

This document prepared by:
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20 N. Wacker Drive – Suite 1660
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For Recorder's Use Only

DEVELOPMENT AGREEMENT
(LOT "C" OF COOPER SQUARE - 147TH STREET AND LAGRANGE ROAD)

INTRODUCTION

1. This Agreement entered into this _____ day of _____, 2008, by and between the Village of Orland Park, an Illinois Municipal Corporation (hereinafter referred to as the "Village"), and NEW URBAN ORLAND PARK, LLC, an Illinois limited liability company (hereinafter "Developer").

2. The Property subject to this Agreement, legal title to which is, or will be, vested in Developer (excepting such portion as is dedicated to the public), is legally described as follows:

PARCEL C IN COOPER SQUARE SUBDIVISION, BEING A SUBDIVISION OF PARTS OF LOTS 7 AND 8 IN COTTAGE HOME SUBDIVISION IN PART OF THE EAST ½ OF THE NORTHEAST ¼ OF SECTION 9, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 19, 2001 AS DOCUMENT NUMBER 0011088802, IN COOK COUNTY, ILLINOIS.

PIN NO. 27-09-220-058-0000

The said property is hereinafter referred to as the "Subject Property".

3. The Subject Property is generally located at the northeast corner of 147th Street and Ravinia Avenue in the Village and consists of approximately 2.40 acres.

4. The Subject Property is being developed by the Developer for thirty-two (32) condominium town homes each having three (3) stories with eight (8) of the town homes

fronting on 147th Street to be constructed as living/work units containing a total of 2,440 square feet of first floor commercial space, all in the VC Village Center Zoning District, with an amended Special Use for a Planned Development pursuant to the Village's Land Development Code.

5. The Village of Orland Park is a Home Rule Unit pursuant to the provisions of the Illinois Constitution, Article VII, Section 6, and the terms, conditions and acts of the Village under this Agreement are entered into and performed pursuant to the Home Rule powers of the Village and the statutes in such cases made and provided.

RECITALS:

1. The parties hereto desire that the Subject Property be developed in the Village, subject to the terms and conditions as hereinafter set forth and that the Subject Property be developed in the manner as set forth in this Agreement.

2. The Developer has petitioned the Village for approval of plans for the proposed uses on the Subject Property under the Village Center Zoning District as more fully hereinafter set forth.

3. The parties hereto have fully complied with all relevant statutes of the State of Illinois and ordinances of the Village to enable development as herein provided. The Village has caused the issuance of proper notice and the conduct of all hearings by all necessary governmental entities to effectuate the plan of development herein set forth.

4. All reports by all relevant governmental entities have been submitted enabling appropriate action by the Village Board of Trustees to achieve the following:

(a) Adoption and execution of this Agreement by ordinance;

(b) Adoption of such ordinances as are necessary to effectuate the terms and provisions of this Agreement;

(c) The adoption of such other ordinances, resolutions and actions as may be necessary to fulfill and implement this Agreement pursuant to the terms and conditions herein contained.

5. The parties hereto have determined that it is in the best interests of the Village and the Developer and in furtherance of the public health, safety, comfort, morals and welfare of the community to execute and implement this Agreement and that such implementation of this Agreement and development of the Subject Property pursuant to its terms and conditions will constitute an improvement of the tax base of the Village, be in implementation of the comprehensive plan of the Village and will constitute a preservation of environmental values.

6. Developer covenants and agrees that it will execute all necessary directions and issue all necessary instructions and take all other action necessary to direct and require performance of its obligations hereunder.

SECTION ONE: Zoning, Plan Approval and Design Standards.

A. The Village, upon the necessary hearings before the relevant governmental bodies having taken place pursuant to statute and ordinances in such cases made and provided and pursuant to requisite notice having been given, will by proper ordinance cause the above-described Subject Property to be classified under the Land Development Code of the Village as a special use for planned development under the VC Village Center District with an amended special use permit to permit multiple buildings on a single subdivided lot, with no further subdivision of said lot permitted, with modifications in detention pond, fence and parking lot setbacks as well as a reduction in parking requirements as hereinafter set forth.

