

RESOLUTION NO. 101116-1

A RESOLUTION ADOPTING A COMMUNITY IMPROVEMENT DISTRICT POLICY FOR THE CITY OF ABILENE, KANSAS

WHEREAS, the City of Abilene, Kansas (the "City"), is authorized by K.S.A. 12-6a26 through K.S.A. 12-6a36, inclusive, as amended, to create a Community Improvement District ("CID") for economic development purposes and any other purpose for which public money may be expended; and

WHEREAS, it is recognized that economic development is best achieved through a balanced effort; and

WHEREAS, the economic development goals of the City include economic diversification, broadening the property tax base, stimulating private investment, support of existing development, preservation and improvement of environmental quality, and the creation of quality employment opportunities;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS, AS FOLLOWS:

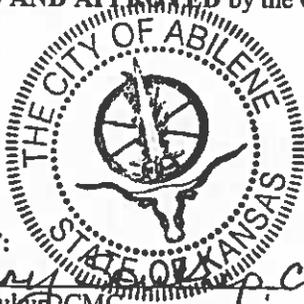
SECTION ONE. Adoption. The attached Community Improvement District Policy (the "Policy") is hereby approved and adopted by reference.

SECTION TWO. Modifications. The City Manager is authorized from time to time to amend or modify the Policy as needed to conform with all pertinent state and federal regulations, and to clarify wording within the Policy to fit the interpretation, intent and practical aspects of implementing the Policy, all with the acknowledgement that any substantive changes or amendments will come first before the Governing Body for review and formal action.

SECTION THREE. Severability. If any provision of the Policy is declared unconstitutional, or the application to any person or circumstance is held to be invalid, the validity of the remainder of the Policy and its applicability to other persons and circumstances shall not be affected.

SECTION FOUR. Effective Date. This Resolution shall be in full force and effect after its adoption by the Governing Body.

PASSED AND APPROVED by the Governing Body of the City of Abilene, Kansas this 11th day of October, 2016.



CITY OF ABILENE, KANSAS

By: Dee Marshall
Dee Marshall, Mayor

ATTEST:

Penny Soukup, CMC
Penny Soukup, CMC
City Clerk

CITY OF ABILENE, KANSAS
Community Improvement District Policy

I. SCOPE.

The Governing Body of the City of Abilene, Kansas ("Governing Body") is responsible for encouraging and promoting the City's economic health. The Community Improvement District Act (the "Act"), K.S.A. 12-6a26 through K.S.A. 12-6a36, inclusive, as amended, authorizes the City to create Community Improvement Districts ("CIDs" and individually a "CID") for the purpose of financing CID Projects. The creation of a CID is a complex legal and administrative matter requiring clear direction from the Governing Body.

II. AUTHORITY OF GOVERNING BODY; DISCLAIMER.

The authority and decision to approve the establishment of a CID is within the sole discretion of the Governing Body of the City. The Governing Body, by its inherent authority, reserves the right to reject any petition for the creation of a CID at any time in the review process when it considers such action to be in the best interest of the City. The City does not relinquish its authority to initiate projects by whatever other financing means it deems necessary to promote the general health and welfare of the City.

The City shall not be bound by any advice, action, agreement, statement or other communication made by City staff or consultants, or the Governing Body, including the information contained herein, until after the Governing Body's approval of an ordinance or resolution creating a CID.

This policy statement does not constitute legal advice regarding the application or petition to create a CID. Those persons or entities considering making application to the City under the Act to create a CID are strongly encouraged to consult private legal counsel.

