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1                           BEFORE THE WASHINGTON STATE  
2                           UTILITIES AND TRANSPORTATION COMMISSION

3 \_\_\_\_\_

4 In the Matter of the                    )  
5 Application of                            )  
6 SEAN MCNAMARA d/b/a                    ) DOCKET TS-111927  
7 BELLINGHAM WATER TAXI                   )  
8 For a Certificate of Public             )  
9 Convenience and Necessity to           )  
10 Operate Vessels in Furnishing         )  
11 Passenger Ferry Service                 )

9 \_\_\_\_\_

10    PREHEARING CONFERENCE, VOLUME I  
11    Pages 1 - 22

12    HEARING BEFORE  
13    ADMINISTRATIVE LAW JUDGE MARTIN LOVINGER

13 \_\_\_\_\_

14    1:02 p.m.

15    FEBRUARY 6, 2012

16  
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A P P E A R A N C E S

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\* \* \* \* \*

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1                   JUDGE LOVINGER: Let's go on the record.  
2 Good afternoon. It is about 1:02 on February 6th,  
3 2012, in the Washington Utilities And Transportation  
4 Commission's hearing room 206, in Olympia, Washington.  
5 This is the time and place set for the prehearing  
6 conference in Docket TS-111927, in the matter of the  
7 Application of Sean McNamara, doing business as  
8 Bellingham Water Taxi, for a certificate of public  
9 convenience and necessity to operate vessels in  
10 furnishing passenger ferry service.

11                   In Docket TS-111927 Sean McNamara, d/b/a  
12 Bellingham Water Taxi, filed with the Washington  
13 Utilities and Transportation Commission, on November  
14 4th, 2011, an application for a certificate of public  
15 convenience and necessity to operate vessels in  
16 furnishing passenger-only ferry service between  
17 Squalicum Harbor, Bellwether Hotel, Bellingham Cruise  
18 Terminal, Eliza, Vendovi, Sinclair, Cypress,  
19 Obstruction Pass, Olga, Rosario, Lopez, and Blakely.  
20 Notice of the Application was published in the  
21 Commission's weekly docket on December 5th, 2011.

22                   On December 15th, 2011, Pacific Cruises  
23 Northwest, Inc., doing business as Victoria San Juan  
24 Cruises, and Island Commuter Service, LLC, doing  
25 business as Island Commuter Service, filed a protest

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1 to the application.

2 My name is Martin Lovinger, and I am the  
3 administrative law judge presiding over these  
4 proceedings.

5 First, I would appreciate it if everyone in  
6 the room would please turn off your cell phones or  
7 turn them to silent and we will get started.

8 Is anybody on the conference bridge line  
9 today?

10 (Pause in the proceedings.)

11 JUDGE LOVINGER: This is the UTC  
12 Commission's hearing room. Is anybody on the bridge  
13 line today for the application of Sean McNamara?

14 (Pause in the proceedings.)

15 JUDGE LOVINGER: We will wait. I'm sure  
16 we will hear it.

17 Some of the parties may -- somebody may appear  
18 on the bridge line, not in person. I would ask that  
19 you identify yourself each time you speak so that all  
20 the parties, and especially the court reporter,  
21 Ms. Smith, will know who is speaking. This is the  
22 court reporter, over here to my left.

23 Also, please speak as clearly and audibly as  
24 possible, to make sure that we hear you, and because  
25 this proceeding is being transcribed by our

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1 court reporter. She may interrupt you to let you know  
2 that she didn't hear what you were saying. Let's try  
3 to avoid the necessity of repeating what you have  
4 already said.

5 Our first order of business is the taking of  
6 appearances. If you have already entered a notice of  
7 appearance -- and by that I mean you provided your  
8 name and your address and your fax number and your  
9 business phone number and your e-mail address -- then  
10 all I will need from you today will be the name and  
11 the spelling of your last name. If you haven't done  
12 that already, then I need that information.