B. The Subject Property shall be developed as a Planned Development substantially in accordance with the Site Plan for “New Urban Communities for Cooper Square Mixed Use Development” as prepared by PPKS Architects, Ltd., Job #99024, Sheet A1, dated December 20, 2006, last revised March 19, 2007, appended hereto and incorporated herein as EXHIBIT A. The Developer agrees that the Subject Property shall be developed substantially in accordance with said Site Plan (EXHIBIT A) as approved or as may be subsequently amended and approved by the Village, and in accordance with supporting preliminary and final engineering drawings and plans to be submitted to the Village Engineer for review and approval, subject to the following conditions to be satisfied by Developer:

1. Final engineering is approved by the Village;
2. A final Landscape Plan is submitted to the Village within 60 days of final engineering approval;
3. A signed and striped left-turn only lane and a striped straight and right-turn only lane are provided on westbound 147th Street at Ravinia;
4. “No Parking” signs are posted along private drives;
5. The top of the retaining walls that abut a sidewalk and drop off to a lower elevation are railed as shown on the elevation entitled “Section A-A-Northeast Corner” produced by PPKS Architects and dated February 17, 2007;
6. The Developer and subsequent Cooper Square owners shall use their best efforts to amend the existing Cooper Square Maintenance Agreement within six months of the date hereof to give the Homeowners’ Association to be formed by Developer equal standing with all Cooper Square commercial owners in determining pond maintenance levels;
7. The Homeowners’ Association will be responsible for maintenance and snow removal in the diagonal parking along 147th Street.

8. The first floor commercial space of each condominium townhome unit may be used only by the owner of each such unit and his/her employees and such commercial space may not be leased or otherwise transferred to any person, firm or corporation who or which is not the owner of the condominium townhome unit. The Developer shall prepare and record with the Cook County Recorder of Deeds, following review and approval thereof by the Village attorney, a perpetual covenant/restriction memorializing this condition.
9. The condominium townhome buildings and Building B6 “live/work” will be designed to be structurally independent with respect to gravity loads; however, the buildings will be structurally dependent with respect to lateral loads. The structurally laterally dependent buildings will be designed in accordance with accepted engineering practice. The units will be tied together with drag struts (metal plates) at the floor and roof lines. The ties will penetrate the fire separation walls but will be painted with intumescent paint to eliminate heat transfer between units.

C. The Subject Property shall also be developed substantially in accordance with the Elevations Plan “New Urban Communities Proposed Mixed Use Development Cooper Square Site Elevations and Sections” prepared by PPKS Architects, Ltd., Sheets A2-A5, dated December 20, 2006, last revised March 19, 2007.

D. The amended special use shall also incorporate the following modifications: (a) a reduction in detention pond setbacks from 25’ to approximately 10’ on the northern property edge; (b) a reduction in the required maintenance access strip around the pond; (c) a reduction in off-street parking requirements from a required ten spaces to seven spaces; (d) a reduction in parking lot setbacks along the eastern edge from a required 10’ to 7’; (e) a reduction in the landscape bufferyard requirements along the eastern property line from 15’ to 7’, and (f) a reduction in fence setback requirements along Ravinia Road to permit the fence to be set back a minimum of 5’ from the sidewalk. The Amended Special Use shall also eliminate the requirement contained in the Special Use for the Subject Property granted by Ordinance No. 3602 to eliminate the requirement for the middle east-west aisle to be connected with a cross access easement, eliminate the requirement for nine (9) shared parking spaces to be triggered by commercial development and to allow re-grading of the existing detention basin to accommodate the additional storm water.

SECTION TWO: Contributions.

