

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

ROBERT S. BISCAN & COMPANY )

Plaintiff, )

v. )

Civil Case No. 18-403-TT

BLACK RABBIT, LLC; )

TREY CIOCCIA, Individually; )

218 LLC; GARY BOWIE, Individually; )

JAMES MURPHY, Individually; )

R G ELECTRICAL; RICHARD GREGORY, )

Individually; GREGORY ELECTRICAL; )

BRIAN C. GREGORY, Individually; )

DEREK A. LEIGH, AIA, Individually; )

NICHOLAS A. PERRY, P.E., Individually; )

TODD FOLGELBERG, P.E., Individually; and )

FIRST COMMUNITY BANK OF TENNESSEE )

Defendants. )

FILED  
2018 APR 12 AM 9:48  
CLERK OF COURT  
DAVIDSON COUNTY  
TENNESSEE

**VERIFIED COMPLAINT**

COMES NOW the plaintiff Robert S. Biscan & Company, a Tennessee for profit corporation, and would show to the Court as follows:

**PARTIES AND CO-CONSPIRATORS**

1. Plaintiff Robert S. Biscan & Company (“Biscan”) is a Tennessee for profit corporation with its principal place of business located at Suite 200, 9160 Carothers Parkway, Franklin, Tennessee 37067.

2. Upon information and belief, defendant Black Rabbit, LLC (“Black Rabbit”) is a Tennessee for profit limited liability company with its principal place of business located at 210 Almond Street, Nashville, Tennessee 37201-2206.

3. Upon information and belief, defendant Trey Cioccia (“Mr. Cioccia”) is a citizen of

the State of Tennessee who resides at 210 Almond Street, Nashville, Tennessee 37201-2206. Upon information and belief, at all time material to this litigation, Mr. Cioccia was the sole member and manager of Black Rabbitt and was authorized to act on its behalf in all matters, including the commercial transactions which are the subject of this litigation.

4. Upon information and belief, defendant 218 LLC ("218") is a Tennessee for profit limited liability company with its principal place of business located at 213 Printers Alley, Nashville, Tennessee 37201-1402.

5. Upon information and belief, defendant Gary Bowie ("Mr. Bowie") is a citizen of the State of Tennessee who resides at 213 Printers Alley, Nashville, Tennessee 37201-1402. Upon information and belief, at all time material to this litigation, Mr. Bowie was the sole member and manager of 218 and was authorized to act on its behalf in all matters, including the commercial transactions which are the subject of this litigation.

6. Upon information and belief, defendant James Murphy ("Mr. Murphy") is a citizen of the State of Tennessee who can be served at 213 Printers Alley, Nashville, Tennessee 37201-1402. Upon information and belief, at all time material to this litigation, Mr. Murphy was an authorized agent of both 218 and Mr. Bowie and was authorized to act on their behalf in relation to the commercial transactions which are the subject of this litigation.

7. Upon information and belief, defendant R G Electrical is a duly licensed electrical contractor (License Number 52922) within the State of Tennessee, with a principal place of business located at 1531 E. Piney Road, Dickson, Tennessee 37055. Upon information and belief, at all times material to this litigation, the conditions imposed upon License Number 52922 prohibited R G Electrical from contracting to perform electrical work in excess of Sixty-Seven Thousand and No/100 Dollars (\$67,000.00) per project.

8. Upon information and belief, defendant Richard Gregory ("Mr. R. Gregory") is a citizen of the State of Tennessee who resides at 1531 E. Piney Road, Dickson, Tennessee 37055. Upon information and belief, at all time material to this litigation, Mr. R. Gregory was the sole owner and employee of R G Electrical and was authorized to act on its behalf in all matters, including the commercial transactions which are the subject of this litigation.

9. Upon information and belief, defendant Gregory Electrical is not now and has never been a licensed electrical contractor within the State of Tennessee and has a principal place of business located at 1446 Butterworth Road, Kingston Springs, Tennessee 37082.

10. Upon information and belief, defendant Brian C. Gregory ("Mr. B. Gregory") is a citizen of the State of Tennessee who resides at 1446 Butterworth Road, Kingston Springs, Tennessee 37082. Upon information and belief, at all time material to this litigation, Mr. B. Gregory was the sole owner and employee of Gregory Electrical and was authorized to act on its behalf, as well as act on behalf of R G Electrical, in all matters, including the commercial transactions which are the subject of this litigation. Upon information and belief, Mr. B. Gregory is not now and has never been a licensed electrical contractor and/or electrician within the State of Tennessee. Upon information and belief, Mr. B. Gregory is the son of Mr. R. Gregory.

11. Upon information and belief, defendant Derek A. Leigh, AIA ("Mr. Leigh") is a citizen of the State of Tennessee who can be served at 1033 Demonbreun Street, Suite 800, Nashville, Tennessee 37203.

12. Upon information and belief, defendant Nicholas A. Perry, P.E. ("Mr. Perry") is a citizen of the State of Tennessee who can be served at 500 Wilson Circle, Suite 216, Brentwood, Tennessee 37027.

13. Upon information and belief, defendant Todd Folgelberg, P.E. ("Mr. Folgelberg ")

is a citizen of the State of Tennessee who resides at 9488 Foothill Drive, Brentwood, Tennessee 37027.

14. Upon information and belief, defendant First Community Bank of Tennessee (“FCB”) is a Tennessee for profit corporation with its principal office located at 207 Elm Street, Shelbyville, TN 37160.

### **JURISDICTION AND VENUE**

15. Jurisdiction and venue over this action is proper in this Court.

### **BACKGROUND INFORMATION**

16. This Verified Complaint arises out of the construction of a “tenant build out,” 4,287 square foot restaurant named the “Black Rabbit” (“Black Rabbit Construction Project”) on the first floor of a 20,892 square foot, four (4) story, century old building owned by 218 and located at 218 3<sup>rd</sup> Avenue North, Nashville, Tennessee (“218 Building”). Biscan was the General Contractor for the Black Rabbit Construction Project.

17. Upon information and belief, Black Rabbit was formed on September 6, 2016 and within a matter of days entered into five (5) year lease (“B R Lease”) with 218 which obligated Black Rabbit to “build out” a restaurant based upon a “mutually approved floor plan” “at no charge” to 218 on the first floor of the 218 Building.

18. Upon information and belief, the B R Lease also provided that Black Rabbit was “responsible for 100% of its utilities,” but also specifically provided that “[s]ince [Black Rabbit] is paying 100% of the build and utilities [218] agrees to waive [218's] first three monthly lease payments.”

19. Upon information and belief, the B R Lease also provided in Exhibit E, “Tenant Work Letter,” that “[a]ny changes or upgrades to the existing sprinkler and electrical system on the first floor will be at [Black Rabbit] cost.”

20. At no time material to this litigation was Biscan provided with a copy of the B R Lease nor informed of the terms and requirements of the B R Lease, including the terms set forth in Paragraphs 18 and 19 above.

21. Upon information and belief, at some point during the period September 6, 2016 to November 1, 2016, Black Rabbit engaged Mr. Leigh to be the architect of record for the Black Rabbit Construction Project, Mr. Perry to be the Mechanical Engineer of record for the Black Rabbit Construction Project and Mr. Fogelberg to be the Electrical Engineer of record for the Black Rabbit Construction Project (Mr. Leigh, Mr. Perry and Mr. Fogelberg hereinafter collectively referred to as the "Black Rabbit Design Team").

22. Upon information and belief, the applicable professional standard of care in Tennessee for each member of the Black Rabbit Design Team required, at a minimum, that at least one member of the Black Rabbit Design Team personally visit the 218 Building and personally conduct a complete and comprehensive investigation to determine the actual condition of the ceilings, floors, walls and all other aspects of the 218 Building, as well as to determine the extent, capacity and location of all existing utilities, including electrical, domestic water, fire suppression sprinklers and sanitary sewer, so that all appropriate and needed additions and up-grades could be incorporated into the design documents. That same professional standard of care also required that at least one member of the Black Rabbit Design Team personally verify with the owner of the 218 Building all additional owner improvements to be shown on the plans and drawings produced by the Black Rabbit Design Team. That same professional standard of care also required that at least one member of the Black Rabbit Design Team personally contact all appropriate government agencies to establish the actual availability of any increased utility capacities required by the plans and drawings produced by the Black Rabbit Design Team.

23. Biscan was invited to submit a bid to construct the Black Rabbit Construction Project and was provided with a complete, true and correct copy of each of the plans and drawings produced by the Black Rabbit Design Team. Those plans and drawings set forth only the internal improvements to the restaurant's building envelope on the first floor of the 218 Building required to construct the desired restaurant. The plans and drawings made no mention of the existence of sloped floors, unstable walls and/or clogged and failing sanitary sewer lines within the first floor or the remainder of the 218 Building. Nor did the plans and drawings mention that only a single 400 amp electric panel was then in place and was serving the electrical needs of all four floors in the 218 Building, including multiple elevators. The plans and drawing did, however, specify that a dedicated 600 amp electrical board, a dedicated one and one-half inch domestic water line and a dedicated one and one-half inch water line for fire suppression sprinklers would be required for the planned restaurant. They also specifically represented and stated that each of these items was being provided by the owner of the 218 Building and was (or would be) in place and available at the boundary of the planned restaurant's construction envelope at the beginning of the construction process, thus were not to be included within any construction bid.

24. In early December 2016, Black Rabbit selected Biscan as its General Contractor and the parties began the process of negotiating a mutually acceptable construction contract. On December 6, 2016, Mr. Leigh, as Architect of Record, applied for the Construction Permit required to construct the Black Rabbit Construction Project. That permit was issued on January 25, 2017.

25. Upon information and belief, from and after September 6, 2016, Black Rabbit and Mr. Cioccia sought to arrange bank financing for the Black Rabbit Construction Project, but were largely unsuccessful because Black Rabbit was a newly formed business and Mr. Cioccia had significant financial exposure in connection with his other restaurant ventures. Upon information and

belief, Mr. Cioccia contacted Mr. Bowie about financing and Mr. Bowie thereafter introduced Black Rabbit and Mr. Cioccia to FCB, then the holder of a \$2,400,000.00 first mortgage on the 218 Building.

