GRANT OF EASEMENT

THIS GRANT OF EASEMENT is made this _____ day of _____, 200_, by and between _____, of _____ (hereinafter referred to as the "Grantor"), and the AQUIDNECK LAND TRUST, a non-profit corporation organized under the laws of the State of Rhode Island and under IRS Section 501 (c)(3), as may be amended, with offices in Middletown, Rhode Island (hereinafter referred to as "Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property in _____, Rhode Island, more particularly described in Exhibit "A" attached hereto and made a part of hereof (hereinafter referred to as the "Trail Easement Area"). The term "Grantor," as used herein, shall mean this Grantor, or any successor owner of the fee simple of the Trail Easement Area, or any portion thereof; and

WHEREAS, Grantee is a publicly supported, tax-exempt non-profit organization qualified under Section 501 (c)(3) and 170(h) of the Internal Revenue Code, as may be amended, whose primary purpose is the preservation, protection or enhancement of land in its natural, scenic, agricultural, forested and/or open space condition. The term "Grantee," as used herein, shall include any assignee of Grantee, as provided in Paragraph 18 and 19, herein; and

WHEREAS, the Trail Easement Area possesses open, natural, scenic, recreation, transportation, and education values; and

WHEREAS, the specific conservation values of the Trail Easement Area are documented in an inventory of relevant features of the Trail Easement Area and attached hereto as Exhibit "B" and incorporated by this reference (hereinafter "Baseline Documentation Report"), which consists of reports, maps, photographs, and other documentation that the parties agree collectively provide an accurate representation of the Trail Easement Area at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and

WHEREAS, the Trail Easement Area contains ______ square feet, more or less, of public walking and bridle trail which, by this Grant of Easement, will be available for outdoor recreation and transportation by, and the education of, the general public in perpetuity; and

WHEREAS, the Trail Easement Area is an important segment of the Grantee's Sakonnet Greenway Trail; and

WHEREAS, Grantor and Grantee recognize the value and special character of the Trail Easement Area and acknowledge a common purpose to conserve the values of the Trail Easement Area, and to prevent its use or development for any purpose or in any manner that would conflict with the maintenance of the Trail Easement Area in its current open, natural, scenic, recreational, transportation, and educational condition; and

WHEREAS, Grantor as owner of the Trail Easement Area intends to convey to Grantee the right to preserve and protect the conservation values of the Trail Easement Area in perpetuity;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the State of Rhode Island, and in particular Title 32, Chapter 6, and Title 34, Chapter 39 of the General Laws of Rhode Island, as may be amended, Grantor hereby voluntarily grants and conveys unto Grantee a Grant of Easement in perpetuity over the Trail Easement Area, of the nature and character, and to the extent hereinafter set forth.

1. <u>Purpose.</u> It is the purpose of this Grant of Easement to assure that the Trail Easement Area will be retained forever in its open, natural, scenic, recreational, transportation, and educational condition and to prevent any use of the Trail Easement Area that will significantly impair or interfere with the conservation values of the Trail Easement Area. Grantor intends that this Grant of Easement will confine the use of the Trail Easement Area to those uses consistent with the purpose of this Grant of Easement, which includes, without limitation, the creation and maintenance of a public walking and bridle trail, and the Management Plan/Conservation Plan (hereinafter referred to as the "Management Plan") hereby incorporated by this reference. Said

Management Plan shall be placed on file at the office of the Grantee upon its execution by the Grantor, the Grantee, and possibly other parties. The Grantee and the Grantor shall work expeditiously, and in good faith, to execute the Management Plan. The Management Plan will set forth specific procedures by which the Trail Easement Area shall be maintained including, but not limited to, the adequate maintenance of the Trail Easement Area to preserve the public walking and bridle trail, natural values and other matters as may be required for the preservation of the Trail Easement Area. Grantor and Grantee shall have the right from time to time to propose amendments to the Management Plan. Any such amendment must be jointly approved as provided in Paragraph 17.

