

# **AIA**® Document B105™ – 2007

## **Standard Form of Agreement Between Owner and Architect for a Residential or Small Commercial Project**

**AGREEMENT** made as of the Sixth day of February in the year Two Thousand Twelve  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

Elizabethtown Independent Board of Education  
219 Helm Street  
Elizabethtown, Kentucky 42701

and the Architect:  
(Name, legal status, address and other information)

RBS Design Group, P.S.C.  
Architecture  
723 Harvard Drive  
Owensboro, Kentucky 42301

for the following Project:  
(Name, location and detailed description)

Elizabethtown Independent Board of Education Facility Survey

Basic Services to provide information on the physical condition of each building and building deficiencies in the Elizabethtown Independent School district. The school evaluations are to be completed using Architect and Engineer Building Evaluation forms. Each building evaluation summary is to include the building name, construction/renovation date(s), gross square footage; evaluation of site and facility and the potential for renovation and additions to meet any deficiencies; summary of building systems and conditions; building deficiencies and building improvements needed; cost estimate of building/center and possible capital improvements as per the Kentucky Department of Education guidelines.

The Owner and Architect agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

State or local law may impose requirements on contracts for home improvements. If this document will be used for Work on the Owner's residence, the Owner should consult local authorities or an attorney to verify requirements applicable to this Agreement.

## ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide architectural services for the Project as described in this Agreement in a manner consistent with locally accepted standards for professional skill and care. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect's services include the following consulting services, if any:

| *(Paragraphs deleted)* Mechanical and electrical services

## ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner's information. The Owner shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services. The Owner shall employ a Contractor, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information.

## ARTICLE 3 USE OF DOCUMENTS

Drawings, specifications and other documents prepared by the Architect are instruments of the Architect's service and are for the Owner's use solely with respect to this Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the Project or termination of this Agreement, the Owner's right to use the instruments of service shall cease. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project.

## ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days' written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement.

## ARTICLE 5 MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105-2007, Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Architect.

The Architect and Architect's consultants shall have no responsibility for the identification, discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site.

## ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT

The Architect's Compensation shall be:

| The Architect shall be compensated at the rate of \$.05 per square foot for all facilities except Helmwood Heights and Panther Academy (Preschool). The Architect shall be compensated at the rate of \$.02 per square foot for Helmwood Heights and Panther Academy (Preschool). See Article 7-Other Provisions for additional fee.

| The Owner shall pay the Architect an initial payment of zero (\$ 0 ) as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

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The Owner shall reimburse the Architect for expenses incurred in the interest of the Project, plus fifteen percent ( 15 %).

Payments are due and payable upon receipt of the Architect's monthly invoice. Amounts unpaid thirty ( 30 ) days after the invoice date shall bear interest from the date payment is due at the prime interest rate at the owner's bank , or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

At the request of the Owner, the Architect shall provide services not included in Article 1 for additional compensation. Such services may include providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the scope, quality or budget; evaluating changes in the Work and Contractors' requests for substitutions of materials or systems; and services not completed within six ( 6 ) months of the date of this Agreement through no fault of the Architect.

#### ARTICLE 7 OTHER PROVISIONS

*(Insert descriptions of other services and modifications to the terms of this Agreement.)*

**AMENDMENT TO STANDARD FORM OF AGREEMENT: The attached Kentucky Department of Education, Division of Facilities Management, Amendment to Standard Form of Agreement Between Owner and Architect shall become an integral part of this contract same as written herein.**

#### ADDITIONAL FEE:

If the Architect finds it necessary to field measure and/or redraw the Elizabethtown Independent Schools building plans, then the Architect shall be compensated for this service on an hourly basis as per the attached hourly rates (Attachment 'A').

