

# **Attachment D**

**DEVELOPMENT AGREEMENT**

**BETWEEN THE CITY OF KEY WEST AND AIDS HELP, INC./ A.H OF  
MONROE COUNTY, INC.**

**THIS AGREEMENT** is entered into by and between, AIDS HELP, INC./ A.H. OF MONROE COUNTY, INC. a Florida Nonprofit Corporation, (“AIDS HELP”), and the CITY OF KEY WEST, a Florida municipal corporation (“City”), pursuant to Section 90-676 through 90-692 of the City Code, and the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes (2008), and is binding on the “Effective Date” set forth herein:

**RECITALS:**

**WHEREAS**, this project will serve low income disabled people and low income people with HIV disease who qualify for affordable housing; and

**WHEREAS**, AIDS HELP is a community-based nonprofit organization providing case-managed health care, housing, food, health education and counseling, HIV-risk reduction outreach programs, and referral and support services for low income disabled people and low income people with HIV disease who are residents of the Florida Keys; and

**WHEREAS**, AIDS HELP works closely with primary medical providers and provides comprehensive support services to help low income disabled people and low income people with HIV disease to live independently, with dignity, and reduce the need for hospitalization and nursing home admissions; and

**WHEREAS**, AIDS HELP conducts screening and verification of income-levels pursuant to City of Key West Comprehensive Plan Housing Element Policy 3-1.1.3 using the Housing Authority of City of Key West Affordability Policy; and

**WHEREAS**, AIDS HELP assists with screening and applications of eligibility for Medicaid, Medicare, Social Security, AIDS Insurance Continuation Program, Department of Children and Families, and Veterans Benefits; and

**WHEREAS**, the City of Key West Code Section 86-9 expressly includes and defines a “rest home” as a facility in which “three or more persons not of the immediate family can be received, kept or provided with food, shelter and care for compensation;” and

**WHEREAS**, the immediate desire of AIDS HELP is to provide a 50 unit rest home for low income people with HIV disease, if a cure for HIV becomes available, the 50 unit rest home can also be used for low income disabled people; and

**WHEREAS**, THE CITY OF KEY WEST has authorized AIDS HELP, to construct a 50 unit rest home for low income disabled people and low income people with HIV disease on vacant land owned by the Housing Authority of the City of Key West (“Housing Authority”). The City of Key West conveyed the land to the Housing Authority. The Housing Authority leases the subject property within the Special Needs Section of the Poinciana Affordable Housing site to AIDS HELP. The subject property is accurately described in Attachment A (herein referred to as “Property”). This Property is located entirely within the corporate limits of the City of Key West, Florida; and

**WHEREAS**, the City reviewed and authorized the development after public hearings on the Major Development Plan and Conditional Use were duly noticed and held by: the Planning Board on March 16, 2006, which recommended approval (Resolution 2006-008); and approved by the City Commission at a meeting held on May 2, 2006 (Resolution 06-153);

**WHEREAS**, on September 7, 2006 the State of Florida Department of Community Affairs (DCA) found the development to be consistent with the Principles for Guiding Development for the Florida Keys Area of Critical State Concern as set forth in Section 380.0552(7), Florida Statutes (2008); and

**WHEREAS**, the approval was then extended by the City Commission on August 15, 2007 (Resolution 07-275); and

**WHEREAS**, the City Commission approved a \$40,000 Grant for this project at a meeting held on February 20, 2008 (Resolution 08-057); and

**WHEREAS**, the original approval allowed 10 years for a phased project and required that development begin within one (1) year and the one (1) year commencement was extended once by the City Commission on August 15, 2007 (Resolution 07-275) and subsequently transmitted to the Department of Community Affairs; and

**WHEREAS**, on May 20, 2008 the City Commission expressed its preliminary interest pursuant to City of Key West Code Section 90-679 in entering into a Development Agreement with AIDS Help (Resolution 08-156); and

**WHEREAS**, the applicant proposed a Modification to the Major Development Plan to improve the project design and comply with two conditions of approval contained in the original Major Development Plan the first condition required ADA compliant sidewalk connections and the second condition required an emergency vehicle access; and

