTY for the sum of ONE HUNDRED TWENTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$127,500.00). The above amount includes all compensation due as a result of this acquisition to the OWNER for any reason and for any account whatsoever. OWNER agrees to execute a Temporary Construction Easement for a period of five (5) years from date of commencement of construction on Parcel No. 707.

(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 paragraph 1 of 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.

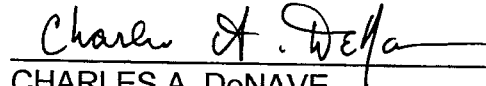
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective name on the date first above written.

WITNESSES:


SIGNATURE
EVA MIJATOVIC
PRINT NAME

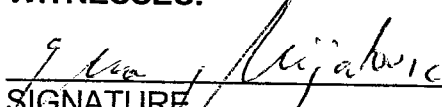

SIGNATURE
ISABELLA MILLER
PRINT NAME

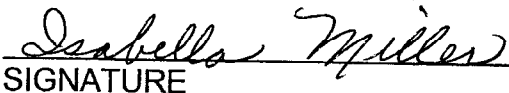
PROPERTY OWNER:


CHARLES A. DeNAVE

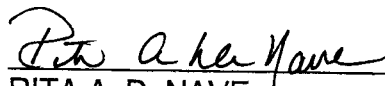
ADDRESS: 4805 East Lake Drive
Winter Springs, FL 32708

WITNESSES:


SIGNATURE
EVA MIJATOVIC
PRINT NAME


SIGNATURE
ISABELLA MILLER
PRINT NAME

PROPERTY OWNER:


RITA A. DeNAVE

ADDRESS: 4805 East Lake Drive
Winter Springs, FL 32708

ATTEST:

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

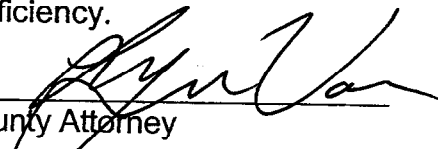
MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

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
8/10/04