

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

Sanicem Landfill  
Orion Charter Township and the City of Auburn Hills,  
Oakland County, Michigan

MDEQ Reference No. AOC-ERD-02-002

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ADMINISTRATIVE ORDER BY CONSENT  
FOR PAYMENT OF PAST COSTS

A. This Administrative Order by Consent ("Order") is entered into voluntarily by and between the Michigan Department of Environmental Quality ("MDEQ"), Jennifer M. Granholm, Attorney General for the State of Michigan ("Attorney General") (jointly "State"), and Mr. Daniel P. Fons, Alice M. Fons, J. Fons Company, Inc. (collectively hereinafter, the "Fons Group") and the Brown Road Group, LLC ("BRG"), pursuant to the authority vested in the Attorney General and the MDEQ by Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). This Order concerns the settlement by the Fons Group of past response activity costs incurred by the State for response activities that addressed hazardous substances that exceeded the Part 201 cleanup criteria or Section 20120a(1)(a) or (17) of the NREPA, and that originated at property identified in Attachment A and are emanating or have emanated from Sanicem Landfill Facility, Oakland County, Michigan ("Facility"). This Order also provides for the release of the liens placed on the Facility as provided in Attachment B. Settlement of this claim is in the public interest and will minimize litigation.

B. The execution of this Order by the Fons Group is neither an admission of liability with respect to any issue dealt with in this Order nor an admission or denial of any findings of fact or legal determinations stated or implied herein.

C. This Order shall apply to and be binding upon the Fons Group, BRG and their successors and assigns. No change or changes in the ownership or corporate status of the Fons Group or BRG shall in any way alter the obligations of such parties under this Order. The signatories to this Order certify that they are authorized to execute this Order and legally bind the parties they represent.

D. Pursuant to Part 201 of the NREPA, the State has incurred costs in responding to the release or threat of a release of hazardous substances at the Facility.

E. The parties to this Order desire to resolve all claims for past response activity costs incurred and paid by the State.

BASED UPON THE FOREGOING FACTS, THE MDEQ, THE ATTORNEY GENERAL, MR. DANIEL P. FONS, ALICE M. FONS, THE J. FONS COMPANY INC., and BROWN ROAD GROUP, LLC, HEREBY AGREE, AND IT IS ORDERED THAT:

1. Within 180 days of the effective date of this Order, the BRG shall pay to the MDEQ the sum of nine hundred fifty-nine thousand five hundred ninety-four dollars (\$959,594.00) to resolve all claims for past response activity costs by the State against the Fons Group and BRG for the Facility. For the purposes of this Order, the term "past response activity costs" means

those costs that the State has paid or incurred for response activities at the Facility and paid through the effective date of this Order.

Payment is to be made by certified check payable to the "State of Michigan - Environmental Response Fund" and sent to:

Revenue Control Unit  
Michigan Department of Environmental Quality  
300 South Washington Square, Suite 457  
P.O. Box 30657  
Lansing, Michigan 48909-8157

To ensure proper credit, the payments made pursuant to this Order must be made by certified check referencing the Sanicem Landfill facility, the MDEQ Reference No. AOC-ERD-02-002, and the ERD Account Number ERD2156. A copy of the transmittal letter and the check shall be provided simultaneously to the Assistant Attorney General in Charge, Department of Attorney General, Natural Resources and Environmental Quality Division, Constitution Hall, 5<sup>th</sup> Floor South Tower, 525 W. Allegan Street, Lansing, Michigan 48933. Costs recovered pursuant to this Order shall be deposited in the Environmental Response Fund in accordance with the provisions of Section 20108(3) of the NREPA.