Upon, and as a condition to, the issuance of building permits, Developer shall pay the Fair Share Road Exaction Fees as established in the Village Land Development Code, Section 5-112(K)(6) for the 2,440 square feet of first floor commercial space. In addition, Developer shall, upon application for each residential town home building permit and as a condition to the issuance of each, pay (or donate/contribute) to the Village all subdivision exactions provided for in Section 5-112(K) of the Land Development Code. The Village shall solely determine how said sums so paid shall be allocated and disbursed.

SECTION THREE: Storm Water Retention/Detention and Storm Sewers.

Storm Water run off emanating from the Subject Property shall be retained or detained in a wet-bottom detention area on the Subject Property as shown on the Site Plan and in accordance with a storm water management system for the entire Cooper Square Subdivision (Lots A, B and C) to be constructed and installed by the Developer, as finally may be approved by the Village. Such system shall include all storm water management facilities, including both on-site and off-site storm sewers, if needed, in accordance with final engineering plans approved by the Village. The design criteria, construction and maintenance of the storm sewers shall be in accordance with all standards of the Village in force from time to time and also all standards of the Metropolitan Water Reclamation District of Greater Chicago in effect from time to time, and shall be completed by the Developer at its expense. All storm water detention/retention facilities shall be perpetually owned and maintained by the Developer or a property owners association to be formed by the Developer.

SECTION FOUR: Water Supply.

Developer shall be required to construct and install at its expense all necessary on-site water mains to service the Subject Property. All such water mains shall be constructed and installed in accordance with the Land Development Code of the Village and final engineering plans approved by the Village. The Developer shall pay to the Village the required water connection charge(s) based upon the size of the connection(s) in accordance with Village ordinances. Existing unused water service must be terminated at the main.

SECTION FIVE: Sanitary Sewers.

Developer shall be required to construct and install at its expense all necessary sanitary sewers to service the Subject Property in accordance with the Land Development Code of the Village and final engineering plans approved by the Village. Existing unused sewer service must be plugged at the main.

SECTION SIX: Streets, Sidewalks and Street Lights

The Developer shall construct and install all streets, sidewalks and street lights as shown in EXHIBIT A (and as modified in accordance herewith) and in accordance with the Village Land Development Code and approved engineering.

SECTION SEVEN: Easements.

The Developer agrees at the time of approval of this Development Agreement to grant to the Village, and/or obtain grants to the Village of, all necessary easements for the extension of sewer, water, street, or other utilities, including cable television, or for other improvements which may serve not only the Subject Property, but other territories in the general area.

All such easements to be granted shall name the Village and/or other appropriate entities designated by the Village as grantee thereunder. It shall be the responsibility of the Developer to obtain all easements, both on site and off site, necessary to serve the Subject Property.

SECTION EIGHT: Developmental Codes and Ordinances and General Matters.

Except as provided by Village Resolution Number 0711, approved June 18, 2007, and the Variance granted therein from strict compliance with Village Building Code Section 503.2 and Tables 503 and 601, the development of the Subject Property shall be in accordance with the existing building, zoning, subdivision, storm water retention and other developmental codes and ordinances of the Village as they exist on the date hereof, or as are in existence during development of the Subject Property, unless otherwise specified in this Agreement or an amendment hereto. Planning and engineering designs and standards, and road construction and dedication of public improvements, shall be in accordance with the then existing ordinances of the Village or in accordance with the statutes and regulations of other governmental agencies having jurisdiction thereof if such standards are more stringent than those of the Village of Orland Park at such time.

No occupancy permit shall be issued for any building prior to the completion and acceptance by the Village of the required public improvements. All required public improvements shall be completed within one (1) year from the date hereof and the Developer shall deliver to the Village an irrevocable letter of credit in a form satisfactory to and from a bank or financial institution and in an amount as provided for in the Land Development Code of the Village, said Letter of Credit to include all costs related to required lighting, landscaping, sidewalk, sewer and water lines, storm water management facilities and placing of utility lines underground. The Village Engineer may, in his discretion, permit the amount of said letter of credit to be reduced, from time to time, as major public improvements are completed.