#### USE OF DOCUMENTS:

1. All Documents are instruments of service in respect to this Project, and Architect shall retain an ownership and property interest therein (including the right of reuse at the discretion of the Architect) whether or not the Project is completed.
2. Copies of Documents that may be relied upon by Owner are limited to the printed copies (also known as hard copies) that are signed or sealed by the Architect. Files in electronic media format of text, data, graphics, or of other types that are furnished by Architect to Owner are only for convenience of Owner. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
3. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. Architect shall not be responsible to maintain documents stored in electronic media format after acceptance by Owner.
4. When transferring documents in electronic media format, Architect makes no presentations as to long term compatibility, usability, to readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Architect at the beginning of this Project.
5. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Such Documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or any other project. Any such reuse or modification without written verification or adaptation by Architect, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Architect or to Architect's Consultants. Owner shall indemnify and hold harmless Architect and Architect's Consultants from all claims, damage, losses, and expenses, including attorney's fees arising out of or resulting therefrom.
6. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
7. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle Architect to further compensation at rates to be agreed upon by Owner & Architect.

#### VERIFICATION OF EXISTING CONDITIONS:

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User Notes: (1684424249)

In as much as the documentation of the existing structure requires that certain assumptions be made by Architect regarding existing conditions, and because some of these assumptions may not be verifiable without Owner's expending substantial sums of money or destroying otherwise adequate or serviceable portions of the structure, Owner agrees to bear all costs, losses and expenses, including the cost of Architect's Additional Services arising from the discovery of concealed or unknown conditions in the existing structure, or from any deficiencies or inaccuracies in any information or documentation furnished to Architect by Owner.

This Agreement entered into as of the day and year first written above.

OWNER

*(Signature)*

Gary French, Superintendent

*(Printed name and title)*

ARCHITECT

*(Signature)*

Jim Ivy, Architect

*(Printed name and title)*

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# ATTACHMENT 'A'

## RBS DESIGN GROUP, PSC 2012 REGULAR HOURLY BILLING RATES

Position	Level	Rate	Position	Level	Rate
Principal		\$160.00/hour			
Project Architect:	7	115.00/hour	Drafter:	8	60.00/hour
	6	110.00/hour		7	58.00/hour
	5	105.00/hour		6	55.00/hour
	4	100.00/hour		5	52.50/hour
	3	95.00/hour		4	50.00/hour
	2	90.00/hour		3	47.50/hour
	1	85.00/hour		2	45.00/hour
Project Coordinator:				1	40.00/hour
	8	80.00/hour			
	7	77.50/hour	Clerical	7	70.00/hour
	6	75.00/hour		6	67.50/hour
	5	72.50/hour		5	65.00/hour
	4	70.00/hour		4	62.50/hour
	3	67.50/hour		3	60.00/hour
	2	65.00/hour		2	57.50/hour
	1	62.50/hour		1	55.00/hour

**NOTE: Forensic rates at 1.5  
times regular hourly billing rates**

**KENTUCKY DEPARTMENT OF EDUCATION**  
**DIVISION OF FACILITIES MANAGEMENT**  
**AMENDMENT TO**  
**STANDARD FORM OF AGREEMENT**  
**BETWEEN OWNER AND ARCHITECT**  
**AIA B101-2007**

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**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

- 2.1** Add the following: "The Architect shall also comply with 702 KAR 4:160, pertaining to services and actions required of the Architect."
- 2.5** Delete the entire paragraph and substitute therefor the following: ""The Architect shall carry professional liability insurance in addition to insurance to protect themselves from claims under Worker's Compensation Acts, for claims for damages because of bodily injury, including death, to their employees, and for other liability normally covered by such insurance and shall furnish evidence of such insurance to the Owner."
- 2.5.1** "During the term of this Agreement, the Architect shall provide evidence of professional liability insurance coverage in the amounts stated in Subparagraph 2.5.2. In addition, the Architect agrees to attempt to maintain continuous professional liability coverage for the period of design and construction of this project, and for a period of two years following Substantial Completion, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the architects practicing in the State are able to obtain such coverage."
- 2.5.2** "Professional liability coverage shall be provided in the following minimum amounts:
- |                                    |   |
|------------------------------------|---|
| "a. Projects \$1,000,000, or less  | \$500,000 per claim and<br>\$1,000,000 aggregate per annum.   |
| "b. Projects exceeding \$1,000,000 | \$1,000,000 per claim and<br>\$2,000,000 aggregate per annum. |
- 2.5.3** "The Architect's Consultants shall carry professional liability coverage during the term of the Agreement as stated in Subparagraph 2.5.1, and shall furnish evidence of such insurance to the Owner. The minimum limit of liability for each of the Architect's Consultants is \$250,000 aggregate, except that structural design and mechanical-electrical-plumbing consultants shall carry a minimum amount of \$1,000,000 aggregate for projects \$1,000,000, or less, and \$2,000,000 aggregate for projects exceeding \$1,000,000."
- 2.5.4** "The Architect shall carry Commercial General Liability Insurance with limits of \$500,000 per occurrence and \$1,000,000 aggregate. This policy shall be written or endorsed to include the following provisions:
- |     |  |
|-----|--|
| "a. | The Owner shall be named as an additional insured,     |
| "b. | Waiver of Subrogation,                                 |
| "c. | Severability of Interest (Separation of Insureds), and |
| "d. | Cross Liability Endorsement."                          |