**WHEREAS**, the City Planning Board noticed and held a public hearing to consider the Modification to the Major Development Plan on February 19, 2009, and recommended approval with a single condition requiring a stormwater (ERP) permit from the South Florida Water Management District (Resolution 2009-005); and the City Commission noticed and held a public hearing to consider the Modification to the Major Development Plan on March 17, 2009, and it was approved with the condition recommended by the Planning Board; and

**WHEREAS**, the City Planning Board noticed a public hearing to consider this Development Agreement on March 19, 2009, and the City Commission noticed a public hearing to consider this Development Agreement on April 7, 2009, and these public hearings were held; and

**WHEREAS**, the City has determined that this Agreement is consistent with the local comprehensive plan, the land development regulations, and is in the public interest, and will further the health, safety, welfare, and goals of the residents of the City of Key West;

NOW, THEREFORE, the Development Agreement is approved as follows:

**TERMS OF AGREEMENT**

**Recitals.** The recitals explaining the intent and purpose of the project as set forth in the preceding “Whereas” clauses are incorporated herein and form a material part of this Agreement.

**1. Ownership, Legal Description, and Unity of Title**

a. **Ownership.** The Owner of the subject site (“Poinciana site”) is the Housing Authority of the City of Key West. The City of Key West conveyed the land to the Housing Authority. The Housing Authority leases the subject property within the Special Needs Section of the Poinciana Affordable Housing site to AIDS HELP.

b. **Legal Description.** The legal description of the Poinciana site is described and incorporated into this agreement as *Attachment A*.

**2. Site Plan Approval, Modifications, Fire Safety, Wind Load, Energy Efficiency**

a. **Approval of a Conceptual Site Plan.** This project will serve low income disabled people and low income people with HIV disease who qualify for affordable housing. The development shall be consistent with the “Conditional Use” Approval incorporated as *Attachment B-1* and the “Modification to the Major Development Plan” for AIDS HELP, hereby incorporated as *Attachment B-2*.

b. **Modifications.** Modifications to the Major Development Plan are governed by City Code Section 108-91(c) and (d) as the Code exists on the effective date of this approval (unless the Code is amended from time to time to allow additional administrative or minor modifications, which shall then also apply to this development).

c. **Fire Safety.** AIDS HELP shall provide all fire protection facilities as required by the City Fire Department and Life Safety Code administered by the City Fire Department.

d. **Wind Load.** AIDS HELP shall construct all structures on the Property, including doors, windows, and cladding, to withstand the mile per hour peak winds as specified in the Building Code.

e. **Energy Efficiency.** AIDS HELP shall construct all residential structures in conformance with the specifications of the State of Florida Energy Efficiency Code for Building Construction (State Energy Code).

3. **Public Utilities, Concurrency, Impact Fees.** Applicant and City staff have conducted a concurrency analysis for this project pursuant to City Code Chapter 94 Concurrency Management, and Section 90-682(5) as set forth in *Attachment C*. All public facilities are available as of the date of this Development Agreement, capacity for each is projected to be available concurrent with the impacts of development.

The following identifies the public facilities that are required and that will service the development authorized by this Agreement; who shall provide the facilities; what new

facilities, if any, will be constructed; and a schedule to assure public facilities are available concurrent with the impacts of development.

a. **Potable Water.** Potable water is supplied by Florida Keys Aqueduct Authority (FKAA), and domestic potable water transmission and potable water source capacity exist for this project as set forth in *Attachment C*.

b. **Electric Service.** Electric service is provided by Keys Energy Services, and capacity exists for this development as set forth in *Attachment C*.

c. **Solid Waste.** Solid waste service is provided by the City of Key West Waste Management or its designate, as determined by the City Commission, and capacity exists for this development as set forth in *Attachment C*.

d. **Transportation.** Transportation and road capacity exists for this development as set forth in *Attachment C*.

e. **Wastewater.** Wastewater treatment shall be provided by the City of Key West Wastewater Treatment Plant, and capacity exists for this development as set forth in *Attachment C*.

g. **Public Recreational Facilities.** Public recreational facilities shall be provided at the Poinciana site and capacity exists for this development as set forth in *Attachment C*.

f. **Impact Fees.** The developer shall pay impact fees according to the City's impact fee ordinance applicable to development in the City of Key West.