No site work whatsoever shall commence until all soil erosion control measures are installed, inspected and approved by the Village. These measures shall be monitored and maintained by the Developer in accordance with Village and Illinois Environmental Protection Agency standards until the development is completed.

SECTION NINE: Utilities.

All electricity, telephone, telecommunication, cable television and gas lines shall be installed underground, the location of which underground utilities shall be at the Developer's option. All existing above ground electricity, telephone, telecommunication, cable television and gas lines on 147th Street adjacent to the Subject Property shall be placed underground by Developer.

SECTION TEN: Impact Requirements.

Developer agrees that any and all contributions, dedications, donations and easements provided for in this Agreement substantially advance legitimate governmental interests of the Village, including, but not limited to, providing its residents, with access to and use of public

utilities, streets, fire protection, and emergency services. Developer further agrees that the contributions, dedications, donations and easements required by this Agreement are uniquely attributable to, reasonably related to and made necessary by the development of the Subject Property.

SECTION ELEVEN: Binding Effect and Term and Covenants Running with the Land.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, successor owners of record of the Subject Property, assignees, lessees and upon any successor municipal authorities of said Village and successor municipalities, for a period of seven (7) years from the date of execution hereof and any extended time that may be agreed to by amendment.

The terms and conditions of this Agreement relative to the payment of monies to the various contributions to the Village, construction and/or dedication of public improvements, granting of easements to the Village, dedication of rights-of-way to the Village and the developmental standards established herein shall constitute covenants which shall run with the land.

SECTION TWELVE: Notices.

Unless otherwise notified in writing, all notices, requests and demands shall be in writing and shall be personally delivered to or mailed by United States Certified mail, postage prepaid and return receipt requested, as follows:

For the Village:

1. Daniel J. McLaughlin
Village President
14700 South Ravinia Avenue
Orland Park, Illinois 60462
2. David P. Maher
Village Clerk
14700 South Ravinia Avenue
Orland Park, Illinois 60462
3. E. Kenneth Friker
Village Attorney
Klein, Thorpe & Jenkins, Ltd.
15010 S. Ravinia Avenue, Suite 17
Orland Park, Illinois 60462

For the Developer:

New Urban Orland Park, LLC
Attn: Richard M. Wallach, Director of Acquisitions
99 South Villa Avenue
Villa Park, Illinois 60181

With a copy to:

Sosin, Lawler & Arnold, LLC
Attn: David B. Sosin, Esq.
11800 S. 75th Avenue, Suite 300
Palos Heights, IL 60463

or such other addresses that any party hereto may designate in writing to the other parties pursuant to the provisions of this Section.

SECTION THIRTEEN: Signs.

The location of any sign upon the Subject Property shall be in accordance with an approved Signage Plan and the Village's Sign Ordinance, and shall have reasonable setbacks from streets and highways as the interest of safety may require.

SECTION FOURTEEN: Sales Trailer.

At any time after the Owner posts the required security for public improvements and as approved by the Village Engineer and Building Department, Owner, or its Village approved assignee, shall have the right to place one (1) sales trailer on the Subject Property. Any such sales trailer must be served by an approved roadway and plumbing facilities in accordance with Village Ordinances.

SECTION FIFTEEN: Reimbursement of Village for Legal and Other Fees and Expenses.

A. To Effective Date of Agreement.

The Developer, concurrently with zoning of the property or so much thereof as required, shall reimburse the Village for the following expenses incurred in the preparation and review of this Agreement, and any ordinances, letters of credit, plats, easements or other documents relating to the Subject Property:

- (1) the costs incurred by the Village for engineering services; and
- (2) all reasonable attorneys' fees incurred by the Village; and

- (3) miscellaneous Village expenses, such as legal publication costs, recording fees and copying expense.