26. Upon information and belief, FCB was unwilling to finance the Black Rabbit Construction Project based upon Black Rabbit's and Mr. Cioccia's credit alone. So, upon information and belief, FCB, 218, Mr. Bowie, Black Rabbit and Mr. Cioccia devised a limited scope \$400,000.00 financing package for the Black Rabbit Construction Project based upon a second mortgage in that amount being placed upon the 218 Building.

27. Upon information and belief, the closing of the \$400,000.00 second mortgage was held on January 27, 2017. Upon information and belief, the funds generated by the second mortgage were used to fund a limited scope \$400,000.00 line of credit from FCB to Black Rabbit, with any and all draws from that line of credit to made only after the following requirements were satisfied:

A. Black Rabbit, Mr. Cioccia and Biscan, each independently confirmed to FCB, 218 and Mr. Bowie that \$400,000.00 or less in work remained to be performed at the Black Rabbit Construction Project under the parties original construction contract; and

B. Biscan submitted duly executed and sworn AIA draw requests to Black Rabbit, each of which was then required to be reviewed, verified and approved by both FCB and 218, through Mr. Bowie.

28. Biscan was not aware of the limited scope \$400,000.00 line of credit from FCB to Black Rabbit until three (3) months after construction commenced on the Black Rabbit Construction Project.

29. Within days of the closing of the above-described second mortgage and line of credit,

Biscan requested that Black Rabbit and Mr. Cioccia provide it with specific proof of financing for the Black Rabbit Construction Project via a letter from "your bank." As of the time of that request, the total projected cost of the Black Rabbit Construction Project was approaching \$800,000.00.

30. Within hours of Biscan's request for proof of financing, FCB sent an e-mail to Biscan which stated in its entirety that "[w]e are working with Trey to provide financing for this project. I look forward to receiving the final budget and contract to review." No mention was made of a second mortgage on the 218 Building or the limited nature of the financing being provided to Black Rabbit. Biscan interpreted the e-mail as confirmation from FCB that it was providing financing for all or the vast majority of the \$800,000.00 cost of the Black Rabbit Construction Project, so did not require further proof of financing from Black Rabbit or Mr. Cioccia.

31. Upon information and belief, prior to 2017, defendants R G Electrical, Mr. R. Gregory and Mr. B. Gregory performed electrical services for 218 and Mr. Bowie, including electrical services at the 218 Building. As soon as Biscan was awarded the Black Rabbit Construction Project, Mr. B. Gregory was introduced to Biscan as "the house electrician for the 218 Building," who, as such, had been engaged by 218 to expand the 218 Building's electrical capacity from 400 amps to 1000 amps. From and after that introduction, Biscan viewed Mr. B. Gregory as the agent of 218 for electrical matters within the 218 Building and treated him accordingly.

32. Black Rabbit specifically requested that Biscan include Mr. B. Gregory in the group of persons and entities bidding on the electrical subcontract for the Black Rabbit Construction Project. Biscan complied with that request.

33. Based upon the initial bids submitted to Biscan by the persons and entities bidding on the electrical subcontract for the Black Rabbit Construction Project, Mr. B. Gregory's bid was the highest by \$15,000.00. At the request of Black Rabbit, Biscan disclosed that fact to Mr. B. Gregory



and invited him to revisit his bid to see if it could be lowered significantly. He did so and lowered his bid by \$7,500.00, but it still remained the highest electrical subcontractor bid. After discussions with Biscan, Black Rabbit decided to not engage Mr. B. Gregory and Biscan signed an electrical subcontract with another bidder.

34. One week later, Black Rabbit, through Mr. Cioccia, contacted Biscan and reported that 218 and Mr. Bowie were “upset” and demanded that their “house electrician,” Mr. B. Gregory, be awarded the electrical subcontract for the Black Rabbit Construction Project. Biscan protested and advised Black Rabbit that “[t]his is a big mistake” because Biscan was concerned about Mr. B. Gregory’s technical and financial ability to successfully complete the electrical portion of the Black Rabbit Construction Project. Mr. Cioccia responded “I know brother I’m kinda in a corner on this... He [Mr. Bowie] called this morning not happy about it..he has done a lot for us....” As of that time, Biscan was not aware that 218 and Mr. Bowie had functional control over the Black Rabbit Construction Project and all decisions related to it through the line-of-credit from FCB. Nor was Biscan aware that neither Mr. B. Gregory nor his company, Gregory Electrical, were licensed electrical subcontractors within the State of Tennessee.

35. As demanded and required by 218 and Mr. Bowie, Biscan cancelled the existing electrical subcontract and signed a higher dollar electrical subcontract with Gregory Electrical, the entity through which Mr. B. Gregory wanted to performed electrical services for the Black Rabbit Construction Project.

36. Soon after being awarded the electrical subcontract for the Black Rabbit Construction Project, Mr. B. Gregory applied for a permit to “upgrade” the existing 400 amp service at the 218 Building to 1000 amp service. Upon information and belief, when Mr. B. Gregory made that application, he was acting solely as the “house electrician” for the 218 Building and as an agent of 218

and Mr. Bowie because the “upgrade” being sought was not part of the Black Rabbit Construction Project. Rather than apply for the permit in the name of Gregory Electrical or in his own name, however, Mr. B. Gregory submitted the permit in the name of R G Electrical and his father Rick Gregory. Biscan would learn much later that (i) neither Gregory Electrical nor Mr. B. Gregory held an electrical contractors license in Tennessee or any other place and (ii) R G Electrical was prohibited by its license from undertaking electrical work in excess of \$67,000.00 on any one job.

37. During the months long discussions between Mr. Cioccia and Biscan leading to the execution of parties’ construction contract, Black Rabbit, through Mr. Cioccia, repeatedly represented and stated to Biscan that 218, not Black Rabbit, was responsible, construction wise and financially, for any and all needed and required upgrades and additions to the 218 Building which were not included in the plans and drawings produced by the Black Rabbit Design Team. Since Mr. B. Gregory and several other trades were in the 218 Building upgrading other portions of the building even before Biscan began its construction work, Biscan had no reason to doubt any of Black Rabbit’s representation and statements.

38. By construction contract, dated as of February 17, 2017, Biscan agreed to construct the Black Rabbit Construction Project in compliance with the plans and drawings produced by the Black Rabbit Design Team for the fixed sum of \$785,839.00 (“Black Rabbit Construction Contract”). No work beyond the internal work on the first floor of the 218 Building required to build the planned restaurant was included in the Black Rabbit Construction Contract. A true and complete copy of the Black Rabbit Construction Contract is attached to and incorporated into this Verified Complaint as **Exhibit 1**.

39. A few weeks after Biscan started construction, 218, through communications from Mr.

Bowie and Mr. Murphy, began to take the position that virtually every needed addition or upgrade to the 218 Building required to construct the Black Rabbit Construction Project was solely the responsibility of the Black Rabbit, both construction wise and financially. The additions and upgrades specifically identified by Mr. Bowie and Mr. Murphy included (i) removing and replacing a large portion of the internal and external sanitary sewer system serving the 218 Building, (ii) constructing and installing all internal and external components necessary to upgrade the aggregate electrical capacity of the 218 Building from 400 amps to 1000 amps, (iii) constructing and installing a fire alarm system on more than one floor of the 218 Building and (iv) constructing and installing all internal and external components necessary to increase the size of the domestic water lines and dedicated fire suppression water lines coming into the 218 Building to sizes large enough to meet the needs of the Black Rabbit, as well as all other tenants in the building.

40. None of the items set forth in paragraph 39(i)-(iv) above were shown or addressed in the plans and drawings produced by the Black Rabbit Design Team. None of the items were included within Biscan's bid or the Black Rabbit Construction Contract. And several of the items were specifically contracted for, undertaken and controlled by 218 via Mr. Bowie and Mr. Murphy, with the 218 subcontractors performing the services only later being instructed to send their bills to Biscan for payment.

41. Throughout the summer of 2017, Biscan continued to construct the Black Rabbit Construction Project, while at the same time continually informing Black Rabbit that all the additional work it was being required to perform by 218, Mr. Bowie and Mr. Murphy would be billed directly to Black Rabbit via change orders to the Black Rabbit Construction Contract. Biscan also repeatedly demanded that Mr. Cioccia meet face to face with Mr. Bowie and Mr. Murphy to finally resolve who was constructing what and who was paying for what. That issue, however, was never resolved.

42. In mid-July 2017, Gregory Electrical/ Mr. B. Gregory/ R E Electrical / Richard Gregory abandoned the Black Rabbit Construction Project shortly after being informed by Nashville Electric Service that it did not have the capacity to increase the electrical service to the 218 Building beyond an aggregate capacity of 800 amps. By that time, Biscan had already paid Gregory Electrical/ Mr. B. Gregory/ R E Electrical / Richard Gregory all but \$20,000.00 of its electrical subcontract, including paying in full for all of the lighting fixtures required for the Black Rabbit Construction Project. Biscan would later learn that Gregory Electrical/ Mr. B. Gregory/ R E Electrical / Richard Gregory had only paid a deposit on those fixtures and all other electrical supplies and had absconded with the rest of the money.

43. After engaging a replacement electrical subcontractor, Biscan learned that a significant portion of the electrical work performed by Gregory Electrical/ Mr. B. Gregory/ R E Electrical/ Richard Gregory was substandard and needed to be replaced, further increasing the cost of the electrical portion of the Black Rabbit Construction Project.

44. The aggregate cost of the Black Rabbit Construction Project was also significantly increased by the existence of sloping floors and unstable internal and external walls at the 218 Building, the unexpected necessity to excavate a significant amount of rock in order to increase the size of the domestic water lines and dedicated fire suppression water lines coming into the 218 Building, the demands of 218, through Mr. Bowie and Mr. Murphy, that a significant portion of the utilities on the roof be relocated to facilitate a planned "patio area" on the roof for other tenants in the 218 Building, changes to the initial construction plans made by the Black Rabbit and, finally, the significant and costly additional improvements to the 218 Building demanded and required by 218, Mr. Bowie and Mr. Murphy, some of which are specifically set forth in paragraph 39(i)-(iv) above.

45. The final cost of the Black Rabbit Construction Project, inclusive of all invoices

submitted to Biscan by subcontractors, Biscan's increased general conditions costs caused by the increased scope of work [and resulting construction time] and Biscan's contractually entitled "profit," was \$1,283,240.17. To-date, Biscan has only been paid the sum of \$661,485.57 by Black Rabbit, which sum is \$124,353.43 less than the initial fixed construction price set forth in the Black Rabbit Construction Contract and \$621,754.60 less than the final cost of the Black Rabbit Construction Project.

**COUNT I**  
**BREACH OF CONTRACT**

46. Paragraph 1 through 45 of this Verified Complaint are realleged herein as if set forth in full.

47. The Black Rabbit Construction Contract is a binding and enforceable agreement by and between Biscan and Black Rabbit relating to the Black Rabbit Construction Project.

48. Biscan fully performed its obligations under the Black Rabbit Construction Contract.

49. Black Rabbit has breached its contractual obligations to Biscan by its failure and refusal to pay Biscan the remaining sum of \$621,754.60 due under the Black Rabbit Construction Contract.

50. At all times material to this litigation, Biscan has attempted to, and did, mitigate the damages caused by Black Rabbit's breach of the Black Rabbit Construction Contract.

51. By reason of Black Rabbit's breach of the Black Rabbit Construction Contract, Biscan has been, or will be, damaged in an amount of not less than \$621,754.60, plus its costs and expenses, including reasonable attorneys' fees, as authorized by the Black Rabbit Construction Contract.

52. Upon information and belief, Mr. Cioccia is individually liable for the damages caused

by Black Rabbit's breach of the Black Rabbit Construction Contract because Black Rabbit was and is an underfunded, sham organization functioning as Mr. Cioccia's alter ego and Mr. Cioccia personally and directly managed, directed, controlled and implemented Black Rabbit's breach of the Black Rabbit Construction Contract.

53. Upon information and belief, 218 is liable for not less than a \$207,000.00 portion of the sums remaining unpaid under the Black Rabbit Construction Contract because Black Rabbit was acting as the authorized agent of 218 when it required Biscan to construct an additional \$207,000.00 worth of improvements to the 218 Building not connected to the Black Rabbit Construction Project and/or because, upon information and belief, 218 had functional control over the Black Rabbit Construction Project at all times material to this litigation.

54. Upon information and belief, Mr. Bowie is personally liable for the above referenced \$207,000.00 portion of the sums remaining unpaid under the Black Rabbit Construction Contract because 218 was and is an underfunded, sham organization functioning as Mr. Bowie's alter ego and Mr. Bowie personally and directly managed, directed, controlled and implemented Black Rabbit's activities relating to construction of the \$207,000.00 worth of improvements to the 218 Building not connected to the Black Rabbit Construction Project.

**COUNT II**  
**BREACH OF CONTRACT**

55. Paragraph 1 through 54 of this Verified Complaint are realleged herein as if set forth in full.

56. By Subcontract Agreement, dated as of February 20, 2017, Gregory Electrical agreed to furnish and install the electrical work at the Black Rabbit Construction Project in compliance with the plans and drawings produced by the Black Rabbit Design Team for the fixed sum of \$97,500.00

("Gregory Electrical Subcontract"). A true and complete copy of the Gregory Electrical Subcontract is attached to and incorporated into this Verified Complaint as **Exhibit 2**.

57. The Gregory Electrical Subcontract is a binding and enforceable agreement by and between Biscan and Gregory Electrical relating to electrical work at the Black Rabbit Construction Project.

58. Biscan fully performed its obligations under the Gregory Electrical Subcontract.

59. Gregory Electrical has breached its contractual obligations to Biscan by its failure and refusal to perform its construction obligations under the Gregory Electrical Subcontract, including but not limited to, properly and professionally installing electrical work, failing to order required electrical components and fixtures, abandoning the Black Rabbit Construction Project and stealing tens of thousands of dollars intended to pay for components and fixtures.

60. At all times material to this litigation, Biscan attempted to, and did, mitigate the damages caused by Gregory Electrical's breach of the Gregory Electrical Subcontract .

61. By reason of Gregory Electrical's breach of the Gregory Electrical Subcontract, Biscan has been, or will be, damaged in an amount of not less than \$100,000.00, plus its costs and expenses, including reasonable attorneys' fees, as authorized by the Gregory Electrical Subcontract.

62. Upon information and belief, Mr. B. Gregory is individually liable for the damages caused by Gregory Electrical's breach of the Gregory Electrical Subcontract because Gregory Electrical was and is an underfunded, sham organization functioning as Mr. B. Gregory's alter ego and Mr. B. Gregory personally and directly managed, directed, controlled and implemented Gregory Electrical breach of the Gregory Electrical Subcontract.

63. Upon information and belief, R E Electrical is liable for the damages caused by

Gregory Electrical's breach of the Gregory Electrical Subcontract because it knowingly and willfully allowed Gregory Electrical and Mr. B. Gregory to unlawfully utilize its Tennessee electrical subcontractor's license.

64. Upon information and belief, Mr. R. Gregory is individually liable for the damages caused by Gregory Electrical's breach of the Gregory Electrical Subcontract because R E Electrical was and is an underfunded, sham organization functioning as Mr. R. Gregory's alter ego and Mr. R. Gregory personally and directly managed, directed, controlled and implemented Gregory Electrical's unlawful use of R E Electrical's Tennessee electrical subcontractor's license.

65. Upon information and belief, 218 is liable for the damages caused by Gregory Electrical's breach of the Gregory Electrical Subcontract because 218 forced Biscan to use Gregory Electrical to perform all electrical work at the Black Rabbit Construction Project, Gregory Electrical was the acting as the authorized agent of 218 when it performed a significant portion the electrical work, 218 knew or should have known that neither Gregory Electrical nor Mr. B. Gregory were licenses to perform electrical work in the State of Tennessee and/or because, upon information and belief, 218 had functional control over the Black Rabbit Construction Project at all times material to this litigation.

66. Upon information and belief, Mr. Bowie is personally liable for the damages caused by Gregory Electrical's breach of the Gregory Electrical Subcontract because 218 was and is an underfunded, sham organization functioning as Mr. Bowie's alter ego and Mr. Bowie personally and directly managed, directed, controlled and implemented Gregory Electrical's activities relating to electrical work at the Black Rabbit Construction Project.

**COUNT III**  
**CONVERSION**

67. Paragraph 1 through 66 of this Verified Complaint are realleged herein as if set forth



in full.

68. In connection with the Black Rabbit Construction Project, Biscan paid Gregory Electrical in excess of \$77,000.00. Upon information, Gregory Electrical and Mr. B. Gregory unlawfully converted most of those payments and subsequently used those funds for other purposes, including, upon information and belief to pay expenses of Gregory Electrical and Mr. B. Gregory unrelated to the Black Rabbit Construction Project, as well as pay Mr. B. Gregory's personal expenses.

69. At all times material to this litigation, Biscan attempted to, and did, mitigate the damages caused by Gregory Electrical's and Mr. B. Gregory's unlawful conversion.

70. By reason of Gregory Electrical's and Mr. B. Gregory's unlawful conversion, Biscan has been, or will be, damaged in the exact amount proven at the trial of this matter, plus its costs and expenses, including reasonable attorneys' fees, as authorized by the Gregory Electrical Subcontract.

**COUNT IV**  
**CIVIL CONSPIRACY**

71. Paragraph 1 through 70 of this Verified Complaint are realleged herein as if set forth in full.

72. Upon information and belief, by engaging in the conduct set forth in paragraphs 25 through 29 above, Black Rabbit, Mr. Cioccia, 218, Mr. Bowie and FCB have engaged in an unlawful civil conspiracy to deny Biscan accurate information concerning Black Rabbit's and Mr. Cioccia's financial inability to fund the Black Rabbit Construction Project, with the ultimate goal being to get Biscan to contractually commit itself to build the Black Rabbit Construction Project with its own funds, and then force Biscan to agree to a long term payout plan with Black Rabbit and/or Mr. Cioccia.

73. Upon information and belief, by intentionally withholding from Biscan accurate

information concerning the terms and conditions of the B R Lease and engaging in the conduct set forth in paragraphs 36 through 40 above, Black Rabbit, Mr. Cioccia, 218, Mr. Bowie and Mr. Murphy have engaged in an unlawful civil conspiracy to deny Biscan accurate information concerning Black Rabbit's and Mr. Cioccia's contractual obligations to fund vast improvements to the 218 Building unrelated to the Black Rabbit Construction Project, with the ultimate goal being to get Biscan to contractually commit to build the unrelated improvements to the 218 Building with its own funds, and then force Biscan to agree to a long term payback plan for such improvements.

74. At all times material to this litigation, Biscan attempted to, and did, mitigate the damages caused by the unlawful civil conspiracy set forth paragraph 72 above.

75. Upon information and belief, as a direct and proximate results of the unlawful civil conspiracy set forth paragraph 72 above, Biscan has been, or will be, damaged in an amount not less than \$621,754.60.

76. At all times material to this litigation, Biscan attempted to, and did, mitigate the damages caused by the unlawful civil conspiracy set forth paragraph 73 above.

77. Upon information and belief, as direct and proximate results of the unlawful civil conspiracy set forth paragraph 73 above, Biscan has been, or will be, damaged in an amount not less than \$207,000.00.

**COUNT V**  
**PROFESSIONAL MALPRACTICE**

78. Paragraph 1 through 77 of this Verified Complaint are realleged herein as if set forth in full.

79. Upon information and belief, no member of the Black Rabbit Design Team actually conducted a complete and comprehensive investigation of the 218 Building to determine the actual condition of the ceilings, floors, walls and other aspects of 218 Building, as well as to determine the

extent, capacity and location of all existing utilities, including electrical, domestic water, fire suppression sprinklers and sanitary sewer.

80. Upon information and belief, no member of the Black Rabbit Design Team actually verified with the owner of the 218 Building the additional owner improvements which were shown on the plans and drawings produced by the Black Rabbit Design Team.

81. Upon information and belief, no member of the Black Rabbit Design Team actually contacted the appropriate government agencies to establish the actual availability of the increased utility capacities required by the plans and drawings produced by the Black Rabbit Design Team.

82. Upon information and belief, the inactivities and failures of the Black Rabbit Design Team set forth in Paragraphs 79 through 81 above constitute professional malpractice as to each member of the Black Rabbit Design Team.

83. As a direct and proximate cause of the professional malpractice set forth above, the plans and drawings produced by the Black Rabbit Design Team were materially incomplete, inaccurate and misleading, including requiring an increase in the electrical capacity within the 218 Building beyond the then current electrical supply capabilities of Nashville Electric Service.

84. At all times material to this litigation, Biscan attempted to, and did, mitigate the damages caused the professional malpractice of the Black Rabbit Design Team.

85. By reason of the professional malpractice of the Black Rabbit Design Team, Biscan has been, or will be, damaged in the exact amount proven at the trial of this matter.

**COUNT VI**  
**QUANTUM MERUIT**

86. Paragraph 1 through 85 of this Verified Complaint are realleged herein as if set forth in full.

87. As a direct and proximate result of Biscan's construction of \$1,283,240.17 worth

of improvements to the 218 Building, the value of the 218 Building has been greatly increased.

88. Pleading in the alternative, Biscan avers and alleges that 218, as owner of the 218 Building, as well as Mr. Bowie as sole member and manager of 218, have received a direct and substantial financial benefit from the increased value of the 218 Building caused by Biscan's construction of \$1,283,240.17 worth of improvements to the 218 Building. Such benefit, because Biscan is still owed a total of \$621,754.60 for its work on the 218 Building, unjustly enriches 218 and Mr. Bowie and, therefore, Biscan is due the sum of \$621,754.60 from 218 and Mr. Bowie, jointly and severally, in order to prevent unjust enrichment.

**COUNT VII**  
**ENFORCEMENT OF MECHANICS' AND MATERIALMEN'S LIEN**

89. Paragraphs 1 through 88 of this Verified Complaint are realleged herein as if set forth in full.

90. Biscan claims and asserts a lien on the 218 Building to secure payments justly due it under the Black Rabbit Construction Contract. In accordance with the provisions of T.C.A. §66-11-101, et seq., Biscan has filed a Notice of Lien against the 218 Building by recording the same in the Register's Office of Davidson County, Tennessee, in Instrument Number 20180129-0008802, and such notice was filed within one (1) year of the default by Black Rabbit. A true and correct copy of the Notice of Lien is attached hereto and incorporated herein by reference as **Exhibit 3**.

91. Biscan avers that its lien on the 218 Building, including all buildings, structures, fixtures, improvements, as well as the land, exists to secure the indebtedness of Black Rabbit to Biscan, plus accrued interest.

**WHEREFORE**, premises considered, plaintiff Robert S. Biscan & Company requests judgment as follows:

1. That process issue against defendants Black Rabbit, LLC, Trey Cioccia, 218 LLC, Gary Bowie, James Murphy, R G Electrical, Richard Gregory, Gregory Electrical, Brian C. Gregory, Derek A. Leigh, AIA, Nicholas A. Perry, P.E., Todd Folgelberg, P.E. and First Community Bank of Tennessee, requiring them to appear in court and answer this Verified Complaint.
2. As to Count I, that plaintiff Robert S. Biscan & Company be awarded a judgment for compensatory damages against defendants Black Rabbit, LLC and Trey Cioccia, jointly and severally, in the amount of not less than Six Hundred Twenty-One Thousand Seven Hundred Fifty-Four and 60/100 Dollars (\$621,754.60).
3. As to Count I, and in the alternative, that plaintiff Robert S. Biscan & Company be awarded a judgment for compensatory damages against defendants 218 LLC and Gary Bowie, jointly and severally, in the amount of not less than Two Hundred Seven Thousand Fifty-Four and No/100 Dollars (\$207,000.00).
4. As to Count II, and in the alternative, that plaintiff Robert S. Biscan & Company be awarded a judgment for compensatory damages against defendants R G Electrical, Richard Gregory, Gregory Electrical, Brian C. Gregory, 218 LLC and Gary Bowie, jointly and severally, in the amount of not less than One Hundred Thousand No/100 Dollars (\$100,000.00).
5. As to Count III, and in the alternative, that plaintiff Robert S. Biscan & Company be awarded a judgment for compensatory damages against defendants Gregory Electrical and Brian C. Gregory, jointly and severally, in the exact amount proven at trial.
6. As to Count IV, and in the alternative, that plaintiff Robert S. Biscan & Company be awarded a judgment for compensatory damages against defendants Black Rabbit, LLC,

Trey Cioccia, 218, LLC, Gary Bowie and First Community Bank of Tennessee, jointly and severally, in the amount of not less than Six Hundred Twenty-One Thousand Seven Hundred Fifty-Four and 60/100 Dollars (\$621,754.60).

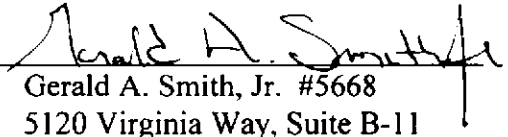
7. As to Count IV, and in the alternative, that plaintiff Robert S. Biscan & Company be awarded a judgment for compensatory damages against defendants Black Rabbit, LLC, Trey Cioccia, 218, LLC, Gary Bowie and James Murphy, jointly and severally, in the amount of not less Two Hundred Seven Thousand Fifty-Four and No/100 Dollars (\$207,000.00).
8. As to Count V, and in the alternative, that plaintiff Robert S. Biscan & Company be awarded a judgment for compensatory damages against defendants Derek A. Leigh, AIA, Nicholas A. Perry, P.E., and Todd Folgelberg, P.E., jointly and severally, in the exact amount proven at trial.
9. As to Count VI, and in the alternative, that plaintiff Robert S. Biscan & Company be awarded a judgment against 218, LLC and Gary Bowie, jointly and severally, for quantum meruit in the amount of not less than Six Hundred Twenty-One Thousand Seven Hundred Fifty-Four and 60/100 Dollars (\$621,754.60).
10. As to Count VII, that at a hearing the lien of plaintiff Robert S. Biscan & Company be declared and that the 218 Building be sold upon such terms as the Court deems equitable and in bar of all equity of redemption and that the proceeds of said sale be applied to the satisfaction of this Decree.
11. As to Count VII, that to secure the payments due plaintiff Robert S. Biscan & Company and to enforce plaintiff's mechanics' and materialmen's lien upon the 218 Building,

an attachment issue and be levied thereon by the Sheriff of Davidson County, Tennessee, on the 218 Building.

12. That plaintiff Robert S. Biscan & Company be awarded a judgment for pre-judgment interest on all amounts due from the date due until paid, as provided by law and the Black Rabbit Construction Contract.
13. That plaintiff Robert S. Biscan & Company be awarded post-judgment interest and its costs in this matter, including reasonable attorney's fees.
14. That plaintiff Robert S. Biscan & Company be awarded such other, further and general relief to which it may be entitled and which this Court deems to be just and equitable.

**Respectfully submitted,**


By: \_\_\_\_\_

  
Gerald A. Smith, Jr. #5668  
5120 Virginia Way, Suite B-11  
Brentwood, Tennessee 37027  
(615) 915-3130  
Attorney for Plaintiff  
Robert S. Biscan & Company

STATE OF TENNESSEE )  
COUNTY OF WILLIAMSON)

The undersigned, A. J. Coleman, being the Vice President of Robert S. Biscan & Company, after being duly sworn, makes oath that the allegations set forth in the foregoing Verified Complaint are true and correct to the best of his knowledge, and acknowledges that he is empowered to execute this instrument for the purposes therein contained, by signing the name of the corporation as such officer.

ROBERT S. BISCAN & COMPANY

By:   
A. J. Coleman  
Title: Vice President

SWORN AND SUBSCRIBED before me this 9<sup>th</sup> day of April, 2018.

  
Notary Public

My Commission Expires: 1-8-19





AIA DOCUMENT

A107-1997

**Abbreviated Standard Form of Agreement Between Owner and Contractor for Construction Projects of Limited Scope where the basis of payment is a STIPULATED SUM**

AGREEMENT made as of the 17th of February,

In the year Two Thousand, Seventeen (2017)  
(In words, indicate day, month, and year)

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

BLACK RABBIT, LLC  
218 3<sup>rd</sup> Ave N  
Nashville, TN  
C/O Trey Cioccia  
210 Almond Street  
Nashville, TN 37201

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

ROBERT S. BISCAN & COMPANY  
9160 Carothers Pkwy, Suite 200  
Franklin, TN 37067

The Project is:  
(Name and location)

BLACK RABBIT  
218 3<sup>rd</sup> Ave N.  
Nashville, TN

The Architect is:  
(Name, address and other information)

DEREK A. LEIGH, AIA

The Owner and Contractor agree as follows.

EXHIBIT 1

This document includes abbreviated General Conditions and should not be used with other general conditions.

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

This document has been approved by The Associated General Contractors of America.

2018 APR 12 AM 9:48  
FILED



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## ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

2.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

January 30, 2017.

2.2 The Contract Time shall be measured from the date of commencement.

2.3 The Contractor shall achieve Substantial Completion of the entire Work not later than one hundred (100) days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of Work.)*

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)*

N/A

## ARTICLE 3 CONTRACT SUM

3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be seven hundred eighty five thousand eight hundred thirty nine and No/100 Dollars (\$785,839.00) subject to additions and deletions as provided in the Contract Documents.



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

*(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner 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.)*

N/A

3.3 Unit prices, if any, are as follows:

N/A

## ARTICLE 4 PAYMENTS

### 4.1 PROGRESS PAYMENTS

4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**Billings submitted by the 25<sup>th</sup> of the month are due and payable by the 10<sup>th</sup> of the next month.**

4.1.2 Provided that an Application for Payment is received by the Architect not later than the 25<sup>th</sup> day of a month, the Owner shall make payment to the Contractor not later than the 10<sup>th</sup> day of the next month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than fifteen (15) days after the Architect receives the Application for Payment.



4.1.3 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.  
*(Insert rate of interest agreed upon, if any.)*

**Interest will be charged at the highest rate allowed by law and a non payment penalty of 1% per month will be charged to any past due account as a late charge. The cost of collection of any delinquent account, including but not limited to reasonable attorney fees, shall be paid by the Owner.**

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advise should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

#### 4.2 FINAL PAYMENT

4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Paragraph 17.2, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

### ARTICLE 5 ENUMERATION OF CONTRACT DOCUMENTS

5.1 The Contract Documents are listed in Article 6 and, except for Modifications Issued after execution of this Agreement, are enumerated as follows:

5.1.1 The Agreement is this executed 1997 edition of the Abbreviated Standard Form of Agreement Between Owner and Contractor, AIA Document A107-1997.

5.1.2 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated \_\_\_\_\_, and are as follows:

Document	Title	Pages
----------	-------	-------

N/A



5.1.3 The Specifications are those contained in the Project Manual dated as in Subparagraph 5.1.2, and are as follows:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

Section	Title	Pages
<b><u>As Indicated on Plans.</u></b>		

5.1.4 The Drawings are as follows, and are dated \_\_\_\_\_ unless different date is shown below:

*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

Number	Title	Pages
<b><u>See Attached.</u></b>		

5.1.5 The Addenda, if any, are as follows:

Number	Date	Pages
<b><u>N/A</u></b>		

Portion of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 5.

5.1.6 Other documents, if any, forming part of the Contract Documents are as follows:  
*(List any additional documents which are intended to form part of the Contract Documents.)*

**Attached Computer Print Out with Qualifications Dated 2/9/17.**



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## GENERAL CONDITIONS

### ARTICLE 6 GENERAL PROVISIONS

#### 6.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement with Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. 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; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

#### 6.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor.

#### 6.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, 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 may constitute the whole or a part of the Project.

#### 6.4 EXECUTION OF THE CONTRACT

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

#### 6.5 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors,



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sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

## **ARTICLE 7 OWNER**

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

7.1.1 The Owner shall furnish and pay for surveys and a legal description of the site.

7.1.2 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

7.1.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

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

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

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

If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after 10 days' written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor.

## **ARTICLE 8 CONTRACTOR**

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

8.1.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 7.1.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions or inconsistencies in the Contract Documents; however, any errors, omissions or inconsistencies discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.



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8.1.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

## 8.2 SUPERVISION AND CONSTRUCTION PROCEDURES

8.2.1 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 under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall be fully and solely responsible for the jobsite safety thereof unless the Contractor gives timely written notice to the Owner and Architect that such means, methods, techniques, sequences or procedures may not be safe.

8.2.2 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.

## 8.3 LABOR AND MATERIALS

8.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

8.3.3 The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

8.3.4 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

## 8.4 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

## 8.5 TAXES

The Contractor shall pay sales, consumer, use and other similar taxes which are legally enacted when bids are received or negotiations concluded.



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## **8.6 PERMITS, FEES AND NOTICES**

8.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

8.6.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. The Contractor shall promptly notify the Architect and Owner if the Drawings and Specifications are observed by the Contractor to be at variance therewith. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

## **8.7 SUBMITTALS**

8.7.1 The Contractor shall review for compliance with the Contract Documents, approve in writing and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness. The Work shall be in accordance with approved submittals.

8.7.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

## **8.8 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

## **8.9 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.

## **8.10 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material.

## **8.11 ROYALTIES, PATENTS AND COPYRIGHTS**

The Contractor shall pay all royalties and license fees; shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect, unless the Contractor has reason to believe that there is an infringement of patent or copyright and fails to promptly furnish such information to the Architect.

## **8.12 ACCESS TO WORK**

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.



### 8.13 INDEMNIFICATION

8.13.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 16.3, 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 expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, 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), 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 which would otherwise exist as to a party or person described in this Paragraph 8.13.

8.13.2 In claims against any person or entity indemnified under this Paragraph 8.13 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 8.13.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### ARTICLE 9 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

9.1 The Architect will provide administration of the Contract and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Paragraph 17.2.

9.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the 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 rights and responsibilities under the Contract Documents, except as provided in Subparagraph 8.2.1.

9.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

9.4 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

9.5 The Architect will have authority to reject Work that does not conform to the Contract Documents.



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9.6 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

9.7 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions so rendered in good faith.

9.8 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

9.9 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

#### 9.10 CLAIMS AND DISPUTES

9.10.1 Claims, disputes and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Paragraph 15.2, shall be referred initially to the Architect for decision. Such matters, except those relating to aesthetic effect and except those waived as provided for in Paragraph 9.11 and Subparagraphs 14.5.3 and 14.5.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

9.10.2 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by the Architect, by mediation or by arbitration.

9.10.3 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

9.10.4 Claims, disputes and other matters in question arising out of or relating to the Contract that are not resolved by mediation, except matters relating to aesthetic effect and except those waived as provided for in Paragraph 9.11 and Subparagraphs 14.5.3 and 14.5.4, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association and shall be made within a reasonable time after the dispute has arisen. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, any person or entity not a party to the Agreement under which



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such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) such person or entity is not the Architect or any of the Architect's employees or consultants. The agreement herein among the parties to the Agreement and any other written agreement to arbitrate referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### **9.11 CLAIMS FOR CONSEQUENTIAL DAMAGES**

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 19 Nothing contained in this Paragraph 9.11 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **ARTICLE 10 SUBCONTRACTORS**

10.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

10.2 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of the Subcontractors for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor to whom the Owner or Architect has made reasonable and timely objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

10.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

#### **ARTICLE 11 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

11.1 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



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of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in Paragraph 9.10.

11.2 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

11.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

#### **ARTICLE 12 CHANGES IN THE WORK**

12.1 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, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor and Architect, or by written Construction Change Directive signed by the Owner and Architect.

12.2 The cost or credit to the Owner from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit.

12.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

12.4 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 equitably adjusted.

#### **ARTICLE 13 TIME**

13.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

13.2 The date of Substantial Completion is the date certified by the Architect in accordance with Subparagraph 14.4.2.

13.3 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, subject to the provisions of Paragraph 9.10.



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## ARTICLE 14 PAYMENTS AND COMPLETION

### 14.1 APPLICATIONS FOR PAYMENT

14.1.1 Payments shall be made as provided in Article 4 of this Agreement. Applications for Payment shall be in a form satisfactory to the Architect.

14.1.2 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.

### 14.2 CERTIFICATES FOR PAYMENT

14.2.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 14.2.3.

14.2.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

14.2.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Subparagraph 14.2.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Subparagraph 14.2.1. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 8.2.2, because:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;



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- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

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

#### 14.3 PAYMENTS TO THE CONTRACTOR

14.3.1 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in similar manner.

14.3.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

14.3.3 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 Contract Documents.

#### 14.4 SUBSTANTIAL COMPLETION

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

14.4.2 When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, 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. Upon the issuance of the Certificate of Substantial Completion, the Architect will submit it to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

#### 14.5 FINAL COMPLETION AND FINAL PAYMENT

14.5.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Subparagraph 14.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

14.5.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor,



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materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

14.5.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

## ARTICLE 15 PROTECTION OF PERSONS AND PROPERTY

### 15.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein; and
- .3 other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Subparagraphs 15.1.2 and 15.1.3, except for damage or loss attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 8.13.

### 15.2 HAZARDOUS MATERIALS

15.2.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB) encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article 12 of this Agreement.

15.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in



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Subparagraph 15.2.1 and has not been rendered harmless, 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), and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

15.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### **ARTICLE 16 INSURANCE**

16.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

#### **16.2 OWNER'S LIABILITY INSURANCE**

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

#### **16.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE**

16.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's various liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability insurance under Paragraph 16.1.

16.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

16.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability insurance under Paragraph 16.1.

#### **16.4 PROPERTY INSURANCE**

16.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located,



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property insurance on an "all-risk" policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 14.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 16.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project.

16.4.2 The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### 16.5 WAIVERS OF SUBROGATION

16.5.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 11, if any, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Paragraph 16.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 11, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

16.5.2 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.

#### ARTICLE 17 CORRECTION OF WORK

17.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

17.2 In addition to the Contractor's obligations under Paragraph 8.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 14.4.2, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it



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promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

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

17.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

17.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 17.

## **ARTICLE 18 MISCELLANEOUS PROVISIONS**

### **18.1 ASSIGNMENT OF CONTRACT**

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

### **18.2 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located.

### **18.3 TESTS AND INSPECTIONS**

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

### **18.4 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

As between Owner and Contractor, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued:

- .1 not later than the date of Substantial Completion for acts or failures to act occurring prior to the relevant date of Substantial Completion;
- .2 not later than the date of issuance of the final Certificate for Payment for acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to the issuance of the Final Certificate for Payment; and
- .3 not later than the date of the relevant act or failure to act by the Contractor for acts or failures to act occurring after the date of the final Certificate for Payment.



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## **ARTICLE 19 TERMINATION OF THE CONTRACT**

### **19.1 TERMINATION BY THE CONTRACTOR**

If the Architect fails to recommend payment for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment thereon for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the

Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages applicable to the Project.

## 19.2 TERMINATION BY THE OWNER

19.2.1 The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

19.2.2 When any of the above reasons exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' written notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

19.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 19.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

19.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.



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ARTICLE 20 OTHER CONDITIONS OR PROVISIONS

If this contract is for a tenant build-out, the following applies:

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

Black Rabbit LLC, by Trey Cioccia as Manager   
OWNER (Signature) CONTRACTOR (Signature)

Trey Cioccia as Manager Jim Coleman, Vice President  
(Printed name and title) (Printed name and title)



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**ATTACHMENT A  
LIST OF DRAWINGS  
BLACK RABBIT**

<u>Sheet No.</u>	<u>Description</u>	<u>Date</u>
	<b><u>Architectural</u></b>	
A-1	Title Page	12/06/16
A-2	Floor & Mezzanine Plans	12/16/16
A-3	Basement & Enlarged Plans	12/06/16
A-4	BLDG Sections & Details	12/16/16
A-5	Sections, Details & Schedules	12/16/16
	<b><u>Interior Design</u></b>	
ID0.0	Cover Sheet	12/06/16
ID1.0	General Notes	12/06/16
ID2.0	Floor/Furniture Plan	12/06/16
ID3.0	RCP Finish Specifications	12/06/16
ID3.1	RCP Finish Plan	12/06/16
ID5.0	Finish Schedule	12/06/16
ID5.1	Finish Plan	12/06/16
ID6.0	Interior Elevations	12/06/16
ID6.1	Interior Elevations	12/06/16
ID7.0	Interior Details	12/06/16
	<b><u>Mechanical</u></b>	
M0.1	Mechanical Specifications	1/18/17
M0.2	Mechanical Schedules	1/18/17
M0.3	Mechanical Cert. of Compliance	1/18/17
M1.0	Mechanical Floor Plan	1/18/17
M1.1	Mechanical Floor Plan	1/18/17
M2.0	Mechanical Piping Plan	12/06/16
M2.1	Mechanical Piping Plan	12/06/16
M5.1	Mechanical Details	12/06/16
M5.2	Mechanical Details	12/06/16
M5.3	Mechanical Details	12/06/16

**ATTACHMENT A  
LIST OF DRAWINGS  
BLACK RABBIT**

<u>Sheet No.</u>	<u>Description</u>	<u>Date</u>
	<u>Plumbing</u>	
P0.1	Plumbing Specifications & Schedules	1/18/17
P1.0	Plumbing Water Plan	12/06/16
P1.1	Plumbing Water Plan	12/06/16
P2.0	Plumbing Waste Plan	12/6/16
P2.1	Plumbing Waste Plan	1/18/17
P3.1	Plumbing Vent Riser Diagram	1/18/17
P5.1	Plumbing Details	12/6/16
	<u>Electrical</u>	
E0.1	Electrical Specifications & Legend	12/6/16
E0.2	Electrical Schedules	12/6/16
E0.3	Electrical Riser Diagram	12/6/16
E1.0	Electrical Power Plan	12/6/16
E1.1	Electrical Power Plan	1/18/17
E2.1	Electrical Lighting Plan	1/18/17
E3.0	HVAC Power Plan	12/6/16
E3.1	HVAC Power Plan	12/6/16

ROBERT S. BISCAN & COMPANY

PROJECT  
FACILITY  
DATE  
PROJECT MANAGER

BLACK RABBIT RESTAURANT  
218 3RD AVE NORTH - NASHVILLE, TN  
2/10/17  
RANDY GENTRY

FINAL REV  
3800 SF

DIV	ITEM	QUAN	UNIT	L	M	S	LABOR	MATRL	SUB	TOTAL
1.0	* GEN CONDITIONS *									
	SUPERINTENDENT	13	WK		1800		23400	0	0	23400
	PROJECT MANAGER	13	WK		450		5850	0	0	5850
	BUILDERS RISK		LS				0	0	0	0
	BLDG PERMIT	1	LS		5000		0	5000	0	5000
	BOND		LS				0	0	0	0
	PARKING	1	LS		1200		0	1200	0	1200
	P.W./ TRAFF CONTROL	1	LS		5000		0	5000	0	5000
	TEMP POWER		MO				0	0	0	0
	TEMP WATER		MO				0	0	0	0
	PORTOILET	3	MO		125		0	375	0	375
	BOND		LS				0	0	0	0
	DUMPSTERS	6	EA		400		0	2400	0	2400
	NON INSURED LOSS		LS				0	0	0	0
	DAILY /FINAL CLEAN	1	LS			1500	0	0	1500	1500
	ARCH / MEP PLANS	1	LS		100		0	100	0	100
	TOOLS / MISC	1	LS		250		0	250	0	250
01	TOTALS						29250	14325	1500	45075
2.0	* SITEWORK/DEMO *									
	DEMOLITION									
	DEMO	1	LS		3500		3500	0	0	3500
	SIGNS / STRIPE		LS				0	0	0	0
	ASPHALT		LS				0	0	0	0
02	TOTALS						3500	0	0	3500
3.0	* CONCRETE *									
	TRENCH PATCH	1	LS		175	200	175	200	0	375
	COOLER SLAB	1	LS			1800	0	0	1800	1800
03	TOTALS						175	200	1800	2175
4.00	* MASONRY *									
	PIZZA OVEN MASONRY	1	AL		2500		2500	0	0	2500
	FIRE / FACE BRICK	1	LS			7344	0	0	7344	7344
	PLASTER @ INFILL		LS				0	0	0	0
04	TOTALS						2500	0	7344	9844
5.00	* METALS *									
	MEZZANINE STEEL	1	LS			11000	0	0	11000	11000
	MISC METAL PIECES	1	LS		350	6250	0	350	6250	6600
05	TOTALS						0	350	17250	17600
6.00	* CARPENTRY *									
	BLOCKING / MISC	1	LS		4500		0	4500	0	4500
	SPECIAL P. LAM PANEL	1	LS		1100		0	1100	0	1100
	GENERAL LABOR	3	LS		3500		10500	0	0	10500
	END CAPS		LS				0	0	0	0
	CABINetry/TRIM/TOPS	1	LS		15945	56350	0	15945	56350	72295



06	TOTALS				10500	21545	56350	88395
7.0	* THERM/MOIST *							
	FIRE CAULK	1 LS	350		0	350	0	350
	SOUND INSULATION	1 LS		8689	0	0	8689	8689
	ROOF PENETRATIONS	1 LS		6000	0	0	6000	6000
07	TOTALS				0	350	14689	15039
8.00	* DOOR/WDW/HDWE *							
	EXTERIOR DOOR	1 EA	1000		0	1000	0	1000
	INTERIOR DOORS	EA	BY MILLWORK SI		0	0	0	0
	FINSH HARDWARE	6 EA	350		0	2100	0	2100
	LOBBY DOOR	1 LS		1000	0	0	1000	1000
	EXT WINDOW/LOUVER	1 LS	1000	7670	0	1000	7670	8670
	GLASS / MIRRORS	1 LS		5389	0	0	5389	5389
	TOTALS				0	3100	14059	18159
9.00	* FINISHES *							
	DRYWALL	1 LS	1000	15500	0	1000	15500	16500
	ACOUSTICAL CEILINGS	1 LS		2950	0	0	2950	2950
	CERAMIC TILE	1 LS		20768	0	0	20768	20768
	SPEC WALL FINISH	1 AL		0	0	0	0	0
	FINISH HARDWOOD	1 LS		2000	0	0	2000	2000
	PAINT / VWC	1 LS		16428	0	0	16428	16428
09	TOTALS				0	1000	57646	58646
10.00	* SPECIALTIES *							
	TOILET PTN & ACESS	1 LS	498		0	498	0	498
	FIRE EXTINGUISHER	1 LS	500		0	500	0	500
	ACOUSTICAL PANELS	1 AL		5000	0	5000	5000	10000
010	TOTALS				0	6998	5000	10998
11.00	* EQUIP / RENTAL *							
	TOILET SIGNAGE	1 LS	50		0	50	0	50
	LIBRARY LADDER	1 LS	3000		0	3000	0	3000
011	TOTALS				0	3050	0	3050
15.00	* MECHANICAL *							
	PLUMBING	1 LS		73000	0	0	73000	73000
	SPRINKLER	1 LS		6760	0	0	6760	6760
	KIT HOODS / PAINT	1 LS	4850	29564	0	4850	29564	34414
	HVAC	1 LS		240408	0	0	240408	240408
015	TOTALS				0	4850	349732	354582
16.00	* ELECTRICAL *							
	LIGHTS & PLUGS	1 LS		93890	0	0	93890	93890
	SECURITY	LS			0	0	0	0
016	TOTALS				0	0	0	93890
	MISC	LS			0	0	0	0
	CONTINGENCY	LS			0	0	0	0

JOB SUB TO TAL \$720,953

BISCAN OH & PR 9% \$64,886

JOB TOTAL	BID	\$785,839
\$ / S.F.		\$206.80

#### BID QUALIFICATIONS

- BID EXCLUDES ARCHITECTURAL OR ENGINEERING PLANS FOR PERMIT
- BID EXCLUDES ANY SEWER, WATER, GAS, POWER CO, CAPACITY OR IMPACT FEES
- BID EXCLUDES ANY COMPUTER, PHONE, FIRE ALARM, SOUND OR OTHER LOW VOLTAGE WORK
- BID EXCLUDES ANY FURNITURE, BLINDS, APPLIANCES OR OTHER OFFICE TYPE FURNISHINGS
- BID IS GOOD FOR 30 DAYS ONLY.
- EXCLUDES FURNISHING THE BOOTHS
- HVAC SUB TO PROVIDE KITCHEN HOODS, FANS AND MAKE UP AIR UNIT.
- LIGHT FIXTURES D4 AND D11 ARE TO BE OWNER FURNISHED
- ACOUSTICAL TREATMENTS ARE EXCLUDED FOR NOW AS NOT ENOUGH INFORMATION IS PROVIDED
- WALK IN COOLER AND CONDENSERS ARE FURNISHED, INSTALLED AND HOOKED UP BY OTHERS
- SPRINKLER BID IS BASED ON OWNER PROVIDING MAIN AND BRANCH LINES IN THE SPACE. WE ARE ONLY REWORKING / ADDING HEADS FOR THE NEW LAYOUT
- WE HAVE USED A SUPPLIER OTHER THAN CREEKSIDE GLASS FOR THE ANTIQUE MIRROR BUT THE SAME SPEC.
- SPECIAL WALL FINISH HAS BEEN ELIMINATED AND WALL IS JUST TO BE PAINTED
- INCLUDES PRICING FOR LATEST REVISIONS AND MISSING PLANS
- INCLUDES CHANGING 6 OF THE 10 FLOOR SINKS TO PLASTIC
- WE DO NOT HAVE THE VENTING OF THE PIZZA OVEN AS WE DON'T YET KNOW ALL THAT'S NEEDED

# CHANGE ORDER

OWNER   
 ARCHITECT   
 CONTRACTOR   
 FIELD   
 OTHER

AIA DOCUMENT G701

PROJECT: Black Rabbit  
 (name, address) 218 3<sup>rd</sup> Ave  
 Nashville, TN 37208

CHANGE ORDER NUMBER: One (1)  
 DATE: March 15, 2017

TO CONTRACTOR: ROBERT S. BISCAN & CO.  
 (name, address) 9160 Carothers Pkwy, Suite 200  
 Franklin, TN 37067

ARCHITECT'S PROJECT NO: N/A  
 CONTRACT DATE: February 17, 2017

The Contract is changed as follows: CONTRACT FOR: General Contracting

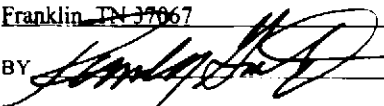
- |  |    |             |
|--|----|-------------|
| 1. Increase Electrical budget to use Building Owner's Electrician                        |    |             |
| Owner's Electrician  | \$ | 97,500.00   |
| Bid Used   | \$ | (93,890.00) |
| 2. Add Extra layer of drywall @ ceiling @ left side of space as required by Fire Marshal | \$ | 1,152.00    |
| 3. Add Wall in Basement per Agreement w/ Gary Bowie                                      | \$ | 1,920.00    |
| 4. RSB Fee 10%   | \$ | 668.00      |