2. In the event that the BRG fails to pay the amount indicated in Paragraph 1 within the time frames set forth in this Order, the BRG shall pay the State interest on those unreimbursed costs at the rate provided in Section 20126a(3) of the NREPA. For payments more than 30 days past due, the BRG also shall pay the State stipulated penalties of \$500.00 per day for every day of noncompliance with Paragraph 1, commencing from the first day the payment was past due. If payment in full, including any interest and penalties due, has not been received by the MDEQ within 30 days after the date the payment is due pursuant to Paragraph 1, and the MDEQ has previously informed the Parties of its failure to make payment, the State may, at its

sole discretion, void this Order. The Order shall become null and void when the State sends the Fons Group and BRG notice that the Order is null and void due to nonpayment of past response activity costs.

3. Within seven (7) days of reimbursement of the MDEQ in Paragraph 1, the MDEQ shall submit the Lien Release (Attachment C) to the Oakland County Register of Deeds for recording.

4. In consideration of the payments to be made by the BRG under the terms of this Order, and except as provided in Paragraph 6, the State covenants not to sue or to take further administrative action against the Fons Group or the BRG for the past response activity costs addressed in Paragraph 1. With respect to liability for response activity costs, the State's covenant not to sue shall take effect upon receipt by the MDEQ of full payment of the amount specified in Paragraph 1 and of any associated interest and penalties that may have accrued pursuant to Paragraph 2. This covenant not to sue applies only to past response activity costs and shall not be construed as a covenant not to sue for any other liability that the Fons Group or BRG may have to the State for the Facility. The covenant not to sue shall extend only to the Fons Group and the BRG and does not extend to any other person.

5. Nothing in this Order shall be construed as releasing or discharging any liability of any person to the Fons Group or the BRG, and the Fons Group and the BRG specifically reserve their rights against such persons.

6. Pursuant to Section 20129(5) of the NREPA, and to the extent provided in Paragraph 4, the Fons Group and BRG shall not be liable for claims for contribution for the matters

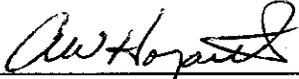
addressed in this Order. Execution of this Order does not discharge the liability of any other person that may be liable under Section 20126 of the NREPA, to the extent allowable by law. Pursuant to Section 20129(9) of the NREPA, any action by the Fons Group and BRG for contribution from any person not a party to this Order shall be subordinate to the rights of the State, if the State files an action pursuant to Part 201 of the NREPA or other applicable federal or state law.

7. The MDEQ and the Attorney General reserve all rights to take enforcement action and to perform response activities pursuant to any state or federal law, including, but not limited to, the right to seek injunctive relief; natural resource damages and costs incurred in the assessment of natural resource damages; monetary penalties; punitive damages for any violation of law or this Order; liability for criminal acts; and to seek recovery of response activity costs that are not addressed in this Order. The MDEQ and the Attorney General expressly reserve all rights and defenses that they may have to enforce this Order against the Fons Group and the BRG.

8. All terms used in this Order, which are defined in Part 201 of the NREPA and/or the Part 201 rules, 1990 AACS R 299.5101 *et seq.*, shall have the same meaning in this Order as in Part 201 of the NREPA and the Part 201 rules.

9. This Order shall become effective upon the date of BRG's closing on the Sanicem Landfill property. If the closing on the Sanicem Landfill property does not occur prior to July 15, 2002, this Order is null and void. All dates for the performance of obligations under this Order shall be calculated from the effective date of this Order. For the purposes of this Order, the term "day" shall mean a calendar day unless otherwise noted.

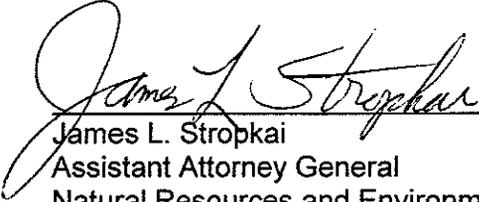
IT IS SO AGREED AND ORDERED BY:



\_\_\_\_\_  
Andrew W. Hogarth, Acting Chief  
Environmental Response Division  
Michigan Department of Environmental Quality

5/31/02

Date



\_\_\_\_\_  
James L. Stropkai [P24588]  
Assistant Attorney General  
Natural Resources and Environmental Quality Division

5/31/02

Date

IT IS SO AGREED BY:

Daniel P. Fons, Alice M. Fons, and  
J. Fons Company, Inc.  
6451 East McNichols  
Detroit, Michigan 48212

By: *Daniel P. Fons* By: *Alice M. Fons*  
Daniel P. Fons Alice M. Fons

By: *Gregory P. Fons*  
Gregory P. Fons for the J. Fons Company

Dated: *June 6, 2002*

IT IS SO AGREED BY:

Brown Road Group, LLC

By: *Fred Storch, Manager*

Dated: *JUNE 6, 2002*

**EXHIBIT A: LEGAL DESCRIPTION OF PROPERTY**

PART OF THE NORTHEAST FRACTIONAL ¼ OF SECTION 2, TOWN 3 NORTH, RANGE 10 EAST, CITY OF AUBURN HILLS, OAKLAND COUNTY, MICHIGAN, AND PART OF THE SOUTHEAST FRACTIONAL ¼ OF SECTION 35, TOWN 4 NORTH, RANGE 10 EAST, ORION TOWNSHIP, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF SECTION 2; THENCE S. 01°-16'-34" E, 1953.02 FEET; THENCE S 88°-43'-56" W, 544.50 FEET; S 01°-16'-34" E, 400.00 FEET; THENCE S 88°-43'-56" W, 808.07 FEET; THENCE N 00°-56'-51" W, 788.36 FEET; THENCE N 86°-22'-22" W 1234.73 FEET; THENCE S 03°-44'-14" W, 10.57 FEET; THENCE S 88°-15'-55" W, 32.03 FEET TO A POINT ON THE EASTERLY LINE OF LAPEER ROAD NORTH 1498.72 FEET AND EAST 83.89 FEET FROM CENTER OF SECTION CORNER OF SECTION 2; THENCE, N 00°-32'-55" E, 298.60 FEET; THENCE, N 00°-09'-05" W, 406.63 FEET; THENCE N 00°-53'-05" W, 400.00 FEET; THENCE S 89°-22'-55" W, 91.42 FEET TO A POINT ON THE CENTER OF SECTION 2; THENCE N 00°-37'-05" W, 376.90 FEET ALONG THE CENTER OF SECTION 2 TO THE NORTH ¼ CORNER OF SECTION 2; THENCE N 89°-00'-21" E, 98.87 FEET TO A POINT DISTANT N 89°-00'-21" E, 33.27 FEET FROM THE SOUTH ¼ CORNER OF SECTION 35; THENCE N 00°-16'-57" W, 384.78 FEET; THENCE N 88°-48'-33" E, 209.21 FEET; THENCE N 12°-36'-36" E, 283.66 FEET; THENCE N 02°-01'-17" W, 101.13 FEET; THENCE N 88°-48'-33" E, 1554.35 FEET; THENCE ALONG A CURVE TO THE RIGHT, RADIUS 340.00 FEET, CHORD BEARS S 60°-55'-35" E, 342.72 FEET, DISTANCE OF 359.19 FEET; THENCE S 30°-39'-42" E, 183.24 FEET; THENCE ALONG A CURVE TO THE LEFT, RADIUS 360.00 FEET, CHORD BEARS S 38°-22'-41" E, 96.67 FEET, DISTANCE OF 96.96 FEET; THENCE S 00°-59'-41" E, 359.82 FEET TO A POINT ON THE SOUTH LINE OF SECTION 35; THENCE N 89°-00'-21" E, 300.00 FEET ALONG THE SOUTH LINE OF SECTION 35 TO THE POINT OF BEGINNING.

LIEN PLACEMENT

First Party: State of Michigan  
Department of Environmental Quality  
P.O. Box 30426  
Lansing, Michigan 48909-7926

Second Party: J. Fons Co. Inc.  
6451 E. McNichols  
Detroit, Mi 48212

Site No. 630060  
District SE MI

NOTICE OF CLAIM OF INTEREST IN REAL PROPERTY

Notice is hereby given that the State of Michigan claims an interest by reason of assessment(s) listed below, issued by the Department of Environmental Quality (DEQ) under Section 20138(1) of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.20101 et seq, against the following property situated in Pontiac Township, County of Oakland, State of Michigan, described as:

T3N, R10E, SEC 2. N 12 Acres of NW FRC ¼ of NE FRC ¼ EXC That Part Taken For M-24 Hwy Widening.