4. List of All Local Permits Approved or Needed

Doc# 1746218  
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a. **Development Approvals.** The following City development approvals have been granted or are needed for the development authorized by this Agreement:

1. **Site Plan.** Final site plan approval will be required by the City building official, fire marshal, and planning staff confirming compliance with this Agreement and applicable City Code requirements.

2. **Building Permits.** A building permit or permits will be required.

3. **South Florida Water Management District.** An Environmental Resource Permit (ERP) will be required from the South Florida Water Management District.

4. **Major Development and Conditional Use.** Applications for Major Development Plan and Conditional Use were duly noticed and held by: the Planning Board on March 16, 2006, which recommended approval (Resolution 2006-008); and approved by the City Commission at meeting held on May 2, 2006 (Resolution 06-153); and the approval was then extended by the City Commission on August 15, 2007 (Resolution 07-275). The City Planning Board noticed and held a public hearing to consider a Modification to the Major Development Plan on February 19, 2009 (Resolution 2009-005); and the City Commission noticed and held a public hearing to consider the Modification to the Major Development Plan on March 17, 2009; and the Modification to the Major Development Plan was approved (Resolution 09-066 ) as forth in *Attachment B-2*. The "Conditional Use" Approval per Resolution 2006-008 as

set for in *Attachment B-1* remains in effect, is still intact and is not impacted by the Modification to the Major Development Plan. The condition of approval in the Modification to the Major Development Plan (Resolution 09-066 ) requiring a stormwater (ERP) permit from the South Florida Water Management District is hereby incorporated into this Development Agreement.

**5. Density, Intensity, Height and Dwelling Unit Allocation System.**

a. This project is a 50 unit rest home 35 feet in height that will serve disabled people and people with HIV disease who qualify for affordable housing. Project intensity, including floor area ratio calculations, is set forth in the site data table contained in the Modification to the Major Development Plan as set forth in *Attachment B-2*.

b. *Nursing homes, rest homes and convalescent homes* are defined as “activities customarily performed by a home for the elderly or infirm in which three or more persons not of the immediate family are received, kept or provided with food, shelter and care for compensation.” Key West Code Section 86-9(2)h. This project will serve as a *rest home* for low income disabled people and low income people with HIV disease who qualify for affordable housing. Pursuant to the Key West Code Section 86-9(2)h<sup>1</sup>, the floor area ratio shall govern, not units per acre, for purposes of permitted density and intensity for *rest homes*. Within rest homes, “*individual living units shall be treated as 0.1 equivalent units under the city's building permit allocation ordinance, Section*

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<sup>1</sup> Definitions. 86-9. Land Use Classifications (2). Community facilities (h.) Nursing Homes, rest homes and convalescent homes.

108-1056...” Key West Code Section 86-9(2)h. Both the City of Key West Code Section 86-9 and the prior development order approvals for the major development plan contained in this development agreement were previously reviewed, adopted or approved by the Department of Community Affairs (DCA) acting as the state land planning agency. Approval of a similar rest home for AIDS HELP, was upheld by the Circuit Court as both in compliance with the City of Key West Code and consistent with the City of Key West Comprehensive Plan in *Catherine Street Alliance v. City of Key West and AIDS HELP, INC.* Circuit Court Case No. 2007-CA-1443 K, Final Order dated January 8, 2008 (Judge Audlin).

c. The project shall comply with, and only serve clients who meet, affordable housing standards set forth in the City of Key West Comprehensive Plan Housing Element Policy 3-1.1.3 using the Housing Authority of City of Key West Affordability Policy.

d. The City hereby allocates five (5) equivalent single family units (ESFU) of affordable housing unit allocations, as defined herein by Policy 3-1.1.3 of the City of Key West Comprehensive Plan, for this project under the Building Permit Allocation System Zoning in Progress Ordinance, Resolution 09-050.