B. From and After Effective Date of Agreement.

Except as hereinafter provided, upon demand by the Village made by and through its President, Developer from time to time shall promptly reimburse the Village for all enumerated reasonable expenses and costs incurred by the Village in the administration of the Agreement, including and limited to engineering fees, attorneys' fees and out of pocket expenses involving various and sundry matters such as, but not limited to, preparation and publication, if any, of all notices, resolutions, ordinances and other documents required hereunder.

Such costs and expenses incurred by the Village in the administration of the Agreement shall be evidenced to the Developer upon its request, by a sworn statement of the Village; and such costs and expenses may be further confirmed by the Developer at its option from additional documents relevant to determining such costs and expenses as designated from time to time by the Developer.

Notwithstanding the immediately preceding paragraph, Developer shall in no event be required to reimburse the Village or pay for any expenses or costs of the Village as aforesaid more than once, whether such are reimbursed or paid through special assessment proceedings, through fees established by Village ordinances or otherwise.

In the event that any third party or parties institute any legal proceedings against any party hereto, which relate to the terms of this Agreement, then, in that event, the Developer on notice from Village shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

- (1) Developer shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the Village.
- (2) If the Village, in its sole discretion, determines there is, or may probably be, a conflict of interest between Village or Developer on an issue of importance to the Village having a potentially substantial adverse effect on the Village, then the Village shall have the option of being represented by its own legal counsel. In the event the Village exercises such option, then Developer shall reimburse the Village from time to time on written demand from the President of Village and notice of the amount due for any expenses, including but not limited to court costs, reasonable attorneys' fees and witnesses' fees, and other reasonable expenses of litigation, incurred by the Village in connection therewith.

In the event the Village institutes legal proceedings against Developer for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against Developer all expenses of such legal proceedings

incurred by the Village, including but not limited to the court costs and reasonable attorneys' fees, witnesses' fees, etc., incurred by the Village in connection therewith. Developer may, in its sole discretion, appeal any such judgment rendered in favor of the Village against Developer.

SECTION SIXTEEN: Warranties and Representations.

Developer represents and warrants to the Village as follows:

1. Developer is the legal title holder and the owner of record of the Subject Property as indicated on the first page of this Agreement.
2. Developer proposes to develop the Subject Property in the manner contemplated under this Agreement.
3. Other than Developer, no other entity or person has any interest in the Subject Property or its development as herein proposed.
4. Developer has provided the legal description of the Subject Property set forth in this Agreement and the attached Exhibits and that said legal description is accurate and correct.
5. With respect to any real estate herein which will become property of the Village, Developer warrants and represents, to the best of its knowledge, that during the period of its ownership or control over said Subject Property it has no knowledge of, nor reason to suspect, that there has been any underground storage (or other) tank or any presence, disposal, release or threatened release of hazardous substances or hazardous wastes on, from or under the property, by or through Developer or any other party whatsoever. Developer similarly represents and warrants that to the best of its knowledge, there was no underground storage (or other) tank and not any presence, disposal, release or threatened release of hazardous substances or hazardous waste on, from or under the property prior to Developer's acquisition of ownership or control of the property.

Developer similarly further represents and warrants that to the best of its knowledge, the property (including underlying soil and ground water conditions) is not in violation of any state, local, federal, municipal or other law, statute, regulation, code, ordinance, decree or other relating to hygienic or environmental conditions, and during ownership of the property by Developer, no party has stored or disposed of any flammable explosives, radioactive materials, hazardous waste, toxic substances or other related materials on, under or about the property. Developer shall and does hereby agree to indemnify, protect, defend, and hold the Village harmless from and against any claims, losses, demands, costs, proceedings, suits, liabilities, damages and causes of action, including consequential damages and attorneys' fees of counsel selected by the Village and other costs of defense incurred, arising against or suffered by the Village or its assigns as a consequence, directly or indirectly, of any misrepresentation by Developer of the foregoing representations and warranties, whether discovered before or after the conveyance of any of the Subject Property to the Village.