Document Date	Assessment Number	Amount
6/10/98	6-98-630060-52	\$550,211.75

Therefore, pursuant to Part 201 of NREPA, the above-listed amount, which is an estimate of the State's costs, is a lawful claim against the real property, in favor of the State of Michigan, DEQ, Environmental Response Division (ERD), upon the above-described property situated in Oakland County, State of Michigan. The amount of reimbursement may be more than the estimate, and will be based upon actual costs, including any and all interest as authorized to be recovered under state and federal law, calculated at the time of reimbursement.

STATE OF MICHIGAN, DEPARTMENT OF ENVIRONMENTAL QUALITY

Pamela F. Meadows  
Witness Pamela F. Meadows

Alan J. Howard  
Alan J. Howard, Chief Environmental Response Division

Dorothy J. Jackson  
Witness Dorothy J. Jackson

STATE OF MICHIGAN, COUNTY OF INGHAM

The foregoing instrument was acknowledged before me this 21st day of August, 1998 by Alan J. Howard, Chief of the ERD, DEQ, an authorized representative, on behalf of the DEQ.

Linda Sherron Daniel  
Notary Public

Prepared by:  
Jacqueline Barnett, DEQ-ERD,  
P.O. Box 30426, Lansing, Michigan 48909-7926

LINDA SHERRON DANIEL  
Notary Public, Ingham Co., MI  
My Comm. Expires Jan. 2, 2002

LIEN PLACEMENT

First Party: State of Michigan  
Department of Environmental Quality  
P.O. Box 30426  
Lansing, Michigan 48909-7926

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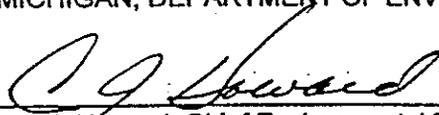
T3N, R10E, SEC 2. Part of the NE FRC ¼ Beg at Pt. Dist N 2603.87 Ft & E 91.42 Ft from Cen of Sec, Th N 88°53'00" E 650 Ft, Th S 32°45'50" W 490.04 Ft, Th S 40°34'40" W 133.25 Ft, Th S 88°53'00" W 302.38 Ft, Th N 00°28'00" E 100 Ft, Th N 00°16'00" W 400 Ft To Beg.

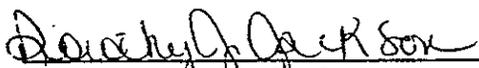
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Alan J. Howard, Chief Environmental Response Division

  
Witness Dorothy J. Jackson

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Detroit, Mi 48212

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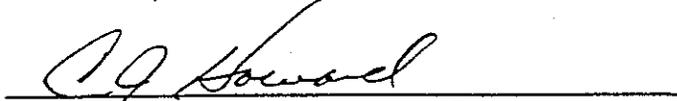
T3N, R10E, SEC 2. Part of the NE FRC ¼ Beg at Pt On Ely Line of Lapeer Rd N 1498.72 Ft & E 83.89 Ft from Center of Sec, Th N 01°10'00" E 261.96 Ft, Th N 00°28'00" E 343.20 Ft, Th N 88°53'00" E 302.38 Ft, Th N 40°34'40" E 133.25 Ft, Th N 32°45'50" E 490.04 Ft, Th N 88°53'00" E 558.06 Ft, Th S 01°08'00" E 400 Ft, Th S 01°09'00" E 704.73 Ft, Th S 88°53'00" W 1237.19 Ft to Beg.

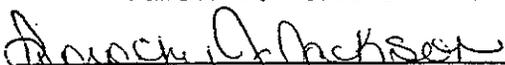
Document Date	Assessment Number	Amount
6/10/98	6-98-630060-54	\$550,211.75

Therefore, pursuant to Part 201 of NREPA, the above-listed amount, which is an estimate of the State's costs, is a lawful claim against the real property, in favor of the State of Michigan, DEQ, Environmental Response Division (ERD), upon the above-described property situated in Oakland County, State of Michigan. The amount of reimbursement may be more than the estimate, and will be based upon actual costs, including any and all interest as authorized to be recovered under state and federal law, calculated at the time of reimbursement.

STATE OF MICHIGAN, DEPARTMENT OF ENVIRONMENTAL QUALITY

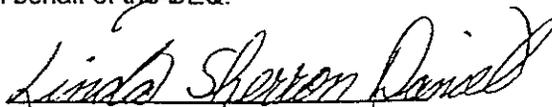
  
Witness Pamela F. Meadows

  
Alan J. Howard, Chief Environmental Response Division

  
Witness Dorothy V. Jackson

STATE OF MICHIGAN, COUNTY OF INGHAM

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Notary Public

Prepared by:  
Jacqueline Barnett, DEQ-ERD,  
P.O. Box 30426, Lansing, Michigan 48909-7926

LINDA SHERRON DANIEL  
Notary Public, Ingham Co., MI  
My Comm. Expires Jan. 2, 2002

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321519  
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MICHIGAN RECORDING  
EQUINE REPRODUCTION  
08/01/2002 02:22:41 A.M. RECEIVED  
MICHIGAN RECORDING - OAKLAND COUNTY  
SARAH JAM COBBELL, CLERK

## LIEN RELEASE

First Party: State of Michigan  
Department of Environmental Quality  
P.O. Box 30426  
Lansing, MI 48909

Second Party: J. Fons Co., Inc.  
6451 E. McNichols  
Detroit, MI 48212

Site No: 630060  
District: SE MI

### NOTICE OF RELEASE OF CLAIM OF INTEREST IN REAL PROPERTY

I hereby certify that the liability for cost and damages asserted under Part 201 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.20101 et seq, for which the assessment(s) listed below were issued, has been resolved, and hereby release the lien on property situated in Pontiac Township, County of Oakland, State of Michigan, described as:

T3N, R10E, SEC 2, Part of the NE FRC 1/4 Bcg at Pt On Ely Line of Lapeer Rd N 1498.72 Ft & E 83.89 Ft from Center of Sec. Th N 01°10'00" E 261.96 Ft, Th N 00°28'00" E 343.20 Ft, Th N 88°53'00" E 302.38 Ft, Th N 40°34'40" E 133.25 Ft, Th N 32°45'50" E 490.04 Ft, Th N 88°53'00" E 558.06 Ft, Th S 01°08'00" E 400 Ft, Th S 01°09'00" E 704.73 Ft, Th S 88°53'00" W 1237.19 Ft to Bcg. [Parcel ID Number 14-02-200-003]

Date of Notice of Lien 6/10/98; Assessment No. 6-98-630060-54 Recorded in Liber 19415; Page 166;  
Filing Date 1/14/99; Place of Filing Oakland County Register of Deeds.

The lien for such costs and damages, notice of which was recorded on the date set forth above, is hereby re'eased

### STATE OF MICHIGAN, DEPARTMENT OF ENVIRONMENTAL QUALITY

Patricia A. McKay, Chief, Compliance and Enforcement Section,  
Environmental Response Division

for  
Andrew W. Hogarth, Acting Chief, Environmental Response Division

O.K. - AM

### STATE OF MICHIGAN, COUNTY OF INGHAM

The foregoing instrument was acknowledged before me this 3rd day of June, 2002 by Patricia A McKay of the Environmental Response Division, Department of Environmental Quality, an authorized representative on behalf of the department.