- 2.5.5 "The Architect shall carry Worker's Compensation Insurance as required by statute, including Employers Liability, with limits of:
- "a. \$100,000 each accident,
  - "b. \$500,000 disease - policy limit, and
  - "c. \$100,000 disease - each employee."
- 2.5.6 "The Architect shall carry Automobile Liability Insurance, including coverage for hired and leased vehicles, with limits of \$500,000 per occurrence, and Non-Owned Automobile Liability Insurance, including coverage for hired and leased vehicles, with limits of \$500,000 per occurrence."
- 2.5.7 "The above indicated minimum coverages shall be subject to the terms, exclusions and conditions of the policies. The Architect shall provide Certificates of Insurance to the Owner upon execution of the Agreement and prior to commencement of services."
- 2.6 Add the new paragraph: "The Architect and the Architect's Consultants shall provide a notarized non-collusion affidavit on current Kentucky Department of Education form to the Owner upon execution of the Agreement and prior to commencement of services."

### **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

- 3.1 After the words "usual and customary structural, mechanical and electrical engineering services," add the words ", including civil engineering, landscape, and kitchen design services required for the Project."

#### **3.2 SCHEMATIC DESIGN PHASE SERVICES**

- 3.2.5 Add the sentence: "For school Projects on new sites, the Architect shall provide a campus master plan with the Schematic Design Documents."
- 3.2.5.2 Add the sentence: "The Architect shall revise the scope of Work to be within the approved BG-1 estimate of Construction Cost, or advise the Owner to submit to the Kentucky Department of Education a revised BG-1 financial page requesting approval of additional financial support."

#### **3.3 DESIGN DEVELOPMENT PHASE SERVICES**

- 3.3.2 Revise the paragraph to read: "The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost, and of any conflict with the budget established by the BG-1."

#### **3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES**

- 2.4.4 Add the sentence: "The Architect shall advise the Owner of any conflict with the budget established by the BG-1."
- 3.4.5 Add the sentence: "The Architect shall prepare the appropriate application forms and submit them with the required Construction Documents to the applicable governmental authorities."

#### **3.5 BIDDING OR NEGOTIATION PHASE SERVICES**

- 3.5.1 Revise the second sentence to read: "Following the Owner's and the Kentucky Department of Education's approval of the Construction Documents, the Architect...contracts for construction." Add the sentence: "The Architect shall prepare the Advertisement for Bids and give it to the Owner

for placement in the newspaper having the largest local circulation."

### **3.5.2 COMPETITIVE BIDDING**

- 3.5.2.2 Add new Subparagraph 3.5.2.2.6, as follows: "providing a written evaluation of bids received and recommendations regarding an award of Contract for Construction."

### **3.5.3 NEGOTIATED PROPOSALS**

- 3.5.3.1 Add the following: Negotiated proposal procedures may only be utilized for emergency construction, for construction estimated to cost no more than \$20,000, or, for those Owners who have adopted the Kentucky Model Procurement Code, under the terms and conditions of KRS 45A.370, KRS 45A.375, KRS 45A.380, and KRS 45A.385.

### **3.6 CONSTRUCTION PHASE SERVICES**

- 3.6.1.1 In the first sentence, after the words "AIA Document A201-2007, General Conditions of the Contract for Construction," add the words "including amendments thereto current as of the date of this Agreement, unless otherwise provided in this Agreement."

### **3.6.2 EVALUATIONS OF THE WORK**

- 3.6.2.1 Add the sentence: "The Architect shall keep the Owner informed of the progress and quality of the Work by a written report each month until time of Substantial Completion."

### **3.6.6 PROJECT COMPLETION**

- 3.6.6.5 Revise the paragraph to read: "Prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct an inspection with the Owner to review the facility operations and performance, and record any nonconforming Work, and shall submit a written report of nonconforming Work to the Contractor, Owner and the Kentucky Department of Education. At the discretion of the Owner and for Reimbursable Expenses, the Architect may be the Owner's agent during the one-year period after Substantial Completion."

- 3.6.6.6 Add the new paragraph: "As a record of the Work as constructed, the Architect shall prepare and deliver to the Owner a set of drawings showing significant changes in the Work during construction, based upon the drawings maintained by the Contractor at the site during construction, other data furnished by the Contractor to the Architect, Addenda, Construction Change Directives and Change Orders."

## **ARTICLE 4 ADDITIONAL SERVICES**

- 4.1 Delete the following from the list of Additional Services:
- 4.1.5 Site Evaluation and Planning
  - 4.1.7 Civil Engineering
  - 4.1.8 Landscape design
  - Record drawings (See new paragraph 3.6.6.6.)
  - 4.1.20 Telecommunications/data systems

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

- 5.1 Revise the paragraph to read: "The Owner shall provide full information regarding requirements for the Project, including Educational Specifications, interior and exterior space requirements and relationships, flexibility and expandability, special equipment and systems, site requirements, and the Owner's objectives, schedule and constraints."
- 5.2 Revise the paragraph to read: "The Owner shall establish and periodically update an overall



budget for the Project based on consultation with the Architect and the Owner's Fiscal Agent, as applicable, which shall include the Construction Cost, the Owner's other related costs and fees, and reasonable contingencies related to all of these costs."

- 5.3 Revise the second sentence of the paragraph to read: "The Owner, through Board of Education Order, shall examine and take action in a timely manner regarding approval of documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services."
- 5.4 Revise the second sentence to add the words "and flood plain limits as applicable" after the words "designated wetlands."
- 5.5 Revise the paragraph to read: "The Owner shall furnish the services of geotechnical engineers when such services are deemed necessary and requested by the Architect."
- 5.7 Revise the paragraph to read: "...and reports required by law, government agencies, or the Contract Documents."

#### **ARTICLE 6 COST OF THE WORK**

- 6.1 Revise the paragraph to read: "The Cost of the Work shall be the total construction cost, or to the extent the Project is not completed, the estimated total construction cost recorded on the current BG-1 form financial page, Column A, Line 1, to the Owner to construct..."

#### **ARTICLE 9 TERMINATION OR SUSPENSION**

- 9.6 Revise the paragraph to read: "In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due."
- 9.7 Delete the entire paragraph.

#### **ARTICLE 10 MISCELLANEOUS PROVISIONS**

- 10.3 Delete the words: ", except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement."
- 10.4 Delete the sentence beginning "If the Owner requests the Architect to execute consents..." In the last sentence, delete the words "or consents."
- 10.8 Revise paragraph to read: "Except as provided under the Kentucky Open Records Act, KRS 61.870 to KRS 61.884, if the Architect or Owner receives information..."

#### **ARTICLE 11 COMPENSATION**

- 11.5 Revise paragraph to read:

"Schematic Design Phase.....	15%
"Design Development Phase .....	20%
"Construction Documents Phase (Completed Plans & Specifications) .....	40%
"Bidding and Negotiation Phase.....	05%
"Construction Phase.....	20%"
- 11.6 Revise the subparagraph to read: "...lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of Construction Cost as recorded on the BG-3 form approved by the Kentucky Department of Education. The Architect shall be..."

## **11.8 COMPENSATION FOR REIMBURSABLE EXPENSES**

11.8.1.8 Revise the clause to read: "Expense of additional insurance coverage or limits requested by the Owner in excess of that required to be carried by the Architect and the Architect's Consultants by the Kentucky Department of Education."

11.8.3 Add the new paragraph: "Prior to incurring Reimbursable Expenses, the Architect shall estimate the cost of the reimbursable items, and obtain approval of the Owner's representative for the expenditures."

## **11.10 PAYMENTS TO THE ARCHITECT**

11.10.1 Delete entire paragraph.

11.10.5 Add the new paragraph: "The Architect shall pay each project Consultant within 10 days after receipt of each payment from the Owner for services rendered. Consultant's fees shall be based on a typical 80% x total fee for work categories paid to the Architect for which the Consultant is responsible. If the Architect's fee is a lump sum, the Consultant shall receive the same proportionate amount. If such payments are not made in a timely manner, the Consultant may make a written request that the Owner issue joint checks for all subsequent payments to the Architect naming the Architect and the Consultant as payees."

11.10.6 Add the new paragraph: "Prior to final payment, the Architect shall provide the Owner a written statement of release from each Consultant stating that all fees up to that point have been paid. (This clause does not apply to Consultants, i.e., geotechnical engineers, land surveyors, having direct contracts with the Owner.) The Architect shall be paid his construction phase fee at the same proportionate percentage as the construction's completion until final contract completion as designated by the submission and approval of the BG-4 form by the Owner, to the Kentucky Department of Education."

## **END OF AMENDMENT**

**Kentucky Department of Education  
Division of Facilities Management**

**Amendment to**

**AIA Document B151  
Abbreviated Standard Form of Agreement Between Owner and Architect  
1997 Edition**

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**List of Design Consultants**

(Identify Consultant, Firm, Mailing Address, Telephone and Fax Numbers)

Structural Design: N/A

Mechanical/Electrical Design: CMTA Consulting Engineers  
2365 Harrodsburg Road  
Suite B-400  
Lexington, KY 40504

Landscape/Site Design: N/A

KETS Consultants: N/A

Other: Civil Engineering  
(Identify Consultant and  
Design Area)

Professional Liability Insurance Certificates must be attached for consultants covered by KRS 322, 323, and 323A.
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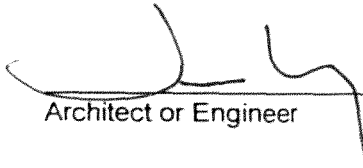
The undersigned agent, being duly sworn, states that neither he nor his company has any relationship (financial or through kinship) to:

- ☒ Any school board member or the superintendent;
- ☐ Any or all prime contractors or material suppliers when using the construction management method of construction.

The undersigned agent further states that he has not entered into any agreement or collusion with any person relative to the price bid by anyone nor has he attempted to induce anyone to refrain from bidding.

Explain below any kinship or financial relationship that exists between the agent or the agent's company and any of the parties listed above:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_  
Architect or Engineer

\_\_\_\_\_  
Construction Manager

Or

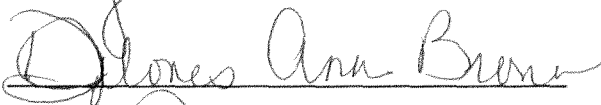
RBS Design Group, PSC     Architect  
Name of Company                      Title

\_\_\_\_\_  
Name of Company                      Title

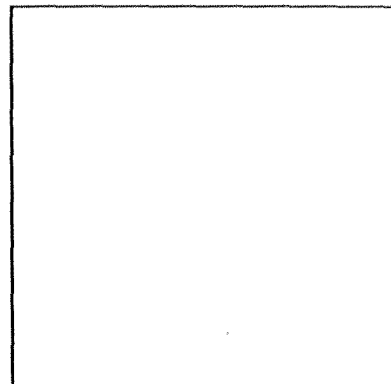
Subscribed and Sworn to Me this

21<sup>st</sup> day of  
February, 2012.

Notary Public



My Commission expires July 13, 2013.



Notary Seal