2. <u>Rights of Grantee</u>. To accomplish the purpose of this Grant of Easement, the following rights are conveyed to Grantee by this Grant of Easement:

- a. To preserve and protect the values of the Trail Easement Area.
- b. To create, construct, reconstruct, and maintain a public walking and bridle trail for public use, and associated trail signage and other trail infrastructure deemed mutually acceptable by both Grantee and Grantor, in the Trail Easement Area as set forth in this Grant of Easement and the Management Plan and to establish, modify, and enforce rules and regulations pertaining to trail use. Grantor shall not unreasonably withhold its approval of any Grantee selected trail signage and/or other trail infrastructure, and Grantor shall work expeditiously and in good faith with Grantee on this approval process (follow Paragraph 6 herein). Furthermore, Grantee has the right to close and re-open said public walking and bridle trail.
- c. To enter upon the Trail Easement Area at all reasonable times in order to (i) monitor and inspect Grantor's, or its successors or assigns, compliance with the covenants and purposes of this Grant of Easement and the Management Plan; (ii) enforce the terms of this Grant of Easement and the Management Plan; and (iii) take any and all actions as may be necessary or appropriate, to remedy or abate the violation hereof.

- d. To prevent any activity or use of the Trail Easement Area that is inconsistent with the purpose of this Grant of Easement and the Management Plan.
- e. To require restoration of such areas or features of the Trail Easement Area that may be damaged by any inconsistent activity or use, pursuant to Paragraph 7 hereof.

3. <u>Prohibited Uses.</u> Any activity on or use of the Trail Easement Area inconsistent with the purpose of this Grant of Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- a. The subdivision or development of the Trail Easement Area, or the disturbance or change in the natural habitat in any manner except as may be permitted pursuant to Paragraph 2 herein, and/or Paragraph 5 herein, and/or the Management Plan.
- b. The placement or construction of any buildings, structures, or other improvements of any kind including, without limitation, camping accommodations or mobile homes, fences, signs, billboards or other advertising material, tennis courts, swimming pools, asphalt driveways, roads, parking lots, utility poles, towers, conduits, or lines or other structures, other than those structures currently on the Trail Easement Area and as may be permitted pursuant to Paragraph 2 herein, and/or Paragraph 5 herein, and/or the Management Plan. No commercial or industrial activity shall be permitted.
- c. Any ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, or any building of roads or permanent change in the topography of the land in any manner, except for those activities permitted pursuant to Paragraph 2 herein, and/or Paragraph 5 herein, and/or the Management Plan.
- d. Any removal, destruction or cutting of trees or plants or planting of trees or plants, use of fertilizers, spraying with biocides, introduction of non-native animals and invasive plant species, except for those activities permitted

pursuant to Paragraph 2 herein, and/or Paragraph 5 herein, and/or the Management Plan.

- e. The dumping or storing of ashes, trash, garbage, waste, refuse, debris, or other material, and the changing of the topography through the placing of soil or other substance or material such as landfill or dredging spoils, nor shall any activities be conducted directly on the Trail Easement Area, or on adjacent property, which could cause erosion or siltation on the Trail Easement Area, except for those activities permitted pursuant to Paragraph 2 herein, and/or Paragraph 5 herein, and/or the Management Plan.
- f. The manipulation or alteration of natural ponds, water courses, lake shores, marshes or other wet bodies, or activities which would be detrimental to water purity, or which could alter natural water level and/or flow, except for those activities permitted pursuant to Paragraph 2 herein, and/or Paragraph 5 herein, and/or the Management Plan.
- **g.** The operation of snowmobiles, dunebuggies, motorcycles, all-terrain vehicles, or any other types of motorized vehicles, except such motorized vehicles as are necessary for the construction and maintenance of the Trail Easement Area or to protect the Trail Easement Area or people in the Trail Easement Area during an emergency or those motor vehicles permitted pursuant to Paragraph 2 herein, and/or Paragraph 5 herein, and/or the Management Plan.

4. <u>Grantor's Rights of Ownership.</u> It is the purpose and intent of all parties to restrict any uses of the Trail Easement Area that are inconsistent with the conservation values. However, it is not the purpose or intent to restrict Grantor's exercise of its rights incident to ownership and alienation. Grantor shall have the unfettered right to sell, mortgage, give, grant or otherwise convey the Trail Easement Area, provided that any such conveyances are expressly subject to the terms of this Grant of Easement, and the Management Plan.