III. DEFINITIONS.

- a. "Applicant" means the person or entity who files an application for a CID with the City of Abilene.
- b. "City Administrative Fee" means a fee payable from CID Funds or, if applicable, bond proceeds, of not to exceed 5% of the total cost of the CID Project to reimburse the City for services rendered by the City in the administration and supervision of the CID Project by its general officers. The \$1,500 application fee shall be applied as a credit against the percentage charged for the City Administrative Fee.
- c. "CID Funds" means money collected from Revenue Sources for the purpose of paying CID Project costs through either the issuance of bonds or pay-as-you-go financing.
- d. "CID Project" means (1) any project whether within the CID, to acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip or extend: (i) buildings, structures and facilities; (ii) sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heading and electrical services and connections located within or without the public right-of-way, water mains and extensions, and other site improvements; (iii) parking garages; (iv) streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers; (v) parks, lawns, trees and other landscape; (vi) communication and information booths, bus stops and other shelters, stations, terminals, hangars, rest rooms and kiosks; (vii) paintings, murals, display cases, sculptures, fountains and other cultural amenities; (viii) airports, railroads, light rail and other mass transit facilities; and (ix) lakes, dams, docks,

wharfs, lake or river ports, channels and levies, waterways and drainage conduits; (2) within the CID, to operate or to contract for the provision of music, news, child care, or parking lots or garages, and buses, minibuses or other modes of transportation; (3) within the CID, to provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons; (4) within the CID, to provide or contract for cleaning, maintenance and other services to public or private property; (5) within the CID, to produce and promote any tourism, recreational or cultural activity or special event, including, but not limited to, advertising, decoration of any public place in the CID, promotion of such activity and special events and furnishing music in any public place; (6) within the CID, to support business activity and economic development, including but not limited to, the promotion of business activity, development and retention and the recruitment of developers and business; (7) within the CID, to provide or support training programs for employees of businesses; and (8) to contract for or conduct economic impact, planning, marketing or other studies.

- e. "CID Sales Tax" means the community district sales tax on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailers' sales tax, and amendments thereto, authorized by K.S.A. 12-6a31 as amended from time to time.
- f. "City" means the City of Abilene, Kansas.
- g. "Development" means the proposed development or redevelopment project including the CID Project to be paid in whole or in part with CID Funds and all other capital costs of improvements related to the CID Project to be paid from sources other than the Revenue Sources.
- h. "Development Agreement" means a written agreement between the City and the Petitioner or its assigns for the completion of a CID Project. Such agreement shall address issues involved in the CID Project, including but not limited to the following: schedule of construction; acquisition of land; eligible CID expenses; scope of development (including development criteria); indemnity of the City and insurance requirements; reimbursement of City costs; financing (private and/or public); transfer restrictions prior to completion; maintenance and restrictive covenants; City inspection and information access rights; reporting requirements; remedies upon default; performance requirements; termination rights; obligation on behalf of the Petitioner to comply with applicable law, including remaining current on all taxes, and the disbursement of CID Funds to pay the City Administrative Fee.
- i. "Petitioner" means the person or entity that has completed the preliminary review process and has properly and timely filed a formal petition to create a CID with the City Clerk.
- j. "Project Costs" means all costs authorized by the Act to be paid for with CID Funds but excluding cost of the Applicant's attorneys' fees or for costs incurred prior to submission of the CID application to the City, except for engineering and design costs and other necessary preliminary expenditures approved by the City.
- k. "Revenue Sources" means all of or any portion of the following: (1) a pledge of special assessments, if any, imposed in the CID pursuant to the Act which have been paid in full prior to the date set aside by the Governing Body of the City as provided in K.S.A. 12-6a10 and amendments thereto; (2) a pledge of special assessments, if any, imposed in the CID pursuant to the Act, to be paid in installments; (3) a pledge of all of the revenue received from the CID Sales Tax, if any; (4) a pledge of the City's full faith and credit to use its ad valorem taxing authority for the repayment of full faith and credit bonds issued pursuant to K.S.A. 12-6a36 and amendments thereto; and (5) any other funds appropriated by the City for the purpose of paying project costs including the principal and interest of bonds issued pursuant to the Act.
- l. All other terms shall have the same meaning as those terms as defined in the Act.