13 Does everyone understand that instruction?

14 (Pause in the proceedings.)

15 JUDGE LOVINGER: Let's start with  
16 Commission Staff, Mr. Fassio.

17 MR. FASSIO: Appearing on behalf of  
18 Commission Staff, Michael Fassio, Assistant Attorney  
19 General. That's F-A-S-S-I-O.

20 JUDGE LOVINGER: I don't know the other  
21 two parties, so why don't we just start over here.

22 MR. SCHMIDT: Do you want me to turn  
23 this thing on?

24 JUDGE LOVINGER: Yes, just press the  
25 little button in the middle there. It should light

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1 up. There's a red light.

2 MR. SCHMIDT: Appearing on behalf of  
3 Pacific Cruises Northwest and Island Commuter Service,  
4 my name is Drew Schmidt, S-C-H-M-I-D-T.

5 JUDGE LOVINGER: And your role --

6 MR. SCHMIDT: I am the protestant, I am  
7 the owner of Pacific Cruises Northwest, managing  
8 member.

9 JUDGE LOVINGER: Thank you very much,  
10 and welcome, Mr. Schmidt.

11 MR. SCHMIDT: Thank you.

12 JUDGE LOVINGER: And that, I take it,  
13 makes you Mr. McNamara?

14 MR. McNAMARA: Yes, sir.

15 JUDGE LOVINGER: Thank you.

16 MR. McNAMARA: My name is Sean McNamara,  
17 that's M-C-N-A-M-A-R-A. I am the applicant for  
18 Bellingham Water Taxi.

19 JUDGE LOVINGER: Thank you.

20 Is there anybody on the conference bridge line  
21 that wishes to make an appearance?

22 (Pause in the proceedings.)

23 JUDGE LOVINGER: Then I guess we will  
24 proceed at this time.

25 I actually don't have anything more at this

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1 point to add, so we will just get to, are there any  
2 preliminary matters that need to be addressed?

3 Again, why don't I start with the Commission  
4 Staff.

5 MR. FASSIO: I'm not sure. We don't  
6 have any specific preliminary matters.

7 JUDGE LOVINGER: Okay, that's fine. I  
8 didn't have any either, I just wanted to give everyone  
9 a chance.

10 Mr. Schmidt, or Mr. McNamara, do you have any  
11 preliminary matters you wish to discuss?

12 MR. SCHMIDT: Not at this time.

13 JUDGE LOVINGER: All right.

14 Our next goal will be to set the procedural  
15 schedule. Have the parties had an opportunity to  
16 discuss what they foresee in the way of a procedural  
17 schedule? By this I mean matters such as discovery,  
18 prefiled testimony, if there will be prefiled  
19 testimony, when we will have the hearing.

20 MR. FASSIO: We have not had a chance to  
21 discuss that among ourselves, Your Honor.

22 JUDGE LOVINGER: Would it be helpful to  
23 take a 10-minute recess at this time and let the  
24 parties at least discuss that?

25 I don't envision this being all that complex,

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1 so I am assuming that we should be able to set out a  
2 good schedule here today.

3 MR. FASSIO: I believe so. I think that  
4 would be helpful.

5 JUDGE LOVINGER: Thank you very much.  
6 In that case, we will be in recess for the next, let's  
7 make it 12 minutes. That will put it at 1:20.  
8 Thank you.

9 (A brief recess.)

10 JUDGE LOVINGER: We are going to go back  
11 on the record.

12 I understand the parties have reached some  
13 sort of an agreed schedule; is that correct?

14 MR. FASSIO: Yes, your Honor.

15 JUDGE LOVINGER: Thank you.

16 Mr. Fassio, if you can set it out for me, I  
17 would appreciate that.

18 MR. FASSIO: Certainly. It's fairly  
19 simple.

20 JUDGE LOVINGER: Okay.

21 MR. FASSIO: We discussed a date for a  
22 hearing. We determined among ourselves there would be  
23 no need for prefiled testimony.