5. <u>Grantor's Reserved Rights.</u> The Grantor reserves and is granted the right to do and perform those activities on the Trail Easement Area in accordance with this Grant of

Easement, the Management Plan, and the applicable laws of the State of Rhode Island and the Town of _____.

6. <u>Notice of Intention to Undertake Certain Permitted Actions.</u> In order to ensure that all activities in question are designed and carried out in a manner consistent with the purpose of this Grant of Easement, the Grantor shall notify the Grantee and submit plans prior to construction of any permitted structure on the Trail Easement Area, if any, in writing not less than fourteen (14) days prior to the date Grantor intends to undertake construction of any proposed structure on the Trail Easement Area. The notice shall describe the size, design, location and types of building materials of the proposed structure in sufficient detail to permit the Grantee to make an informed judgement as to its consistency with the purpose of this Grant of Easement, and to consent or object to the construction accordingly. The Grantee shall not unreasonably withhold its consent to any permitted structure and shall provide written notice to Grantor within fourteen (14) days of receipt of such plans.

7. Grantee's Remedies. Subject to the provisions of Paragraph 22 herein, if Grantee determines that Grantor is in violation of the terms of this Grant of Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Grant of Easement, to enjoin the violation, by temporary or permanent injunction, to recover any damages to which Grantee may be entitled for violation of the terms of this Grant of Easement or injury to any conservation values protected by this Grant of Easement, including damages for the loss of scenic, recreational, aesthetic, or environmental values, and to require the restoration of the Trail Easement Area to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Trail Easement Area. If Grantee shall determine that circumstances require emergency action in order to prevent or mitigate significant damage or other adverse consequences to the value of the Trail Easement Area, Grantee, after making reasonable effort to notify Grantor, may pursue any or all appropriate relief or remedies.

Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Grant of Easement, and Grantor agrees that if Grantee's remedies at law for any violation of the terms of this Grant of Easement are inadequate, that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Grant of Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Nothing contained in this Grant of Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Trail Easement Area resulting from any causes beyond Grantor's control, including, without limitation, fire, flood, storm or earth movement.

8. <u>Costs of Enforcement.</u> Any costs incurred by Grantee in enforcing the terms of this Grant of Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Grant of Easement, shall be borne by Grantor.

9. <u>Grantee's Discretion.</u> Enforcement of the terms of this Grant of Easement shall be at the sole discretion of Grantee, and any forbearance or delay by Grantee to exercise its rights under this Grant of Easement, in the event of any breach of any term of this Grant of Easement by Grantor, shall not be deemed or construed to be a waiver by Grantee of such terms for any subsequent breach of the same or any other terms of this Grant of Easement or any of Grantee's rights under this Grant of Easement.

10. <u>Waiver of Certain Defenses.</u> Grantor hereby waives any defense of laches, estoppel, and/or prescription.

11. <u>Access.</u> The rights of access to any portions of the Trail Easement Area are as set forth in this Grant of Easement and the Management Plan.

12. <u>Upkeep and Maintenance of the Trail Easement Area.</u> Grantee retains all responsibilities and shall bear all costs and liabilities of any kind related to the operation, upkeep and maintenance of the Trail Easement Area in accordance with the Grant of Easement, the Management Plan, and the requirements established by the Town of ______ and the State of Rhode Island.

13. <u>Costs and Liabilities.</u> Grantee retains all responsibilities and shall bear all costs of maintaining adequate comprehensive general liability insurance coverage. Grantor shall keep the Trail Easement Area free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

14. <u>Taxes.</u> If the Trail Easement Area is subject to taxes, assessments, fees, and/or charges of whatever description, then Grantor shall pay before delinquency all such taxes, assessments, fees and charges of whatever description levied on or assessed against the Trail Easement Area by competent authority, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but in no event obligated to make or advance, on Grantor's behalf, any payment of delinquent taxes and/or assessments in accordance with any bill or statement procured from appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill or statement, provided it gives thirty (30) days prior written notice to Grantor of its intention to do so. Grantor hereby agrees to reimburse Grantee for any such payment made on its behalf. The obligation created thereby shall bear interest until paid by the Grantor at the lesser rate of (1) Prime Rate of Interest plus two (2%) percentage points as defined by the <u>Wall Street Journal</u> or any successor publisher, or (2) the maximum rate allowed by law, whichever is lower, and shall be a lien upon the property.