6. **Mutual Cooperation on Community Facilities Project.** This rest home will serve low income disabled people and low income people with HIV disease who qualify for affordable housing. The City agrees to partner and cooperate with the AIDS HELP in a timely manner in providing expedited review of all permits, licenses, approvals,

consents, and provide information for any grant applications necessary or appropriate to fully implement this Agreement.

7. **Development to Comply with Permits and City Comprehensive Plan and**

**Code Provisions.** The development described in and authorized by this Agreement shall be constructed in accordance with all specified permit conditions, and in accordance with all applicable provisions of the adopted Comprehensive Plan and City Code. No certificate of occupancy for an individual phase shall be issued until the City approves all plans for that phase and that AIDS HELP has complied with all conditions established in the conditional use and development plan approval and the building permit issued by the City and other regulatory entities for that phase.

8. **Finding of Consistency.** The City of Key West finds that the development authorized herein is consistent with the Comprehensive Plan and Land Development Regulations as adopted and approved.

9. **Compliance with Permits, Terms, Conditions, Restrictions not Identified.** The failure of this Agreement to address a particular permit requirement, condition, term, or restriction shall not relieve AIDS HELP of the necessity of complying with all applicable laws governing said permitting requirements, conditions, terms, or restrictions.

10. **Duration of Agreement and Renewal.**

a. **Duration of Agreement.** This Development Agreement shall remain in effect for a period of ten (10) years, commencing on the Effective Date set forth below

pursuant to City Code Section 90-684. This Development Agreement may be renewed or extended as provided herein.

**b. Agreement Renewal.** This Agreement may be renewed or extended upon an affirmative vote of the City Council (see 12. b of this document).

**c. Phasing.** The project in shall be completed in a maximum of three phases, together with the corresponding required site work, as set forth in the Modification to the Major Development Plan, *Attachment B-2*. The first phase shall commence within the first five (5) years of the date of this agreement and certificates of occupancy for all phases shall be completed within ten (10) years of the date of this agreement.

**d. Extension of Deadlines.** Deadlines contained herein shall commence on the Effective Date of this Development Agreement as set forth below, and this Development Agreement shall extend and replace all previous deadlines contained in prior approvals for this proposed development.

## **11. Governing Laws**

**a. Controlling Regulations.** For the duration of this Agreement, all approved development on the Property shall comply with and be controlled by this Agreement and by the provisions of the Comprehensive Plan and City Code in existence on the effective date of this Agreement.

**b. State or Federal Laws.** If state or federal laws enacted after the effective date of this Agreement preclude any party's compliance with the terms of this Agreement, this Agreement shall be modified as is necessary to comply with the relevant state or federal laws. However, this Agreement shall not be construed to waive or abrogate any rights that may vest pursuant to common or statutory law.

**12. Amendments, Renewal, Revocation, Termination.** This Agreement may be amended, renewed, or terminated as follows:

**a. Amendments.** As provided in Section 163.3237, Florida Statutes (2008) and City Code Section 90-689, this Agreement may be amended by mutual consent of the parties to this Agreement or by their successors in interest; an instrument in writing signed by the parties or their successors shall accomplish an amendment under this provision.

**b. Renewal.** As provided in Section 163.3229, Florida Statutes (2008) and City Code Section 90-682(a)(2), this Agreement may be extended or renewed by the mutual consent of the parties, subject to the following public hearing requirements in Section 163.3225, Florida Statutes. The City shall conduct at least two (2) public hearings, one of which may be held by the local planning agency at the option of the City. Notice of intent to consider renewal of the Agreement shall be advertised approximately seven (7) days before each public hearing in a newspaper of general circulation and readership in Monroe County, Florida, and shall be mailed to all property owners within 500 feet of the development before the first public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first

public hearing. The notice shall specify the location of the land subject to the Agreement, the development uses on the Property, the population densities, and the building intensities and height and shall specify a place where a copy of the Agreement can be obtained.

c. **Revocation by City.** Pursuant to Section 163.3235, Florida Statutes (2008) and City Code Section 90-689, this Agreement may be revoked by the City if the City finds, on the basis of competent substantial evidence, that there has been a material failure by AIDS HELP, to comply with the terms of this Agreement.

d. **Termination by Mutual Consent.** This Agreement may also be terminated by mutual consent of the parties.