24 JUDGE LOVINGER: Okay.

25 MR. FASSIO: We would have a simple live



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1 hearing. And we looked at the date of March 28th as  
2 available for all parties.

3 JUDGE LOVINGER: Starting at?

4 MR. FASSIO: Late morning, or sometime  
5 in the morning. We don't have a particular time in  
6 mind. I'm available all day.

7 MR. SCHMIDT: Anytime.

8 JUDGE LOVINGER: Mr. McNamara?

9 MR. McNAMARA: Anytime.

10 JUDGE LOVINGER: I assume everyone is  
11 envisioning this being only one day?

12 MR. FASSIO: I imagine so, yes.

13 JUDGE LOVINGER: If we are doing a  
14 one-day event, we usually start at 9:30 in the  
15 morning. If that's too hard for people because of  
16 distance, I can make it a little bit later.

17 MR. SCHMIDT: 9:30 is fine for me.

18 MR. FASSIO: That's fine.

19 JUDGE LOVINGER: Let's make it 9:30.

20 MR. FASSIO: We also discussed a  
21 deadline for the parties to exchange a list of  
22 witnesses and exhibits in advance of the hearing.

23 MR. McNAMARA: What date is that?

24 MR. FASSIO: March 23rd.

25 JUDGE LOVINGER: 5:00 p.m.?

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1 MR. FASSIO: March 23rd, 5:00 p.m.,  
2 sure.

3 JUDGE LOVINGER: And everyone will be  
4 filing -- does anyone know about how to file documents  
5 with the Commission?

6 MR. SCHMIDT: Not entirely.

7 MR. McNAMARA: Lots of copies, right?

8 JUDGE LOVINGER: We need you to file  
9 copies with the -- what's the data center called?

10 MR. FASSIO: The records center.

11 JUDGE LOVINGER: The records center,  
12 thank you very much.

13 -- the records center, and then they get them  
14 out to everybody as well, electronically.

15 You are also supposed to send a copy to all of  
16 the other parties as well. And when I checked with  
17 the records center, they told me that they would need  
18 originals and seven copies, but that's not accurate.  
19 I am going to be sending out a prehearing order to the  
20 parties, and it will tell you the number. My guess is  
21 we will be able to get it down to one original and  
22 four copies, but I need to discuss it with our Staff  
23 downstairs to make sure on that.

24 Any others?

25 MR. FASSIO: No other dates for the

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1 hearing calendar, Your Honor. We did discuss  
2 discovery.

3 JUDGE LOVINGER: Okay.

4 MR. FASSIO: And Staff has done a  
5 preliminary analysis of the application, but does  
6 anticipate the need for some limited discovery in  
7 order to develop a clear understanding and to present  
8 a recommendation to the Commission. We may be issuing  
9 a limited number of data requests.

10 JUDGE LOVINGER: Okay.

11 MR. FASSIO: We would ask for discovery  
12 to be invoked in this proceeding.

13 JUDGE LOVINGER: Okay. That does not  
14 require the full discovery rules, is my understanding,  
15 Mr. Fassio. You are asking for the limited discovery  
16 of subpoenas and data requests?

17 MR. FASSIO: We would be asking for -- I  
18 suppose we would be asking for the discovery rules to  
19 just simply be invoked. The Staff doesn't anticipate  
20 discovery beyond data requests.

21 JUDGE LOVINGER: You don't actually need  
22 them invoked if you are only limiting them to data  
23 requests. If we invoke them, though, you will be in a  
24 position, and so will the other parties, to request  
25 things like depositions.

