

11/13/2014

83-R-14

A RESOLUTION

Authorizing the Execution of an Agreement to Purchase Property for a Park and Accept a Dedication of Land for the New Ashland Avenue Extended Roadway all within the Emerson Square Subdivision

WHEREAS, the United States Department of Housing and Urban Development (“HUD”) awarded Neighborhood Stabilization Program 2 (“NSP2”) grant funds to the City in the amount of \$18.15 million for two main purposes: (a) acquire, rehabilitations and/or development, leasing and/or sale of a minimum of 100 single-family, multi-family and condominium units; and (b) the development of a mixed tenure residential development called “Emerson Square” in the area bounded by Emerson Street, the alley east of Dewey Avenue, Foster Street and Gilbert Park and Jackson; and

WHEREAS, the City entered into a redevelopment agreement and subsequent amendments with Brinshore Development, L.L.C (“Brinshore”) to carry out the goals of the NSP2 grant funds, including a second amendment to the redevelopment agreement (the “RDA Second Amendment”) dated July 26, 2012 clarifying development issues, including that the City would acquire Lot 4 for a public park after Emerson Square was developed and the park was complete; and

WHEREAS, the first phase of the Emerson Square development is complete and the park situated on Lot 4 has been constructed and the City seeks to acquire it from Brinshore for use as a public park; and

WHEREAS, the new roadway, extension of Ashland Avenue, through the Emerson Square subdivision is also complete; and

WHEREAS, EMSQ Holding LLC, an Illinois limited liability company (“EMSQ Holding”) is the owner of several lots, including Lot 4 (“Park”) and Lot 5 (“Roadway”) and seeks to convey the Park and Roadway to the City of Evanston; and

WHEREAS, it is in the best interests of the City of Evanston to purchase the Park from EMSQ Holding to expand its public park system and to accept the dedication of the Roadway for the continuity of the City’s right-of-way system,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

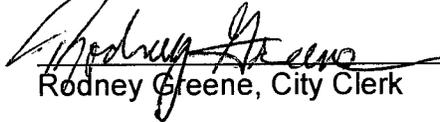
SECTION 1: The City Manager is hereby authorized and directed to execute, and the City Clerk hereby authorized and directed to attest, on behalf of the City, the Real Estate Contract (the “Agreement”) as set forth in Exhibit 1, by and between EMSQ Holding LLC and the City of Evanston for the purchase of the Park for a price of \$1.00 (One and no/100 Dollar) and accept the dedication of the Roadway.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions or terms of the Agreement as may be determined to be in the best interests of the City.

SECTION 3: That this Resolution 83-R-14 shall be in full force and effect from and after its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: November 24, 2014

83-R-14

EXHIBIT 1
CONTRACT

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“**Agreement**”) is made as of this ____ day of _____, 2014, by and between the **City of Evanston**, an Illinois home rule unit of government located in Cook County, Illinois (“**Purchaser**”), and **EMSQ Holding, LLC**, an Illinois limited liability company (“**Seller**”).

WITNESSETH:

WHEREAS, Seller is the owner of that certain property in Evanston, Illinois described on Exhibit A attached hereto and made a part hereof (the “**Property**”);

WHEREAS, the Property consists of a newly constructed street (the “**Street**”) and a newly constructed park (the “**Park**”) that were built by Seller as part of the Emerson Square redevelopment;

WHEREAS, Seller is an Affiliate of Brinshore Development, LLC, an Illinois limited liability company;

WHEREAS, Brinshore Development, LLC has entered into that certain Redevelopment Agreement with Seller Regarding the Neighborhood Stabilization Program 2 Grant Number B-09-LN-IL-0026, as amended (the “**Redevelopment Agreement**”); and

WHEREAS, in accordance with the Redevelopment Agreement, Seller and Purchaser have agreed that the Street will be dedicated as a public right-of-way and the Park will be conveyed to the Purchaser;

NOW, THEREFORE, for and in consideration of the promises and of the mutual covenants and agreements hereinafter set forth, the parties agree to the terms of this Agreement, which reads in its entirety as follows:

1. Agreement to Purchase the Park. Purchaser agrees to purchase and Seller agrees to sell and convey or cause to be conveyed to Purchaser, or its designee, by Special Warranty Deed (the “**Deed**”), good and merchantable title to the Park at the price and subject to the terms, conditions and provisions hereinafter set forth. The Deed shall be substantially in the form attached hereto as Exhibit B.
2. Dedication of Street. Purchaser agrees to accept a dedication of the Street as a public right-of-way pursuant to a Plat of Dedication (the “**Plat**”) substantially in the form attached hereto as Exhibit C.
3. Bill of Sale. Purchaser agrees to accept a Bill of Sale from Seller for any and all improvements located on the Street (the “**Bill of Sale**”) substantially in the form attached hereto as Exhibit D.

