

FILED  
11 AUG 10 PM 1:30  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

FINAL ORDER NO. LW-11-012

STATE OF FLORIDA  
LAND AND WATER ADJUDICATORY COMMISSION

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

vs.

FLWAC CASE NO.: APP-09-008

DOAH CASE NO.: 10-0547DRI

MONROE COUNTY, LEO F. WINTERLING  
and JAMES A. WINTERLING,

Respondents.

\_\_\_\_\_ /

**FINAL ORDER OF DISMISSAL**

This cause came before the Secretary of the Florida Land and Water Adjudicatory Commission upon the "Notice of Voluntary Dismissal" filed by the Department of Community Affairs on August 2, 2011. A copy of the "Notice of Voluntary Dismissal" is attached and incorporated as "Exhibit A."

IT IS ORDERED that the proceeding is dismissed.

DONE AND ORDERED this 11<sup>th</sup> day of August, 2011.

**NOTICE OF RIGHTS**

Any party to this Order has the right to seek Judicial review of the Final Order pursuant to section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Commission, Office of Policy and Budget, Executive Office of the Governor, The Capitol, Room 1801, Tallahassee, Florida 32399-0001; and by filing a copy of the Notice of Appeal, accompanied by the applicable filing fees,

with the appropriate District Court of Appeal. Notice of Appeal must be filed within 30 days of the day this Order is filed with the Clerk of the Commission.

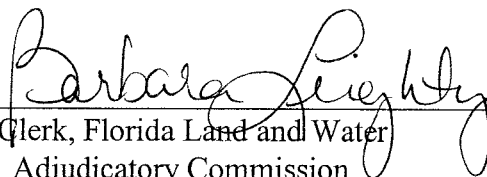
*For/ Phillip B. Miller*  
\_\_\_\_\_  
JERRY L. MCDANIEL, Secretary  
Florida Land and Water  
Adjudicatory Commission

11 FILED with the Clerk of the Florida Land and Water Adjudicatory Commission this  
day of August, 2011.

*Barbara Feighty*  
\_\_\_\_\_  
Clerk, Florida Land and Water  
Adjudicatory Commission

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered to the following persons by hand delivery, electronic delivery, or US Mail this 11<sup>th</sup> day of August, 2011.

  
Clerk, Florida Land and Water  
Adjudicatory Commission

Honorable Rick Scott  
Governor  
The Capitol  
Tallahassee, Florida 32399

Honorable Jeff Atwater  
Chief Financial Officer  
The Capitol  
Tallahassee, Florida 32399

Honorable Pam Bondi  
Attorney General  
The Capitol  
Tallahassee, Florida 32399

Honorable Adam Putnam  
Commissioner of Agriculture  
The Capitol  
Tallahassee, Florida 32399

L. Mary Thomas, Esquire  
Governor's Legal Office  
Room 209, The Capitol  
Tallahassee, Florida 32399-0001

Suzanne Hutton, Esquire  
County Attorney  
Monroe County  
1111 12<sup>th</sup> Street  
Suite 408  
Key West, Florida 33040

William Buzzett, Secretary  
Deborah Kearney, General Counsel  
Richard Shine, Assistant General Counsel  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

Leo F. Winterling  
926 Gerst Road  
Perry Hall, MD 21128

B. Jack Osterholt  
Executive Director  
South Florida Regional Planning Council  
3440 Hollywood Boulevard  
Suite 140  
Hollywood, Florida 33021

David Dehaas  
Dehaas Consulting and Design  
88975 Overseas Highway  
Tavernier, Florida 33070

Florida Administrative Law Reports  
Post Office Box 385  
Gainesville, Florida 32602

Franklin D. Greenman, Esquire  
Greenman & Manz  
5800 Overseas Highway  
Suite 40  
Marathon, Florida 33050

Honorable Bram D.E. Cantor  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

**ORIGINAL**

**STATE OF FLORIDA  
LAND AND WATER ADJUDICATORY COMMISSION**

DEPARTMENT OF COMMUNITY  
AFFAIRS,

Petitioner,

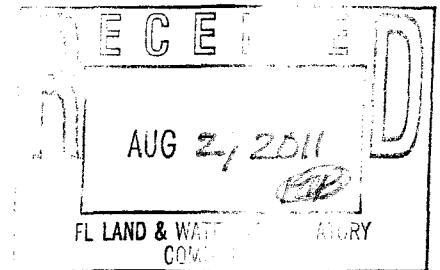
vs.