IV. CRITERIA.

- a. The decision to establish a CID is within the sole discretion of the Governing Body. In determining whether to approve a petition to establish a CID, the Governing Body will evaluate whether the creation of the CID is in the City's best interest, by considering one or more of the following criteria:
 - i. Attracts retail development to positively enhance the economic climate of and benefit the City;
 - ii. Results in the building of infrastructure beyond what the City would require or would otherwise build; and
 - iii. Promotes new development, rejuvenation, and/or redevelopment within the City.
- b. In determining whether to approve a petition to establish a CID, the Governing Body will give preference to those petitions that provide for the following:
 - i. The use of CID Funds is limited to capital costs (the City will not authorize the use of CID Funds for operating expenses except as allowed by state law and only if the petitioner can demonstrate that the use of such funds for operations meets a public interest to the satisfaction of the Governing Body);
 - ii. The use of pay-as-you-go financing in which CID Funds are used to reimburse Project Costs without the issuance of bonds;
 - iii. The proposed CID Sales Tax, if applicable, will not exceed 2%;
 - iv. The proposed CID is expected to perform such that it will not require the full duration as allowed by state law; and
 - v. The proposed Development includes public improvements to be paid with CID Funds or funds of the Applicant or other private parties bonds.

V. BOND ISSUANCE.

The City typically expects to utilize pay-as-you-go financing for CID Projects rather than the issuance of bonds or notes under the Act. If due to exceptional circumstances, the Governing Body elects to consider the issuance of bonds or notes for a CID Project, the following guidelines will apply to such issues unless an exception is approved by the Governing Body:

- a. The minimum principal amount of a special obligation bond or note issue will be \$3 million.
- b. The minimum denominations of special obligation bonds or notes shall be not less than \$100,000. Minimum denominations may be reduced when one or more of the following are met:
 - 1. The project(s) being bond financed are substantially leased;
 - 2. The estimated revenue stream yields significant debt service coverage on the bonds;
 - 3. Construction of the project(s) being bond financed is 100% complete;
 - 4. The repayment term is less than or equal to 60% of the maximum permitted repayment term; and/or

- 5. Waiver of the minimum denomination requirement by the Governing Body.
- c. The special obligation bonds or notes will be placed with qualified institutional investors.
- d. The City will select the underwriter/placement agent for the special obligation bonds or notes.
- e. The City may require that an independent feasibility study of future CID Sales Tax or special assessment revenues be performed and the cost of such study shall be borne by the Applicant.
- f. The City may establish other conditions relating to the security for the special obligation bonds or notes such as minimum projected coverage ratios, minimum equity investment, completion of construction, execution of lease agreements for leased parcels, etc.
- g. The issuance of bonds or notes with the City's full faith and credit or annual appropriation backing will primarily be reserved for public improvements. The Governing Body may also elect to issue General Obligation Bonds for a CID Project if it may be demonstrated by the petitioner to the satisfaction of the Governing Body that "but for" the issuance of General Obligation Bonds the project would not otherwise be feasible. The issuance of bonds or notes with the City's full faith and credit or annual appropriation backing must demonstrate to the satisfaction of the Governing Body an at-large benefit to the City and that such issuance of bonds or notes will not negatively impact the City's credit rating.

VI. PRELIMINARY REVIEW PROCESS.

A preliminary review of a CID application will be conducted as outlined in this Section in order to provide the Applicant with an early determination as to whether the CID Project will be in the best interest of the City. The creation of a CID will be initiated and preliminarily reviewed in the following manner:

- a. Applicant shall present, in a form and manner satisfactory to the City staff, the following preliminary information regarding the proposed CID to the City Manager for consideration by City staff:
 - i. The use of pay-as-you-go financing in which CID Funds are used to reimburse Project Costs without the issuance of bonds;
 - ii. A detailed description that identifies the proposed buildings, facilities, and other improvements to be constructed or improved in the CID and outside the CID, including the estimated date on which construction of the improvements will be commenced and completed;
 - iii. Estimated cost of the Development and the CID Project;
 - iv. Proposed method of financing the CID Project;
 - v. Proposed amount and method of assessment, if applicable;
 - vi. Proposed amount of CID Sales Tax, if applicable;
 - vii. Map of the proposed CID with accompanying tax parcel I.D. information;
 - viii. Legal description of the boundaries of the proposed CID;
 - ix. If a CID Sales Tax is being proposed, the current and proposed taxable retail sales within the CID;

- x. The current and proposed uses of facilities within the CID, including the status of any lease arrangements; and
 - xi. Identification of the current owners of property within the CID and any existing rights of the Applicant to acquire property within the CID.
- b. The City's Finance Director, in consultation with other City staff, City Attorney, City Bond Counsel and City Financial Advisor, may request, at any time during the preliminary review process, additional information to assist in the determination of whether the creation of the proposed CID is in the City's best interest.
 - c. At the time of application, the Applicant shall pay an initial non-refundable application fee of \$1,500 and shall agree in a written Funding Agreement with the City to pay for all of the fees of the City's attorney, the City's bond counsel and the City's financial advisor in conjunction with the CID review process, the establishment of a CID, and the issuance of bonds, if applicable, for the CID. In connection with the Funding Agreement, the Applicant shall deposit an initial sum of money (typically, \$10,000) with the City to pay for the fees of the City's outside professionals in connection with the CID, however, the amount of the initial deposit will be determined by the City Manager on a case-by-case basis depending on the size and scope of the CID Project. Any portion of such deposit that is not needed to pay for the fees of the City's outside professionals shall be returned to the Applicant after all activities related to the establishment of the CID have been completed or if the Governing Body determines not to proceed with the establishment of the CID. (See Attachment A — CID Funding Agreement Example.)
 - d. If, after review of the application with any amendments or supplements, City staff determines that at least one of the criteria for creating the proposed CID is met, the City's Finance Director will forward the application, as amended and supplemented, through the City Manager to the Governing Body, for its preliminary consideration. If the City staff determines that the application does not meet any of the criteria set forth above, then the application will be rejected and the Applicant notified in writing.
 - e. If the application is forwarded to the Governing Body for its preliminary consideration, the application will be reviewed by the Governing Body in a study session to gain consensus regarding the proposed CID Project and financing plan. If the Governing Body consensus is to move forward, City staff will continue work on the CID Project through the final approval process.

VII. FINAL APPROVAL PROCESS.

The information provided below is a summary of the procedures for filing a CID petition. Because this policy does not set forth all the statutory requirements, Applicants are encouraged to read the Act prior to petitioning the City for a CID and consult their own legal counsel with any questions regarding interpretation of the Act.

- a. Within 180 days after the study session at which the Governing Body has completed its preliminary review of the application, the Petitioner shall file with the City Clerk a formal petition for the creation of a CID based upon the concept of the proposed CID and finance plan that was preliminarily reviewed by the Governing Body.
- b. If the Applicant fails to timely file a formal CID petition, the City shall require the Applicant to renew its application. All costs assessed and/or paid during the preliminary approval process shall be non-refundable and non-creditable to any renewal application. If the Applicant desires to renew the CID application, the Applicant shall be required to pay all fees and costs associated with said filing.

- c. The petition for the creation of the CID shall be in such form and contain all such information as is required by the Act, and shall include all additional, supplemental information as may be requested by the City staff. No petition will be accepted by the City Clerk or without the minimum signatures required by the Act. As of the date of this Policy, the minimum signatures required by the Act are: (i) for a CID that is financed in whole or in part with a CID Sales Tax, the petition must be signed by the owners of more than 55% of the land area within the proposed district and the owners collectively owning more than 55% by assessed value of the land area within the proposed district, and (ii) for a CID that is financed by special assessments with no CID Sales Tax, the petition must be signed by the owners of 100% of the land area within the proposed district. No person or entity shall be able to remove such person's or entity's name from the petition after the Governing Body has commenced consideration thereof, or after seven days from the date it is filed with the City Clerk, whichever is sooner.
- d. The City staff and City Bond Counsel will prepare a Development Agreement in consultation with the Petitioner.
- e. Following the filing of a valid petition, the Governing Body may, but is not required to, direct City staff to take any action described and allowed by statute to create the CID and to approve the execution of the Development Agreement.

VIII. COMPLIANCE WITH STATE STATUTE.

All procedures regarding final approval of a petition as herein set forth are intended to follow the procedures and authority as outlined in the Community Improvement District Act, K.S.A. 12-6a26 through K.S.A. 12-6a36, inclusive, for the creation of Community Improvement Districts. Any conflict between this policy and the Act shall be interpreted in favor of the provisions set forth in the Act.

IX. GOVERNING BODY ACTIONS.

No elected or appointed officer, employee or committee of the City, or other public or private body or individual, shall be authorized to speak for or commit the Governing Body of the City to the establishment of a CID. The establishment of a CID is in the sole discretion of the Governing Body and until the Governing Body has completed all statutorily prescribed steps necessary to establish a CID, any actions by the Governing Body or its officers or representatives shall be an expression of good faith intent, but shall not in any way bind the City to establish a CID.

Approval of the creation of a CID based on the information presented does not constitute an implied or other approval of a site plan, special use permit, plat, rezoning or other land development application. All proposals for Development are subject to land use approvals by the appropriate body.

X. WAIVER OF REQUIREMENTS.

The Governing Body reserves the right to grant or deny a CID under circumstances beyond the scope of this policy or to waive provisions herein. However, no such action or waiver shall be taken or made except upon a finding by the Governing Body that a compelling or imperative reason or emergency exists, and that such action or waiver is found and declared to be in the public interest. The Governing Body shall not waive any statutory requirement of State law.

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ATTACHMENT A

CID FUNDING AGREEMENT EXAMPLE

This FUNDING AGREEMENT (the "Agreement") is entered into this date of _____, 20____ between _____ (the "Applicant"), and the City of Abilene, Kansas (the "City").

RECITALS

- a. The City is a municipal corporation duly organized and existing under the laws of the state of Kansas and authorized by Community Improvement District Act (the "Act"), K.S.A. 12-6a26 through K.S.A. 12-6a36, inclusive, to provide Community Improvement District ("CID") financing for certain qualified projects upon compliance with the procedures set forth in the Act.
- b. The Applicant is a [Type of Company: LLC, Corporation, Partnership, etc.].
- c. Applicant has requested that the City consider the establishment of a CID (as defined in the Act) and, if approved, to implement and administer the CID through its completion. In order to do so, the City must retain outside administrative and professional staff, outside counsel and consultants, and incur expenses, but is without a source of funds to pay such staff, counsel, consultants and expenses.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter expressed, the parties mutually agree as follows:

SECTION ONE. CID Application.

By execution of this Agreement, the Applicant is applying to the City for the establishment of a CID. The Applicant agrees, represents and warrants that any information provided to the City in connection with the CID shall be accurate and complete to the best knowledge of the manager or member of the Applicant providing such information.

SECTION TWO. Services to be Performed by the City.

The City shall retain outside administrative and professional staff, outside counsel and consultants, and incur expenses which it, in its sole discretion, deems necessary to:

- a. Consider the establishment of a CID in accordance with the provisions of the Act, prepare an independent feasibility study and market study on behalf of the City, give all notices, make all publications, hold all hearings as required by the Act, prepare the required resolution and ordinance to establish the CID;
- b. If the Governing Body establishes the CID, prepare and consider in accordance with the provisions of the CID Act, give all notices, make all publications, hold all hearings as required by the Act and prepare the required resolution and ordinance to approve the CID;
- c. If the Governing Body approves the CID, prepare and negotiate a definitive agreement between the parties for implementation of the CID; and
- d. If a definitive agreement is entered into, administer the CID and definitive agreement until terminated or completed.

SECTION THREE. Payment.

