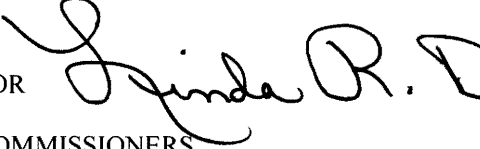

TULSA COUNTY

**PURCHASING
DEPARTMENT**

MEMO

DATE: SEPTEMBER 5, 2012

FROM: LINDA R. DORRELL
PURCHASING DIRECTOR 

TO: BOARD OF COUNTY COMMISSIONERS

SUBJECT: CONTRACT FOR PROJECT PERFORMANCE-CHEROKEE PRIDE
CONSTRUCTION, INC.

BIDS FOR THE WEST 103rd STREET NORTH ROADWAY AND DRAINAGE IMPROVEMENTS FROM OSAGE DRIVE TO STATE HIGHWAY 11 WERE OPENED ON AUGUST 20, 2012 AND THE BID RECOMMENDATION TO CHEROKEE PRIDE CONSTRUCTION, INC. WAS APPROVED BY THE BOARD OF COUNTY COMMISSIONERS ON AUGUST 27, 2012, CMF #225639.

THE TULSA COUNTY PURCHASING DEPARTMENT RESPECTFULLY REQUESTS THE BOARD OF COUNTY COMMISSIONERS APPROVE AND EXECUTE THE ATTACHED CONTRACT FOR PROJECT PERFORMANCE BETWEEN THE BOARD OF COUNTY COMMISSIONERS AND CHEROKEE PRIDE CONSTRUCTION, INC. FOR THE ROADWAY AND DRAINAGE IMPROVEMENTS AS STATE ABOVE.

RESPECTFULLY SUBMITTED FOR YOUR APPROVAL AND EXECUTION.

LRD/sks

ORIGINAL: EARLENE WILSON, COUNTY CLERK, FOR THE SEPTEMBER 10, 2012 AGENDA.

COPIES: COMMISSIONER JOHN M. SMALIGO
COMMISSIONER KAREN KEITH
COMMISSIONER FRED R. PERRY
MARK LIOTTA, CHIEF DEPUTY
TOM RAINS, COUNTY ENGINEER

**CONTRACT
FOR PROJECT PERFORMANCE**

THIS AGREEMENT, made and entered into by and between the Board of County Commissioners of Tulsa County, Oklahoma, a political subdivision of the State of Oklahoma, and hereinafter referred to as "County", and

Cherokee Pride Construction, Inc.

Hereinafter called "Contractor".

WITNESSETH:

That for and in consideration of the mutual terms, covenants and conditions hereinafter set forth, the parties agree as follows:

- 1. Recitals.** The County has heretofore called for bids for the construction of **West 103rd Street North Roadway and Drainage Improvements from Osage Drive to SH 11**

Hereinafter called the "Project", same to be in accordance with the plans and specifications therefore prepared by **Tulsa County Engineering Department**

hereinafter referred to as **Engineer**, which plans and specifications are on file in the office of the County Clerk at the Tulsa County Courthouse and are further identified as all the contract documents, blueprints, drawings and any addenda thereto and are hereby made a part hereof; all of which instruments shall be hereinafter referred to as "plans and specifications", which shall mean the plans, specifications, drawings, general conditions and any and all other instruments prepared and filed with the County Clerk in connection with this project. Notice to Bidders dated July 16, 2012 **wherein** the County called for bids as aforesaid, was published in the Tulsa Daily Commerce & Legal News on July 20, 2012 and July 27, 2012 as appears more fully in the affidavit of Community Publishers, Inc., a corporation, said affidavit being on file in the office of the County Clerk of Tulsa County Courthouse. Pursuant to advertisement for bids, the sealed bid proposal of Contractor was duly received and publicly opened on the date and at the time prescribed in the Notice to Bidders, in the County Commission Room, Tulsa County Courthouse, and read aloud as were all other bids duly received. The bid of Contractor is now on file in the County Clerk and is incorporated herein and made a part hereof by reference, as fully as if copied at length herein. By order and direction of the Board of County Commissioners of Tulsa County, Oklahoma, all bids received for this project were filed and examined to determine the lowest responsible bid therefore. Thereafter, on August 27, 2012, at a regular meeting of the Board of County Commissioners of Tulsa County, Oklahoma, the Contractor's bid was accepted as the lowest responsible bid for said construction. Contractor admits that he has visited the site of the project and that the plans and specifications are sufficient to accomplish their intended purposes, to which Contractor does agree and warrant. This contract, together with the plans and specifications, general conditions, Contractor's bid and any other documents hereinafter identified, constitutes the entire agreement between the parties hereto.

- 2. Bonds, Insurance and Indemnity.** Contractor's performance bond, maintenance bond, statutory bond, and all insurance policies, shall be submitted to the County for approval by the District Attorney concurrently with the submission of this agreement. This contract shall be of no force or effect until all such bonds, insurance policies and/or insurance certificates required herein and in the contract documents are submitted to the District Attorney's office and there approved as to form and content and placed on file in the office of the County Clerk of Tulsa County. Upon approval of the bonds, insurance policies, and/or insurance certificates required herein and the contracts due execution and

damage, loss or expense due to the performance of this contract and/or Contractor's operation hereunder. It is further understood and agreed that if any part of Contractor's work depends upon the work of any other contractor, firm, or person, other than one of the Contractor's sub-contractors, Contractor shall inspect and promptly report to County and/or Engineer any and all defects of such work as would render it unsuitable for proper performance under this contract. The term "Work" shall mean labor and materials and/or the furnishing and performance thereof. Failure by Contractor to inspect and report any such deficiency by any contractor other than one of his sub-contractors as not being fit, adequate and proper work for the reception of the work to be done by Contractor shall not excuse Contractor from timely, due and proper performance of his work under this contract, and this clause shall not be construed or interpreted as relieving the Contractor of any and/or the primary responsibility hereunder to report such deficiency.

Due and proper performance under this contract shall mean that all work shall be performed in a good and first-class, workmanlike manner, and the requirement of due performance of this contract in a good and workmanlike manner shall extend to and encompass any and all work done under this contract by the Contractor and/or any of his sub-contractors.

3. Scope of Work. The work to be done and performed by the Contractor is that contained in the basic bid proposal in which Contractor has agreed to do such work for the **base sum \$536,712.40**. In consideration of the payment thereof, Contractor shall, in a good and first-class, workmanlike manner, at his own cost and expense, furnish all labor, materials, and supplies, all necessary tools and equipment required to commence, perform and complete this project in strict accordance with the plans and specifications.

4. Construction. It is understood and agreed that Contractor shall, within ten (10) days after receipt of a work order, commence the performance of this contract, and shall thereafter diligently prosecute such performance until completion of same. In any event, Contractor shall complete construction and performance of this contract within 90 calendar days from the date of the work order, in accordance with the bid proposal of Contractor, and pursuant to the conditions stipulated in the general conditions. Contractor shall at all times be represented at the site of the project by a competent foreman or superintendent satisfactory to Engineer. Said representative shall have authority to act for the Contractor in all respects and in all matters concerning the work and performance of this contract, and any commitment, action or representation made by said agent shall be fully binding upon Contractor as fully as if made by it. All work shall be performed in a good and first-class, workmanlike manner in strict accordance with the said plans and specifications.

5. Title. Title to all materials to be furnished by Contractor shall remain in Contractor, and Contractor shall retain all risk of loss or injury to said materials until final approval and acceptance of complete performance of this contract.

6. Alterations and Extras. It is hereby specifically noted and agreed that neither Engineer nor any other agent of the County of Tulsa has authority to vary, modify or add to the terms and conditions of the contract documents to the prejudice of the County. Contractor shall not be entitled to any claim for extras in any amount, whether performed or not, unless before the commencement thereof such extras shall have been approved and authorized in writing by the Board of County Commissioners of the County of Tulsa, and ratifications of any extras subsequent to the act shall be illegal and not binding upon County.

7. Progress Payments. The County shall make payments on account of the contract and as provided in the contract document, as follows:

In the event Contractor has duly performed this contract without delay, deviation or default, Contractor may on or about the 10th day of each calendar

85.23, pay to Contractor ninety percent (95%) of such estimates, less the aggregate of all previous payments made thereunder.

Requests for payment shall be submitted to Engineer on AIA document G702 accompanied by AIA document G702A or any other form acceptable to the County, listing the percentages of completion for the various items of the contract.

8. Subcontracts. A subcontractor is a person who has a direct contract with the Contractor to perform any of the work at the site. The Contractor shall submit a list of all Subcontractors proposed for the principal portions of the work within five (5) calendar days from the date hereof. Approval of all Subcontractors must be had before commencement of work, which approval shall not be withheld an unreasonable length of time. The Contractor shall not employ any Subcontractor to whom Engineer or the County may have a reasonable objection. In the event of any rejection of a proposed Subcontractor, the Contractor shall immediately submit an additional proposed Subcontractor for the work contemplated in the same manner as the original list.

9. Acceptance and Final Payment. Upon full performance hereof, and completion of the project, Contractor shall give written notice to Engineer that the work is ready for final inspection and acceptance, and shall at the same time submit evidence satisfactory to Engineer and the County that all payrolls, materials bills, sums due Subcontractors and any or all other indebtedness connected with the work has been fully paid. Engineer shall promptly make an inspection of the work and construction done. In the event any portion of the work is not in accordance with the plans and specifications or is faulty, whether such defect be latent or patent, discovered or undiscovered, before the final acceptance under this provision, Contractor shall at his expense remedy such deficiencies or defaults and correct any improper construction or workmanship as may be specified by the County, and/or its Engineer, and shall thereupon complete performance of this contract in accordance with the plans and specifications and these contract documents.

When, upon inspection, Engineer finds that the project has been fully completed and the contract fully performed, he shall promptly issue and deliver to the County and the Contractor Engineer's signed final certificate stating that the work specified in the contract has been completed and is ready for acceptance under the terms and conditions of this instrument. Such certificate shall state the entire balance found to be due to Contractor. Upon receipt of the final certificate from Engineer and the duly sworn certificate and affidavits as required in Section 7 above, and approval thereof by County, and a finding by County that said work has been completed according to the terms and conditions of the contract documents, County shall within twenty (20) days thereafter pay to Contractor the entire balance then due and payable under the terms of this contract. It is hereby specifically noted, understood and agreed that Engineer's certificates, whether for the issue of any progress payment or the final certificate for the issue of the final payment hereof, shall not of itself constitute an approval or acceptance of any faulty work or defective materials, whether latent or patent, neither shall any payments, whether progress payments or final payment by the County, constitute a waiver and/or acceptance of any defective or faulty workmanship or materials hereunder. On such final completion Contractor shall furnish to County a release of all claims and right of lien and sworn statements as required by law, and Contractor hereby acknowledges receipt of statutory notice to furnish the same before final payment shall be due under this contract. The full performance of this contract shall be subject to Contractor's full performance of all the obligations contained thereunder, together with the specific items and obligations and the full performance thereof contained in the contract documents, plans and specifications, general conditions, and addenda thereto, heretofore identified in this contract.

10. Discrimination Prohibited. The Contractor agrees, and further agrees to require of all Subcontractors, to adhere to and follow all Federal, State, and County laws, including but not limited to: Civil Rights Act of 1964, Title VII,

such invalidity does not affect any other provision of this contract or its application that can be given effect without the invalid provision or application.

13. In the event of any conflict, inconsistency, or incongruity between the provisions of the Contract for Project Performance and any of the provisions of the plans and specifications, the provisions of this Contract for Project Performance shall in all respects govern and control.

IN WITNESS WHEREOF, the parties hereto have executed in multiple copies this _____ day of _____, 20__.

"COUNTY"

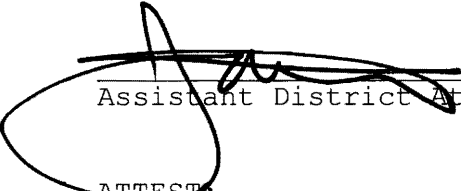
Board of County Commissioners
Tulsa County, Oklahoma

ATTEST:

County Clerk

Chairman

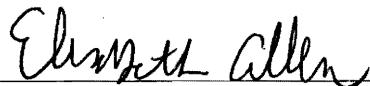
APPROVED AS TO FORM:



Assistant District Attorney

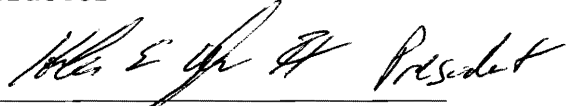
ATTEST:

"CONTRACTOR"



Secretary

Cherokee Pride Construction, Inc.
Contractor

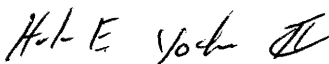
By: 

Title

STATE OF OKLAHOMA

ss

COUNTY OF TULSA



of lawful age, being first duly sworn on oath says that (s) he is the agent authorized by Contractor to submit the above contract to the Board of County Commissioners of Tulsa County, Oklahoma. Affiant further states that Contractor has not paid, given, or donated or agreed to pay, give, or donate to any officer or employee of the County of Tulsa any money or other thing of value, either directly or indirectly, in the procuring of the contract.

Subscribed and sworn to before me this 5th day of September, 2012

PERFORMANCE BOND

Bond #CBB32981

KNOW ALL MEN BY THESE PRESENTS:

That Cherokee Pride Construction, Inc., as Principal, and National American Insurance Company, a corporation organized under the laws of the State of Oklahoma and authorized to transact business in the State of Oklahoma, as Surety, are held and firmly bound unto the Board of County Commissioners of Tulsa County, Oklahoma in the penal sum of Five Hundred Thirty-Six Thousand, Seven Hundred Twelve Dollars and 40/100***** Dollars (\$536,712.40) in lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, trustees, successors, and assigns, jointly and severally, firmly by these presents.

DATED this _____ day of _____, 2012.

The condition of this obligation is such that:

WHEREAS, said Principal entered into a written Contract with the Board of County Commissioners of Tulsa County, Oklahoma dated _____, 2012, for

West 103rd Street Roadway and Drainage Improvements, Osage Drive to SH 11

all in compliance with the plans and specifications therefore, made a part of said Contract and on file in the office of the County Clerk, of Tulsa County, Tulsa County Administration Building, Tulsa, Oklahoma.

NOW, THEREFORE, if said Principal shall, in all particulars, well, truly and faithfully perform and abide by said Contract and each and every covenant, condition, and part thereof and shall fulfill all obligations resting upon said Principal by terms of said Contract and said specifications; and if said Principal shall promptly pay, or cause to be paid, all labor, materials and/or repairs and all bills for labor performed on said work, whether by subcontract or otherwise, and if said Principal shall protect and save harmless said Board of County Commissioners of Tulsa County, Oklahoma, from all loss, damage, and expense to life or property suffered or sustained by any person, firm, or corporation caused by said Principal or his or its agents, servants or employees in the construction of said work, or by or in consequence of any negligence, carelessness or misconduct in guarding and protecting the same, or from any act or omission of said Principal or his or

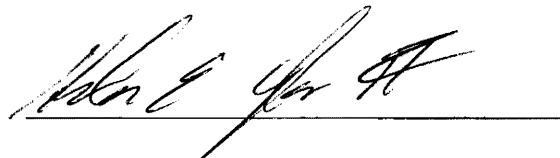
its agents, servants, or employees, and if said principal shall protect and save the Board of County Commissioners of Tulsa County, Oklahoma, harmless from all suits and claims of infringement or alleged infringement or patent rights or processes, then this obligation shall be null and void, otherwise to be and remain in full force and effect.

It is further expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of this Bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year first above written.

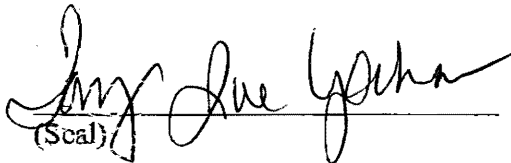
Principal:

Cherokee Pride Construction, Inc.



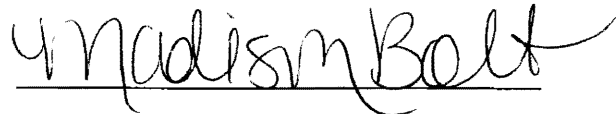
By: Harlan Yocham, President

ATTEST:


(Seal)

Surety:

National American Insurance Company



By: Madison Bolton
Attorney-in-Fact

(Seal)

STATUTORY BOND

Bond #CBB32981

KNOW ALL MEN BY THESE PRESENTS:

That Cherokee Pride Construction, Inc., as Principal, and National American Insurance Company, a corporation organized under the laws of the State of Oklahoma and authorized to transact business in the State of Oklahoma, as Surety, are held and firmly bound unto the Board of County Commissioners of Tulsa County, Oklahoma, in the penal sum of Five Hundred Thirty-Six Thousand, Seven Hundred Twelve Dollars and 40/100****Dollars \$ 536,712.40) in lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, trustees, successors, and assigns, jointly and severally, firmly by these presents.

DATED this _____ day of _____, 2012 .

The condition of this obligation is such that:

WHEREAS, said Principal entered into a written Contract with the Board of County Commissioners of Tulsa County, Oklahoma, dated _____, 2012 , for

West 103rd Street Roadway and Drainage Improvements, Osage Drive to SH 11

all in compliance with the plans and specifications therefore, made a part of said Contract and on file in the office of the County Clerk of Tulsa County, Tulsa County Administration Building, Tulsa, Oklahoma.

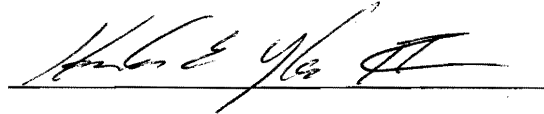
NOW, THEREFORE, if said Principal shall fail or neglect to pay all indebtedness incurred by said Principal or subcontractors of said Principal who perform work in the performance of such contract, for labor and materials and repairs to and parts for equipment used and consumed in the performance of said Contract within thirty (30) days after the same becomes due and payable, the person, firm, or corporation entitled thereto may sue and recover on this bond, the amount so due and unpaid.

It is further expressly agreed and understood by the parties hereto that no changes or alternations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of this Bond.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year first above written.

Principal:

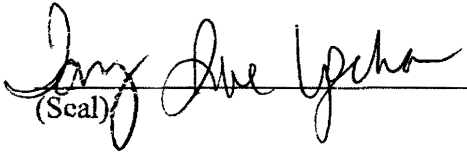
Cherokee Pride Construction, Inc.



By: Harlan Yocham

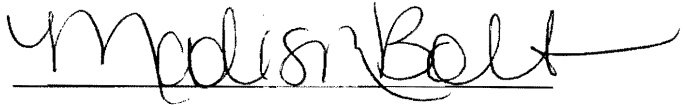
Title: President

ATTEST:



Surety:

National American Insurance Company



By: Madison Bolton

Attorney-in-Fact

(Seal)

MAINTENANCE BOND

Bond #CBB32981

KNOW ALL MEN BY THESE PRESENTS:

That Cherokee Pride Construction, Inc., as Principal,
and National American Insurance Company, a corporation
organized under the laws of the State of Oklahoma and authorized to transact
business in the State of Oklahoma, as Surety, are held and firmly bound unto the Board of
County Commissioners of Tulsa County, Oklahoma, in the penal sum of
Five Hundred Thirty-Six Thousand, Seven Hundred Twelve Dollars and 40/100**** Dollars
(\$ 536,712.40) in lawful money of the United States of America, said sum being
equal to one hundred percent (100%) of the contract price, for the payment of which, well and
truly to be made, we bind ourselves and each of us, our heirs, executors, administrators, trustees,
successors, and assigns, jointly and severally, firmly by these presents.

DATED this _____ day of _____, 2012.

WHEREAS, the said Principal has constructed certain improvements described as follows:

West 103rd Street Roadway and Drainage Improvements, Osage Drive to SH 11

which said improvements have been constructed in compliance with the plans and specifications
therefore, made a part of said Contract and on file in the office of the County Clerk of Tulsa
County, Tulsa County Administration Building, Tulsa, Oklahoma.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the
said Principal shall maintain said improvements for a period of one year, against any failure due
to defective workmanship or materials, said year period to begin with the date of final acceptance
of such completed improvements described above, then this obligation shall be null and void,
otherwise to remain in full force and effect subject however to the following express provision:

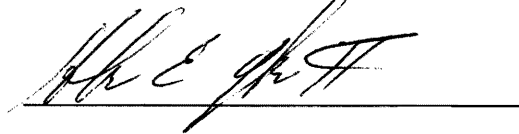
N/A

The Oblige, by and through its proper representative, shall give the Principal and the Surety written notice of all repairs to fulfill the terms of this maintenance guarantee; and the said Principal and Surety shall, after receipt of any such notice, be allowed a reasonable period of time in which to make any such repairs.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year first above written.

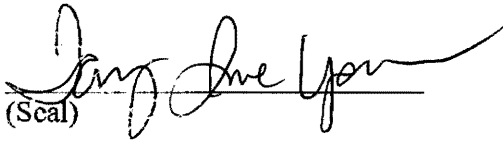
Principal:

Cherokee Pride Construction, Inc.



By: Harlan Yocham, President

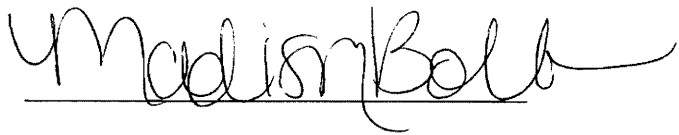
ATTEST:



(Seal)

Surety:

National American Insurance Company



By: Madison Bolton
Attorney-in-Fact

(Seal)

**NATIONAL AMERICAN INSURANCE COMPANY
CHANDLER, OKLAHOMA
POWER OF ATTORNEY**

Bond Number **CBB 32981**

DUPLICATES SHALL HAVE THE SAME FORCE AND EFFECT AS AN ORIGINAL ONLY WHEN ISSUED IN CONJUNCTION WITH THE ORIGINAL.

KNOW ALL MEN BY THESE PRESENTS: That the National American Insurance Company, a corporation duly organized under the laws of the State of Oklahoma, having its principal office in the city of Chandler, Oklahoma, pursuant to the following resolution, adopted by the Board of Directors of the said Company on the 8th day of July, 1987, to wit:

"Resolved, that any officer of the Company shall have authority to make, execute and deliver a Power of Attorney constituting as Attorney-in-fact, such persons, firms, or corporations as may be selected from time to time.

Resolved that nothing in this Power of Attorney shall be construed as a grant of authority to the attorney(s)-in fact to sign, execute, acknowledge, deliver or otherwise issue a policy or policies of insurance on behalf of National American Insurance Company.

Be It Further Resolved, that the signature of any officer and the Seal of the Company may be affixed to any such Power of Attorney or any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such powers so executed and certified by facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond and documents relating to such bonds to which it is attached."

National American Insurance Company does hereby make, constitute and appoint

PRINCIPAL: NAME, ADDRESS CITY, STATE, ZIP	
Cherokee Pride Constructors PO Box 28 Sapulpa, OK 79067	
EFFECTIVE DATE	
CONTRACT AMOUNT	
\$	536,712.40
BOND AMOUNT	
\$	536,712.40

Barry Herring, Vicky Jarvis, Madison Bolton, Connie Thueson, Mark Tedford

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred in its name, places and stead, to sign, execute, acknowledge and deliver in its behalf, and its act and deed, as follows:

The authority of said Attorney-in-fact to bind the company shall not exceed \$1,000,000 for any single bond.

And to bind National American Insurance Company thereby as fully and to the same extent as if such bonds and documents relating to such bonds were, signed by the duly authorized officer of the National American Insurance Company, and all the acts of said Attorney(s) pursuant to the authority herein given, are hereby ratified and confirmed.

IN WITNESS WHEREOF, the National American Insurance Company has caused these presents to be signed by any officer of the Company and its Corporate Seal to be hereto affixed.



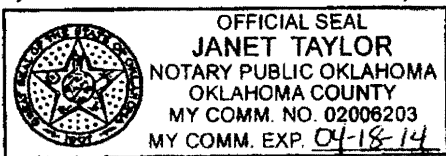
NATIONAL AMERICAN INSURANCE COMPANY

W. Brent LaGere

W. Brent LaGere, Chairman & Chief Executive Officer

STATE OF OKLAHOMA)
COUNTY OF LINCOLN) SS:

On this 26th day of September, A.D. 2011, before me personally came W. Brent LaGere, to me known, who being by me duly sworn, did depose and say; that he resides in the County of Lincoln, State of Oklahoma; that he is the Chairman and Chief Executive Officer of the National American Insurance Company, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name, thereto by like order.



Janet Taylor

Notary Public
My Commission Expires April 18, 2014
Commission #02006203

STATE OF OKLAHOMA)
COUNTY OF LINCOLN) SS:

I, the undersigned, Assistant Secretary of the National American Insurance Company, an Oklahoma Corporation, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force.

Signed and Sealed at the City of Chandler.

Dated the _____ day of _____, 2012



Joyce M. Seitz

Joyce M. Seitz, Assistant Secretary