**13. Breach of Agreement and Cure Provisions.**

a. **Written Notice to AIDS HELP.** If the City concludes there has been a material breach of this Agreement, prior to revoking this Agreement, the City shall serve written notice to AIDS HELP identifying the term or condition the City contends has been materially breached and providing AIDS HELP ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to the Agreement. Each of the following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of AIDS HELP shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement; or (b) failure to comply with terms and conditions of permits issued by the City of Key West or other regulatory entity for the development authorized by this Agreement.

**b. Written Notice to the City.** If AIDS HELP concludes that there has been a material breach in the terms and conditions of this Agreement, AIDS HELP shall serve written notice to the City, identifying the term or condition that it contends has been materially breached and providing the City ninety (90) days from the date of receipt of the notice to cure the breach or negotiate an amendment to the agreement. The following events, unless caused by fire, storm, flood, other Act of God, or events beyond the control of the City, shall be considered a material breach of this Agreement: (a) failure to comply with the provisions of this Agreement, or (b) failure to timely process any application for site plan approval or other development approval required to be issued by the City for the development authorized by this Agreement.

**c. Option to Terminate.** If a material breach of this Agreement occurs and is not cured within the time periods provided above, the party that provided notice of breach may elect to terminate this Agreement or may seek to enforce this Agreement as provided herein.

**d. Waiver of Breach.** If either party waives a material breach in this Agreement by the other party, such a waiver shall not be deemed a waiver of any subsequent breach.

**14. Notices.** All notices, demands, requests, or replies provided for or permitted by this Agreement, including notification of a change of address, shall be in writing to the addressees identified below, and may be delivered by any one of the following methods: (a) personal delivery; (b) deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid; or (c) deposit with an overnight



express delivery service with a signed receipt required. Notice shall be effective upon receipt. The addresses of the parties for such notice are as follows:

**TO AIDS HELP:** Executive Director AIDS Help, Inc.  
PO Box 4374  
Key West, Florida 33041-4374  
Phone (305) 296-6196

**TO THE CITY:** City Manager, City of Key West  
521 Angela Street  
Key West, Florida 33040

**With a copy by regular U.S. Mail to:**

City Attorney, City of Key West  
P.O. Box 1409  
Key West, Florida 33041

15. **Annual Report.** Fourteen days prior to the anniversary date of the Effective Date of this Agreement and each year following until its termination, AIDS HELP shall provide to the City a report pursuant to City Code Section 90-688 (a), (b) and (c) identifying:

(a) the amount of development authorized by this Agreement that has been completed;

(b) the amount of development authorized by this Agreement that remains to be completed; and

(c) any changes to the plan of development that have occurred during the one (1) year period from the Effective Date of this Agreement or from the date of the last annual report.

(d) Pursuant to F.S. § 163.3235 and City Code Section 90-688 (a), (b) and (c), the city shall review land subject to a development agreement at least once every 12 months. Such review shall determine if there has been demonstrated good faith compliance with the terms of the development agreement. The city administrative official shall present the city commission with a report on the status of all activities and achievements pursuant to the development agreement. Prior to the city's review of the status of a development agreement, the developer or property owner shall, within 14 days of the city commission's review of the development agreement, submit to the city a progress report indicating all activities and achievements since the execution of the development agreement and, if applicable, since the previous periodic report. If the city no longer has a record of the present property owner and/or developer, any requests or notices required by this Development Agreement shall be made to the property owner of record as shown on the records of the county property appraiser.

(e) Pursuant to City Code Section 90-687(b) For each annual review conducted during years six (6) through ten (10) of the development agreement, the review shall be incorporated into a written report which shall be submitted to the parties to the agreement and the state land planning agency.

(f) any other annual reporting requirements required by Florida Statutes, Florida Administrative Code or City Code Section 90-688 (a), (b) and (c) or Section 90-687(b) in existence on the effective date of this Development Agreement.