4. Purchase Price. Purchaser agrees to pay and Seller agrees to accept as for the Property the sum of \$1.00 ("**Purchase Price**") payable at Closing (as hereinafter defined).
5. Title Policy.
 - (a) Seller has previously furnished Purchaser, at Seller's expense, a title commitment with respect to the Property. Purchaser acknowledges that the title commitment is acceptable to Purchaser.
 - (b) Purchaser and Seller shall, at Seller's expense, obtain a title insurance policy covering the Park, issued by Chicago Title Insurance Company through its agent, Greater Illinois Title Company, or another title company acceptable to Purchaser ("**Title Insurer**"), dated as of the date Closing in a nominal amount, free and clear of all liens and encumbrances whatsoever, except for general real estate taxes not due and payable, covenants, conditions, restrictions and other matters of record shown on the title commitment and those additional matters approved by Purchaser (the "**Permitted Exceptions**").
 - (c) The title commitment shall be conclusive evidence of good and merchantable title as therein shown as to all matters insured by the policy, subject only to the exceptions as therein stated. Seller shall also furnish Purchaser an affidavit of title in customary form covering the date of Closing and showing title in Seller subject only to the Permitted Exceptions.
6. Representations.
 - (a) Seller's Representations. As an inducement to Purchaser to enter into this Agreement Seller hereby represents to Purchaser and agrees as follows:
 - (i) Seller has the right, power and authority to sell and dedicate the Property, as the case may be, subject to the terms and conditions provided for in this Agreement, and to execute, deliver and perform its obligations under this Agreement and all other instruments, conveyances and documents to be executed and delivered in connection with the transaction contemplated herein. This Agreement and all other documents executed and delivered, or to be executed and delivered by Seller in connection with this Agreement have been, or at the appropriate time will be, duly executed and delivered and constitute or, upon such execution and delivery will constitute, the legal, valid and binding obligations of Seller, enforceable in accordance with the respective terms and provisions. No consent or approval of any person, firm, corporation or governmental authority is required to be obtained by Seller in order for Seller to enter into this Agreement.
 - (ii) To the best of Seller's knowledge, there exists no action, suit, litigation or proceeding affecting the Property to which Seller is a party, and to the knowledge of Seller, there is no such action, suit, litigation or proceeding threatened.

- (iii) Seller is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code and is therefore exempt from the withholding requirements of said Section. Seller shall furnish Purchaser at Closing the exemption certification set forth in said Section.
- (b) Purchaser’s Representations. As an inducement to Seller to enter into this Agreement Purchaser hereby represents to Seller and agrees as follows:
 - (i) Purchaser has the right, power and authority to purchase and accept a dedication of the Property, as the case may be, subject to the terms and conditions provided for in the Agreement, and to execute, deliver and perform its obligations under this Agreement and all other instruments, conveyances and documents to be executed and delivered in connection with the transaction contemplated herein. This Agreement and all other documents executed and delivered, or to be executed and delivered by Purchaser in connection with this Agreement have been, or at the appropriate time will be, duly executed and delivered and constitute or, upon such execution and delivery will constitute, the legal, valid and binding obligations of Purchaser, enforceable in accordance with the respective terms and provisions. No consent or approval of any person, firm, corporation or governmental authority is required to be obtained by Purchaser in order for Purchaser to enter into this Agreement.

7. Closing of Sale.

- (a) The Closing (“Closing”) shall take place on a date mutually agreeable to the parties but not later than _____, 2014.
- (b) At Closing, each party shall, without further consideration, execute and deliver such additional instruments as may be reasonably requested by the other party in order to complete and effectuate the transfer of title and ownership of the Property, provided that such additional instruments (other than these specifically provided for in this Agreement, and customary Closing documents) shall not impose cost or liability on any party. This transaction shall be closed in accordance with the general provisions of the usual form of New York style escrow agreement then in use by the Title Insurer, the costs of which escrow shall be paid by Seller. Real estate taxes shall not be prorated. Seller shall pay any State, County or other transfer tax imposed by local ordinance.

8. “As Is” Sale. Purchaser acknowledges that it will have adequate opportunity to inspect the Property and accepts the risk that any inspection may not disclose all material matters affecting the Property. SUBJECT ONLY TO THE TERMS OF SECTION 5(a) AND IF PURCHASER CLOSES THE TRANSACTION CONTEMPLATED HEREUNDER, PURCHASER AGREES TO ACCEPT THE PROPERTY IN ITS “AS IS” “WHERE IS” AND “WITH ALL FAULTS” CONDITION AT CLOSING AND THAT PURCHASER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY

KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER OR ITS AGENTS OR BROKERS, OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT ON BEHALF OF SELLER, AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (i) the quality, nature, adequacy and physical condition and aspects of the Property, including, but not limited to, the structural elements, seismic aspects of the Property, foundation, roof, appurtenances, access, landscaping, parking facilities and the electrical, mechanical, HVAC, plumbing, sewage, and utility systems, facilities and appliances, the square footage within the improvements on the Real Property and within each tenant space therein, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Property, (iv) the development potential of the Property, and the Property's use, habitability, merchantability, or fitness, suitability, value or adequacy of the Property for any particular purpose, (v) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property, (vi) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the quality of any labor and materials used in any improvements on the Real Property, (viii) the condition of title to the Property (except the deed warranties), (ix) the value, economics of the operation or income potential of the Property, or (x) any other fact or condition which may affect the Property, including without limitation, the physical condition, value, economics of operation or income potential of the Property. In addition, Seller shall have no legal obligation to apprise Purchaser regarding any event or other matter involving the Property which occurs after the Effective Date or to otherwise update any due diligence items, unless and until an event or other matter occurs which would cause Seller to be unable to remake any of its representations or warranties contained in this Agreement.

9. Brokerage. Purchaser and Seller each represent and warrant to the other that it has had no dealings with any broker or agent in connection with this Agreement and the subject matter hereof, and each party agrees to pay, and hold harmless and indemnify the other from and against, any and all costs, expenses or liabilities for compensation, commissions and other amounts claimed by any other broker or agent allegedly retained, consulted or employed by such indemnifying party.

10. Miscellaneous.

- (a) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective successors and assigns.
- (b) Capitalized terms used by not defined in this letter shall have the meanings ascribed to them in the Redevelopment Agreement.
- (c) This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one instrument.

- (d) This Agreement (i) contains the entire understanding between the parties hereto with respect to the transactions contemplated herein; and (ii) may be altered or amended from time to time only by written instrument executed by both parties hereto.
- (e) This Agreement shall be interpreted in accordance with the laws of the State of Illinois.
- (f) The provisions of the Uniform Vendor and Purchaser Risk Act of the State of Illinois shall be applicable to this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement this day and year first written above.

PURCHASER:

CITY OF EVANSTON,

A Home Rule unit of government

By: _____

Print Name: Wally Bobkiewicz

Its: City Manager

SELLER:

EMSQ HOLDING, LLC,
an Illinois limited liability company,

By: Brinshore, Inc., its manager

By: _____

Name: _____

Its: _____

EXHIBIT A

LOTS 4 AND 5 IN THE EMERSON SQUARE SUBDIVISION OF A PART OF SECTION 13,
TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN
COOK COUNTY, ILLINOIS ACCORDING TO THE PLAT THEREOF, RECORDED ON
OCTOBER 2, 2012 AS DOCUMENT NUMBER 1227616095.

Parcel Number: 10-13-209-027-0000
10-13-209-028-0000

Real Estate Address: 1600 Foster Avenue, Evanston, Illinois

EXHIBIT B

DEED

This instrument was prepared by:
Steven D. Friedland
Applegate & Thorne-Thomsen, P.C.
626 W. Jackson Blvd, Suite 400
Chicago, Illinois 60661

Upon recording mail to:
Michelle L. Masoncup
City of Evanston Legal Department
2100 Ridge Avenue
Evanston, IL 60201

SPECIAL WARRANTY DEED

EMSQ Holding, LLC, an Illinois limited liability company ("Grantor") having an address of 666 Dundee Road, Suite 1102 Northbrook, IL 60062, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations in hand paid, the receipt and sufficiency of which are hereby acknowledged, by these presents does GRANT, BARGAIN, SELL, REMISE, RELEASE, ALIEN AND CONVEY to the City of Evanston, an Illinois municipal corporation ("Grantee") having an address of 2100 Ridge Avenue, Evanston, IL 60201, all the following real property situated in the County of Cook, in the State of Illinois, to wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, together with the improvements thereon and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, and interest, of Grantor, of, in and to the above described premises, with the hereditaments and appurtenances: TO HAVE AND TO HOLD the said premises as above described, with the appurtenances, unto the Grantee, its heirs, successors and assigns forever.