15. Hold Harmless.

a. <u>Grantor's Hold Harmless.</u> Grantor shall defend, hold harmless, indemnify, and defend Grantee and its directors, officers, employees, agents, contractors, and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgements, including, without limitation, reasonable

attorney's fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, conditions, or other matter related to or occurring on or about the Trail Easement Area caused by the Grantor, its agents, or representatives.

b. <u>Grantee's Hold Harmless.</u> Grantee shall defend, hold harmless, indemnify, and defend Grantor and its directors, officers, employees, agents, contractors, and the heirs, personal representatives, successors, and assigns of each of them from and against all liabilities penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, conditions, or other matter related to or occurring on or about the Trail Easement Area caused by the Grantee, its agents, or representatives.

16. <u>Maintenance of Insurance; Indemnification.</u> Grantee retains all responsibilities and shall bear all costs of maintenance of adequate comprehensive general liability insurance coverage, in perpetuity, certifying Grantor as an additional insured against all claims and demands for bodily injury, death and property damage occurring on the Trail Easement Area. Such insurance policies shall afford minimum limits of not less than one hundred thousand (\$100,000) Dollars for property damage, five hundred thousand (\$500,000) Dollars for injury or death of one person, and one million (\$1,000,000) Dollars for injury or death of more than one person in a single accident and shall be adjusted for inflation. Such insurance shall be effected under valid enforceable policies with insurers authorized to do business in Rhode Island. Certificates of all such insurance shall be delivered to Grantor upon the recording of this Grant of Easement. Each such policy shall provide against cancellation without at least ten (10) days prior written notice to each insured named therein, pursuant to clauses typically available in the State of Rhode Island, if such clauses are available.

17. <u>Amendment</u>. If circumstances arise under which an amendment to or modification of this Grant of Easement and/or Management Plan would be appropriate, Grantor and Grantee are free to jointly amend this Grant of Easement and/or Management Plan, provided that no

amendment shall be allowed that will affect the qualification of this Grant of Easement or the status of Grantee under any applicable laws, including Chapter 39 of Title 34 of the Rhode Island General Laws, as may be amended, or Section 170(h) of the Internal Revenue Code of 1954, as may be amended, and any amendment shall be consistent with the purpose of this Grant of Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the Land Evidence Records of the Town of ______, Rhode Island, and a copy sent to Grantor at his address as provided herein.

18. <u>Assignment</u>. This Grant of Easement is transferable, but Grantee may assign its rights and obligations under this Grant of Easement only to an organization authorized to acquire and hold Conservation Easements under Rhode Island General Laws 34-39-1, et seq. (or any successor provision then applicable) and deemed mutually acceptable by both Grantee and Grantor. Grantor shall not unreasonably withhold its approval of any Grantee selected authorized organization, and Grantor shall also work expeditiously and in good faith to assist Grantee with any assignment of this Conservation Easement. As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

19. Executory Limitation. If Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Internal Revenue Code, as may be amended, or to be authorized to acquire and hold Conservation Easements under Chapter 39 of Title 34 of the Rhode Island General Laws, as may be amended, and a prior assignment is not made pursuant to Paragraph 18 herein, then the Grantee's rights and obligations shall become immediately vested in the State of Rhode Island, acting by and through the Department of Environmental Management, or any successor agency. If the State of Rhode Island, acting by and through the Department of Environmental Management of Environmental Management or any successor agency, is no longer in existence at the time the rights and obligations under this Grant of Easement would otherwise vest in it, or if the State of Rhode Island, acting by and through the Department of Environmental Management or authorized to hold such Easements at that time, or if it shall refuse such rights and obligations, then the rights and obligations under this Grant of Easement shall vest in such organization with a similar mission as a court of competent

jurisdiction shall direct pursuant to the applicable laws and with due regard to the requirements for an assignment pursuant to Paragraph 18 herein.

20. <u>Subsequent Transfers.</u> Grantor agrees to incorporate the terms of this Grant of Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Trail Easement Area, including, without limitation, a leasehold interest. The Grantor shall promptly notify the Grantee in writing of any proposed sale of the Trail Easement Area, and provide the opportunity for the Grantee to explain the terms of this Grant of Easement to potential new owners prior to the sale closing.