SECTION SEVENTEEN: Continuity of Obligations.

Notwithstanding any provision of this Agreement to the contrary, including but not limited to the sale or conveyance of all or any part of the Subject Property by Developer, Developer shall at all times during the term of this Agreement remain liable to Village for its faithful performance of all obligations imposed upon Developer by this Agreement until such obligations have been fully performed or until Village, at its sole option, has otherwise released it from any or all of such obligations.

SECTION EIGHTEEN: Prior Agreement.

Developer understands and acknowledges that the Subject Property is a part of a Planned Development approved by the Village pursuant to Ordinance No. 3602 and pursuant to a Development Agreement dated November 12, 2001. Said Special Use and Development Agreement remain in full force and effect with respect to the Subject Property except as amended by this Development Agreement and the subsequently approved amended special use.

SECTION NINETEEN: No Waiver or Relinquishment of Right to Enforce Agreement.

Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

SECTION TWENTY: Village Approval or Direction.

Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.

SECTION TWENTY-ONE: Singular and Plural.

Wherever appropriate in this Agreement, the singular shall include the plural, and the plural shall include the singular.

SECTION TWENTY-TWO: Section Headings and Subheadings.

All section headings or other headings in this Agreement are for general aid of the reader and shall not limit the plain meaning or application of any of the provisions thereunder whether covered or relevant to such heading or not.

SECTION TWENTY-THREE: Recording.

A copy of this Agreement and any amendment thereto shall be recorded by the Village at the expense of the Developer.

SECTION TWENTY-FOUR: Authorization to Execute.

The person or persons executing this Agreement on Developer's behalf, warrant that they have been lawfully authorized to execute this Agreement on Developer's behalf. The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board of the Village to execute this Agreement. Developer and Village shall, upon request, deliver to one another at the respective time such entities cause their authorized agents to affix their signatures hereto copies of all bylaws, resolutions, ordinances, partnership agreements, letters of direction or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective entities.

SECTION TWENTY-FIVE: Amendment.

This Agreement sets forth all the promises, inducements, agreements, conditions and understandings between the parties hereto relative to the development of the Subject Property, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them regarding that property, other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless authorized in accordance with law and reduced to writing and signed by them.

SECTION TWENTY-SIX: Counterparts.

This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

SECTION TWENTY-SEVEN: Curing Default.

The parties to this Agreement reserve a right to cure any default hereunder within thirty (30) days from written notice of such default, or such additional time as is reasonably required to cure the default so long as the cure of default is commenced within said thirty (30) days, and efforts to effect such cure of default are diligently prosecuted to completion.

SECTION TWENTY-EIGHT: Conflict Between the Text and Exhibits.

In the event of a conflict in the provisions of the text of this Agreement and the Exhibits attached hereto, the text of the Agreement shall control and govern.

SECTION TWENTY-NINE: Severability.

If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the Village does not have the power to perform any such provision, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve Village from performance under such invalid provision of this Agreement.

SECTION THIRTY: Definition of Village.

When the term Village is used herein it shall be construed as referring to the Corporate Authorities of the Village unless the context clearly indicates otherwise.

SECTION THIRTY-ONE: Execution of Agreement.

This Agreement shall be signed last by the Village and the President of the Village shall affix the date on which he signs this Agreement on page 1 hereof, which date shall be the effective date of this Agreement.

VILLAGE OF ORLAND PARK, an
Illinois Municipal Corporation

By: _____
Village President

ATTEST:

By: _____
Village Clerk

DEVELOPER:

NEW URBAN ORLAND PARK, LLC,
an Illinois limited liability company

By: _____
_____, Member/Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for the County and state aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the Member/Manager of NEW URBAN ORLAND PARK, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____ appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this _____ day of _____, 2008.

Commission expires _____

Notary Public