

AIA® Document A105® – 2017

Standard Short Form of Agreement Between Owner and Contractor

AGREEMENT made as of the 8th day of December in the year 2023
(In words, indicate day, month and year.)

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

Carlton House Management Association, Inc.
2701 South Blvd.
Highland Beach, FL 33487

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

Best Roofing Services, LLC
d/b/a Best Roofing
1600 N.E. 12th Terrace
Fort Lauderdale, Florida 33305

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

Carlton House Condominiums
Main Roof and Porte Cochere Re-Roof

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

O&S Associates
2500 Hollywood Blvd, Suite 212
Hollywood, FL 33020

All references in this Agreement to "Architect" or "Engineer" shall mean and refer to the Owner's Engineer, O&S Associates.

The Owner and Contractor 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.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
3	CONTRACT SUM
4	PAYMENTS
5	INSURANCE
6	GENERAL PROVISIONS
7	OWNER
8	CONTRACTOR
9	ARCHITECT
10	CHANGES IN THE WORK
11	TIME
12	PAYMENTS AND COMPLETION
13	PROTECTION OF PERSONS AND PROPERTY
14	CORRECTION OF WORK
15	MISCELLANEOUS PROVISIONS
16	TERMINATION OF THE CONTRACT
17	OTHER TERMS AND CONDITIONS

ARTICLE 1 THE CONTRACT DOCUMENTS

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 as follows:

Drawings:
Number

Title

Date

Exhibit 1 Contractor's Proposal (#62358) dated October 24, 2023 (20 Pages)

Exhibit 2 - O & S Associates Engineers & Architect Specifications

Specifications:

Section

Title

Pages

Init.



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Exhibit 1 Contractor's Proposal (#62358) dated October 24, 2023 (20 Pages)

Exhibit 2 - O & S Associates Engineers & Architect Specifications

- | | | Pages | | | | |
|--------|---|--------|------|------|--|--|
| .3 | addenda prepared by the Architect as follows: | | | | | |
| | <table border="0"><thead><tr><th style="text-align: left;">Number</th><th style="text-align: left;">Date</th></tr></thead><tbody><tr><td colspan="2">None</td></tr></tbody></table> | Number | Date | None | | |
| Number | Date | | | | | |
| None | | | | | | |
| .4 | written orders for changes in the Work, pursuant to Article 10, issued after execution of this Agreement; and | | | | | |
| .5 | other documents, if any, identified as follows: | | | | | |
| | None | | | | | |

In the event of any conflict or ambiguity between this AIA Document A105-2017 Agreement, and any other documents or Contract Documents, this AIA-A105-2017 Agreement shall control and supersede any such other documentation; however, any written changes or addenda executed by both parties after the date of this Agreement shall have priority.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The Contract Time is the number of calendar days available to the Contractor to substantially complete the Work.

§ 2.2 Date of Commencement:

Unless otherwise set forth below, the date of commencement shall be the date of this Agreement.
(Insert the date of commencement if other than the date of this Agreement.)

The commencement date for the Work shall occur within Twenty-one (21) days from the date that all permits have been issued, and materials received, time being of the essence ("Date of Commencement"). Upon receipt of Deposit, The Contractor shall expedite the application for and obtain all permits for the Work

§ 2.3 Substantial Completion:

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 12.5, of the entire Work:
(Check the appropriate box and complete the necessary information.)

☒ Not later than Thirty-Five (35) days from the date of commencement.

☐ By the following date:

TIME IS OF THE ESSENCE OF THIS CONTRACT. Time is of the essence with respect to all provisions of the Contract that specify a time or an amount of time for performance. Due to the difficulty in determining damages for failure to timely achieve Substantial Completion, all parties agree that the failure of Contractor to timely achieve Substantial Completion, shall subject Contractor to liquidated damages for each day the work remains incomplete (Substantial Completion not achieved) at the daily rate of Two Hundred and Fifty (\$250.00) Dollars, which amounts may be withheld and deducted by Owner from any amounts otherwise due to Contractor.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

Two Hundred Forty-Six Thousand Two Hundred and Twenty Dollars and Seventy-Eight Cents (\$246,220.78)

§ 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.)

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Portion of the Work

Value

§ 3.3 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner:

(Identify the 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.)

Option Two - Exhibit 1 - Contractor's Proposal

§ 3.4 Allowances, if any, included in the Contract Sum are as follows:
(Identify each allowance.)

Item	Price
See Exhibit 1 - Contractor's Proposal	

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

Item	Units and Limitations	Price per Unit (\$0.00)
See Exhibit 1 - Contractor's Proposal		

ARTICLE 4 PAYMENTS

§ 4.1 Based on Contractor's Applications for Payment certified by the Architect, 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.)

The Payment Schedule for this Project shall be as follows:

- 20% initial deposit
- 30% due upon mobilization (mobilizing equipment and loading materials on-site)
- 40% at Substantial Completion of Project
- 10% Final Payment, warranties, inspections, punch-list completed (see § 12.6 below)

Applications for Payment will be submitted no more than one (1) time per month based on a percentage of completion basis in accordance with the schedule of values.

Payment applications will be reviewed by the Architect within seven (7) days. If errors are found in an Application for Payment by the Architect, Architect shall be afforded an additional seven (7) days to review any revised Application for Payment, as well as an additional seven (7) days for any subsequent review thereafter.

Upon approval of an Application for Payment by the Architect, Owner shall issue payment to Contractor no later than Fifteen (15) days after the approved and certified Application for Payment is received by the Owner.

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.
(Insert rate of interest agreed upon, if any.)

%

§ 4.3 Each Application for Payment shall be accompanied by a Progress Payment Affidavit, Partial Release of Lien, or, if completion is final, a Contractor's Final Affidavit and Final Release of Lien, from Contractor and each subcontractor, materialmen, laborer and supplier working on the Project, and any other forms as may be required by

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the Contract Documents, indicating that Contractor and all subcontractors, laborers, materialmen and suppliers who worked for Contractor under the Contract have been paid in full for the work completed up through the date of the previous most recent Application for Payment. All subcontractor lien releases shall include a statement as to all unresolved issues or claims.

If defective work is not remedied by Contractor, or Contractor fails to make payments to subcontractors, laborers, materialmen or suppliers, Owner shall have the option, but not obligation, after seven (7) business days' written notice to Contractor and reasonable opportunity to cure, and without prejudice to any other remedy it may have, to provide for the work to be completed by another contractor, to make payment to subcontractors, laborers, materialmen or suppliers, and to terminate this Contract. If the expenses of finishing the work hereunder shall exceed the contract's price, Contractor shall be liable to Owner for such amounts, in addition to all other remedies available to Owner.

ARTICLE 5 INSURANCE AND BONDS

§ 5.1 The Contractor shall maintain the following types and limits of insurance until the expiration of the period for correction of Work as set forth in Section 14.2, subject to the terms and conditions set forth in this Section 5:

The Contractor shall procure and maintain the insurance cited in this Article 5 for the duration of this Agreement which insurance shall be placed with insurance companies authorized to do business in the State of Florida and rated A minus VII or better by the current edition of A.M. Best's Key Rating Guide or as otherwise approved by Owner.

Contractor's insurance coverage is Primary and Non-Contributory to any insurance of the Owner.

(Paragraphs deleted)

§ 5.1.1 COMPREHENSIVE GENERAL LIABILITY.

Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than \$1,000,000.00 each occurrence, \$2,000,000.00 general aggregate, and \$2,000,000.00 aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

The General Liability Insurance Policy must include, without limitation, a waiver of subrogation endorsement in favor of the additional insureds, and appropriate endorsements adding the following coverages: Premises and Operations Liability; Explosion, Collapse and Underground Damage Liability; Personal Injury Liability (with employee and contractual exclusions deleted); Broad Form Property Damage Liability; Broad Form Contractual Liability supporting Contractor's indemnification agreements in favor of the additional insureds; Independent Contractor's Protective Liability; Completed Operations and Products Liability for a period of not less than two (2) years following the date of final payment for all services provided under this Agreement. Contractor shall furnish the Owner with a Certificate of Insurance, an endorsement, and an Additional Insured Form for such two (2) year period. Contractor shall furnish the Owner with a Certificate of Insurance, an endorsement, and an Additional Insured Form from Contractor's insurance carrier naming the Owner, and its officers, directors, agents, and employees, as an additional insured on all such policies including, but not limited to General Liability and Completed Operations. The General Liability Insurance Policy required herein shall have a "Per Location Aggregate" endorsement, as well as be on an "Occurrence" basis. A "Claims-Made" policy is not acceptable. Coverage shall be no less than the limits carried by Contractor or the limits required in this Contract, whichever is greater.

§ 5.1.1.1 The Contractor's Commercial General Liability policy under this Section shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.

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- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under this Agreement arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ 5.1.2 AUTOMOBILE LIABILITY. Automobile Liability Insurance Policy covering vehicles owned, and non-owned vehicles used, by the Contractor written with limits of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. Contractor shall furnish the Owner with a Certificate of Insurance, and an endorsement from Contractor's insurance carrier naming the Owner, and its officers, directors, agents, and employees, as an additional insured on all such policies.

§ 5.1.3 UMBRELLA/EXCESS LIABILITY. Umbrella/Excess Liability insurance with limits of not less than \$5,000,000.00 for each occurrence of bodily injury and/or property damage and/or automobile liability. Contractor shall furnish the Owner with a Certificate of Insurance, and an endorsement from Contractor's insurance carrier naming the Owner, and its officers, directors, agents, and employees, as an additional insured on such policy.

§ 5.1.4 WORKERS' COMPENSATION. Workers' Compensation coverage (including Employer's Liability coverage) with a policy limit of not less than \$1,000,000.00, including but not limited to, statutory benefits and limits which shall fully comply with all State and Federal requirements.

§ 5.2 INSURANCE REQUIREMENTS OF SUBCONTRACTORS, LABORERS, MATERIALMEN, AND SUPPLIERS.

Contractor agrees to require its subcontractors, laborers, materialmen and suppliers who worked for Contractor under the Contract to comply with the insurance provisions required of Contractor pursuant to this Agreement. Contractor agrees that it will contractually obligate its subcontractors, laborers, materialmen and suppliers to advise Contractor promptly of any changes or lapses of the requisite insurance coverages and Contractor agrees to promptly advise Owner of any such notices Contractor receives from its subcontractors, laborers, materialmen and suppliers. Contractor agrees that it will contractually obligate its subcontractors, laborers, materialmen and suppliers to indemnify and hold harmless Owner to the same extent that Contractor is required to do so as provided in this Agreement. Contractor assumes all responsibility for monitoring its subcontractors', laborers', materialmen and suppliers' contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until final completion of the Project.

§ 5.3 ADDITIONAL INSURANCE REQUIREMENTS. Contractor shall not make changes in or allow the required insurance coverages to lapse without Owner's prior written approval thereto. All policies for insurance must be endorsed to contain a provision giving Owner a thirty (30) day prior written notice by certified mail of any cancellation of that policy or material change in coverage. Should a notice of cancellation be issued for non-payment of premiums or any part thereof, or should Contractor fail to provide and maintain certificates as set forth herein, Owner shall have the right, but shall not the obligation, to pay such premium to the insurance company or to obtain such coverage and to deduct such payment from any sums that may be due or become due to Contractor, or to seek reimbursement for said payments from Contractor. Any sums paid by Owner shall be due and payable immediately by Contractor upon notice from Owner. Receipt and review by Owner of any copies of insurance policies or insurance certificates shall not relieve Contractor of his obligation to comply with the insurance provisions of this Agreement. The insurance provisions of this Agreement shall not be construed as a limitation on Contractor's responsibilities and liabilities pursuant to the terms and conditions of this Agreement.

(Paragraphs deleted)

(Table deleted)

§ 5.4 WAIVER OF SUBROGATION. Contractor waives all subrogation rights against the Owner, and its agents and employees.

§ 5.5 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property as determined in the sole discretion of the Owner.

§ 5.6 The Contractor shall obtain an endorsement to its Commercial General Liability, Umbrella/Excess Liability, and Automobile Liability insurance policy to provide coverage for the Contractor's obligations under Section 8.12.

§ 5.7 Prior to commencement of the Work, each party shall provide certificates of insurance showing their respective coverages.

§ 5.8 PERFORMANCE AND PAYMENT BONDS. Contractor shall furnish the Owner with a performance bond and an payment bond issued on forms AIA Document A-312-2010, unmodified, the cost of same which shall be invoiced to Owner at actual cost and at a rate not to exceed **Two percent (2%)** of the Contract Sum, as adjusted, with a Penal Sum in the amount of the Contract Sum, covering the full faithful performance of the Contract and full payment of all obligations arising under the Contract. The payment bond shall be issued in accordance with Section 713.23, Florida Statutes. **A "conditional payment bond" as provided by Section 713.245, Florida Statutes, shall not be acceptable to the Owner.**

Such performance and payment bonds shall be obtained by Contractor and provided to Owner, prior to the commencement of any work under the Contract by Contractor.

§ 5.9 In the event Contractor fails to provide such insurance and performance and payment bonds to Owner as required by this Article 5 within Fifteen (15) days from execution of this Agreement by both parties, then in such event, Owner shall have the right to terminate this Agreement for cause and without any liability to Contractor. Contractor shall not commence any Work as contemplated by this Agreement until such time that Contractor has provided Owner with all insurance and performance and payment bonds as required by this Article 5.

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 Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

The Work to be performed under this Contract includes all transportation, storage, equipment, supplies, labor and materials, plans, drawings and specifications, necessary for a complete and functional installation of the Work, and the Work shall comply with all manufacturer specifications, applicable codes, ordinances, and inspection requirements. All Work performed by Contractor or by others to make this Contractor's Work comply with the same, or interpretations thereof, shall be performed at no additional cost to the Owner. The Work shall also include all labor, materials, and everything required or claimed by Contractor's materialmen, suppliers, or laborers to complete the work in accordance with the drawings and specifications. The Contractor will be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract.

§ 6.3 Intent

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

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§ 6.4 Ownership and Use of Architect's Drawings, Specifications and Other Documents

Documents prepared by the Architect are instruments of the Architect's service for use solely with respect to this Project. The Architect shall retain all common law, statutory, and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Architect.

§ 6.5 Notice

Written notice under this Agreement may be given by one party to the other as set forth below.

(Insert requirements for delivering written notice by email such as name, title, and email address of the recipient, and whether and how the system will be required to generate a read receipt for the transmission.)

All written Notices sent pursuant to this Agreement shall be sent via U.S. certified mail, return receipt requested to the addresses indicated on the first page of this Agreement.

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 under Section 8.7.1 that are the responsibility of the Contractor, the Owner shall obtain and pay for other necessary approvals, easements, assessments, and charges.

§ 7.1.3 If the Contractor becomes aware of any deviations between existing conditions and the Contract Documents, the Contractor shall promptly notify the Architect in writing.

§ 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 Architect may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the cost of correction, provided the actions of the Owner and amounts charged to the Contractor were approved by the Architect.

§ 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.

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 with requirements of the Contract Documents.

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the Architect.

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§ 8.1.3 The Contractor shall not be liable for damages which are pre-existing as of the date of commencement of this Agreement; To this end, the Contractor and Owner shall meet prior to commencement of the Work to complete an inventory of pre-existing damages.

§ 8.2 Contractor's Construction Schedule

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work and a schedule of values allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 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, through the Architect, the names of subcontractors or suppliers for each portion of the Work. Owner shall have an opportunity to object to use of certain subcontractors or suppliers as determined in the reasonable discretion of the Owner. In the event of any such objection, Contractor shall use and advise Owner of an alternative subcontractor or supplier agreed to by the Owner. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or Architect have made a timely and reasonable objection. No Subcontractor shall be employed by Contractor unless it holds current State of Florida and County contractor's license as applicable and required by law, and (if required) a city occupational license. The Contractor represents and warrants to Owner that all Subcontractors are duly licensed in their particular trade or specialty to perform the task for which contracted.

§ 8.3.3 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. The Contractor shall promptly remedy damage and loss to all real and personal property to the extent caused by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed or retained by any of them, and by anyone for whose acts Contractor may be liable. The above obligations are in addition to the Contractor's indemnification obligations. This provision shall survive any termination of this contract.

§ 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. Contractor shall ensure that there is at least one English speaking foreman, superintendent or other supervisor present during performance of the work. Owner reserves the right to require Contractor to remove any person working for Contractor or its subcontractors who cause a disturbance or nuisance in Owner's community, as determined in Owner's sole discretion. Contractor and subs must conform to all Owner rules and regulations for contractors which will be provided to Contractor by Owner.

§ 8.5 Warranty

The Contractor warrants to the Owner and Architect for a period of **Two (2) years** for materials, parts and labor from the date of completion of the Work, 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; (3) the Work will conform to the requirements of the Contract Documents; and (4) will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit, and will be fit for the purposes intended. Work, materials, or equipment not conforming

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to these requirements may be considered defective. Contractor hereby agrees that during the warranty period of time, any flaws or deficiencies in either work or material shall be corrected and/or replaced and restored to first class working order by Contractor at no cost to the Owner. In the event of Contractor's refusal to commence curative work within Ten (10) days or so restore same as aforesaid after written notice and reasonable opportunity to cure, Owner may perform such repair or replacement work, and/or secure additional material.

In addition, Upon receipt of final Payment, Contractor shall assign all manufacturer warranties in writing to Owner including, but not limited to, the 20-year NDL roof system manufacturer's warranty. Contractor shall strictly comply with all manufacturers' directions and specifications for installation or application of all products and materials which are part of the Work and shall take no action which might void or limit such warranties. Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 12.5.

§ 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 Architect in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

§ 8.8 Submittals

The Contractor shall promptly review, approve in writing, and submit to the Architect shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents.

§ 8.9 Use of Site

§ 8.9.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

§ 8.9.2 IDENTIFICATION OF UTILITIES, ETC. Deleted.

§ 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. Contractor shall provide a dumpster at Contractor's expense and all debris shall be removed from the Owner's property/project daily.

If after three (3) business days' notice by Owner's representative to Contractor's representative at the site of the work Contractor has not diligently proceeded with the clean-up as outlined in this paragraph, then the Owner has the right to proceed with the clean-up at Contractor's costs and expense and may deduct such amounts from any monies that may be due to Contractor.

Free, clear and unobstructed egress and ingress with respect to the Owner's property shall be maintained by the Contractor.

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§ 8.12 Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and its officers, directors, employees and agents, from and against claims, injuries, damages, losses, suits, and expenses, including but not limited to attorneys' fees, arising directly or indirectly from the Contractor's Work or resulting from performance of the Work (including any work performed by Contractor or Contractor's subcontractors or sub-subcontractors), provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense 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.

Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Contractor, any or anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable.

The foregoing obligations of the Contractor are in addition to its other obligations under this Contract.

The provisions of this Section shall survive any termination of the Contract.

ARTICLE 9 ARCHITECT

§ 9.1 The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

All references in this Agreement to "Architect" or "Engineer" shall mean and refer to the Owner's Engineer, O&S Associates.

§ 9.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

§ 9.3 The Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

§ 9.4 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor.

§ 9.5 The Architect has authority to reject Work that does not conform to the Contract Documents.

§ 9.6 The Architect will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 9.7 On written request from either the Owner or Contractor, the Architect will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

§ 9.8 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from the Contract Documents, and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 9.9 The Architect's duties, responsibilities, and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

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ARTICLE 10 CHANGES IN THE WORK

§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing. If the Owner and Contractor cannot agree to a change in the Contract Sum, the Owner shall pay the Contractor its actual cost plus reasonable overhead and profit.

§ 10.1.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect 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.

Agreement on any Change Order shall constitute a final settlement of all matters stated in the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any and all adjustments to the Contract Sum and the Contract Time for completion.

§ 10.1.2 In the event of any changes in the Work, Contractor shall obtain a fully executed Change Order signed by Owner, Architect, and Contractor before commencing such changes in the Work. In the event Contractor fails to obtain such fully executed Change Order prior to commencing such changes in the Work, Owner shall not be liable to Contractor for any additions to the Contract Sum, costs, expenses, or additional Contract Time associated with such changes in the Work and Contractor shall pay all costs and expenses associated with the unapproved changes in the Work.

§ 10.2 The Architect may authorize or order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such authorization or order shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall proceed with such minor changes promptly.

§ 10.3 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.

ARTICLE 11 TIME

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

§ 11.2 **FORCE MAJEURE.** Best Roofing shall not be responsible for loss, damage or delay caused by circumstances beyond its reasonable control, including but not limited to acts of God, inclement weather, accidents, fire, vandalism, federal, state or local law, regulation or order; strikes, jurisdictional disputes, failure or delay of transportation, shortage of or inability to obtain materials, equipment or labor; changes in the work and delays caused by others. In the event of these occurrences, Best Roofing's time for performance under this a time sufficient to permit completion of the work. Additional costs may apply for any de-mobilization and/or re-mobilization caused by any natural disasters.

Where a party to this Agreement fails or is prevented from timely performing one or more of its contractual duties or receiving the benefits of this Agreement, the provisions of this clause will follow to the extent that that party proves:

- the event must be beyond the reasonable control of the applicable party;
- the applicable party must have been prevented from performing its contractual duties or receiving the benefits of this Agreement;
- the applicable party must have taken all reasonable steps to avoid its non-performance or inability to receive the benefits and have satisfied its duty to mitigate damages as a result thereof; and
- timely written notice must have been given to the other party to this Agreement in accordance herein and the Notice requirements contained in this Agreement.

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In addition to the above, this provision shall apply in the case of the occurrence of one or more of the following impediments: war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilization; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or piracy; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject party ("Force Majeure Event").

This provision shall become effective only if the party to this Agreement failing or prevented from timely performing its duties or receiving the benefits of this Agreement, notifies the other party in writing within a reasonable time (not in excess of ten(10) working days after the first occurrence of the Force Majeure Event) of the extent and nature of the Force Majeure Event.

In the event of a Force Majeure Event, the affected party shall negotiate with the other party as to additional contract time for performance or other circumstances necessary to perform its contractual duties or receive the benefits of this Agreement which have been affected by the Force Majeure Event.

In the event a mutual agreement cannot be reached by both of the parties as to such additional contract time or other circumstances, either party may terminate this Agreement without cause upon Thirty (30) days' written notice. In the event of any such termination Contractor shall only be entitled to payment for the Work fully completed on the Project up through the date of termination, reasonable demobilization costs

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

ARTICLE 12 PAYMENTS AND COMPLETION

§ 12.1 Contract Sum

The Contract Sum stated in this Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 12.2 Applications for Payment

§ 12.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for Work completed in accordance with the values stated in this Agreement. The Application shall be supported by data substantiating the Contractor's right to payment as the Owner or Architect may reasonably require, such as evidence of payments made to, and waivers of liens from, subcontractors and suppliers. 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 advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 12.2.2 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 other encumbrances adverse to the Owner's interests.

§ 12.2.3 The Contractor shall use the AIA G702 & G703 for Applications for Payment.

§ 12.3 Certificates for Payment

The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; (2)

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issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in part; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole. If certification or notification is not made within such seven day period, the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time and the Contract Sum shall be equitably adjusted due to the delay.

Certificates for Payment shall only be approved by Architect upon Architect's and Owner's receipt of a Progress Payment Affidavit, Partial Release of Lien from the Contractor and all subcontractors, materialmen, laborers and suppliers working on the project, or, if completion is final, a Contractor's Final Affidavit and Final Release of Lien, from Contractor and each subcontractor, materialmen, laborer and supplier working on the Project, and any other forms as may be required by the Contract Documents, indicating that Contractor and all subcontractors, laborers, materialmen and suppliers who worked for Contractor under the Contract have been paid in full for the work completed up through the date of the previous most recent Application for Payment.

§ 12.4 Progress Payments

§ 12.4.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.

§ 12.4.2 The Contractor shall promptly pay each subcontractor materialmen, laborer, and supplier, working on the Project in full for the work completed up through the date of each of the Contractor's Applications for Payment.

§ 12.4.3 Neither the Owner nor the Architect shall have responsibility for payments to a subcontractor or supplier.

§ 12.4.4 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

§ 12.5 Substantial Completion

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

§ 12.5.2 When the Contractor believes that the Work or designated portion thereof is substantially complete, it will notify the Architect and the Architect will make an inspection to determine whether the Work is substantially complete. When the Architect determines that the Work is substantially complete, the Architect shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish the responsibilities of the Owner and Contractor, and 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.

§ 12.6 Final Completion and Final Payment

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

§ 12.6.2 Final payment shall not become due until completion of all punch-list items by Contractor at the conclusion of the entire Project as determined in the sole discretion of the Owner, and in no event prior to the Owner's receipt of all warranties, and receipt of all approvals of all permits and final inspections required by governmental agencies and after the Contractor submits to the Architect releases and waivers of liens (from Contractor and its subcontractors, laborers, materialmen and suppliers) indicating that Contractor and all subcontractors, laborers, materialmen and suppliers who worked for Contractor under the Contract have been paid in full, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract.

§ 12.6.3 Acceptance of final payment by the Contractor, a subcontractor or 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.

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ARTICLE 13 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 and other persons who may be affected thereby, 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.

The Contractor shall cordon off areas where Work is being performed and shall adequately post signs in the construction areas.

The Contractor shall arrange the Work to cause minimum disturbance to pedestrian and vehicular traffic and shall be responsible for providing suitable means of access to all public and private properties during all stages of construction. Other than for an emergency safety condition, the Contractor must contact the Owner and Architect for approval prior to completely blocking off any street or drive area to vehicular traffic during construction.

ARTICLE 14 CORRECTION OF WORK

§ 14.1 The Contractor shall promptly correct Work rejected by the Architect 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, to the extent of its; fault for the rejected Work.

§ 14.2 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.

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

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Assignment of Contract

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

§ 15.2 Tests and Inspections

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests (excluding Wind Up- Lift Test, promulgated by FM Global as outlined in TAS 124), 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.

§ 15.2.2 If the Architect requires additional testing, the Contractor shall perform those tests.

§ 15.2.3 The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 15.3 Governing Law

The Contract shall be governed by the laws of the State of Florida. All claims or disputes arising from or in any way related this Agreement shall be litigated in a court of law or equity with competent jurisdiction in Palm Beach County, Florida.

§ 15.4 NOTICES, PERMITS, AND APPLICABLE LAWS. Contractor shall give all notices and comply with all local ordinances, requirements of city and county building codes, and of federal and state authorities, which are applicable to the Work. Contractor shall secure and pay for all permits, inspections, fees, licenses and royalties necessary for the execution of the Work to be performed, as expressly defined in the Contract Documents, and in accordance with allowances provided. All Work shall be in compliance with the South Florida Building Code. In addition, in all instances, the Work furnished shall be sufficient to meet or exceed the requirements of the Miami-Dade County and Florida Building Code.



§ 15.5 MATERIALS AND TOOLS. Contractor shall be responsible for the security and welfare of its' equipment and materials within its' exclusive control.

During any tropical storm or hurricane advisory affecting the project area, Contractor shall ensure that the project area and all such materials, tools, equipment and Work shall be secured to avoid potential injury or damage to person or property, at no additional cost or expense to Owner. If the path of a Hurricane ("Cone") is forecasted to make land fall within three (3) days, a decision must be made by Owner to secure, or offload the project at Owner's cost. Such additional services by Contractor shall be billed to Owner on a time and materials basis not to exceed \$10,000.00. It is specifically understood that the value of the materials and equipment damaged as a result of leaving these assets (not offloading the project) will be the responsibility of Owner unless Owner authorizes Contractor to protect the project site accordingly.. Additional charges will be handled by change order based on actual time and verifiable expenses incurred.

§ 15.6 LIENS. With exception of any lien filed by Contractor for non-payment by the Owner, unless such non-payment is otherwise permitted by this Contract, Contractor shall ensure that no construction lien is recorded against the real property pertaining to this Contract, real property owned by the Owner or its members of any portion of the real property, development, or buildings managed by the Owner. If a lien is recorded as a result of, or in any way connected with, the Contract or the work, services or materials provided hereunder, the Contractor agrees that it shall within five (5) days take all steps necessary to release the lien, including, but not limited to, transferring the lien to a surety or cash bond at Contractor's expense. If Owner must pay any monies including attorney's fees to release or satisfy any said lien, then in addition to all other remedies, the Owner may collect those sums from Contractor, plus interest at the maximum rate permitted by law, and deduct such amounts from any payments due under the Contract.

§ 15.7 WITHHOLDING OF PAYMENT. The Owner may withhold all or part of any payment for any one or more of the following reasons:

- a. Defective Work which is not remedied;
- b. Third party claims filed;
- c. Failure of the Contractor to make payments promptly to subcontractors or for labor, material or equipment;
- d. Damage to the Owner to the extent caused by the Contractor or its subcontractors;
- e. Costs incurred by Owner associated with having to satisfy of transfer a lien to a surety or cash bond; and

§ 15.8 NOTICES. A duplicate copy of any notice sent to the Owner pursuant to this Contract shall also be sent to the Owner's counsel, via certified mail, return receipt requested, as follows:

Edward S. Hammel, Esquire
Sachs Sax Caplan, P.L.
6111 Broken Sound Parkway NW, Suite 200
Boca Raton, Florida 33487

§ 15.9 WAIVER. No consent or waiver by Owner or Contractor shall be effective unless it is in writing and then only to the extent specifically stated. Failure on the part of any party to this Agreement to enforce any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

§ 15.10 ENFORCEMENT. If it becomes necessary to hire an attorney to enforce any provision of the Contract, the prevailing party shall be entitled to recover their costs and attorney's fees incurred prior to suit, as well as in litigation, appeal and any arbitration, bankruptcy or administrative proceedings.

§ 15.11 CONSTRUCTION OF CONTRACT. All parties hereto agree that each has either received, or had the opportunity to obtain, independent legal counsel with respect to this Contract. The parties further agree that this Contract is the joint product of all parties herein and shall not be construed against any individual party as the drafter of this Contract.

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§ 15.12 ENTIRE AGREEMENT. The terms and provisions of this Contract represent the entire agreement between the parties. There shall be no change in any of the provisions of the Contract without the prior written approval of all parties.

§ 15.13 EXHIBIT "1" – BEST ROOFING PROPOSAL DATED OCTOBER 24, 2023. The Exhibit "1" - Best Roofing Proposal dated October 24, 2023 is amended as follows:

- **Page 9 – Price Volatility.** The last paragraph on Page 9 of the Agreement is deleted in its entirety.
- **Page 11 – Standard Payment Terms.** Items 1 through 7 under the heading entitled Standard Payment Terms on Page 11 of the Exhibit "A" are deleted in their entirety. See § 4.1 of this Agreement.

§ 15.14 EXHIBIT "1" – BEST ROOFING PROPOSAL DATED OCTOBER 24, 2023 - CONTRACTOR CLARIFICATIONS v. 06.28.2023. The Contractor Clarifications v. 06.28.2023 starting on Page 16 of the Agreement are amended as follows:

- **Item 2 – Price Volatility.** Item 2 is deleted in its entirety.
- **Item 6 – Maintenance Agreement.** Item 6 is deleted in its entirety. The proposed Maintenance Agreement shall not be part of this Agreement.
- **Item 8 – Metal Roofing.** Item 8 is deleted as not applicable to this project.
- **Item 13 – Mobilizations.** Item 13 is amended to reflect that any demobilization and remobilization must be authorized by the Owner in writing. The agreed-upon cost for any additional mobilization including, but not limited to, the cost incurred to remove and remobilize material, equipment and manpower, shall not exceed the sum of **\$10,000.00** per occurrence.
- **Item 18 – Sub-Surface Conditions.** Item 18 is amended to reflect that Provided Owner advises Contractor of the locations of subsurface conditions, Contractor shall be responsible and liable for any such damages to the extent such damages result from Contractor's negligence.
- **Item 28 – Consequential Damages.** Item 28 is amended to reflect that the waiver of all such consequential damages described in this section shall only apply to the amount of such consequential damages which exceed **\$500,000.00**.
- **Item 29 – Insurance.** Item 29 is deleted in its entirety. See Article 5 of this Agreement.
- **Item 30 – Additional Insured.** Item 30 is deleted in its entirety. See Article 5 of this Agreement.
- **Item 32 – Adjacent Walls and Equipment.** Item 32 is deleted in its entirety. Water intrusion in adjacent walls and equipment due to Contractor's negligence shall be the responsibility of Contractor. Conditions which include existing water intrusion issues shall be excluded.
- **Item 35 – Miscellaneous.** Item 35 is amended to delete the word "Broward" and replace same with "Palm Beach".
- **Item 36 – Final Payment.** Item 36 is deleted in its entirety.

ARTICLE 16 TERMINATION OF THE CONTRACT

§ 16.1 Termination by the Contractor

If the Work is stopped under Section 12.3 for a period of 14 days through no fault of the Contractor, the Contractor may, upon seven additional days' written notice to the Owner and Architect, 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.

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User Notes:

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(942819406)

CONTRACTOR (Signature) _____
(Printed name and title)
LICENSE NO.: CCC018297
JURISDICTION: Florida

OWNER (Signature) _____
(Printed name and title)
Judith Fenney

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.)

None

(Insert any other terms or conditions below.)

ARTICLE 17 OTHER TERMS AND CONDITIONS

§ 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.

In the event of termination for cause by Owner, Contractor shall be entitled to be compensated for all services performed prior to receipt of written notice from Owner of such termination up to the effective date of the termination. However, Owner shall be entitled to offset any amounts due and owing Contractor pursuant to this provision by the amounts of any damages incurred by Owner for which Contractor is liable and any damages incurred by Owner as a result of Contractor's breach of this Contract, which offset shall not prejudice the right of Owner to recover additional damages or to exercise any other remedy at law or in equity. In no event shall Contractor be entitled to receive termination expenses, unabsorbed overhead or lost profit or any other incidental or consequential damages. If Owner terminates this Agreement for cause, and the termination is later found or agreed to have been improper then the termination will be construed as a termination for convenience pursuant to Section 16.3 hereof.

§ 16.2.4 If the costs of finishing the Work, including compensation for the Architect's services, attorney's fees, and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 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.

§ 16.2.2 When any of the above reasons exist, the Owner, after consultation with the Architect, 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 paid materials thereon owned by the Contractor, and
2. finish the Work by whatever reasonable method the Owner may deem expedient.

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. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
4. is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.1 The Owner may terminate the Contract if the Contractor
§ 16.2 Termination by the Owner for Cause

Additions and Deletions Report for AIA® Document A105® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:00:23 ET on 12/08/2023.

PAGE 1

AGREEMENT made as of the _____ day of _____ in the year 2023

...

Carlton House Management Association, Inc.
2701 South Blvd.
Highland Beach, FL 33487

...

Best Roofing Services, LLC
d/b/a Best Roofing
1600 N.E. 12th Terrace
Fort Lauderdale, Florida 33305

...

Carlton House Condominiums
Main Roof and Porte Cochere Re-Roof

...

(Name, legal status, address and other information)

O&S Associates
2500 Hollywood Blvd, Suite 212
Hollywood, FL 33020

All references in this Agreement to "Architect" or "Engineer" shall mean and refer to the Owner's Engineer, O&S Associates.

PAGE 2

- .2 the drawings and specifications prepared by the Architect, dated —, and ~~enumerated~~ Architect as follows:

...

Exhibit 1 Contractor's Proposal (#62358) dated October 24, 2023 (20 Pages)

Exhibit 2 - O & S Associates Engineers & Architect Specifications

PAGE 3

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User Notes:



Exhibit 1 Contractor's Proposal (#62358) dated October 24, 2023 (20 Pages)

Exhibit 2 - O & S Associates Engineers & Architect Specifications

...

None

...

None

In the event of any conflict or ambiguity between this AIA Document A105-2017 Agreement, and any other documents or Contract Documents, this AIA-A105-2017 Agreement shall control and supersede any such other documentation; however, any written changes or addenda executed by both parties after the date of this Agreement shall have priority.

...

The commencement date for the Work shall occur within Twenty-one (21) days from the date that all permits have been issued, and materials received, time being of the essence ("Date of Commencement"). Upon receipt of Deposit, The Contractor shall expedite the application for and obtain all permits for the Work

...

☒ [X] Not later than (—) ~~calendar~~ Thirty-Five (35) days from the date of commencement.

☐ [] By the following date:

TIME IS OF THE ESSENCE OF THIS CONTRACT. Time is of the essence with respect to all provisions of the Contract that specify a time or an amount of time for performance. Due to the difficulty in determining damages for failure to timely achieve Substantial Completion, all parties agree that the failure of Contractor to timely achieve Substantial Completion, shall subject Contractor to liquidated damages for each day the work remains incomplete (Substantial Completion not achieved) at the daily rate of Two Hundred and Fifty (\$250.00) Dollars, which amounts may be withheld and deducted by Owner from any amounts otherwise due to Contractor.

...

(~~\$—~~)Two Hundred Forty-Six Thousand Two Hundred and Twenty Dollars and Seventy-Eight Cents (\$246,220.78)

PAGE 4

Option Two - Exhibit 1 - Contractor's Proposal

...

See Exhibit 1 - Contractor's Proposal

...

See Exhibit 1 - Contractor's Proposal

...

The Payment Schedule for this Project shall be as follows:

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User Notes:



- 20% initial deposit
- 30% due upon mobilization (mobilizing equipment and loading materials on-site)
- 40% at Substantial Completion of Project
- 10% Final Payment, warranties, inspections, punch-list completed (see § 12.6 below)

Applications for Payment will be submitted no more than one (1) time per month based on a percentage of completion basis in accordance with the schedule of values.

Payment applications will be reviewed by the Architect within seven (7) days. If errors are found in an Application for Payment by the Architect, Architect shall be afforded an additional seven (7) days to review any revised Application for Payment, as well as an additional seven (7) days for any subsequent review thereafter.

Upon approval of an Application for Payment by the Architect, Owner shall issue payment to Contractor no later than Fifteen (15) days after the approved and certified Application for Payment is received by the Owner.

...

§ 4.3 Each Application for Payment shall be accompanied by a Progress Payment Affidavit, Partial Release of Lien, or, if completion is final, a Contractor's Final Affidavit and Final Release of Lien, from Contractor and each subcontractor, materialmen, laborer and supplier working on the Project, and any other forms as may be required by the Contract Documents, indicating that Contractor and all subcontractors, laborers, materialmen and suppliers who worked for Contractor under the Contract have been paid in full for the work completed up through the date of the previous most recent Application for Payment. All subcontractor lien releases shall include a statement as to all unresolved issues or claims.

If defective work is not remedied by Contractor, or Contractor fails to make payments to subcontractors, laborers, materialmen or suppliers, Owner shall have the option, but not obligation, after seven (7) business days' written notice to Contractor and reasonable opportunity to cure, and without prejudice to any other remedy it may have, to provide for the work to be completed by another contractor, to make payment to subcontractors, laborers, materialmen or suppliers, and to terminate this Contract. If the expenses of finishing the work hereunder shall exceed the contract's price, Contractor shall be liable to Owner for such amounts, in addition to all other remedies available to Owner.

ARTICLE 5 INSURANCE AND BONDS

§ 5.1 The Contractor shall maintain the following types and limits of insurance until the expiration of the period for correction of Work as set forth in Section 14.2, subject to the terms and conditions set forth in this Section 5.1:Section 5:

The Contractor shall procure and maintain the insurance cited in this Article 5 for the duration of this Agreement which insurance shall be placed with insurance companies authorized to do business in the State of Florida and rated A minus VII or better by the current edition of A.M. Best's Key Rating Guide or as otherwise approved by Owner.

Contractor's insurance coverage is Primary and Non-Contributory to any insurance of the Owner.

~~§ 5.1.1 Commercial General Liability insurance for the Project, written on an occurrence form, with policy limits of not less than (\$) each occurrence, (\$) general aggregate, and (\$) aggregate for products completed operations hazard.~~

~~§ 5.1.2 Automobile Liability covering vehicles owned, and non owned vehicles used, by the Contractor, with policy limits of not less than (\$) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.~~

~~§ 5.1.3 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 5.1.1 and 5.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage~~

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than the primary policy. The excess policy shall not require exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 5.1.4 Workers' Compensation at statutory limits.

§ 5.1.5 Employers' Liability with policy limits not less than ~~(\$) each accident, (\$) each employee, and (\$) policy limit.~~

§ 5.1.6 ~~The Contractor shall provide builder's risk insurance to cover the total value of the entire Project on a replacement cost basis.~~

§ 5.1.7 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

§ 5.1.1 COMPREHENSIVE GENERAL LIABILITY.

Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than \$1,000,000.00 each occurrence, \$2,000,000.00 general aggregate, and \$2,000,000.00 aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

The General Liability Insurance Policy must include, without limitation, a waiver of subrogation endorsement in favor of the additional insureds, and appropriate endorsements adding the following coverages: Premises and Operations Liability; Explosion, Collapse and Underground Damage Liability; Personal Injury Liability (with employee and contractual exclusions deleted); Broad Form Property Damage Liability; Broad Form Contractual Liability supporting Contractor's indemnification agreements in favor of the additional insureds; Independent Contractor's Protective Liability; Completed Operations and Products Liability for a period of not less than two (2) years following the date of final payment for all services provided under this Agreement. Contractor shall furnish the Owner with a Certificate of Insurance, an endorsement, and an Additional Insured Form for such two (2) year period. Contractor shall furnish the Owner with a Certificate of Insurance, an endorsement, and an Additional Insured Form from Contractor's insurance carrier naming the Owner, and its officers, directors, agents, and employees, as an additional insured on all such policies including, but not limited to General Liability and Completed Operations. The General Liability Insurance Policy required herein shall have a "Per Location Aggregate" endorsement, as well as be on an "Occurrence" basis. A "Claims-Made" policy is not acceptable. Coverage shall be no less than the limits carried by Contractor or the limits required in this Contract, whichever is greater.

§ 5.1.1.1 The Contractor's Commercial General Liability policy under this Section shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under this Agreement arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.

- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ 5.1.2 AUTOMOBILE LIABILITY. Automobile Liability Insurance Policy covering vehicles owned, and non-owned vehicles used, by the Contractor written with limits of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage. Contractor shall furnish the Owner with a Certificate of Insurance, and an endorsement from Contractor's insurance carrier naming the Owner, and its officers, directors, agents, and employees, as an additional insured on all such policies.

§ 5.1.3 UMBRELLA/EXCESS LIABILITY. Umbrella/Excess Liability insurance with limits of not less than \$5,000,000.00 for each occurrence of bodily injury and/or property damage and/or automobile liability. Contractor shall furnish the Owner with a Certificate of Insurance, and an endorsement from Contractor's insurance carrier naming the Owner, and its officers, directors, agents, and employees, as an additional insured on such policy.

§ 5.1.4 WORKERS' COMPENSATION. Workers' Compensation coverage (including Employer's Liability coverage) with a policy limit of not less than \$1,000,000.00, including but not limited to, statutory benefits and limits which shall fully comply with all State and Federal requirements.

§ 5.2 INSURANCE REQUIREMENTS OF SUBCONTRACTORS, LABORERS, MATERIALMEN, AND SUPPLIERS. Contractor agrees to require its subcontractors, laborers, materialmen and suppliers who worked for Contractor under the Contract to comply with the insurance provisions required of Contractor pursuant to this Agreement. Contractor agrees that it will contractually obligate its subcontractors, laborers, materialmen and suppliers to advise Contractor promptly of any changes or lapses of the requisite insurance coverages and Contractor agrees to promptly advise Owner of any such notices Contractor receives from its subcontractors, laborers, materialmen and suppliers. Contractor agrees that it will contractually obligate its subcontractors, laborers, materialmen and suppliers to indemnify and hold harmless Owner to the same extent that Contractor is required to do so as provided in this Agreement. Contractor assumes all responsibility for monitoring its subcontractors', laborers', materialmen and suppliers' contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until final completion of the Project.

§ 5.3 ADDITIONAL INSURANCE REQUIREMENTS. Contractor shall not make changes in or allow the required insurance coverages to lapse without Owner's prior written approval thereto. All policies for insurance must be endorsed to contain a provision giving Owner a thirty (30) day prior written notice by certified mail of any cancellation of that policy or material change in coverage. Should a notice of cancellation be issued for non-payment of premiums or any part thereof, or should Contractor fail to provide and maintain certificates as set forth herein, Owner shall have the right, but shall not the obligation, to pay such premium to the insurance company or to obtain such coverage and to deduct such payment from any sums that may be due or become due to Contractor, or to seek reimbursement for said payments from Contractor. Any sums paid by Owner shall be due and payable immediately by Contractor upon notice from Owner. Receipt and review by Owner of any copies of insurance policies or insurance certificates shall not relieve Contractor of his obligation to comply with the insurance provisions of this Agreement. The insurance provisions of this Agreement shall not be construed as a limitation on Contractor's responsibilities and liabilities pursuant to the terms and conditions of this Agreement.

Coverage

Limits

~~§ 5.2 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance.~~

~~§ 5.3 The Contractor shall obtain an endorsement to its Commercial General Liability insurance policy to provide coverage for the Contractor's obligations under Section 8.12.~~

§ 5.4 Prior to commencement of the Work, each party shall provide certificates of insurance showing their respective coverages. **WAIVER OF SUBROGATION.** Contractor waives all subrogation rights against the Owner, and its agents and employees.

§ 5.5 Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents, and employees, each of the other; and (2) the Architect, Architect's consultants, and any of their agents and employees, for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance or other insurance applicable to the Project, except such rights as they have to the proceeds of such insurance. The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property as determined in the sole discretion of the Owner.

§ 5.6 The Contractor shall obtain an endorsement to its Commercial General Liability, Umbrella/Excess Liability, and Automobile Liability insurance policy to provide coverage for the Contractor's obligations under Section 8.12.

§ 5.7 Prior to commencement of the Work, each party shall provide certificates of insurance showing their respective coverages.

§ 5.8 PERFORMANCE AND PAYMENT BONDS. Contractor shall furnish the Owner with a performance bond and an payment bond issued on forms AIA Document A-312-2010, unmodified, the cost of same which shall be invoiced to Owner at actual cost and at a rate not to exceed **Two percent (2%)** of the Contract Sum, as adjusted, with a Penal Sum in the amount of the Contract Sum, covering the full faithful performance of the Contract and full payment of all obligations arising under the Contract. The payment bond shall be issued in accordance with Section 713.23, Florida Statutes. **A "conditional payment bond" as provided by Section 713.245, Florida Statutes, shall not be acceptable to the Owner.**

Such performance and payment bonds shall be obtained by Contractor and provided to Owner, prior to the commencement of any work under the Contract by Contractor.

§ 5.9 In the event Contractor fails to provide such insurance and performance and payment bonds to Owner as required by this Article 5 within Fifteen (15) days from execution of this Agreement by both parties, then in such event, Owner shall have the right to terminate this Agreement for cause and without any liability to Contractor. Contractor shall not commence any Work as contemplated by this Agreement until such time that Contractor has provided Owner with all insurance and performance and payment bonds as required by this Article 5.

PAGE 7

The Work to be performed under this Contract includes all transportation, storage, equipment, supplies, labor and materials, plans, drawings and specifications, necessary for a complete and functional installation of the Work, and the Work shall comply with all manufacturer specifications, applicable codes, ordinances, and inspection requirements. All Work performed by Contractor or by others to make this Contractor's Work comply with the same, or interpretations thereof, shall be performed at no additional cost to the Owner. The Work shall also include all labor, materials, and everything required or claimed by Contractor's materialmen, suppliers, or laborers to complete the work in accordance with the drawings and specifications. The Contractor will be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract.

PAGE 8

§ 6.5 Electronic Notice

Written notice under this Agreement may be given by one party to the other ~~by email~~ as set forth below.

...

All written Notices sent pursuant to this Agreement shall be sent via U.S. certified mail, return receipt requested to the addresses indicated on the first page of this Agreement.

...

§ 7.1.3 Prior to commencement of the Work, at the written request of the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If the Contractor becomes aware of any deviations between existing conditions and the Contract Documents, the Contractor shall promptly notify the Architect in writing.

PAGE 9

§ 8.1.3 The Contractor shall not be liable for damages which are pre-existing as of the date of commencement of this Agreement; To this end, the Contractor and Owner shall meet prior to commencement of the Work to complete an inventory of pre-existing damages.

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work and a schedule of values allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

...

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, through the Architect, the names of subcontractors or suppliers for each portion of the Work. Owner shall have an opportunity to object to use of certain subcontractors or suppliers as determined in the reasonable discretion of the Owner. In the event of any such objection, Contractor shall use and advise Owner of an alternative subcontractor or supplier agreed to by the Owner. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or Architect have made a timely and reasonable objection. No Subcontractor shall be employed by Contractor unless it holds current State of Florida and County contractor's license as applicable and required by law, and (if required) a city occupational license. The Contractor represents and warrants to Owner that all Subcontractors are duly licensed in their particular trade or specialty to perform the task for which contracted.

§ 8.3.3 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. The Contractor shall promptly remedy damage and loss to all real and personal property to the extent caused by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed or retained by any of them, and by anyone for whose acts Contractor may be liable. The above obligations are in addition to the Contractor's indemnification obligations. This provision shall survive any termination of this contract.

...

§ 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. Contractor shall ensure that there is at least one English speaking foreman, superintendent or other supervisor present during performance of the work. Owner reserves the right to require Contractor to remove any person working for Contractor or its subcontractors who cause a disturbance or nuisance in Owner's community, as determined in Owner's sole discretion. Contractor and subs must conform to all Owner rules and regulations for contractors which will be provided to Contractor by Owner.

...

The Contractor warrants to the Owner and Architect for a period of Two (2) years for materials, parts and labor from the date of completion of the Work, 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 of the Contract Documents; and (4) will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit, and will be fit for the purposes intended. Work, materials, or equipment not conforming to these requirements may be considered defective. Contractor hereby agrees that during the warranty period of time, any flaws or deficiencies in either work or material shall be corrected and/or replaced and restored to first class working order by Contractor at no cost to the Owner. In the event of Contractor's refusal to commence curative work within Ten (10) days or so restore same as aforesaid after written notice and reasonable opportunity to cure, Owner may perform such repair or replacement work, and/or secure additional material.~~

In addition, Upon receipt of final Payment, Contractor shall assign all manufacturer warranties in writing to Owner including, but not limited to, the 20-year NDL roof system manufacturer's warranty. Contractor shall strictly comply with all manufacturers' directions and specifications for installation or application of all products and materials which are part of the Work and shall take no action which might void or limit such warranties. Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 12.5.

PAGE 10

~~The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.~~ **§ 8.9.1** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

§ 8.9.2 IDENTIFICATION OF UTILITIES, ETC. Deleted.

...

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. Contractor shall provide a dumpster at Contractor's expense and all debris shall be removed from the Owner's property/project daily.

If after three (3) business days' notice by Owner's representative to Contractor's representative at the site of the work Contractor has not diligently proceeded with the clean-up as outlined in this paragraph, then the Owner has the right to proceed with the clean-up at Contractor's costs and expense and may deduct such amounts from any monies that may be due to Contractor.

Free, clear and unobstructed egress and ingress with respect to the Owner's property shall be maintained by the Contractor.

PAGE 11

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's consultants, and agents and employees of any of them, from and against claims, damages, losses and its officers, directors, employees and agents, from and against claims, injuries, damages, losses, suits, and expenses, including but not limited to attorneys' fees, arising out of directly or indirectly from the Contractor's Work or resulting from performance of the Work, Work (including any work performed by Contractor or Contractor's subcontractors or sub-subcontractors), provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), property, but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense 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.~~

Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Contractor, any or anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable.

The foregoing obligations of the Contractor are in addition to its other obligations under this Contract.

The provisions of this Section shall survive any termination of the Contract.

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All references in this Agreement to "Architect" or "Engineer" shall mean and refer to the Owner's Engineer, O&S Associates.

PAGE 12

§ 10.1.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect 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.

Agreement on any Change Order shall constitute a final settlement of all matters stated in the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any and all adjustments to the Contract Sum and the Contract Time for completion.

§ 10.1.2 In the event of any changes in the Work, Contractor shall obtain a fully executed Change Order signed by Owner, Architect, and Contractor before commencing such changes in the Work. In the event Contractor fails to obtain such fully executed Change Order prior to commencing such changes in the Work, Owner shall not be liable to Contractor for any additions to the Contract Sum, costs, expenses, or additional Contract Time associated with such changes in the Work and Contractor shall pay all costs and expenses associated with the unapproved changes in the Work.

...

ARTICLE 11 — TIME

ARTICLE 11 TIME

§ 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. **FORCE MAJEURE.** Best Roofing shall not be responsible for loss, damage or delay caused by circumstances beyond its reasonable control, including but not limited to acts of God, inclement weather, accidents, fire, vandalism, federal, state or local law, regulation or order; strikes, jurisdictional disputes, failure or delay of transportation, shortage of or inability to obtain materials, equipment or labor; changes in the work and delays caused by others. In the event of these occurrences, Best Roofing's time for performance under this a time sufficient to permit completion of the work. Additional costs may apply for any de-mobilization and/or re-mobilization caused by any natural disasters.

Where a party to this Agreement fails or is prevented from timely performing one or more of its contractual duties or receiving the benefits of this Agreement, the provisions of this clause will follow to the extent that that party proves:

- the event must be beyond the reasonable control of the applicable party;
- the applicable party must have been prevented from performing its contractual duties or receiving the benefits of this Agreement;
- the applicable party must have taken all reasonable steps to avoid its non-performance or inability to receive the benefits and have satisfied its duty to mitigate damages as a result thereof; and
- timely written notice must have been given to the other party to this Agreement in accordance herein and the Notice requirements contained in this Agreement.

In addition to the above, this provision shall apply in the case of the occurrence of one or more of the following impediments: war (whether declared or not), armed conflict or the serious threat of the same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military

mobilization; civil war, riot, rebellion, revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience; act of terrorism, sabotage or piracy; plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions; act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization; act of God or natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought; explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunication or electric current; general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises; shortage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject party ("Force Majeure Event").

This provision shall become effective only if the party to this Agreement failing or prevented from timely performing its duties or receiving the benefits of this Agreement, notifies the other party in writing within a reasonable time (not in excess of ten(10) working days after the first occurrence of the Force Majeure Event) of the extent and nature of the Force Majeure Event.

In the event of a Force Majeure Event, the affected party shall negotiate with the other party as to additional contract time for performance or other circumstances necessary to perform its contractual duties or receive the benefits of this Agreement which have been affected by the Force Majeure Event.

In the event a mutual agreement cannot be reached by both of the parties as to such additional contract time or other circumstances, either party may terminate this Agreement without cause upon Thirty (30) days' written notice. In the event of any such termination Contractor shall only be entitled to payment for the Work fully completed on the Project up through the date of termination, reasonable demobilization costs

PAGE 13

§ 12.2.3 The Contractor shall use the AIA G702 & G703 for Applications for Payment.

PAGE 14

Certificates for Payment shall only be approved by Architect upon Architect's and Owner's receipt of a Progress Payment Affidavit, Partial Release of Lien from the Contractor and all subcontractors, materialmen, laborers and suppliers working on the project, or, if completion is final, a Contractor's Final Affidavit and Final Release of Lien, from Contractor and each subcontractor, materialmen, laborer and supplier working on the Project, and any other forms as may be required by the Contract Documents, indicating that Contractor and all subcontractors, laborers, materialmen and suppliers who worked for Contractor under the Contract have been paid in full for the work completed up through the date of the previous most recent Application for Payment.

...

§ 12.4.2 The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders, materialmen, laborer, and supplier, working on the Project in full for the work completed up through the date of each of the Contractor's Applications for Payment.

...

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

...

§ 12.6.2 Final payment shall not become due until completion of all punch-list items by Contractor at the conclusion of the entire Project as determined in the sole discretion of the Owner, and in no event prior to the Owner's receipt of all

warranties, and receipt of all approvals of all permits and final inspections required by governmental agencies and after the Contractor submits to the Architect releases and waivers of liens, liens (from Contractor and its subcontractors, laborers, materialmen and suppliers) indicating that Contractor and all subcontractors, laborers, materialmen and suppliers who worked for Contractor under the Contract have been paid in full, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract.

PAGE 15

The Contractor shall cordon off areas where Work is being performed and shall adequately post signs in the construction areas.

The Contractor shall arrange the Work to cause minimum disturbance to pedestrian and vehicular traffic and shall be responsible for providing suitable means of access to all public and private properties during all stages of construction. Other than for an emergency safety condition, the Contractor must contact the Owner and Architect for approval prior to completely blocking off any street or drive area to vehicular traffic during construction.

§ 14.1 The Contractor shall promptly correct Work rejected by the Architect 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 to the extent of its fault for the rejected Work.

...

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, tests (excluding Wind Up- Lift Test, promulgated by FM Global as outlined in TAS 124), 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.

...

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. laws of the State of Florida. All claims or disputes arising from or in any way related this Agreement shall be litigated in a court of law or equity with competent jurisdiction in Palm Beach County, Florida.

§ 15.4 NOTICES, PERMITS, AND APPLICABLE LAWS. Contractor shall give all notices and comply with all local ordinances, requirements of city and county building codes, and of federal and state authorities, which are applicable to the Work. Contractor shall secure and pay for all permits, inspections, fees, licenses and royalties necessary for the execution of the Work to be performed, as expressly defined in the Contract Documents, and in accordance with allowances provided. All Work shall be in compliance with the South Florida Building Code. In addition, in all instances, the Work furnished shall be sufficient to meet or exceed the requirements of the Miami-Dade County and Florida Building Code.

§ 15.5 MATERIALS AND TOOLS. Contractor shall be responsible for the security and welfare of its' equipment and materials within its' exclusive control.

During any tropical storm or hurricane advisory affecting the project area, Contractor shall ensure that the project area and all such materials, tools, equipment and Work shall be secured to avoid potential injury or damage to person or property, at no additional cost or expense to Owner. If the path of a Hurricane ("Cone") is forecasted to make land fall within three (3) days, a decision must be made by Owner to secure, or offload the project at Owner's cost. Such additional services by Contractor shall be billed to Owner on a time and materials basis not to exceed \$10,000.00. It is specifically understood that the value of the materials and equipment damaged as a result of leaving these assets (not offloading the project) will be the responsibility of Owner unless Owner authorizes Contractor to protect the project site accordingly.. Additional charges will be handled by change order based on actual time and verifiable expenses incurred.

§ 15.6 LIENS. With exception of any lien filed by Contractor for non-payment by the Owner, unless such non-payment is otherwise permitted by this Contract, Contractor shall ensure that no construction lien is recorded against the real property pertaining to this Contract, real property owned by the Owner or its members of any portion of the real

property, development, or buildings managed by the Owner. If a lien is recorded as a result of, or in any way connected with, the Contract or the work, services or materials provided hereunder, the Contractor agrees that it shall within five (5) days take all steps necessary to release the lien, including, but not limited to, transferring the lien to a surety or cash bond at Contractor's expense. If Owner must pay any monies including attorney's fees to release or satisfy any said lien, then in addition to all other remedies, the Owner may collect those sums from Contractor, plus interest at the maximum rate permitted by law, and deduct such amounts from any payments due under the Contract.

§ 15.7 WITHHOLDING OF PAYMENT. The Owner may withhold all or part of any payment for any one or more of the following reasons:

- a. Defective Work which is not remedied;
- b. Third party claims filed;
- c. Failure of the Contractor to make payments promptly to subcontractors or for labor, material or equipment;
- d. Damage to the Owner to the extent caused by the Contractor or its subcontractors;
- e. Costs incurred by Owner associated with having to satisfy of transfer a lien to a surety or cash bond; and

§ 15.8 NOTICES. A duplicate copy of any notice sent to the Owner pursuant to this Contract shall also be sent to the Owner's counsel, via certified mail, return receipt requested, as follows:

Edward S. Hammel, Esquire

Sachs Sax Caplan, P.L.

6111 Broken Sound Parkway NW, Suite 200

Boca Raton, Florida 33487

§ 15.9 WAIVER. No consent or waiver by Owner or Contractor shall be effective unless it is in writing and then only to the extent specifically stated. Failure on the part of any party to this Agreement to enforce any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

§ 15.10 ENFORCEMENT. If it becomes necessary to hire an attorney to enforce any provision of the Contract, the prevailing party shall be entitled to recover their costs and attorney's fees incurred prior to suit, as well as in litigation, appeal and any arbitration, bankruptcy or administrative proceedings.

§ 15.11 CONSTRUCTION OF CONTRACT. All parties hereto agree that each has either received, or had the opportunity to obtain, independent legal counsel with respect to this Contract. The parties further agree that this Contract is the joint product of all parties herein and shall not be construed against any individual party as the drafter of this Contract.

§ 15.12 ENTIRE AGREEMENT. The terms and provisions of this Contract represent the entire agreement between the parties. There shall be no change in any of the provisions of the Contract without the prior written approval of all parties.

§ 15.13 EXHIBIT "1" – BEST ROOFING PROPOSAL DATED OCTOBER 24, 2023. The Exhibit "1" - Best Roofing Proposal dated October 24, 2023 is amended as follows:

- Page 9 – Price Volatility. The last paragraph on Page 9 of the Agreement is deleted in its entirety.
- Page 11 – Standard Payment Terms. Items 1 through 7 under the heading entitled Standard Payment Terms on Page 11 of the Exhibit "A" are deleted in their entirety. See § 4.1 of this Agreement.

§ 15.14 EXHIBIT "1" – BEST ROOFING PROPOSAL DATED OCTOBER 24, 2023 - CONTRACTOR CLARIFICATIONS v. 06.28.2023. The Contractor Clarifications v. 06.28.2023 starting on Page 16 of the Agreement are amended as follows:

- Item 2 – Price Volatility. Item 2 is deleted in its entirety.



- **Item 6 – Maintenance Agreement.** Item 6 is deleted in its entirety. The proposed Maintenance Agreement shall not be part of this Agreement.
- **Item 8 – Metal Roofing.** Item 8 is deleted as not applicable to this project.
- **Item 13 – Mobilizations.** Item 13 is amended to reflect that any demobilization and remobilization must be authorized by the Owner in writing. The agreed-upon cost for any additional mobilization including, but not limited to, the cost incurred to remove and remobilize material, equipment and manpower, shall not exceed the sum of **\$10,000.00** per occurrence.
- **Item 18 – Sub-Surface Conditions.** Item 18 is amended to reflect that Provided Owner advises Contractor of the locations of subsurface conditions, Contractor shall be responsible and liable for any such damages to the extent such damages result from Contractor's negligence.
- **Item 28 – Consequential Damages.** Item 28 is amended to reflect that the waiver of all such consequential damages described in this section shall only apply to the amount of such consequential damages which exceed **\$500,000.00**.
- **Item 29 – Insurance.** Item 29 is deleted in its entirety. See Article 5 of this Agreement.
- **Item 30 – Additional Insured.** Item 30 is deleted in its entirety. See Article 5 of this Agreement.
- **Item 32 – Adjacent Walls and Equipment.** Item 32 is deleted in its entirety. Water intrusion in adjacent walls and equipment due to Contractor's negligence shall be the responsibility of Contractor. Conditions which include existing water intrusion issues shall be excluded.
- **Item 35 – Miscellaneous.** Item 35 is amended to delete the word "Broward" and replace same with "Palm Beach".
- **Item 36 – Final Payment.** Item 36 is deleted in its entirety.

PAGE 18

- .1 take possession of the site and of all paid materials thereon owned by the Contractor, and

...

§ 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 costs of finishing the Work, including compensation for the Architect's services, attorney's fees, and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

In the event of termination for cause by Owner, Contractor shall be entitled to be compensated for all services performed prior to receipt of written notice from Owner of such termination up to the effective date of the termination. However, Owner shall be entitled to offset any amounts due and owing Contractor pursuant to this provision by the amounts of any damages incurred by Owner for which Contractor is liable and any damages incurred by Owner as a result of Contractor's breach of this Contract, which offset shall not prejudice the right of Owner to recover additional damages or to exercise any other remedy at law or in equity. In no event shall Contractor be entitled to receive termination expenses, unabsorbed overhead or lost profit or any other incidental or consequential damages. If Owner terminates this Agreement for cause, and the termination is later found or agreed to have been improper then the termination will be construed as a termination for convenience pursuant to Section 16.3 hereof.

...

None

...

LICENSE NO.: CCC018297
JURISDICTION: Florida

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:00:23 ET on 12/08/2023 under Order No. 2114450677 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A105™ – 2017, Standard Short Form of Agreement Between Owner and Contractor, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

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