**CASE NO. 10-0547DRI**

MONROE COUNTY, LEO F.  
WINTERLING, AND JAMES A.  
WINTERLING,

Respondents,

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**NOTICE OF VOLUNTARY DISMISSAL**

The Department of Community Affairs ("Department"), by and through the undersigned counsel, hereby files this Notice of Voluntary Dismissal in Case Number 10-0547DRI.

1. On February 5, 2010, the Department filed a Petition for Appeal of a Development Order at FLWAC pursuant to Section 380.07, Florida Statutes. On January 15, 2010, FLWAC filed a Notice of Forwarding Appeal to the Division for assignment of an administrative law judge and further proceedings as noticed.
2. On June 14, 2011, the Monroe County Board of County Commissioners voted to approve a Section 380.032, Florida Statutes Settlement Agreement which was previously agreed to and executed by the individual Winterling Respondents and the Department, and is attached as Exhibit A.
3. The Department determined that the Settlement Agreement fully addresses the compliance issues raised in this matter with respect to the development order issued

**EXHIBIT A**

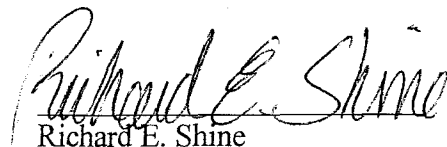
to Leo F. Winterling and James A. Winterling by the Monroe County Planning Commission. On June 23, 2011 the Department filed a Status Report, Notice of Dismissal and Motion to Close File and Relinquish Jurisdiction.

4. On June 23, 2011, the Division entered an Order Relinquishing Jurisdiction to the Administration Commission for entry of a final order. Final disposition of this matter upon relinquishment of jurisdiction by the Division is before FLWAC pursuant to Section 380.07(6), Florida Statutes.

5. Counsel for the Department has conferred with Counsel for the County and is authorized to indicate that the County concurs in this Notice of Voluntary Dismissal. Counsel for the Department has conferred with counsel for Respondents Leo F. and James A. Winterling and is authorized to indicate that that Respondent has no objection to the dismissal of this appeal.

WHEREFORE, the Department respectfully requests that this Notice of Voluntary Dismissal in Case Number 10-0547DRI be accepted and that such other relief be granted consistent with this Notice of Voluntary Dismissal as is just and fair.

Respectfully submitted this 29th day of July, 2011.



Richard E. Shine  
Assistant General Counsel  
Shaw P. Stiller  
General Counsel  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100  
(850) 922-1683

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. Mail to the persons listed below this 29th day of July, 2011:

  
Richard E. Shine

**By U.S. Mail:**

Franklin D. Greenman, Esq.  
Greenman and Manz  
5800 Overseas Highway, Gulfside  
Village, Suite 40  
Marathon, FL 33050

Honorable Heather Carruthers  
Mayor Monroe County  
2798 Overseas Highway,  
Suite 400  
Marathon, FL 33050

Randolph D. Wall Chairman  
Planning Commission  
Monroe County  
2798 Overseas Highway  
Suite 410  
Marathon, FL 33831-9005

Suzanne Hutton  
Monroe County Attorney  
1111 12<sup>th</sup> Street  
Suite 408  
Key West, FL 33040

By U.S. Mail:

B. Jack Osterholt  
Executive Director  
South Florida Regional  
Planning Council  
3440 Hollywood Blvd  
Suite 140  
Hollywood, FL 33021

By Interagency Mail:

Honorable Rick Scott  
Governor  
The Capitol  
Tallahassee, FL 32399-0001

Honorable Pam Bondi  
Chief Financial Officer  
The Capitol  
Tallahassee, FL 32399-0001

Honorable Pam Bondi  
Attorney General  
The Capitol  
Tallahassee, FL 32399-0001

Honorable Adam Putnam  
Commissioner of Agriculture  
The Capitol  
Tallahassee, FL 32399-0810

Honorable Jett Atwater  
Chief Financial Officer  
The Capital  
Tallahassee, FL 32399-0300

Barbara Leighty, Clerk  
Administration Commission  
The Capitol, Room 1801  
Tallahassee, FL 32399-0001



**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

STATE OF FLORIDA, DEPARTMENT  
OF COMMUNITY AFFAIRS,

Petitioner,

DOAH Case No. 10-0547DRI  
APP-09-008

MONROE COUNTY AND LEO F.  
WINTERLING AND JAMES A.  
WINTERLING,

Respondent.

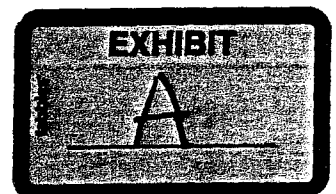
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**FLORIDA STATUTE 380.032(3)  
SETTLEMENT AGREEMENT**

THIS AGREEMENT is entered into between Respondents, MONROE COUNTY, LEO F. WINTERLING and JAMES A. WINTERLING and Petitioner DEPARTMENT OF COMMUNITY AFFAIRS, as a complete and final settlement of the specific claims raised in the above-styled, Section 380.07, Florida Statutes appeal.

WHEREAS, the DEPARTMENT OF COMMUNITY AFFAIRS ( Department) is the state land planning agency having the power and duty to exercise general supervision of the administration and enforcement of Chapter 380, Florida Statutes, which includes provisions related to Areas of Critical Concern; and

WHEREAS, MONROE COUNTY (County) is a local government located in the Florida Keys Area of Critical State Concern with jurisdiction to issue development orders in Monroe County, Florida. The County Planning Department's mailing address is 2789 Overseas Highway, Suite 410, Marathon, Florida 33050; and



WHEREAS, Leo F. Winterling, James A. Winterling, George C. Winterling, Paul J. Winterling, and Mark J. Winterling (Applicants) are the owners of a single family dwelling unit on Big Pine Key and the developers of the subject property into a proposed Recreational Vehicle (RV) park. The Applicants mailing address is 9626 Gerst Road, Perry Hall, Maryland 21128; and

WHEREAS, the subject property is located at 31875 Overseas Highway (US1), Big Pine Key and is legally described as Part of Government Lot 4, Section 25, Township 66 South, Range 29 East, Big Pine Key, and adjacent bay bottom Monroe County, Florida, as shown on Exhibit A, having Real Estate Number 00110730.000000; and

WHEREAS, on April 15, 2009, the Applicants submitted to the Monroe County Planning Department an application (Application) for an amendment to a Major Conditional Use Permit in accordance with § 110-70 and § 130-94 of the Monroe County Code for the subject property; and

WHEREAS, the Application proposed to recognize ten transient campground spaces to be redeveloped as transient campground/recreational vehicle (RV) spaces, the maintenance of one (1) existing permanent single-family dwelling unit, the construction of accessory development (tiki hut, pool and bath houses), and the carrying out of associated site improvements; and

WHEREAS, the subject property is approximately 3.48 acres of uplands and 1.89 acres of submerged lands, the Future Land Use Map (FLUM) designation of the subject parcel is Residential Low (RL), the Zoning is Suburban Residential (SR), and the Tier Designation is a Tier I Natural Area; and

WHEREAS, on September 25, 2009, Monroe County Planning Commission Resolution No. P33-09 adopting the Major Conditional Use Permit was signed by the Chair and rendered to the Department on October 26, 2009; and

WHEREAS, the County's comprehensive plan is implemented, in part, by and through its adopted land development regulations; and

WHEREAS, Section 380.05(16), Florida Statutes provides that no person shall undertake any development within an area of critical state concern except in conformity with Chapter 380, Florida Statutes; and

WHEREAS, the Monroe County Comprehensive Plan and the Livable CommuniKeys Plan Master Plan for Big Pine Key and No Name Key designate the subject parcel as a Tier I property located within the Key Deer Federal Preserve established for the protection of a threatened and endangered species; and

WHEREAS, a controversy has arisen between the Department, the County and the Applicants regarding whether the transient campground spaces were lawfully established and may be redeveloped as RV spaces, whether the proposed RV use is allowed in the subject property's Residential Low Future Land Use Map (FLUM) designation, whether development of the subject property located within a Tier I category is severely restricted to protect the Key deer and its habitat, and whether the development of the subject property is consistent with the Monroe County Comprehensive Plan, Land Development Regulations and Section 380.0552(7), Florida Statutes, Principles for Guiding Development; and

WHEREAS, on December 10, 2009, the Department filed a Petition for Appeal of a Development Order with the State of Florida Land and Water Adjudicatory Commission which forwarded the appeal to the Division of Administrative Hearings for assignment of an administrative law judge and further proceedings; and

WHEREAS, the Department has authority, pursuant to Section 380.032(3), Florida Statutes (2010), to enter into agreements with any landowner, developer or governmental agency as may be necessary to effectuate the provisions and purposes of Chapter 380 or any rules promulgated thereunder; and

WHEREAS, the parties hereto wish to avoid the expense and delay of lengthy litigation and to resolve the conflict by amending the Major Conditional Use Permit (Conditional Use), to the new terms and conditions set forth herein, which terms and conditions effectuate the provisions and purposes of the Act, and it is in their best interest to do so.

NOW THEREFORE, in consideration of the terms and conditions set forth hereafter and as the full, complete and final settlement of all claims arising out of the controversy set forth above, the parties hereto agree as follows:

1. **Representations.** The representations set forth above are incorporated herein and are essential elements hereof.

2. **Major Conditional Use Permit amendments.** The following amendments to the Major Conditional Use Permit are binding on the Winterling property located at 31875 Overseas Highway (US1), Big Pine Key, and run with the land pursuant to the Florida Statutes 380.032 Settlement Agreement.

- a. One market rate dwelling unit (as defined in the Monroe County Code) per two upland acres may be continued or newly constructed on the property if the existing unit is demolished and rebuilt consistent with the Residential Low FLUM designation.
- b. The subject property is located in a Key Deer Refuge area which has been designated by

Monroe County as a Tier I property. Ten (10) campground spaces are recognized as transient Rate of Growth Ordinance (ROGO) Exemptions which may only be used for future development if they are transferred off of the subject sending property for development in a Tier II or Tier III property as a transient campground space, a RV space, or a hotel unit in the following receiving areas – Big Pine Key subarea (not including No Name Key), the City of Marathon, and the Village of Islamorada. The receiving areas are subject to all of the following conditions: in Monroe County the units may only be transferred to a parcel on Big Pine Key designated Tier II or Tier III; all receiving sites must be served by a wastewater treatment facility that meets the advanced wastewater treatment standards established by Section 403.086(10), Fla. Stat., or a Department of Environmental Protection construction permit has been issued for the collection lines for such a facility; transfers to the City of Marathon or the Village of Islamorada shall additionally be limited to sites where no clearing of tropical hardwood hammock is required and may not be transferred to any parcel designated as a VE zone or having turtle beach protections or result in the filling of wetlands. With the exception of transfers within the Big Pine Key subarea, transfers of ROGO exempt units may be effectuated only upon adoption of a Resolution by the City of Marathon and the Village of Islamorada pursuant to local regulations.

c. In the event Monroe County Comprehensive Plan and Land Use regulations or State of Florida Area of Critical State Concern land use regulations are amended in the future, all proposed changes to the subject property shall be effective only by an amendment to the

instant Florida Statutes 380.032 Settlement Agreement if approved by all parties. The Florida Statutes 380.032 Settlement Agreement and any future amendments shall be binding on the land in perpetuity and shall be recorded in the Monroe County public records.

d. Monroe County shall recognize and document 10 transient campground spaces as Transfer of ROGO Exemptions available to the subject property that are not eligible for redevelopment on the site. Monroe County and the Respondents Leo and James Winterling shall track and record the transfer of the transient campground spaces to the receiving property as required by the Monroe County Comprehensive Plan and Land Development Regulations governing Transfer of ROGO Exemptions.

3. **Amendment of the Major Conditional Use Permit.** The Respondents and the Department hereby agree that the Major Conditional Use approval for the subject property shall be amended as set forth above and all future development shall not proceed without a building permit allocation.

4. **Further Proceedings.** Conditioned upon Monroe County's adoption of the amendments to the Major Conditional Use Permit by approval of this Settlement Agreement, the Department shall, within 15 working days of receipt of said amendments file appropriate pleadings with the Division of Administrative Hearings to close the case and relinquish jurisdiction back to the Department.

5. **Entirety of Agreement.** The parties further agree that this Settlement Agreement

contains the entire and exclusive agreement among the parties and may not be modified in any manner except by an instrument in writing and signed by the parties.

6. **Duplicate originals.** This Settlement Agreement may be executed in any number of originals or counterparts, all of which evidence one agreement, and only one of which may be produced for any purpose.

7. **Enforcement.** In the event of a breach of this Agreement or failure to comply with any condition of it, or if it has been based upon materially inaccurate information, the Department may enforce this Agreement as provided in Sections 380.05, 380.07, and 380.11, Florida Statutes.

8. **Scope of Authority.** This Agreement affects the rights and obligations of the parties under Chapter 380, Florida Statutes. It is not intended to influence or determine the authority or decisions of any other state or local government agency in issuance of any other permits or approvals that might be required by state law or local ordinance for any development authorized by this Agreement, or restrict the Department's authority with regard to future developments orders for the Project. It is not intended to limit the authority of the Department with regard to any development other than the Project.

9. **Release; Costs and Attorneys Fees.** Each party hereto releases the other from any and all claims or demands arising out of the subject dispute. Each party shall bear its own costs and attorneys fees incurred in connection with this matter.

10. **Date of Execution.** The date of execution of this Agreement shall be the date that the last party signs and acknowledges this Agreement.

11. **Recordation**. This Agreement shall run with the land and shall bind, and the benefit shall inure to, respectively, Monroe County, Leo F. Winterling, James A. Winterling, the Department, and their respective successors and assigns. Respondents Leo F. Winterling and James A. Winterling shall record this Agreement in the Public Records of Monroe County, Florida, or Monroe County may record the Agreement at the Respondents' (Winterlings) expense and shall provide a certified copy of the recorded Agreement to the Department within 15 days after receipt of the executed Agreement from the Department.

IN WITNESS WHEREOF, the parties, by and through their respective undersigned duly authorized representatives, have executed this Agreement on the dates and year below written.

**BALANCE OF PAGE INTENTIONALLY LEFT BLANK**

**SIGNATURE PAGES TO FOLLOW**



WITNESSES:

LEO F. WINTERLING

[Signature]  
Witness as to Winterling

[Signature]  
Leo F. Winterling

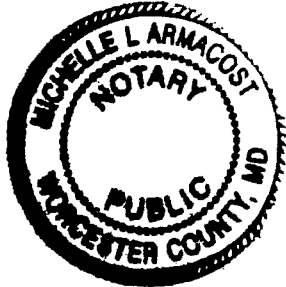
Debbie Hause  
Print Name

STATE OF ~~FLORIDA~~ Maryland  
COUNTY OF ~~MONROE~~ Worcester

The foregoing instrument was acknowledged before me this 2nd day of  
June 2011, by LEO F. WINTERLING who is personally known to me or who  
has produced Delaware Drivers license as identification.

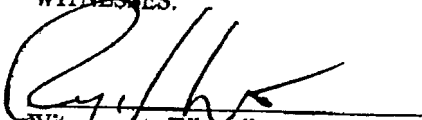
Michelle A. Hillman  
Notary Public

Michelle A. Hillman  
Print Name of Notary Public  
My Commission Expires: 9/29/2012



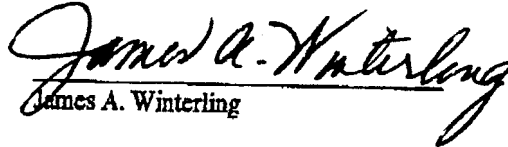
new name,  
commissioned as prior.

WITNESSES:

  
Witness as to Winterling

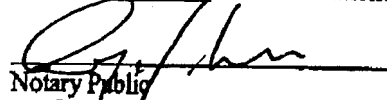
RYAN SCHMIDT  
Print Name

JAMES A. WINTERLING

  
James A. Winterling

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 1st day of June, 2011, by JAMES A. WINTERLING who is personally known to me or who has produced MD Driver's License as identification.

  
Notary Public

RYAN SCHMIDT MAY 25, 2014  
Print Name of Notary Public  
My Commission Expires:

WITNESSES:

GEORGE C. WINTERLING

LOU BOWEN  
Witness as to Winterling

George C. Winterling  
George C. Winterling

Donna Bailey  
Print Name

<sup>nd</sup>  
STATE OF FLORIDA  
COUNTY OF ~~MONROE~~  
Carroll

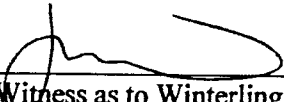
The foregoing instrument was acknowledged before me this 1 day of  
June 2011, by GEORGE C. WINTERLING who is personally known to me or  
who has produced Known to me as identification.

