

AUG 21 2018

**AMENDED AND RESTATED FUNDING PARTIES AGREEMENT**

**THIS AMENDED AND RESTATED FUNDING PARTIES AGREEMENT** ("Agreement") amends, restates, supersedes and replaces in its entirety that certain Funding Parties Agreement made as of March, 6, 2007, by and among Orange County, Florida, a charter county and political subdivision of the State of Florida ("**County**"), the City of Orlando, a municipal corporation organized and existing under the Laws of the State of Florida ("**City**"), and Lake Nona Land Company, LLC, a Florida limited liability company ("**LNLC**") (County, City, and LNLC are referred to individually as a "**Funding Party**" and collectively as the "**Funding Parties**").

**RECITALS**

A. The Funding Parties have heretofore entered into various economic development agreements, all dated as of March 6, 2007, with the Burnham Institute for Medical Research, a California nonprofit public benefit corporation, now known as Sanford Burnham Prebys Medical Discovery Institute ("**SBP**") pursuant to which the Funding Parties agreed to donate certain local matching funds and property, along with other local contributions, valued in an amount equal to the Florida Legislature's award to SBP of \$155,272,000 in state funds to incentivize the opening and operation of a medical research facility in Orlando, Florida under the terms of that certain Innovation Incentive Funding Agreement OT07-030.

B. As contemplated in the local matching funds arrangement, the Funding Parties and SBP entered into a Grant Agreement pursuant to which, among other contributions by the Funding Parties, LNLC conveyed to County certain land identified herein as the Permanent Facilities Site, by virtue of that certain Special Warranty Deed recorded in Official Records Book 9262, Page 2564, as re-recorded in Official Records Book 9374, Page 934, both in Public Records of Orange County, Florida.

C. Simultaneously with such conveyance, the County leased the Permanent Facilities Site to SBP pursuant to a Ground Lease and SBP committed therein to operate a medical research facility and achieve certain operational metrics including, without limitation, job creation goals.

D. Construction on the Permanent Facilities Site of the medical research facility known as the Sanford Burnham Prebys Medical Discovery Institute at Lake Nona was completed in 2010 and subsequently operated by SBP (the Permanent Facilities Site and all improvements thereon are the "**Property**"); however in 2016, the Funding Parties became aware of SBP's intent to wind down its operations in Florida.

E. In anticipation of SBP's departure, the Funding Parties have determined to simultaneously: (1) terminate the Ground Lease with SBP by means of that certain Termination and Release Agreement by and among SBP and the respective Funding Parties ("**Termination and Release Agreement**"); and (2) convey the Property to the University of Central Florida Real Estate Foundation, L.L.C., a Florida limited liability company and direct support organization of the University of Central Florida ("**DSO**"), pursuant to that certain Transfer Agreement ("**Transfer Agreement**") between County and DSO, with a limited joinder by City and LNLC.

The conveyance to DSO is secured by a Mortgage and a Promissory Note ("**Mortgage**" and "**Promissory Note**" as described in the Transfer Agreement). The complete transfer from County to DSO, inclusive of all terms and conditions in the Transfer Agreement, Mortgage, Promissory Note, and associated documents is the "**UCF Conveyance**."

F. The Funding Parties desire to enter into this Agreement in order to set forth certain understandings and agreements among the Funding Parties regarding the Property, including the adjustment of the Proportionate Shares of the Funding Parties to account for the actual contributions made by the respective Funding Parties.

In consideration of the foregoing, the promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Funding Parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

2. **Term.** The term of this Agreement ("**Term**") commences on the date of last execution by a party hereto and expires upon the earlier of: (1) the County's final distribution of Proceeds following or contemporaneously with the "Maturity Date" of the Promissory Note as defined therein, or (2) the County's final distribution of proceeds, according to each party's Proportionate Share, from any disposition pursuant to Section 9, hereinbelow.

3. **Proportionate Shares of the Funding Parties.** Each Funding Party shall share the benefits and liabilities relative to the Property based on each Funding Party's actual contribution to the incentive transaction with SBP as provided in the Grant Agreement ("**Proportionate Share**"). Accordingly, each of the Funding Parties' Proportionate Share, calculated as a percentage of the whole based on each party's proportionate contribution, are:

	Amount	Proportionate Share
i. County:	\$40,700,000	43.19%
ii. City:	\$32,700,000	34.70%
iii. LNLC:	\$20,840,000	22.11%*

\*Within ninety (90) days after the Effective Date, LNLC shall deliver to the other Funding Parties documentation reasonably acceptable to both the County and City evidencing LNLC's payment of all or a portion of the \$10,000,000.00 Operations Contribution (as defined in the Grant Agreement) which \$10,000,000.00 is presently included in LNLC's Amount of \$20,840,000.00 set forth in the table above. LNLC's Amount set forth in the table above will be adjusted and each Funding Party's Proportionate Share set forth in the table above will be re-calculated. County and City shall execute an appropriate instrument to acknowledge their agreement to the re-calculated Proportionate Shares for each Funding Party.