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1                   MR. FASSIO: Well, we don't intend to  
2 have depositions, Your Honor. Procedurally, however,  
3 you would like to proceed, Your Honor. I just wanted  
4 to alert the Commission and the parties that we --  
5 that although the discovery rules are not  
6 automatically invoked, but the needs of the case  
7 will require Staff to --

8                   JUDGE LOVINGER: At this time, what I  
9 would be willing to do is we will invoke the rules for  
10 the limited purpose of data requests.

11                   MR. FASSIO: Okay.

12                   JUDGE LOVINGER: Will that help?

13                   MR. FASSIO: Sure.

14                   MR. SCHMIDT: Not to be a huge pain, I  
15 just looked at the wrong calendar, and I have a  
16 conflict on the 28th. Is there any chance the 27th or  
17 the 29th would work? Sorry about that.

18                   MR. HARMON: Are we back on the record  
19 here?

20                   JUDGE LOVINGER: Hello. Yes. We didn't  
21 know somebody joined us on the conference line. Can  
22 you please identify yourself for the record?

23                   MR. HARMON: I apologize to whoever just  
24 talked, if that was Judge Lovinger. I can barely hear  
25 you.

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1 JUDGE LOVINGER: It is --

2 MR. HARMON: My name is Jack Harmon, I  
3 am with Arrow Launch Service, Boat Certificate No. 97.  
4 I've been on the conference bridge since you -- right  
5 when you went into recess to come up to some  
6 determination dates. I apologize, the phone number  
7 for this phone bridge was not listed on the public  
8 hearing conference notice. I had to dig to get the  
9 right number, so I apologize for my tardiness in  
10 joining the phone call here.

11 JUDGE LOVINGER: All right.

12 MR. HARMON: I did have one other  
13 comment, that Mr. McNamara and I have spoken. In his  
14 application, it is checked including launch service,  
15 including to provide launch service. That's what  
16 Arrow Launch does. Mr. McNamara has agreed to give  
17 the Commission a letter to exclude any current or  
18 future launch service.

19 I apologize if I'm out of order here. Again,  
20 I just can't hear the judge. You tell me how you  
21 would like me to proceed.

22 JUDGE LOVINGER: I'm not clear, and I  
23 don't know that anyone else is, except perhaps  
24 Mr. McNamara, on what role you envision. Are you  
25 making an appearance as a party, are you --

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1 MR. HARMON: Protester.

2 JUDGE LOVINGER: So you are making --

3 (Simultaneous talking.)

4 MR. HARMON: -- certificate.

5 JUDGE LOVINGER: Okay. So you are  
6 asking to intervene in this matter; is that correct?

7 MR. HARMON: That's correct.

8 JUDGE LOVINGER: And you haven't sent in  
9 a written notice or anything --

10 MR. HARMON: No, I have --

11 JUDGE LOVINGER: -- at this time?

12 MR. HARMON: -- not.

13 JUDGE LOVINGER: All right.

14 Can you do me a favor, can you provide the  
15 information again? Now that we understand the role, I  
16 think we are going to need to get all of your  
17 information, starting with your name, spelling your  
18 last name.

19 MR. HARMON: Yes, sir. Jack Harmon,  
20 H-A-R-M-O-N.

21 JUDGE LOVINGER: And you are  
22 representing which party?

23 MR. HARMON: A-R-R-O-W.

24 JUDGE LOVINGER: A-R-R-O-W.

25 MR. HARMON: Launch, L-A-U-N-C-H,

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1 Service, Inc.

2 JUDGE LOVINGER: And your address?

3 MR. HARMON: P.O. Box 2376,

4 Port Angeles, Washington 98362.

5 JUDGE LOVINGER: And your phone number?

6 MR. HARMON: (360) 457-1544.

7 JUDGE LOVINGER: And do you have a fax  
8 number?

9 MR. HARMON: (360) 457-1552.

10 JUDGE LOVINGER: And do you have an  
11 e-mail address?

12 MR. HARMON: Jack@arrowlaunch.com,

13 A-A-R-O-W-L-A-U-N-C-H.

14 JUDGE LOVINGER: Thank you very much for  
15 that information.

16 MR. HARMON: I apologize to the Court.

17 JUDGE LOVINGER: Mr. Harmon, what we are  
18 doing now is we are trying to set the dates for this  
19 matter.

20 MR. HARMON: Correct.

21 JUDGE LOVINGER: We had discussed the  
22 23rd being the date for filing exhibit lists and  
23 witness names, and then March 28th being the day for  
24 the hearing. However, Mr. Schmidt has just brought to  
25 our attention that there is a conflict in his