RETURN TO

FRUSONE, TAYLOR & BROWN

ATTN: PAUL F. BROWN

41320 W SIX MILE RD #

NORTHVILLE MI 48167

Prepared by: Jacqueline Barnett  
DEQ-ERD  
P.O. Box 30426  
Lansing, Michigan 48909-7926

Sandra J. Tompkins  
Notary Public

SANDRA J. TOMPKINS  
Notary Public, Eaton Co., MI  
Acting in Ingham Co., MI  
My Comm. Expires Dec 13, 2002

01-0747

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321318  
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 \$7.00 MISC RECORDING  
 \$2.00 REDEMPTION  
 08/01/2002 08:22:10 A.M. RECEIVED 52842  
 PAID RECORDED - OAKLAND COUNTY  
 G.WILLIAMS (ADDELL) CLERK REGISTER OF DEEDS

## LIEN RELEASE

First Party: State of Michigan  
 Department of Environmental Quality  
 P.O. Box 30426  
 Lansing, MI 48909

Second Party: J. Fons Co., Inc.  
 6451 E. McNichols  
 Detroit, MI 48212

Site No.: 630060  
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Date of Notice of Lien 6/10/98; Assessment No. 6-98-630060-53; Recorded in Liber 19415; Page 165;  
 Filing Date 1/14/99; Place of Filing Oakland County Register of Deeds.

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STATE OF MICHIGAN, DEPARTMENT OF ENVIRONMENTAL QUALITY

Patricia A. McKay  
 Patricia A. McKay, Chief, Compliance and Enforcement Section,  
 Environmental Response Division  
 for  
 Andrew W. Hogarth, Acting Chief, Environmental Response Division

STATE OF MICHIGAN, COUNTY OF INGHAM

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of June, 2002 by Patricia A. McKay of the Environmental Response Division, Department of Environmental Quality, an authorized representative on behalf of the department.

Sandra J. Tompkins  
 Notary Public

Prepared by Jacqueline Barnett  
 DEQ-ERD  
 P.O. Box 30426  
 Lansing, Michigan 48909-7926

RETURN TO:  
 FAYSONE, TAYLOR & PUGH  
 ATTN: PAUL F. COHN

**O.K. - ANN**  
 SANDRA J. TOMPKINS  
 Notary Public, Eaton Co., MI  
 Acting In Ingham Co., MI  
 My Comm. Expires Dec 13, 2002

41320 W. SIX MILE RD  
 # 103  
 NORTH HE MI 48816

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# LIBER 26204 PAGE 654

321320  
LIBER 26204 PAGE 714  
\$2.00 MISC RECORDING  
\$2.00 LENDUMENTATION  
09/01/2002 09:22:41 A.P. RECEIVED STATE  
PAID RECORDED - OAKLAND COUNTY  
G. WILLIAM CASSELL, CLERK/REGISTRAR OF DEEDS

## LIEN RELEASE

First Party: State of Michigan  
Department of Environmental Quality  
P.O. Box 30426  
Lansing, MI 48909

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Date of Notice of Lien 6/10/98; Assessment No. 6-98-630060-52; Recorded in Liber 19415; Page 164; Filing 1/14/99; Place of Filing Oakland County Register of Deeds.

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STATE OF MICHIGAN, DEPARTMENT OF ENVIRONMENTAL QUALITY

*D.K. - AW*  
Patricia A. McKay, Chief, Compliance and Enforcement Section,  
Environmental Response Division  
for  
Andrew W. Hogarth, Acting Chief, Environmental Response Division

STATE OF MICHIGAN, COUNTY OF INGHAM

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Prepared by: Jacqueline Barnett,  
DEQ-ERD,  
P.O. Box 30426  
Lansing, Michigan 48909-7926

RETURN TO:  
FRISONE, TAYLOR + BROWN  
ATTN: PAUL F. BROWN  
41320 W SIX MILE RD  
#103  
NORTHVILLE MI  
48167

*Sandra J. Tompkins*  
Notary Public

SANDRA J. TOMPKINS  
Notary Public, Eaton Co., MI  
Acting in Ingham Co., MI  
My Comm Expires Dec 13, 2002

31-0747