The Applicant shall pay the City for its fees and expenses; the time of its outside administrative and professional staff, as the City may from time to time deem appropriate; all charges for the City's outside counsel and consultants; and all other expenses incurred by the City in providing the services set forth in Section 2 (the "Charges"), subject to the following conditions:

- a. In order to insure the prompt and timely payment of the Charges, the Applicant shall establish a fund in the amount of \$ _____ (the "Fund") by paying such amount to the City contemporaneously with the execution of this Agreement, receipt of which is hereby acknowledged. Thereafter, the City shall pay all Charges from moneys on deposit in the Fund and shall provide a statement thereof to the Applicant on a monthly basis which statement shall provide the amount expended from the Fund, the purpose of the expenditure, the date of the expenditure and the recipient of the money. If, in the judgment of the City's Finance Director, there are insufficient amounts on deposit in the Fund to pay for the projected Charges expected to be incurred, the Applicant shall make a subsequent deposit or deposits into the Fund in an amount equal to the initial deposit or such other amount which in the judgment of the City's Finance Director is required to provide sufficient funds to pay the projected Charges. Such additional deposit shall be made within 7 days of the receipt of the Applicant of notification by the City's Finance Director of the amount required.
- b. Following the establishment of the CID (or, if bonds are issued, upon the closing of the bond issue), the Applicant will pay the City Administrative Fee as set forth in the City's Community Improvement District Policy.
- c. All statements submitted to the City for Charges from its outside counsel or consultants shall be payable within 30 days of receipt thereof from moneys on deposit in the Fund. If sufficient amounts are not on deposit in the Fund to pay such Charges, the City shall be relieved of its obligations hereunder and no further services or activity will be performed by the City to further the proposed CID until an amount sufficient to pay such Charges, plus an amount sufficient to satisfy any further deposit request made by the City's Finance Director for projected Charges, is made. All unpaid balances on statements submitted to the City for Charges shall be subject to a penalty of two percent (2%) per month until paid, but in no event shall such penalty exceed eighteen percent (18%).

SECTION FOUR. Termination.

- a. The City may terminate this Agreement upon 10 days written notice in the event the Applicant fails to make any payments when due.
- b. The Applicant may terminate this Agreement in the event it determines not to proceed further to complete the CID upon written notice to the City thereof.
- c. If either party terminates this Agreement, the City shall apply the balance of the Fund, if any, to outstanding Charges pursuant to this Agreement and any monies due and owing to the City pursuant to any other agreement and shall pay the remaining balance, if any, to the Applicant within 30 days of such termination. In the event the balance of the Fund is insufficient to pay the outstanding Charges payable hereunder, the Applicant shall pay such Charges within 30 days of receipt of a statement from the City of the balance required to pay such Charges.

SECTION FIVE. No Obligation to Proceed with the Community Improvement District.

The Applicant acknowledges that the City is not obligated by the execution of this Agreement to establish or approve a CID and is subject to the sole discretion of the Governing Body of the City and the requirements of the Act.

SECTION SIX. Notice.

Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if it is in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:
City Clerk
City Hall
PO Box 519
Abilene, KS 67410

To the Applicant:

Each party may specify that notice be addressed to any other person or address by giving to the other party ten days prior written notice thereof.

SECTION SEVEN. Scope of Agreement.

This Agreement pertains to financing requested by the Applicant pursuant to the CID Act and does not apply to any other financing which may be requested of the City by the Applicant.

SECTION EIGHT. Governing Law.

This Agreement shall be construed in accordance with the laws of the State of Kansas.

SECTION NINE. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have cause this Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF ABILENE, KANSAS

[INSERT APPLICANT NAME]

By: _____
Dee Marshall, Mayor

By: _____

Its:

ATTEST:

By: _____
Penny Soukup, City Clerk

APPROVED AS TO FORM:

By: _____
Aaron O. Martin, City Attorney

STATE OF _____)
) SS.
COUNTY OF _____)

On this ____ day of _____ 20__, before me, a notary public, appeared _____ to me personally known, who being by me duly sworn, did say that he/she is the _____ of _____ and that said instrument was signed in behalf of said company and he/she acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in my office the day and year last above written.

Notary Public

My Commission Expires: _____

STATE OF KANSAS)
) SS.
COUNTY OF DICKINSON)

On this ____ day of _____ 20__, before me, a notary public, appeared _____ to me personally known, who being by me duly sworn, did say that he/she is the _____ of _____ and that said instrument was signed in behalf of said company and he/she acknowledged said instrument to be the free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in my office the day and year last above written.

Notary Public

My Commission Expires: _____