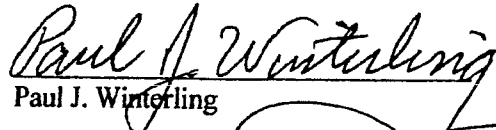

Lola D McDermott  
Notary Public

LOLA D McDERMOTT  
NOTARY PUBLIC  
Print Name of Notary Public  
MY COMMISSION EXPIRES 12/17/13  
My Commission Expires:

WITNESSES:

PAUL J. WINTERLING

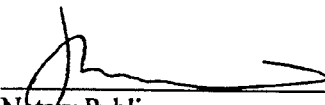
  
 \_\_\_\_\_  
 Witness as to Winterling  
Jonathan R. Williams  
 \_\_\_\_\_  
 Print Name

  
 \_\_\_\_\_  
 Paul J. Winterling  


STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of  
June 2011, by PAUL J. WINTERLING who is personally known to me or who  
 has produced Maryland State Driven License as identification.

**JONATHAN R. WILLIAMS**  
 Notary Public-Maryland  
 Anne Arundel County  
 My Commission Expires  
12-28-2014

  
 \_\_\_\_\_  
 Notary Public  
Jonathan R. Williams  
 \_\_\_\_\_  
 Print Name of Notary Public  
 My Commission Expires: 12/28/2014

WITNESSES:

MARK J. WINTERLING

Debra House  
Witness as to Winterling

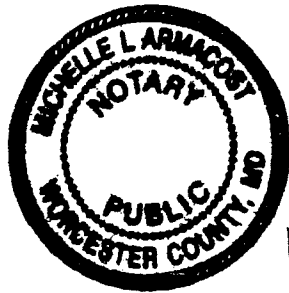
Mark J. Winterling  
Mark J. Winterling

Debra House  
Print Name

STATE OF ~~FLORIDA~~ Maryland  
COUNTY OF ~~MONROE~~ Worcester

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of

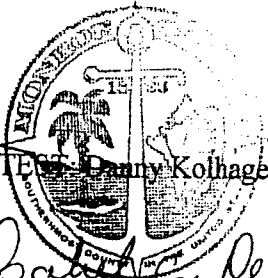
June 2011, by MARK J. WINTERLING who is personally known to me or who  
has produced Maryland drivers license as identification.



Michelle A. Hillman  
Notary Public

Michelle A. Hillman  
Print Name of Notary Public  
My Commission Expires: 9/29/2012

new name,  
Commissioned as prior.



ATTEST: Danny Kolhage, Clerk

MONROE COUNTY

Daniel C. DeSantis

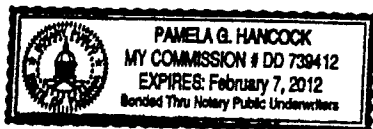
Deputy Clerk

Heather Carruthers  
Mayor Heather Carruthers

STATE OF FLORIDA  
COUNTY OF MONROE

The foregoing instrument was acknowledged before me this 22nd day of June 2011, by Heather Carruthers who is personally known to me or who has produced \_\_\_\_\_ as identification.

Pamela Hancock  
Notary Public



\_\_\_\_\_  
Print Name of Notary Public  
My Commission Expires:

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:  
Robert B. Shillinger, Jr.  
ROBERT B. SHILLINGER, JR.  
CHIEF ASSISTANT COUNTY ATTORNEY  
Date: 8-15-11

FILED FOR RECORD

2011 JUN 22 AM 9:08

DANNY KOLHAGE  
CLERK  
MONROE COUNTY

DEPARTMENT OF COMMUNITY AFFAIRS

By: J. Thomas Beck  
J. Thomas Beck, Director  
Division of Community Planning

Approved as to form and legality:  
Richard E. Stone  
Assistant General Counsel

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of  
June 2011, by J. Thomas Beck who is personally known to me or who has  
produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public

\_\_\_\_\_  
Print Name of Notary Public  
My Commission Expires:

