



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

## Growth Management Department


300 Sixth Street

Vicki Fisher, Urban Planner III  
Growth Management Department  
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Phone: 605-394-4120  
Fax: 605-394-6636  
e-mail: [vicki.fisher@rcgov.org](mailto:vicki.fisher@rcgov.org)

### MEMORANDUM

TO: Rapid City Council

FROM: Vicki L. Fisher, Planner Manager 

DATE: November 24, 2008

RE: Authorization for Mayor and Finance Officer to sign a waiver of right to protest a future assessment for street improvements.

Legal Description: Lots 1, 2, 4, 5, 6, 7, 9, 12, 13, 16, 17, 18, 19, 20, 21 and Lot 4a of Block 4 of H&H Estates Subdivision, all located in the NW1/4 SE1/4 and NE1/4 SW1/4, Section 10, T1N, R8E, BHM, Pennington County, South Dakota

A Variance to the Subdivision Regulations to waive the requirement to install sewer along the eastern 37 feet of Lot 9, Block 4 of H & H Estates Subdivision as it abuts Hacienda Street has been submitted in conjunction with a Preliminary Plat to replat 16 lots into 15 lots. A stipulation of approval of the Variance to the Subdivision Regulations requires that the applicant sign a waiver of right to protest any future assessment for the improvements. The document also requires the signature of the Mayor and the Finance Officer.

**Staff Recommendation:** Authorize the Mayor and Finance Officer to sign the waiver of right protest any future assessment for the installation of sewer along the eastern 37 feet of Lot 9, Block 4 of H & H Estates Subdivision as it abuts Hacienda Street.

(File #08SV052)



EQUAL OPPORTUNITY EMPLOYER

PREPARED BY: City's Attorney Office  
 300 Sixth Street  
 Rapid City, SD 57701  
 (605) 394-4140

11/14/08 mcs

AGREEMENT WAIVING RIGHT TO PROTEST  
 (SDCL 9-45-26; 9-47-13; 9-48-18; 9-48-42)

THIS AGREEMENT IS MADE and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and for DONNA L. NELSON, JOHN NELSON, DONNA R. BANTON, CURTIS A. KETCHUM, MARY KETCHUM, LYLE G. BROMWICH, DARLA BROMWICH, STEVEN W. WIEGE, DEBRA O'NEILL, DENNIS M. JONES, CAROL JONES, DONALD G. MITCHELL, JR., BONNIE MITCHELL, JANELLE C. POZORSKI, LEE O. SMITH, KRISTIE SMITH, DAVID B. OIHUS, WILLIAM P. FARRAR, EDWIN L. ROYALTY, TERESA ROYALTY, THOMAS G. HUWE, REBECCA HUWE, AARON MYERS, ANGIE MYERS, MONTY D. ENGEL, and TERESA ENGEL, hereinafter called "Developers," and the CITY OF RAPID CITY, a municipal corporation of the State of South Dakota, hereinafter called the "City."

WHEREAS the Developers have submitted a proposed subdivision plat; and

WHEREAS it is the intended purpose of the Developers to obtain final approval for this subdivision plat; and

WHEREAS the City of Rapid City's subdivision regulations require installation of sewer, which in this instance would require the Developers to install sewer along the eastern 37 feet of Lot 9, Block 4 of H & H Estates Subdivision located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T1N, R8E, BHM, Pennington County, South Dakota, as it abuts Hacienda Street; and

WHEREAS it is the intent and purpose of the Developers and the City to enter into an agreement whereby the Developers will consent to a future assessed project for the installation of sewer along Hacienda Street as it abuts the subject property in exchange for the City not requiring immediate installation of the improvements as required by Rapid City Subdivision Regulations;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is hereby agreed as follows:

1. This agreement pertains to, and includes those properties which are designated and identified as follows:

The eastern 37 feet of Lot 9, Block 4 of H & H Estates Subdivision located in the NW $\frac{1}{4}$ SE $\frac{1}{4}$  and the NE $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 10, T1N, R8E, BHM, Pennington County, South Dakota.

2. This agreement specifically references the installation of sewer along Hacienda Street as it abuts the subject property.

3. The Developers acknowledge the City has the power to make assessments for local improvements on property adjoining or benefited thereby, to collect same in the manner provided by law, and to fix, determine and collect penalties for nonpayment of any special assessments. The Developers agree that if at any time in the future the City determines it is necessary or desirous to install sewer along Hacienda Street as it abuts the subject property through an assessed project, Developers or their heirs, assigns, or successors in interest, waive any right to object to such an assessed project as allowed under state law in consideration for the final approval of the subdivision plat without the immediate installation of sewer. It is understood by the Developers that the City of Rapid City's primary consideration for the granting of the approval for a subdivision plat on the herein described property and forbearance from requiring Developers to immediately install sewer along Hacienda Street is the Developers' covenant and promise to waive any right to object to the assessed project and their consent to the assessed project.

4. Developers further covenant and agree for themselves, their heirs, assigns, and successors in interest, that should they or any of their heirs, assigns, or successors in interest fail to abide by each and every covenant herein contained, the immediate installation of sewer along Hacienda Street as it abuts the subject property, which is required in the City subdivision regulations, will be required within 90 days of the objection in order to comply with the City of Rapid City's subdivision regulations. Should the weather prevent immediate installation of these subdivision improvements, the City Council may accept a surety bond in an amount equal to the estimated cost of installation of the improvements, whereby the improvements will be made and utilities installed without cost to the City in the event of default of the Developers.

5. All of the terms and conditions herein set forth shall extend to and be binding upon the heirs, assigns, or successors in interest of the Developers, and be considered as a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of this agreement recorded with the Pennington County Register of Deeds' Office pursuant to the provisions of South Dakota statutes.

6. The City may undertake any legal or equitable action available to enforce the provisions of this agreement in addition to any remedy provided herein. In the event the City is required to undertake any action to enforce the terms of this agreement or its subdivision regulations in

connection with this agreement, the undersigned, heirs, assigns or successors in interest agree the City may recover from the owner of said property its reasonable expenses, including attorney's fees incurred with respect to such action.

7. If any section(s), or provision of this application is declared invalid for any reason whatsoever by any competent court, such invalidity shall not affect any other section(s) or provision of this application if they can be given effect without the invalid section(s) or provisions.

8. This agreement shall be construed according to the laws of the State of South Dakota. No modification or amendment to this agreement shall be valid, unless evidenced by a writing signed by the parties hereto.

9. If the Developer is a corporation, it has the power to enter into this agreement and its officers signing for it have full power and authority to do so.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF RAPID CITY

\_\_\_\_\_  
Alan Hanks, Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

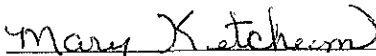
(SEAL)



Donna L. Nelson

DIANA

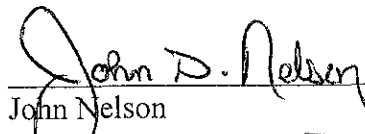
~~Donna R. Banton~~ ~~Donna R. Banton~~ ~~Donna R. Banton~~ ~~Donna R. Banton~~  
Donna R. Banton



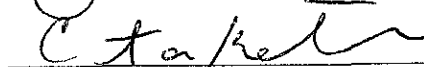
Mary Ketchum



Darla Bromwich



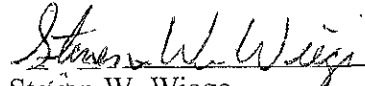
John Nelson



Curtis A. Ketchum



Lyle G. Bromwich



Steven W. Wiege

Debra Wiege formerly Debra O'Neill Dennis M. Jones  
Debra O'Neill Dennis M. Jones

Carol Jones Donald G. Mitchell, Jr.  
Carol Jones Donald G. Mitchell, Jr.

Bonnie Mitchell Janelle C. Pozorski  
Bonnie Mitchell Janelle C. Pozorski

Lee O. Smith Kristie L. Smith  
Lee O. Smith Kristie L. Smith

David B. Oihus William P. Farrar  
David B. Oihus William P. Farrar

Edwin L. Royalty Teresa Royalty  
Edwin L. Royalty Teresa Royalty

Thomas G. Huwe Rebecca Huwe  
Thomas G. Huwe Rebecca Huwe

Aaron Myers Angie Myers  
Aaron Myers Angie Myers

Monty D. Engel Teresa Engel  
Monty D. Engel Teresa Engel

State of South Dakota )  
SS.  
County of Pennington )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me, the undersigned officer, personally appeared Alan Hanks and James F. Preston, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Agreement Consenting to Assessed Project for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, South Dakota

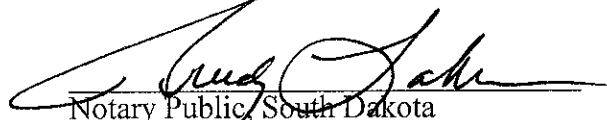
My Commission Expires:

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared ~~Donna~~ <sup>Diana</sup> L. Nelson, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public, South Dakota

My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared John Nelson, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
\_\_\_\_\_  
Notary Public, South Dakota

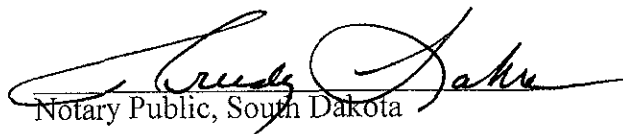
My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Donna R. Banton, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

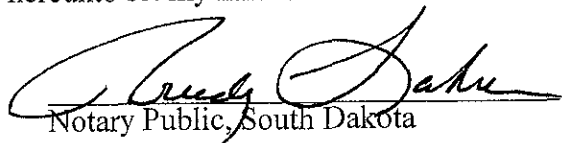
My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Curtis A. Ketchum, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota


My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Mary Ketchum, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

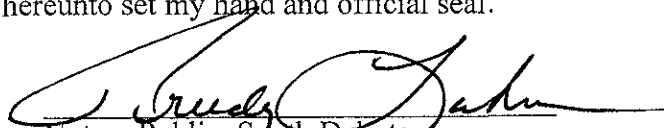
My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Lyle G. Bromwich, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

My Commission Expires: 10/22/13

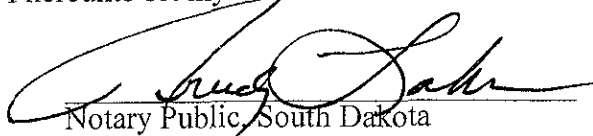
(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Darla Bromwich, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.



IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Steven W. Wiege, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

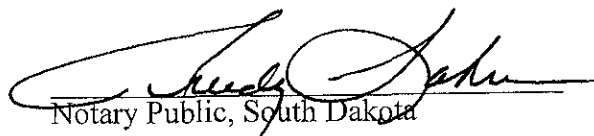
My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Debra O'Neill, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

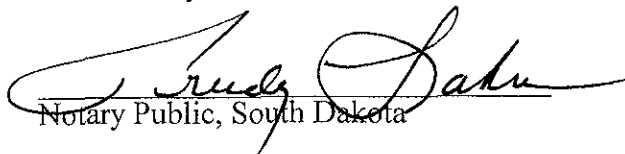
My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Dennis M. Jones, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

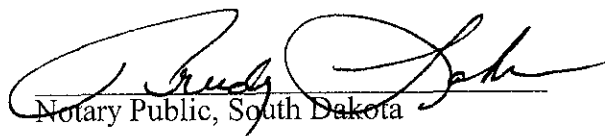
My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Carol Jones, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

My Commission Expires: 10/22/13


(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Donald G. Mitchell, Jr., known to me or satisfactorily proven to be the

person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Bonnie Mitchell, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Janelle C. Pozorski, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

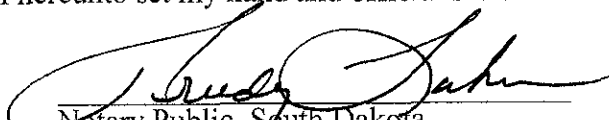
My Commission Expires: 10/22/13

(SEAL)

State of South Dakota            )  
  ss.  
County of Pennington            )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Lee O. Smith, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

My Commission Expires: 10/22/13

(SEAL)

State of South Dakota            )  
  ss.  
County of Pennington            )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Kristie Smith, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

My Commission Expires: 10/22/13

(SEAL)

State of South Dakota            )  
  ss.  
County of Pennington            )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared David B. Oihus, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

My Commission Expires: 10/22/13

(SEAL)

State of South Dakota            )  
  ss.  
County of Pennington            )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared William P. Farrar, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

My Commission Expires: 10/22/13

(SEAL)

State of South Dakota            )  
  ss.  
County of Pennington            )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Edwin L. Royalty, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

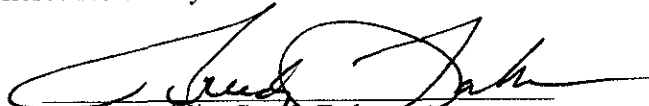
My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Teresa Royalty, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota


My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Thomas G. Huwe, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Rebecca Huwe, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota


My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Aaron Myers, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

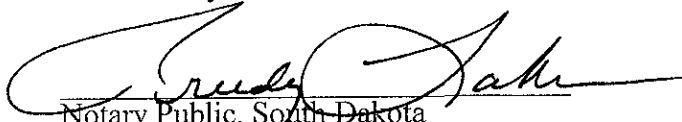
My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Angie Myers, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota


My Commission Expires: 10/22/13

(SEAL)

State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Monty D. Engel, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

My Commission Expires: 10/22/13

(SEAL)

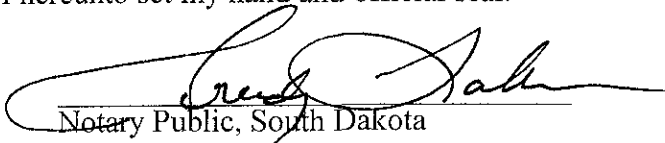
State of South Dakota       )  
  ss.  
County of Pennington       )

On this the 16 day of November, 2008, before me, the undersigned officer personally appeared Teresa Engel, known to me or satisfactorily proven to be the person whose



name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

  
Notary Public, South Dakota

My Commission Expires: 10/22/13

(SEAL)