21. <u>Condemnation</u>. If all or part of the Trail Easement Area is taken in exercise of eminent domain by lawful authority so as to abrogate in whole or in part the Grant of Easement conveyed hereby, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered. The balance of the damages recovered (including, for purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Trail Easement Area unencumbered by the restrictions hereunder) shall be divided between the Grantor and the Grantee in proportion to the fair market value, at the time of condemnation, of their respective interests in that part of the Trail Easement Area condemned. The values of the Grantor's and Grantee's interests shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

22. <u>Mediation</u>. If a dispute arises between the parties concerning the consistency of any proposed use or activity within the purpose of this Grant of Easement, and either Grantor or Grantee, as the case may be, agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing to the other. Within ten (10) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall, within fifteen (15) days of receipt of the initial request, jointly

apply to a proper court for the appointment of a trained and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

a. <u>Purpose</u>. The purpose of the mediation is to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or *de facto* modification or amendment of the terms, conditions, or restrictions of this Grant of Easement.

b. <u>Participation</u>. The mediator may meet with the parties and their counsel jointly or *ex parte*. The parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority will attend mediation sessions as requested by the mediator.

c. <u>Confidentiality</u>. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to the subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.

d. <u>Time Period.</u> Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually acceptable resolution of the dispute.
e. <u>Costs.</u> The costs of mediation shall be borne equally by Grantor and Grantee; the parties shall bear their own expenses, including attorneys' fees, individually.

23. General Provisions.

a. <u>Entire Agreement.</u> This Grant of Easement, the exhibits and attachments hereto, and the Management Plan, set forth all of the covenants, provisions, agreements, conditions and understandings between the parties hereto.

b. <u>Successors.</u> The covenants, terms, conditions and restrictions of this Grant of Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Trail Easement Area.

c. <u>Rhode Island Law.</u> This Grant of Easement shall be and is deemed to be a conservation restriction under the laws of the State of Rhode Island only, and shall be construed and given effect in accordance with the laws of the State of Rhode Island and not otherwise.

d. <u>Liberal Construction</u>. Any general rule of construction to the contrary notwithstanding, this Grant of Easement shall be liberally construed in favor of this grant to effect the purpose of this Grant of Easement and the policy and purposes of the Grantee. If any provision in this Grant of Easement is found to be ambiguous, an interpretation consistent with the purpose of this Grant of Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

e. <u>Severability</u>. If any provision of this Grant of Easement or the application thereof to any entity or circumstance is found to be invalid, the remainder of the provisions of this Grant of Easement shall not be affected thereby.

f. <u>Duplicate Originals.</u> Grantor and Grantee shall execute this Grant of Easement in duplicate, each party retaining an original.

g. <u>Notice(s)</u>. Any notices shall be mailed to the address(es) listed after each party in the execution. Upon any transfer of the ownership of the fee, or the assignment of the rights of Grantee as provided in Paragraphs 18 and 19 under this Easement, any change in the address(es) shall be provided to the other party.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

WITNESS:	
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GRANTOR:

By:_____ Its: Address:

WITNESS:

GRANTEE:

AQUIDNECK LAND TRUST

By:_____

Its: Address: 790 Aquidneck Ave., Middletown, RI 02842

STATE OF RHODE ISLAND COUNTY OF NEWPORT

In	, on this	day of	, A.D. 200_	, then		
personally appeared	,		of	, to me		
known and known by me to be the party executing the foregoing instrument, and he/she						
acknowledged said inst	rument, by him/her so	executed, to be his/	her free act and deed	in his/her		
said capacity and the fr	ee act and deed of said		_, before me,			

Notary Public Printed Name: My Commission Expires:

STATE OF RHODE ISLAND COUNTY OF NEWPORT

In ______, on this ______day of ______, A.D. 200____, then personally appeared ______, _____of AQUIDNECK LAND TRUST, to me known and known by me to be the party executing the foregoing instrument, and he/she acknowledged said instrument, by him/her so executed, to be his/her free act and deed in his/her said capacity and the free act and deed of said AQUIDNECK LAND TRUST, before me,

Notary Public Printed Name: My Commission Expires: