

**AGREEMENT BETWEEN OWNER AND CONTRACTOR** for residential or Small Commercial Project

**AGREEMENT** made as of the «15th» day of « August » in the year « 2022 »  
(In words, indicate day, month and year.)

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

«Bayou Treme Center »«Limited Liability Company »  
«2533 Columbus Street »  
« New Orleans, LA 70119 »  
« Jonathan Leit, Director »

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

« Master Maintenance Roofing »«Company»  
« 2805 Sells Street »  
« Metairie, Louisiana 70003 »  
« Konstantin Bogdanov, President»

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

«Re-roof of former church building»  
«2541 Bayou Road  
New Orleans, LA 70119»  
«Project entails the replacement of 100+ year old slate roof and component parts, materials and accessories. Demolition and disposal of existing slate roof. Restoration and repair of any damaged substrate material, installation of new Ice and water shield peel and stick membrane over entire substrate material, all new copper flashing materials. All proper safety measures required throughout duration of scope of work.

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

N/A

The Owner and Contractor agree as follows.

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**ARTICLE 1 THE CONTRACT DOCUMENTS**

§ 1.1 The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 the drawings and specifications prepared by the Architect, dated « » , and enumerated as follows:

Drawings:

Number	Title	Date
See Attached		

Specifications:

Section	Title	Pages
See Attached		

- .3 addenda prepared by the Architect as follows:

Number	Date	Pages

- .4 written orders for changes in the Work issued after execution of this Agreement; and

.5 other documents, if any, identified as follows:

«

**ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

The number of calendar days available to the Contractor to substantially complete the Work is the Contract Time. The date of commencement of the Work shall be the date of this Agreement unless otherwise indicated below. The Contractor shall substantially complete the Work, no later than « November 22, 2022 » ( « 100 » ) calendar days from the date of commencement, subject to adjustment as provided in Article 10 and Article 11. (Insert the date of commencement, if it differs from the date of this Agreement.)

« Notice to Proceed will be issued on August \_\_, 2022. »

**ARTICLE 3 CONTRACT SUM**

§ 3.1 Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

« \$466,123.00 » (\$ «Four hundred sixty six thousand one hundred twenty three dollars and zero cents » )

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work: (Itemize the Contract Sum among the major portions of the Work.)

Portion of Work	Value
See attached Quote	

§ 3.3 Unit prices, if any, are as follows: (Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ 3.4 Allowances included in the Contract Sum, if any, are as follows: (Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price

§ 3.5 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner: (State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

« »

§ 3.6 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

**ARTICLE 4 PAYMENT**

§ 4.1 Based on Contractor’s Applications for Payment, the Owner shall pay the Contractor, in accordance with Article 12, as follows: (Insert below timing for payments and provisions for withholding retainage, if any.)

« \$150,000 Deposit prior to Contract execution, thereafter monthly payments payable 30 day net upon receipt; 5% retainage; no more than four (4) Applications for Payment »

**§ 4.2 APPLICATIONS FOR PAYMENT**

§ 4.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment prepared in accordance with the schedule of values, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the

Contractor's right to payment as the Owner may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 4.2.1.1 Applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 4.2.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 4.2.1.3 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing and in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 4.2.1.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 4.3 The Contractor shall provide lien waivers as required by Owner with each Application for Payment and at the conclusion of the Work.

#### § 4.4 DECISIONS TO WITHHOLD CERTIFICATION

§ 4.4.1 The Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;  
or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 4.4.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

### ARTICLE 5 INSURANCE

#### § 5.1 CONTRACTOR'S LIABILITY INSURANCE

§ 5.1.1 The Contractor shall purchase and maintain in a company or companies lawfully authorized to do business in the State of Louisiana such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;  
Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;  
Claims for damages insured by usual personal injury liability coverage;  
Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;  
Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;  
Claims for bodily injury or property damage arising out of completed operations;  
Claims involving contractual liability insurance applicable to the Contractor's obligations under this Agreement; and  
Claims involving the Contractor's indemnity obligations under Article 8.12 of this Agreement.

**§ 5.1.2** The liability insurance required by Section 5.1.1 shall be written for not less than \$1,000,000 Dollars per incident and \$2,000,000 Dollars aggregate. Coverages shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Agreement

**§ 5.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 5.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Articles 4.2 and 12 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Article 5.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§ 5.1.4.** The Contractor shall cause the commercial liability coverage required by the Agreement to include (1) the Owner and relevant ownership entities as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. These ownership entities required as additional insureds are the Owner, BTC Master Tenant, L.L.C., and BTC Leverage Lender, L.L.C.

## **§ 5.2 OWNER'S LIABILITY INSURANCE**

**§ 5.2.1.** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

## **§ 5.3 PROPERTY INSURANCE**

**§ 5.3.1. Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Louisiana, property insurance written on a builder's risk or equivalent policy form until final payment has been made as provided in Articles 4.2 and 12. This insurance shall include interests of the Owner, relevant ownership entities, and the Contractor.**

**§ 5.3.1.1. The Owner shall pay for all deductible amounts incurred under the policy.**

**§ 5.3.1.2. All tools and equipment of Contractor or Subcontractors will be the sole responsibility of the Contractor.**

**§ 5.3.2.** The Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 5.3.3.** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method

of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

## **§ 5.4 RESERVED**

## **ARTICLE 6 GENERAL PROVISIONS**

### **§ 6.1 THE CONTRACT**

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

### **§ 6.2 THE WORK**

The term "Work" means the construction and services required by the Project Definition, and includes all other labor, materials, equipment and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations. See attached documents.

### **§ 6.3 INTENT**

The intent of the Contract Project Definition is to include all items necessary for the proper execution and completion of the Work by the Contractor.

## **ARTICLE 7 OWNER**

### **§ 7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 7.1.1** If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

**§ 7.1.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, the Owner shall obtain and pay for other necessary approvals, easements, assessments and charges.

### **§ 7.2 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

### **§ 7.3 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Contractor.

### **§ 7.4 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ 7.4.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

**§ 7.4.2** The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

**§ 7.4.3** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

### **§ 7.5 Owner & Owner's Representative**

The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative.

§ 7.5.1 The Owner's representative shall be:

Michael Grote  
Alembic Community Development  
2533 Columbus St  
New Orleans, Louisiana 70119  
mgrote@alembiccommunity.com

## **ARTICLE 8 CONTRACTOR**

### **§ 8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

§ 8.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations.

### **§ 8.2 CONTRACTOR'S CONSTRUCTION SCHEDULE**

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work.

### **§ 8.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

§ 8.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner have made a timely and reasonable objection.

### **§ 8.4 LABOR AND MATERIALS**

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

§ 8.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

### **§ 8.5 WARRANTY**

The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

### **§ 8.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.

### **§ 8.7 PERMITS, FEES AND NOTICES**

§ 8.7.1 The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Owner in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

### **§ 8.9 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner. However, from time to time and with advance notice, the Owner may use the interior of the building for specific events.

### **§ 8.10 CUTTING AND PATCHING**

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

### **§ 8.11 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery and surplus material; and shall properly dispose of waste materials.

### **§ 8.12 INDEMNIFICATION**

**§ 8.12.1.** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, its members, managers, affiliates and subsidiaries (each a "Owner Party") from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, ("Losses") arising out of or resulting from performance of the Work, provided that such Loss, including to the extent attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, a Sub-subcontractor, their owners, managers, directors, officers, employees or agents and anyone directly or indirectly employed by them, other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors or anyone for whose acts they may be liable (each a "Contractor Party" and collective, the "Contractor Parties"), regardless of whether or not such Loss is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 8.12.

**§ 8.12.2.** In claims against any person or entity indemnified under this Article 8.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Article 8.12.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### **§ 8.13 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

**§ 8.13.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of each Subcontract bid package, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 7 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 7-day period shall constitute notice of no reasonable objection.

**§ 8.13.2** The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 8.13.3** If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work.

**§ 8.13.4** The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitution. If the Owner reasonably concludes that any portion of the Work subcontracted by the Contractor is not being performed in accordance with the Contract Documents, the Contractor shall, upon written request of the Owner, remove the Subcontractor performing such Work. The Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work.



## **§ 8.14 LIENS**

**§ 8.14.1** The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons and entities properly providing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors) to the extent that the Owner has paid the Contractor for such. The Contractor shall provide to the Owner such releases and waivers of liens and claims and other documents monthly with its payment application to evidence such payment or bond (and discharge). The Owner may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are provided.

**§ 8.14.2** The Contractor shall defend, indemnify, and hold harmless the Owner from any liens, including all expenses, Professional costs and attorneys' fees, except to the extent a lien has been filed because of failure of timely payment by the Owner for the Work in any such lien.

## **ARTICLE 9 Reserved.**

## **ARTICLE 10 CHANGES IN THE WORK**

### **§ 10.1 GENERAL**

**§ 10.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 10 and elsewhere in the Contract Documents.

**§ 10.1.2** The Owner will have authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such orders shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall carry out such orders promptly.

**§ 10.1.3** If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

**§ 10.1.4** A Change Order shall be based upon agreement among the Owner and Contractor; a Construction Change Directive requires agreement by the Owner and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Owner alone.

**§ 10.1.5** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### **§ 10.2 CHANGE ORDERS**

**§ 10.2.1** A Change Order is a written instrument prepared by the Owner and signed by the Owner and Contractor stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### **§ 10.3 CONSTRUCTION CHANGE DIRECTIVES**

**§ 10.3.1** A Construction Change Directive is a written order prepared by the Owner and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 10.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 10.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

**§ 10.3.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**§ 10.3.5** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 10.3.6** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 10.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 10.3.7 shall be limited to the following:

- .1 Costs of labor, including social security and unemployment insurance, fringe benefits required by agreement, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

**§ 10.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 10.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for the undisputed Cost of the Work completed under the Construction Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Owner determines, in the Owner's professional judgment, to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 17.

**§ 10.3.10** When the Owner and Contractor agree with a determination made by the Owner concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

## **ARTICLE 11 TIME**

**§ 11.1** Time limits stated in the Contract Documents are of the essence of the Contract.

**§ 11.2** If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

## **§ 12 SUBSTANTIAL COMPLETION**

**§ 12.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

**§ 12.2** When the Work or designated portion thereof is substantially complete, the Owner will make an inspection to determine whether the Work is substantially complete. When the Owner determines that the Work is substantially complete the Owner shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish the responsibilities of the Owner and Contractor, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

## **§ 13 FINAL COMPLETION AND FINAL PAYMENT**

**§ 13.1** Upon receipt of a final Application for Payment, the Owner will inspect the Work. When the Owner finds the Work acceptable and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment.

**§ 13.2** Final payment shall not become due until the Contractor submits to the Owner releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract.

**§ 13.3** Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 14 PROTECTION OF PERSONS AND PROPERTY**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury or loss to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

## **ARTICLE 15 CORRECTION OF WORK**

**§ 15.1** The Contractor shall promptly correct Work rejected by the Owner as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement and additional testing.

**§ 15.2** In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

**§ 15.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

## **ARTICLE 16 TERMINATION OF THE CONTRACT**

### **§ 16.1 TERMINATION BY THE CONTRACTOR**

If the Owner fails to certify payment as provided in Section 4.2 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.2 for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

### **§ 16.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 16.2.1** The Owner may terminate the Contract if the Contractor

- .1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2** fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;

- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

### § 16.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 17 CLAIMS AND DISPUTES

### § 17.1 CLAIMS

#### § 17.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 17.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### § 17.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Article 16, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Owner will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 17.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property.

#### § 17.1.5 CLAIMS FOR ADDITIONAL TIME

§ 17.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 17.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions had an adverse effect on the scheduled construction.

#### § 17.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 16. Nothing contained in this Section 17.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## **§ 17.2 INITIAL DECISION**

**§ 17.2.1** Claims shall be referred to the Initial Decision Maker for initial decision. The Owner will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 17.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 17.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 17.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 17.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 17.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 17.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 17.2.6.1.

**§ 17.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

**§ 17.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 17.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### **§ 17.3 MEDIATION**

**§ 17.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 17.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 17.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 17.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **§ 17.4 ARBITRATION**

**§ 17.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 17.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**§ 17.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 17.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

## **ARTICLE 18 OTHER TERMS AND CONDITIONS**

*(Insert any other terms or conditions below.)*

### **§ 18.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

### **§ 18.2 TESTS AND INSPECTIONS**

**§ 18.2.1** At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

**§ 18.2.2** If the Owner requires additional testing, the Contractor shall perform those tests.

**§ 18.2.3** The Owner shall bear cost of tests, inspections or approvals that do not become requirements until after the Contract is executed.

### **§ 18.3 GOVERNING LAW**

The Contract shall be governed by the laws of the State of Louisiana.

**§ 18.4 CDBG CONSTRUCTION COMPLIANCE PROVISIONS**

The Contractor shall comply with the CDBG Compliance Provisions for Construction Contracts, attached as Exhibit A.

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

*(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)*

« »

DocuSigned by:

*Jonathan Leit*

3F495F228BD0476...

**OWNER** *(Signature)*

«Bayou Treme Center »«L.L.C. »  
« Jonathan Leit, Authorized Signatory  
2533 Columbus Street  
New Orleans, LA 70119 »

*(Printed name, title and address)*

DocuSigned by:



74BAE8A806504E7...

**CONTRACTOR** *(Signature)*

«Master Maintenance Roofing »« Company »  
« Konstantin Bogdanov, President  
2805 Sells Street  
Metairie, LA 70003»

*(Printed name, title and address)*

LICENSE NO.: CL74500

JURISDICTION: Louisiana