**TOTAL CHANGE ORDER 1** \$7,350.00

**Not valid until signed by the Owner, Architect and Contractor.**

The original (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) was .....	\$	785,839.00
Net change by previously authorized Change Orders.....		
The (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) prior to this Change Order was.....	\$	785,839.00
The (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) will be (increased) ( <del>decreased</del> )		
( <del>unchanged</del> ) by this Change Order in the amount of .....	\$	7,350.00
The new (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) including this Change Order will be.....	\$	793,189.00

The Contract Time will be (~~increased~~) (~~decreased~~) (unchanged) by  
 The date of Substantial Completion as of the date of this Change Order therefore is  
 NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive

<del>Derek A. Leigh, AIA</del> ARCHITECT	ROBERT S. BISCAN & CO. CONTRACTOR	Trey Cioccia OWNER
<del>Address</del>	9160 Carothers Pkwy, Suite 200 Address	210 Almond Street Address
<del>Franklin, TN 37067</del>	Franklin, TN 37067	Nashville, TN 37201
BY _____	BY 	BY _____
DATE _____	DATE March 15, 2017	DATE _____



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# CHANGE ORDER

OWNER  
ARCHITECT  
CONTRACTOR  
FIELD  
OTHER

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AIA DOCUMENT G701

PROJECT: Black Rabbit  
(name, address) 218 3<sup>rd</sup> Ave  
Nashville, TN 37208

CHANGE ORDER NUMBER: Two (2)  
DATE: April 6, 2017

TO CONTRACTOR: ROBERT S. BISCAN & CO.  
(name, address) 9160 Carothers Pkwy, Suite 200  
Franklin, TN 37067

ARCHITECT'S PROJECT NO: N/A  
CONTRACT DATE: February 17, 2017

The Contract is changed as follows:

CONTRACT FOR:	General Contracting
1. Video Inspect/Jet Existing Sewer Line	\$ 435.00
2. Excavate Rock for Cooler Drain	\$ 600.00
3. Pump/Remove Existing 8" sewer line	\$ 1,290.00
4. Biscan Fee	\$ 233.00

**TOTAL CHANGE ORDER 1**

**\$2,558.00**

**Not valid until signed by the Owner, Architect and Contractor.**

The original (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) was .....	\$	785,839.00
Net change by previously authorized Change Orders.....	\$	7,350.00
The (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) prior to this Change Order was.....	\$	793,189.00
The (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) will be (increased) ( <del>decreased</del> ) ( <del>unchanged</del> ) by this Change Order in the amount of .....	\$	2,558.00
The new (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) including this Change Order will be.....	\$	795,747.00

The Contract Time will be (~~increased~~) (~~decreased~~) (unchanged) by

The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive

Derek A. Leigh, AIA  
ARCHITECT

ROBERT S. BISCAN & CO.  
CONTRACTOR

Trey Cioccia  
OWNER

Address

9160 Carothers Pkwy, Suite 200  
Address

210 Almond Street  
Address

Franklin, TN 37067

Nashville, TN 37201

BY

BY 

BY

DATE

DATE April 6, 2017

DATE



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# CHANGE ORDER

OWNER  
ARCHITECT  
CONTRACTOR  
FIELD  
OTHER

<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

ALA DOCUMENT G701

PROJECT: Black Rabbit  
(name, address) 218 3<sup>rd</sup> Ave  
Nashville, TN 37208

CHANGE ORDER NUMBER: Three (3)  
DATE: September 7, 2017

TO CONTRACTOR: ROBERT S. BISCAN & CO.  
(name, address) 9160 Carothers Pkwy, Suite 200  
Franklin, TN 37067

ARCHITECT'S PROJECT NO: N/A  
CONTRACT DATE: February 17, 2017

The Contract is changed as follows: CONTRACT FOR: General Contracting

1. Credit acoustical panel allowance from final estimate	\$	(5,000.00)
2. Additional masonry work @ pizza oven & Pit		
*Final Cost	\$	10,698.00
*Less Pizza oven allowance	\$	(2,500.00)
*Less original masonry	\$	(7,344.00)
3. Finish Access Panels for concealed work	\$	577.00
4. Furnish and install fire alarm system & Rework existing to add the Black Rabbit Space Add underlayment materials, etc. Required to get proper drainage and waterproofing @	\$	10,513.00
5. ceramic tile areas.	\$	17,426.00
Change Plumbing fixture & Trim finishes to champagne bronze in lieu of specified		
6. finishes	\$	1,640.00
7. Add B floor drains and associated piping in kitchen area.	\$	1,573.00
Add venting and exhaust fan for wood fired pizza oven. Revise original ductwork and		
8. venting to accomodate its venting.	\$	44,985.00
9. Relocated existing rooftop HVAC units to accomodate new HVAC design per codes.	\$	4,986.00
10. Change toilet accessories per desginers revisions	\$	566.00
11. Add pressure reducing valve for kitchen hood system not shown on plans	\$	2,700.00
Add domestic water and fire lines to building inc. sidewalk and asphalt repair, rock		
12. removal etc.	\$	142,785.00
13. Biscan Fee	\$	22,361.00
<b>TOTAL CHANGE ORDER # 3</b>		<b>\$245,966.00</b>

**Not valid until signed by the Owner, Architect and Contractor.**

The original (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) was .....	\$	785,839.00
Net change by previously authorized Change Orders.....	\$	9,908.00
The (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) prior to this Change Order was.....	\$	795,747.00
The (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) will be (increased) ( <del>decreased</del> ) ( <del>unchanged</del> ) by this Change Order in the amount of .....	\$	245,966.00
The new (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) including this Change Order will be.....	\$	1,041,713.00

The Contract Time will be (increased) (~~decreased~~) (unchanged) by

The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive

Derek A. Leigh, AIA  
ARCHITECT

ROBERT S. BISCAN & CO.  
CONTRACTOR

Trey Cioccia  
OWNER

Address

9160 Carothers Pkwy, Suite 200  
Address

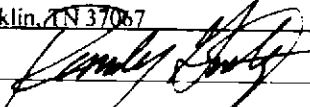
210 Almond Street  
Address

BY

Franklin, TN 37067

Nashville, TN 37201

DATE

BY   
DATE September 7, 2017

BY

DATE



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# CHANGE ORDER

OWNER   
 ARCHITECT   
 CONTRACTOR   
 FIELD   
 OTHER

AIA DOCUMENT G701

PROJECT: Black Rabbit  
 (name, address) 218 3<sup>rd</sup> Ave  
 Nashville, TN 37208

CHANGE ORDER NUMBER: Five (5)  
 DATE: January 18, 2018

TO CONTRACTOR: ROBERT S. BISCAN & CO.  
 (name, address) 9160 Carothers Pkwy, Suite 200  
 Franklin, TN 37067

ARCHITECT'S PROJECT NO: N/A  
 CONTRACT DATE: February 17, 2017

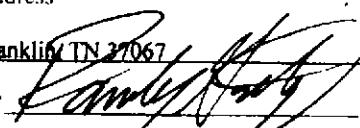
The Contract is changed as follows: CONTRACT FOR: General Contracting

1	Total Impulse Electric Bills.	\$	161,549.36
2	Less Balance and Retianage from Gregory Electric.	\$	(12,523.24)
3	Incoming Domestic Water, Fire Line, Sidewalk & Road Patching Etc.	\$	61,418.00
4	Credit Item # 12, CO # 3 in it's entirety.	\$	(142,785.00)
5	Electrical Credit from Impulse	\$	(25,872.99)
5	Biscan Fee @ 10%	\$	4,178.00
<b>TOTAL CHANGE ORDER # 5</b>			<b>\$45,964.13</b>

**Not valid until signed by the Owner, Architect and Contractor.**

The original (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) was .....	\$	785,839.00
Net change by previously authorized Change Orders.....	\$	271,112.00
The (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) prior to this Change Order was.....	\$	1,056,951.00
The (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) will be (increased) ( <del>decreased</del> ) ( <del>unchanged</del> ) by this Change Order in the amount of.....	\$	45,964.13
The new (Contract Sum) ( <del>Guaranteed Maximum Price</del> ) including this Change Order will be.....	\$	1,102,915.13

The Contract Time will be (~~increased~~) (~~decreased~~) (unchanged) by  
 The date of Substantial Completion as of the date of this Change Order therefore is  
 NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by  
 Construction Change Directive

<u>Derek A. Leigh, AIA</u> ARCHITECT	<u>ROBERT S. BISCAN &amp; CO.</u> CONTRACTOR	<u>Trev Cioccia</u> OWNER
_____	<u>9160 Carothers Pkwy, Suite 200</u> Address	<u>210 Almond Street</u> Address
_____	<u>Franklin TN 37067</u>	<u>Nashville, TN 37201</u>
BY _____	BY 	BY _____
DATE _____	DATE <u>January 22, 2018</u>	DATE _____

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Subcontractor proposes to undertake, and agrees to be bound thereby. Such Plans, Specifications, and all subsequent Addenda thereto are hereby made a part of this agreement.

3. The Plans, Specifications, and Details are intended to and shall be considered to include all items which would normally be included in the Subcontractor's trade and are intended to include all work that Subcontractor is called upon to perform under the terms of its contract. The plans and specifications generally indicate the scope and quality of the work but are not represented as being free from errors or omissions and any work called for in the specifications and not shown in the plans or vice-versa are to be furnished as if called for in both and, in addition, Subcontractor agrees that any and all work required and reasonably implied as necessary to complete the job, shall be furnished and installed by Subcontractor without any additional cost. Subcontractor shall make his own measurements and shall guarantee the accuracy thereof and shall not rely on the measurements of any other Subcontractor or the Contractor. All the work shall be done in a good and workmanlike manner and all material shall be new and of specified grade and all work material shall be furnished and installed so as to comply with the requirements of the institutions making the construction and permanent mortgages on the property and all governmental or other authorities having jurisdiction thereof. Subcontractor agrees that this is a "fixed sum" contract and not a "unit price" contract. Any units or quantities mentioned by Contractor, its surveyors, engineers or agents shall not be relied upon by Subcontractor. Subcontractor shall determine his own units or quantities and neither Contractor's nor Subcontractor's units or quantities shall be a part of this "fixed sum" contract.
4. Work hours are 7:00 a.m. to 3:30 p.m. unless mutually agreed to by all subs for extremely hot weather.
5. Subcontractor agrees to maintain on-site (at all times while work under this Subcontract is underway), a full-time, fully qualified and competent (in the applicable trades) Supervisor who is authorized to speak on behalf of Subcontractor and bind Subcontractor in the areas of manpower, overtime, equipment, procedures, etc., as required to enable Contractor to properly schedule, coordinate and manage this project.
6. Subcontractor represents and warrants to Contractor that all equipment and materials used in this work, and made a part of this structure thereon, or placed permanently in connection therewith, will be new unless otherwise specified in the Plans and Specifications, of excellent quality, free of defects, and in conformity with the Plans and Specifications. It is understood between the parties hereto that all equipment and materials not so in conformity are defective. Subcontractor further warrants and assures Contractor that all work performed by him and materials supplied by him and all warranties shall continue and Subcontractor shall promptly correct any deficiencies therein, if demand is made by Owner or Contractor upon Subcontractor within 365 days after acceptance of the completed project by Owner. Subcontractor further warrants and assures Contractor that if at any time during the 365 day period after acceptance of the completed project by Owner the Subcontractor fails, upon proper notification, to commence the warranty work, Contractor has the right to perform said warranty work. Subcontractor will be liable for the cost of said warranty work, plus any legal fees that may be incurred by Contractor if required for collecting payment from Subcontractor for said warranty work.
7. The Subcontractor shall carefully coordinate his work with the job requirements and shall furnish at all times sufficient materials, skilled workmen, supervision, and equipment to perform the work to the entire satisfaction of Contractor so as not to delay the completion of the whole or any part of the work.