4. **Proportionate Obligations of the Funding Parties.** Each Funding Party shall, to the extent of its Proportionate Share, be liable for and, shall promptly fund upon County's

request, any and all liabilities, obligations, losses, fines, fees, penalties, costs, or expenses that may arise from the UCF Conveyance including without limitation those arising from taxes, special assessments, casualty, contract, and/or environmental remediation ("**Proportionate Obligation**"). The terms of this paragraph shall survive the termination of this Agreement to the extent Proportionate Obligations accrue prior thereto.

**5. Actions regarding the Property.**

a. County shall have all authority to do all things necessary and convenient to perform its responsibilities under the Transfer Agreement and to perform its responsibilities as lender under the Promissory Note and Mortgage, however, County's Material Loan Actions shall only be taken upon a unanimous vote of the Funding Parties. "**Material Loan Actions**" are: (i) amending the Promissory Note or Mortgage, (ii) approving any agreements for subordination, nondisturbance, or attornment, or their equivalents, with DSO or its tenants or their subtenants, or (iii), sending notices to DSO, or bringing enforcement actions against DSO, for nonmonetary breaches of the Promissory Note or Mortgage. The Funding Parties shall meet within three (3) Business Days of receipt of County's notification of a pending Material Loan Action or as soon thereafter as practicable, unless each Funding Party agrees in writing that a meeting is not necessary and the County may proceed with the proposed course of action. Nothing herein shall be construed to prevent the County from taking any action it deems necessary to avoid breach of the Promissory Note or Mortgage.

b. Under the terms of the Transfer Agreement, County will convey the Property to DSO via County Deed, which contains a "**Use Restriction**" at Exhibit "B" thereto. LNLIC shall have all authority, in its reasonable discretion, to enforce the Use Restriction, and to provide DSO or its Permitted Transferee (as defined in the Deed) with consent to uses that vary from the Permissible Uses (as defined in the Use Restriction), so long as such consent does not cause directly or indirectly, or otherwise effect, a devaluation of the Property.

**6. Proceeds from Property.** County shall distribute to each Funding Party its Proportionate Share of all proceeds received by County from the UCF Conveyance (the "**Proceeds**") within thirty (30) Business Days after County's receipt of such Proceeds; provided, however, each party's right to the Proceeds is subordinate to that party's duty to pay its Proportionate Obligation. Notwithstanding anything to the contrary herein, each Funding Party's right to the Proceeds shall be reduced by the amount of its unmet Proportionate Obligation.

**7. Unexpended Grant Funds.** The Funding Parties, SBP, and the Orange County Comptroller entered into that certain Escrow Agreement on or about March 6, 2007, creating an Escrow Account to fund the design, construction, and furnishing of the Sanford Burnham Prebys Medical Discovery Institute at Lake Nona. Approximately EIGHT HUNDRED FOURTEEN THOUSAND DOLLARS (\$814,000) in unexpended grant funds remain on deposit in the Escrow Account. Through the Termination and Release Agreement, SBP has released any claim it may have to the funds in the Escrow Account. Accordingly, all funds in the Escrow Account shall be distributed to the Funding Parties according to their Proportionate Shares no longer than thirty (30) days after the final calculation of LNLIC's Proportionate Share as outlined in Section 3

of this agreement and subsequent notification to the Orange County Comptroller as Escrow Agent. Upon each Funding Party's receipt of its Proportionate Share of the unexpended escrowed funds, such party will be deemed to have released any and all claims it may then have or thereafter acquire against each other Funding Party relating to the Escrow Agreement, Escrow Account, and all funds escrowed. The Funding Parties shall execute any directions to the Escrow Agent necessary to facilitate disbursements.

8. **Fair Market Value.** At any time an estimate of "Fair Market Value" is required under this Agreement, the Funding Parties shall negotiate in good faith for a period of not to exceed thirty (30) days in an attempt to agree upon the Fair Market Value and, failing such agreement, the Funding Parties shall attempt to agree within the same thirty-day period on an appraiser to estimate the Fair Market Value. If the Funding Parties agree upon the appraiser, then such appraiser shall estimate the Fair Market Value within thirty (30) days thereafter, which estimation shall be binding upon the Funding Parties. If LNLC and the other Funding Parties are unable to agree as to the Fair Market Value or any such appraiser within such thirty-day period, then LNLC, on the one hand, and the other Funding Parties, on the other hand, shall each engage an appraiser who is licensed in the State of Florida, holds a Member of Appraisal Institute (MAI) designation, and has a minimum of ten years of experience in appraising commercial property in Orange County, Florida and the parties shall notify each other of the appraiser so selected. Within fifteen (15) days thereafter, the two appraisers so selected shall select a third appraiser who is similarly qualified, and each of the three appraisers shall estimate the Fair Market Value of the Property within thirty (30) days after the selection of the third appraiser. The Fair Market Value shall be determined by taking the average of the three appraisals. Each appraiser shall notify each of the Funding Parties in writing of such appraiser's conclusion. LNLC, on the one hand, and the other Funding Parties, on the other hand, shall bear the costs of the appraiser selected by it or them (unless the parties agree as to the appraiser, in which event the cost of such appraiser shall be divided equally between LNLC, on the one hand, and the other Funding Parties, on the other hand), and the costs of the third appraiser shall be divided equally between LNLC, on the one hand, and the other Funding Parties, on the other hand. Notwithstanding any other provision of this Agreement, Fair Market Value shall always be reckoned from highest and best use of the Property as that term is used in *The Appraisal of Real Estate*, 14<sup>th</sup> ed., published by the Appraisal Institute (2013), or such successor as may be designated by the Appraisal Institute giving due consideration to all restrictions, conditions and matters both benefiting and burdening the property being appraised.

9. **Course of Action/Disposition.**

a. **Default, Foreclosure.** In the event DSO defaults under the Mortgage and Promissory Note, County, within twenty (20) days of becoming aware of such default, shall notify the Funding Parties of the circumstances of default and call a meeting of the Funding Parties to discuss the appropriate course of action, such meeting to occur not later than ten (10) days after County's notice. Unless the Funding Parties unanimously agree on a contrary course of action, County shall take all necessary action to foreclose as provided in the Mortgage and applicable law.

b. **Disposition after Foreclosure.** In the event the County recovers the Property at foreclosure, then no later than the completion of the foreclosure, the Funding

Parties shall convene a disposition meeting to determine a course of action regarding the Property. Potential courses of action include, but are not limited to (i) selling the Property by Bid Sale (as defined below), (ii) leasing the Property, (iii) retaining the Property for a use to be determined by the Funding Parties, or (iv) any other action permitted by law that is determined by the Funding Parties to be in the best interest of the Funding Parties. In the absence of unanimous agreement among the Funding Parties on a particular course of action within thirty (30) days after convening the disposition meeting, each party shall be deemed to have elected to sell the Property in accordance with Section 125.35, Florida Statutes (2018), as it may be amended, or in accordance with such public bid sale procedures, authorized by statute, as may be provided by County ordinance at that time (the "**Bid Sale**"); provided, the Bid Sale shall be a public auction, open outcry or electronic bid, of which the Funding Parties shall have received at least thirty (30) days' prior written notice, without sealed bids (i.e., all bidders are aware of the bids of the other bidders and all bidders may continue to bid until no bidder desires to increase its bid above the highest bid and the auction is declared closed). Unless LNLC agrees not to participate in the Bid Sale (and neither County nor City elects to bid), County and City, to the extent permitted by law, may exclude LNLC from discussions between City and County regarding reserve price (if any) or consideration or acceptance of bids, unless City and County jointly agree otherwise.

10. **Miscellaneous.**

a. Meeting. Each Funding Party hereby delegates to the following persons all authority to act on such party's behalf for all actions required or authorized under this Agreement including the signing of any required documentation contemplated hereunder: for County, the County Administrator; for City, the City Chief Administrative Officer; for LNLC, the LNLC President. Where consensus is required, votes may be cast in writing or at a meeting attended by the parties in person or by teleconference, the results of which shall be recorded and circulated among the parties. If a time for meeting to gather unanimous approval is not otherwise expressed in this Agreement, the parties shall meet or cast their votes in writing within three (3) Business Days of receipt of notice from the party requesting the meeting or as soon thereafter as reasonably practicable.

b. Memorandum of Agreement. The Funding Parties shall execute a termination of that certain Memorandum of Funding Parties Agreement, recorded in Official Records Book 9262, Page 2625, in the Public Records of Orange County, Florida. The form of such termination is attached hereto as **Exhibit "A"**. It shall be recorded in the Public Records of Orange County, Florida promptly hereafter.

c. Notices. All notices and elections (collectively, "notices") to be given or delivered by or to any party hereunder, shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service or overnight mail, or alternatively shall be sent by United States Certified Mail, with Return Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services or overnight mail, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the

following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

If to County:

Orange County, Florida  
P.O. Box 1393  
Orlando, Florida, 32802-1393  
Attention: County Administrator  
With a copy to:

Orange County, Florida  
P.O. Box 1393  
Orlando, Florida 32802-1393  
Attention: Manager, Real Estate Management Division

If to City:

Chief Financial Officer  
City of Orlando, Florida  
4<sup>th</sup> Floor, City Hall  
400 South Orange Avenue  
Orlando, Florida 32801

With a copy to:

City Attorney  
City of Orlando, Florida  
3<sup>rd</sup> Floor, City Hall  
400 South Orange Avenue  
Orlando, Florida 32801

If to LNLC:

Lake Nona Land Company, LLC  
6900 Tavistock Lakes Boulevard, Suite 200  
Orlando, Florida 32827  
Attention: James L. Zboril, President

With a copy to:

Lake Nona Land Company, LLC  
6900 Tavistock Lakes Boulevard, Suite 200  
Orlando, Florida 32827  
Attention: Rasesh Thakkar, Chief Executive Officer

and

Nelson Mullins Broad and Cassel  
390 North Orange Avenue, Suite 1400  
Orlando, Florida 32801  
Attention: Sara W. Bernard, P.A.

Any party may from time to time change the address to which notice under this Lease shall be given such party, upon three (3) days' prior written notice to the other parties.

d. Governing Law and Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida. The parties acknowledge that personal jurisdiction upon proper service will be valid in the State of Florida, and that venue of all actions arising out of or related to this Agreement shall be proper only in a State Court of competent jurisdiction located in Orange County, Florida.

e. Modifications to Agreement. The parties shall not be bound by any modification, cancellation or rescission of this Agreement unless in writing and signed by the party(ies) to be bound.

f. Binding Effect. The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their permitted successors, and assigns, if any.

g. Construction. No party shall be considered the author of this Agreement since the parties hereto have participated in extensive negotiations and drafting and redrafting of this document to arrive at a final Agreement. Thus, the terms of this Agreement shall not be strictly construed against one party as opposed to the other party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof, shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

h. Entirety of Agreement. The parties agree that this Agreement sets forth the entire agreement and understanding between the parties with respect to the disposition of the Property and supersede all prior negotiations, representations, understandings or agreements, whether oral or written, between the parties or made by third parties to either party and there are no promises, covenants, agreements, representations, warranties or understandings between the parties other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

i. Severability. If any term of this Agreement or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

j. Time of Essence. Time is of the essence of this Agreement and in the performance of all conditions and covenants to be performed or satisfied by any party hereto. Whenever a date specified herein shall fall on a Saturday, Sunday or legal holiday, the date shall be extended to the next succeeding Business Day.

k. Force Majeure. Any party hereto shall be excused for the period of delay in the performance of any obligations hereunder when such delay is occasioned by a Force Majeure Event and the time for performance shall be automatically extended for a like period.

l. Waiver. No waiver of any provision of this Agreement shall be effective against any party hereto unless it is in writing and signed by the party(ies) waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

m. Counterparts. This Agreement may be executed in any three (3) or more counterparts, each of which, when executed, shall be deemed to be an original and all of which together shall constitute one and the same document.

n. Captions. The captions contained in this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

o. Enforcement Costs. In the event that any party finds it necessary to employ an attorney to enforce any provision of this Agreement, the predominantly prevailing party will be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in connection therewith (including costs of collection), at both trial and appellate levels; including bankruptcy proceedings, in addition to any other remedies to which such party may be entitled. The requirement to pay the predominantly prevailing party's reasonable attorneys' fees and costs will survive any termination or expiration of this Agreement.

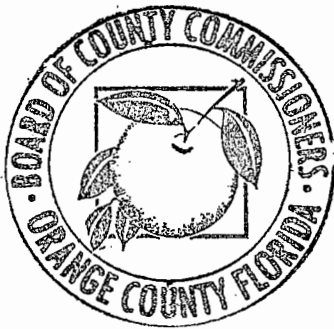
p. No Assignment. Assignment of any or all of a party's interest in this Agreement without the unanimous written consent of all parties hereto shall be void ab initio and of no force and effect.

q. Exhibits and Schedules. All Exhibits and Schedules referenced in this Agreement are incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement.

(Remainder of this page is left blank intentionally)



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed intending to be bound hereby.




ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By:   
Teresa Jacobs  
Orange County Mayor

Date: AUG 21 2018

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By:   
Deputy Clerk

Date: AUG 21 2018

ATTEST:

By: Denise Aldridge  
Denise Aldridge, City Clerk

APPROVED AS TO FORM  
AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF  
ORLANDO, FLORIDA, ONLY:

August 20 2018

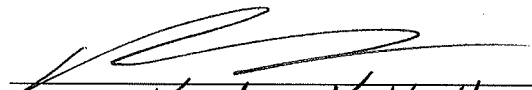
Wesley Powell  
Assistant City Attorney


CITY OF ORLANDO, a municipal  
corporation organized and existing under  
the laws of the State of Florida,

By: Buddy Dyer  
Buddy Dyer, Mayor

Date: 8.20.18

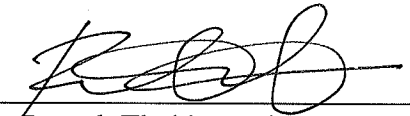
Signed, sealed and delivered in the presence of the following witnesses:

  
Name: Kathy Kittell

  
Name: Shamira Barkley

**“LNLC”**

**LAKE NONA LAND COMPANY, LLC,**  
a Florida limited liability company

By:   
Rasesh Thakkar, Vice President

Date: August 27, 2018

**EXHIBIT "A"**  
**TERMINATION OF MEMORANDUM OF**  
**FUNDING PARTIES AGREEMENT**

[See Attached 4 Pages]

This Document Prepared by  
And Return After Recording To:

Wesley Powell  
Assistant City Attorney  
City of Orlando  
400 South Orange Avenue  
Orlando, FL 32801

**TERMINATION OF MEMORANDUM  
OF  
FUNDING PARTIES AGREEMENT**

**THIS TERMINATION OF MEMORANDUM OF FUNDING PARTIES AGREEMENT** ("Termination") is entered into by and between **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida ("County"), the **CITY OF ORLANDO**, a municipal corporation organized and existing under the laws of the State of Florida ("City"), and **LAKE NONA LAND COMPANY, LLC**, a Florida limited liability company ("LNLC") (County, City and LNLC are referred to individually as a "Funding Party" and collectively as the "Funding Parties").

**WITNESSETH:**

A. In connection with the funding, design, construction, and operation of the bio-medical research facility in Lake Nona ("Project"), the Funding Parties entered into the Funding Parties Agreement dated March 6, 2007 that set forth certain rights and obligations among the Funding Parties with respect to various agreements associated with the Project (the "Funding Parties Agreement").

B. The Funding Parties executed a Memorandum of Funding Parties Agreement dated May 7, 2007, and recorded in Official Records Book 9262, Page 2625, of the Public Records of Orange County, Florida, to provide constructive notice of the Funding Parties Agreement and the Funding Parties' respective interests in the real property and improvements described therein (the "Memorandum").

C. The Funding Parties Agreement has been replaced and superseded by the Amended and Restated Funding Parties Agreement of even date herewith, and the Funding Parties therefore desire to terminate and cancel the Memorandum.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Funding Parties hereby terminate and cancel the Memorandum.

The undersigned have executed this Termination of Memorandum of Funding Parties Agreement for the purpose described herein.

**"COUNTY"**

**ORANGE COUNTY**, a charter county and  
political subdivision of the state of Florida

By: Board of County Commissioners

By: \_\_\_\_\_  
Teresa Jacobs  
Orange County Mayor

Date: \_\_\_\_\_

ATTEST: Phil Diamond , CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Denise Aldridge, City Clerk

APPROVED AS TO FORM  
AND LEGALITY FOR THE USE  
AND RELIANCE OF THE CITY OF  
ORLANDO, FLORIDA, ONLY:

\_\_\_\_\_, 2018

\_\_\_\_\_  
Assistant City Attorney

**"CITY"**

**CITY OF ORLANDO, a municipal  
corporation organized and existing under  
the laws of the State of Florida,**

By: \_\_\_\_\_  
Buddy Dyer, Mayor

Date: \_\_\_\_\_

**"LNLC"**

Signed, sealed and delivered in the  
presence of the following witnesses:

**LAKE NONA LAND COMPANY, LLC,**  
a Florida limited liability company

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
James L. Zboril, President

Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

**STATE OF FLORIDA     )**  
  )  
**COUNTY OF ORANGE    )**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2018 by James L. Zboril, as President of **LAKE NONA LAND COMPANY, LLC**, a Florida  
limited liability company, on behalf of the company. He is either personally known to me or has  
produced \_\_\_\_\_ as identification.

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