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1 calendar, so we are now looking at a different date in  
2 March. He has suggested March 27th. I don't know if  
3 that works for the other parties. Does that work you  
4 as well, Mr. Harmon?

5 MR. HARMON: It works for Arrow.

6 JUDGE LOVINGER: Mr. Fassio, does  
7 March 27th work for you?

8 MR. FASSIO: It does.

9 MR. McNAMARA: It works fine for me,  
10 too.

11 JUDGE LOVINGER: We are going to make  
12 the hearing March 27th at 9:30, and that's in Hearing  
13 Room 206.

14 Let me suggest that we move back the date for  
15 the witness list and the exhibit list by at least one  
16 day so that we have five days, which we had before.

17 MR. FASSIO: Okay.

18 JUDGE LOVINGER: Shall we make it the  
19 22nd?

20 MR. FASSIO: Sure.

21 JUDGE LOVINGER: As of this time, the  
22 schedule for filing the exhibit list and witness list  
23 will be March 22nd, at 5:00 p.m. is the deadline.

24 Mr. Harmon, I don't know if you heard, we  
25 discussed that there will be discovery, but it's



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1 limited to data requests at this time.

2 MR. HARMON: Yes, I did.

3 JUDGE LOVINGER: Are there any other  
4 matters at this time?

5 MR. FASSIO: I believe, Your Honor, we  
6 do need to address the matter of Mr. Harmon's  
7 intervention for the record.

8 JUDGE LOVINGER: Oh, whether or not we  
9 will accept his intervention?

10 MR. FASSIO: For Arrow Launch Service.  
11 Because he has not filed a written petition to  
12 intervene, to, I guess for the record, explain the  
13 reason for his intervention here today.

14 JUDGE LOVINGER: Thank you, I appreciate  
15 the reminder.

16 Mr. Harmon, we normally expect people to give  
17 an adequate notice of wanting to intervene in these  
18 matters. Can you state for the record why you took  
19 until today to do so?

20 MR. HARMON: It's my understanding that  
21 via e-mail, Mr. McNamara has agreed to restrict this  
22 certificate in writing with the -- some type of  
23 dialogue with the Utilities and Transportation  
24 Commission, to exclude its use into launch service.

25 Launch service is a very specified-type

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1 service, as defined by the RCWs and the WACs.  
2 Mr. McNamara's intention was not to provide launch  
3 service, that it's merely an administrative issue in  
4 the format of the UTC's application, and that the UTC  
5 Staff may have checked the launch service box.

6 Arrow Launch provides regulated launch service  
7 in these specified areas that Mr. McNamara has been  
8 asking for authority, and yet not having any  
9 notification in writing from the UTC, that this  
10 certificate will be restricted to providing his  
11 specific point-to-point passenger-only service, and  
12 not invading the launch service activities that we are  
13 involved in. I have to get it on the record here that  
14 there's already a certificated carrier providing  
15 launch service in the area that he is requesting  
16 authority.

17 JUDGE LOVINGER: Having heard your  
18 explanation, I am going to ask if anybody has an  
19 objection to having Mr. Harmon named as an intervenor  
20 in this matter?