**16. Enforcement.** In accordance with Section 163.3243, Florida Statutes (2008) and City Code Section 90-692, any party to this Agreement, any aggrieved or adversely

affected person as defined in Section 163.3215(2), Florida Statutes (2008), or the state land planning agency may file an action for injunctive relief in the circuit court of Monroe County, Florida, to enforce the terms of this Agreement or to challenge the compliance of this Agreement with the provisions of Sections 163.3220-163.3243, Florida Statutes (2008).

17. **Binding Effect.** This Agreement shall be binding upon the parties hereto, their successors in interest, heirs, assigns, and personal representatives.

18. **Assignment.** This Agreement may not be assigned without the written consent of the parties.

19. **Drafting of Agreement.** The parties acknowledge that they jointly participated in the drafting and review of this Agreement and that no term or provision of this Agreement shall be construed in favor of or against either party based solely on the drafting of the Agreement.

20. **Severability.** In the event any provision, paragraph or section of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the enforceability or the validity of the remaining provisions of this Agreement.

21. **Applicable Law.** This Agreement was drafted and delivered in the State of Florida and shall be construed and enforced in accordance with the laws of the State of Florida. Agreed venue for hearings held by the Division of Administrative Hearings shall

be in Key West, Monroe County, Florida or in the Circuit Court in and for Monroe County, as governed by applicable law.

22. **Use of Singular and Plural.** Where the context requires, the singular includes the plural, and the plural includes the singular.
23. **Duplicate Originals; Counterparts.** This Agreement may be executed in any number of originals and in counterparts, all of which evidence one agreement. Only one original is required to be produced for any purpose.
24. **Headings.** The headings contained in this Agreement are for identification purposes only and shall not be construed to amend, modify, or alter the terms of the Agreement.
25. **Entirety of Agreement.** This Agreement incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, or understandings regarding the matters contained herein. The parties agree that there are no commitments, agreements, or understandings concerning the subjects covered by this Agreement that are not contained in or incorporated into this document and, accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether written or oral. This Agreement contains the entire and exclusive understanding and agreement among the parties and may not be modified in any manner except by an instrument in writing signed by the parties.
26. **Recording and Transmittal.** Pursuant to City Code Section 90-690, not later than 14 days after the execution of a development agreement, the city clerk shall record

the agreement with the clerk of the circuit court in the county. A copy of the recorded development agreement shall be submitted to the state land planning agency within 14 days after the agreement is recorded as provided in F.S. § 163.3239. A development agreement shall not be effective until it is properly recorded in the public records of the county and until 30 days after having been received by the state land planning agency pursuant to F.S. § 163.3239.

27. **Date of Agreement.** The date of this Agreement is the date the last party signs and acknowledges this Agreement.

28. **Effective Date.** A development agreement shall not be effective until it is properly recorded in the public records of the county and until 30 days after having been received by the state land planning agency pursuant to F.S. § 163.3239. The agreement shall be effective on the date it is deemed approved by the state land planning agency (or on the date any objections by the state land planning agency are deemed waived) under Florida Statutes Chapter 380 and City Code Section 90-690.

29. **Successors.** The burdens of the development agreement shall be binding upon and the benefits of the agreement shall inure to all successors in interest to the parties to the agreement as provided in F.S. § 163.3239 and City Code Section 90-691.

3.22.09

Doc# 1746218  
Bk# 2417 Pg# 871

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,  
have set their hands and seals on the dates below written.

AS APPROVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST ,  
FLORIDA ON May 5, 2009

THE CITY OF KEY WEST

By  \_\_\_\_\_

Morgan McPherson, MAYOR

Date : May 8, 2009

ATTEST:

 \_\_\_\_\_

CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

 \_\_\_\_\_

CITY ATTORNEY

3.12.09



**AIDS HELP, INC.**

A Florida Not For Profit Corporation

By: Edward W. Czaplicki  
Ed Czaplicki, Past President

By: Sally Lewis  
Sally Lewis, President

Date: May 9, 2009

Date: May 9, 09

STATE OF FLORIDA

COUNTY OF MONROE

The foregoing instrument was acknowledged before me on this 9 day of May 2009, by Sally Lewis who is personally known to me or who produced Edward Czaplicki as identification, and who did/did not take an oath.

Karen A. Frank-Noll

Notary Public, State of Florida At Large

[seal]