And Grantor, for itself, and its successors, does covenant, promise and agree, to and with the Grantee, its successors and assigns, that it has not done or suffered to be done, anything whereby the said premises hereby granted are, or may be, in any manner encumbered or charged, except as herein recited; and it WILL WARRANT AND DEFEND the said premises unto the

Grantee, its successors and assigns, against all persons lawfully claiming, or to claim the same, by, through or under it, subject to the matters set forth in EXHIBIT B attached hereto and made a part hereof, and not otherwise.

Grantor hereby releases and waives all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois.

In Witness Whereof, said Grantor has caused its name to be signed to these presents as of the ____ day of _____, 2014.

EMSQ HOLDING, LLC,
an Illinois limited liability company

By: Brinshore, Inc.,
an Illinois corporation,
its sole member

By: _____
Name: _____
Title: _____

State of Illinois)
) ss:
County of Cook)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that _____, _____ of Brinshore, Inc., an Illinois corporation, the sole member of EMSQ HOLDING, LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager appeared before me this day in person and acknowledged that she signed and delivered such instrument as his/her own free and voluntary act, all for the uses and purposes set forth therein.

Given under my hand and official seal this ____ day of _____, 2014.

Commission expires _____

Notary Public

SEND SUBSEQUENT TAX BILLS TO:

City of Evanston
2100 Ridge Avenue
Evanston, IL 60201

EXHIBIT A
LEGAL DESCRIPTION

LOT 4 IN EMERSON SQUARE SUBDIVISION OF A PART OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 1600 FOSTER STREET, EVANSTON, IL
PERMANENT INDEX NUMBERS: 10-13-209-027-0000

EXHIBIT B

1. Covenants, conditions and restrictions of record.
2. Taxes not yet due and payable.

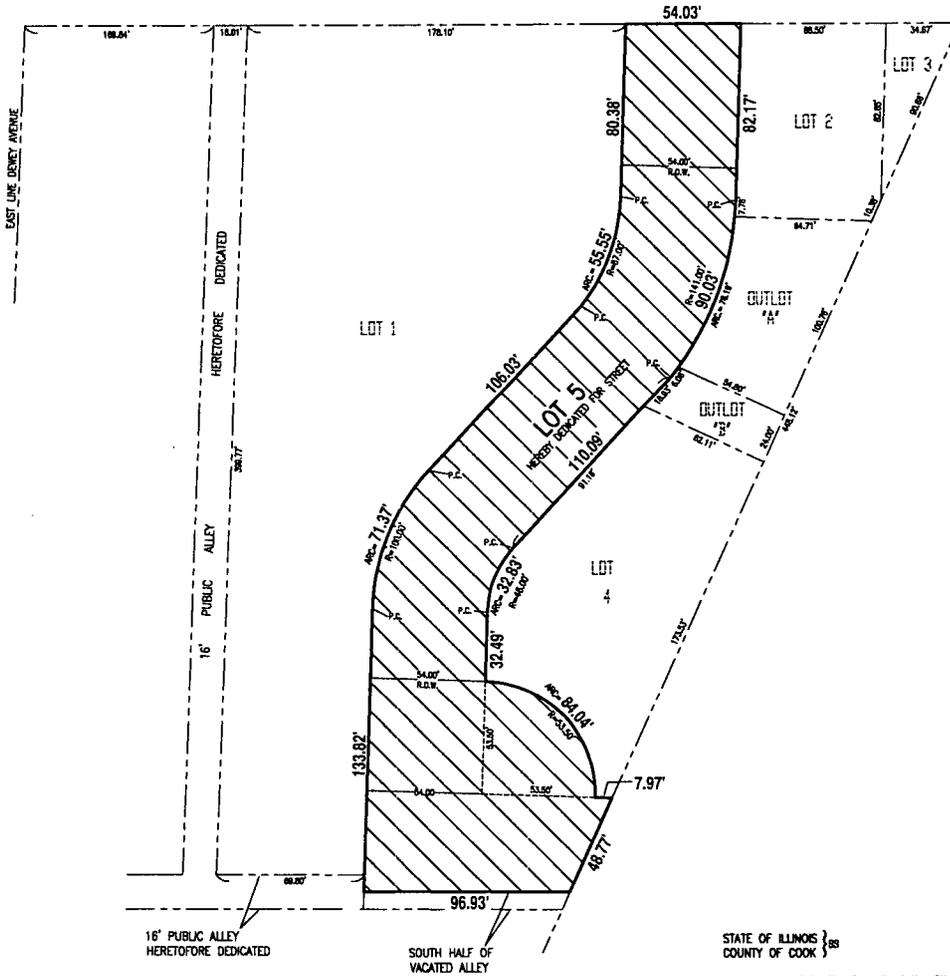
EXHIBIT C

PLAT OF DEDICATION

PLAT OF DEDICATION OF

LOT 5 IN EMERSON SQUARE SUBDIVISION OF A PART OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

FOSTER STREET HERETOFORE DEDICATED



STATE OF ILLINOIS }
COUNTY OF COOK }

Approved by the Council of the City of Evanston, Illinois, at a meeting held on the _____ day of _____ A.D., 20____ in witness whereof, I set my hand and affix the Corporate Seal of said City, this _____ day of _____ A.D., 20____

City Clerk, Evanston, Illinois

STATE OF ILLINOIS }
COUNTY OF COOK }

Approved this _____ day of _____, A.D., 20____

Director of Public Works, Evanston, Illinois

STATE OF ILLINOIS }
COUNTY OF COOK }

Approved this _____ day of _____, A.D., 20____

Corporation Counsel, Evanston, Illinois

STATE OF ILLINOIS }
COUNTY OF COOK }

B. H. SUHR & COMPANY, INC., does hereby certify that it has prepared this Plat of Dedication for street from existing plats and plans as shown hereon.

Dated at Evanston, Illinois, this _____ day of _____, A.D., 20____

STATE OF ILLINOIS }
COUNTY OF COOK }

I, _____, do hereby certify that I am the Title Owner of record of the property described hereon, and that I have caused the same to be surveyed for the purpose of Dedicating a Public Street as shown hereon.

Dated this _____ day of _____, A.D., 20____

NAME

STATE OF ILLINOIS }
COUNTY OF COOK }

I, _____, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument as Owner of the property described hereon, appeared before me this day in person and acknowledged that he signed and delivered the said instrument in his own free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial seal, this _____ day of _____, A.D., 20____

Notary Public

B.H. SUHR & COMPANY, INC.		
R. R. HANSEN MEMBER I.P.L.S.A. A.C.S.M. R.S.P.S.	SURVEYORS ESTABLISHED 1911 840 CUSTER AVENUE, EVANSTON, ILLINOIS 60202 CHICAGO TEL. (773) 273-5315 / EVANSTON TEL. (847) 864-6315 WWW.BHSUHR.COM / E-MAIL: SURVEYOR@BHSUHR.COM	Professional Design Firm License No. 154-200071
LOCATION: EMERSON SQUARE SUBDIVISION	EVANSTON,	OCTOBER 15, 20 14
ORDER No. 13-193	ORDERED BY:	BRIMSHORE DEVELOPMENT
80135 In 2014 B. H. Suhr & Company, Inc. All rights reserved.		

SUBMITTED BY AND RETURN PLAT TO:

XXPDFXX

RAYMOND R. SIEG
Professional Engineer and Surveyor, No. 25
License Expiration Date 11/30/18

EXHIBIT D

BILL OF SALE

EMSQ Holding, LLC, an Illinois limited liability company (the “Grantor”), in consideration of Ten Dollars (\$10.00), receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and set over to the City of Evanston, an Illinois municipal corporation (“Grantee”), the following described personal property, to-wit:

All roadways, curbs, gutters, medians, street lights, sidewalks and landscaping located on the property legally described in Exhibit A attached hereto (collectively, the “Improvements”)

Grantor hereby represents and warrants to Grantee that Grantor has full right, power and authority to sell said Improvements and to make this Bill of Sale. All warranties of quality, fitness and merchantability are hereby excluded.

By accepting this Bill of Sale, the Grantee agrees to assume full responsibility for the maintenance and repair of the Improvements.

[Signature Page Follows]

IN WITNESS WHEREOF, Grantor has signed and sealed this Bill of Sale this ____ day of _____, 2014.

EMSQ HOLDING, LLC,
an Illinois limited liability company

By: Brinshore, Inc.,
an Illinois corporation,
its sole member

By: _____
Name: _____
Title: _____

State of Illinois)
) ss:
County of Cook)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that _____, _____ of Brinshore, Inc., an Illinois corporation, the sole member of EMSQ HOLDING, LLC, and personally known to me to be the same person whose name is subscribed to the foregoing instrument as such manager appeared before me this day in person and acknowledged that she signed and delivered such instrument as his/her own free and voluntary act, all for the uses and purposes set forth therein.

Given under my hand and official seal this ____ day of _____, 2014.

Commission expires _____

Notary Public