21 MR. SCHMIDT: No objection.

22 MR. FASSIO: No objection from Staff,  
23 Your Honor. If I understand the intervention, from  
24 what I have heard Mr. Harmon speak to, it is that his  
25 interest is in the launch service aspect of what may

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1 or may not be in the application. I guess  
2 Mr. McNamara can speak to whether he has agreed with  
3 Mr. Harmon to restrict that. Staff would not object  
4 to the intervention of Arrow Launch Service.

5 It's my understanding from hearing this, that  
6 if Mr. McNamara were to restrict his application on  
7 the record to not include launch service, that that  
8 would be sufficient for Arrow Launch Service to then  
9 also withdraw its intervention in the matter.

10 That's my understanding, from what I hear,  
11 but...

12 JUDGE LOVINGER: I actually agree that  
13 that would seem to be what he is saying.

14 MR. HARMON: That's right.

15 JUDGE LOVINGER: I was going to get to  
16 Mr. McNamara next.

17 Mr. McNamara, are you agreeable to what is  
18 being requested? Because if you are, it will save us  
19 some time with the witnesses, and it will also save  
20 this witness time in not having to participate.

21 MR. McNAMARA: Yes, your Honor. In the  
22 beginning of the application, it says -- certificated  
23 commercial ferry service, including launch service.  
24 That's the only box you can check. I never intended  
25 to run any launch service. And I talked with

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1 Mr. Harmon on Friday afternoon, and then again  
2 yesterday, I sent him an e-mail stating that to him,  
3 that I would restrict myself, or, you know, not -- I'm  
4 not intending to provide a launch service, just a  
5 commercial ferry service.

6 If you look at the front page of the  
7 commercial --

8 JUDGE LOVINGER: I'm looking at the  
9 application. It does seem to indicate certificated  
10 commercial ferry, and then it has a dash, including  
11 launch service. So you are indicating at this point  
12 that you would want that -- you are agreeable to that  
13 portion being stricken?

14 MR. McNAMARA: Yes.

15 JUDGE LOVINGER: Mr. Harmon, I will  
16 treat your request as -- actually, what I will do is I  
17 will ask Mr. McNamara if he is willing to make a  
18 motion that his application be amended to exclude  
19 launch service.

20 MR. McNAMARA: Yes, I will.

21 JUDGE LOVINGER: I am going to grant  
22 that motion. It will be included in the final order  
23 in this matter, whatever we do decide.

24 At this point, Mr. Harmon, it looks like it  
25 won't be necessary for you to intervene.

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1 MR. HARMON: Thank you, Your Honor.

2 JUDGE LOVINGER: Thank you very much for  
3 participating.

4 MR. HARMON: Thank you very much.

5 JUDGE LOVINGER: Are there any other  
6 preliminary matters?

7 MR. FASSIO: (Shakes head.)

8 JUDGE LOVINGER: Or any matters at all,  
9 I should say?

10 MR. FASSIO: Not from Staff, Your Honor.

11 JUDGE LOVINGER: Mr. Schmidt?

12 MR. SCHMIDT: No, sir.

13 JUDGE LOVINGER: Mr. McNamara?

14 MR. McNAMARA: No, sir.

15 JUDGE LOVINGER: Let's just review this.

16 We are in agreement that the exhibit and witness lists  
17 are due on the 22nd of March at 5:00 p.m., we will  
18 have the hearing on March 27th at 9:30 in this room.

19 With that, I believe that we are prepared to  
20 adjourn. Thank you.

21 (Prehearing conference concluded 1:37 p.m.)

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C E R T I F I C A T E

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3 STATE OF WASHINGTON

4 COUNTY OF KING

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I, Sherrilyn Smith, a Certified

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Shorthand Reporter and Notary Public in and for the

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State of Washington, do hereby certify that the

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foregoing transcript is true and accurate to the best

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of my knowledge, skill and ability.

11

IN WITNESS WHEREOF, I have hereunto

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set my hand and seal this 23rd day of February, 2012.

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SHERRILYN SMITH

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22 MY COMMISSION EXPIRES:

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JUNE 2012

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