Project No. 584

Cost Code: 16000.00

Initials

Initials

309  
MC

8. Subcontractor is responsible for any damage to existing structures, walls, floor coverings, ceilings, doors, frames, finishes, etc., which are damaged by this Subcontractor during the performance of this work. All repair costs for the referenced damages are the responsibility of this Subcontractor
9. Subcontractor shall inspect and verify acceptability of prerequisite work (by others) which interfaces with his work prior to commencing each phase of his work. Subcontractor shall report any unacceptable conditions to the Contractor in writing. Proceeding with Subcontractor's work implies acceptance of prerequisite work.
10. Subcontractor acknowledges that all barricades, blinker lights, flagmen, road closing permits, etc., required for the delivery of the materials and the unloading of said materials and/or for the performance of the work included herein are the responsibility of the Subcontractor.
11. Shop drawing approval by the Architect and/or Contractor does not relieve Subcontractor and/or Supplier of the responsibility of furnishing material and workmanship required by project drawings, specifications, and other contract documents. Any deviations on shop drawings and/or submittal data from project plans and specifications must be explicitly delineated on the shop drawings and in letter of transmittal to Contractor. Subcontractor must have prior written approval from the Architect or Engineer and Contractor for all deviations from plans and specifications.
12. Subcontractor agrees that he is bound and obligated to the Contractor by the terms of this Subcontract and that all specifications, addenda, plans, etc., are made a part hereof by reference.
13. Subcontractor agrees that this Subcontract Agreement supersedes all previous written and verbal communications and that there are no exceptions to plans and specifications unless specifically enumerated in this Agreement.
14. It is the intent of this Subcontract to bind the Subcontractor to the Contractor in a like manner as the Contractor is bound to the Owner. Subcontractor is bound by all General Conditions and Supplementary Conditions contained in the project specifications.
15. Divisions 0 and 1 of the project specifications shall apply to this Subcontract. The word "Contractor" in these two divisions shall apply to Subcontractor for purposes of defining Subcontractor's obligations under these two divisions (as applicable to sections of work included in this Subcontract).

**TIME:**

1. The Subcontractor will promptly begin said work as soon as he is notified by the Contractor that the ground is clear or structure far enough advanced to allow the beginning of that portion included hereunder, and will carry forward and complete said work as rapidly as said Contractor may judge that the progress of the structure will permit, unless detained by other Subcontractors; in which event he will promptly notify the Contractor in writing, who (if satisfied that said delay is caused by others than said Subcontractor hereunder) will allow additional time sufficient in his judgment to make up the time so lost. This paragraph shall cover any extra work done or materials furnished under this contract.

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2. The Subcontractor will furnish said materials, including all necessary scaffolding, and prosecute said work with due diligence, without delay, and will not in any manner, by delay or otherwise, interfere with the work of the Contractor, or other Subcontractor, and should the said Contractor conclude that the said Subcontractor is delaying said work, he shall so notify said Subcontractor by telephone and later by registered mail, who shall within 48 hours, two (2) days after telephone notice, thereafter, furnish whatever materials are required by said Contractor, and in case said Subcontractor fails to comply with said demand, said Contractor shall have the right to furnish said materials and additional men and charge expense, including Attorney Fees, thereof, against the said Subcontractor and deduct same from this contract, and should the amount or balance due on said contract be insufficient, to collect said deficiency by legal process, including interest at prime plus two (2) on the amount in question.
3. Should said Subcontractor fail to begin, continue and complete the work as hereinbefore provided and should the Contractor suffer or permit said Subcontractor to occupy more time than required under this agreement, in that event the said Subcontractor hereby covenants and agrees to indemnify and save harmless the said Contractor from any loss or damages, including Legal Fees, which he may be compelled to make good to the owner of said building, under or by virtue of the contract with the owner, for or on account of delay in the completion thereof, insofar as said delay was caused by the said Subcontractor.
4. The Contractor will develop the construction schedule and will have the final determination as to what is in the best interest of the overall project. This schedule, in most instances, will be in written form. If the Subcontractor objects to the Contractor's determination of the phasing, sequencing, overlapping, duration, etc., of any of the Subcontractor's schedule activities, the Subcontractor shall provide, within 72 hours after issuance of the scheduling, a written narrative describing precisely what his objection is, and why; provide along with this written objection a detailed alternate schedule including a scenario which solves the Subcontractor's concerns while also maintaining the building completion goals. Show not only this Subcontractor's activities, but all other affected activities and trades which would be modified if the Subcontractor's scenario were to be approved and incorporated in the construction schedule. Submission of this information by the Subcontractor does not constitute agreement on the part of the Contractor to make any modification to the schedule, but the Contractor will consider such additional data and schedule alternatives (provided they are submitted in sufficient detail and with adequate backup documentation to make a thorough analysis) and will make such adjustments as feasible, provided that such adjustments do not adversely impact the overall project completion schedule, and provided the alternative schedule scenario does not unfairly adversely impact other trades and/or Subcontractors and/or Material Suppliers and/or the Contractor.
5. From time to time as the work progresses, Contractor will update the schedule to account for actual progress and job conditions. The overall project final completion date cannot change, but, as the project progresses, individual work activities will likely be shifted to accommodate and reflect actual job progress and conditions. Subcontractor shall have one week to review and submit in writing any comments on the schedule updates to Contractor. Contractor will use its best judgment in analyzing all such comments received, subject to the best overall interest of the project, and will make such revisions as it deems appropriate and consistent with the intent of maintaining (and improving, if possible) the completion date of the project. Durations of this Subcontractor's remaining work activities will not be shortened without this Subcontractor's approval, unless this Subcontractor has

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caused a delay up to and including that point in time. Sequences may be shifted and activities overlapped to adjust for delays or changes in actual progress, but the completion date cannot be changed.

6. It is the agreed intent of both this Subcontractor and the Contractor to complete the entire project to the "Substantial Completion" (as defined by the contract documents) stage by 4/21/17, in order to insure that the final completion date of 4/21/17 be achieved. It is the intent of both the Contractor and Subcontractor to improve (i.e., shorten) the schedule time, if possible. Subcontractor agrees to adjust his activities to meet the updated schedule if any improvement is possible, subject to his reasonable ability to reschedule materials for earlier delivery dates.
7. This Subcontractor acknowledges that this project has a completion date of 4/21/17 with a liquidated damages penalty of \$500.00 per day. This Subcontractor also acknowledges and agrees that overtime work, weekend work, and multiple shifts will be required to complete the project on schedule. This Subcontractor agrees to do whatever it takes to complete the project on schedule. Subcontractor agrees to accept a pro-rata share of any liquidated damages which are assessed by the Owner against Contractor for the proportionate cause/contribution to same by this Subcontractor as a result of his failure to comply with the schedule. It is the intent of the Contractor to compensate for any delays in the schedule by accelerating some or all subsequent activities of work to still complete the project within the overall time frame indicated above. Further, Subcontractor acknowledges and agrees that a delay on its part which causes the Contractor and/or other Subcontractors to work overtime and/or incur other acceleration costs in order to compensate for this Subcontractor's delays (even though Contractor may not be assessed liquidated damages by the Owner) is a valid justification for assessment of the \$500.00 per day liquidated damages by Contractor against Subcontractor.
8. Subcontractor acknowledges and agrees that it is familiar with the project schedule for this project. Any time Subcontractor is behind the project schedule in its work, Subcontractor shall, at its own expense, supply additional equipment, perform overtime work, and do everything necessary to bring its work back on time with the project schedule.
9. The Subcontractor's performance in compliance with the project schedule, as updated, shall be the determining factor in whether or not liquidated damages are applied against this Subcontractor in the event that liquidated damages are not applied against the Contractor by the Owner. If the Subcontractor fails to maintain an on-schedule performance more than 90% of the time on more than 90% of his activities, this shall be grounds for the application of liquidated damages against the Subcontractor by the Contractor, even if the Contractor has not become subject to the application of liquidated damages by the Owner.
10. The requirements of this section (pertaining to liquidated damages) shall only apply if the Contractor, or if any other Subcontractor or Supplier, suffers any additional costs due to acceleration to compensate for delays caused by this Subcontractor, or if the Owner assesses liquidated damages against the Contractor.

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11. The Subcontractor shall notify the Contractor within 48 hours of the date of the occurrence of any incident which causes a delay or other damage to the Subcontractor. Any claim for damages, time extension, additional compensation due to acceleration, etc., must be made in writing to the Contractor by the Subcontractor within 7 days of the date of the occurrence which led to the claim. The Subcontractor must give the Contractor the opportunity to cure the problem or error which led to the claim while there is still time for the Contractor to react in a manner which will prevent any current damage or minimize any subsequent damage or claim. Such written notice and/or claim must be in sufficient detail and be accompanied by sufficient supporting backup documentation as to allow the Contractor (and Architect & Owner, if necessary) to review such claim and to make an informed decision as to its validity and foundation. The Subcontractor will only be allowed to recoup compensation for such a claim if the Owner compensates the Contractor for same and the claim is a clear, direct, and proximate result of the Contractor's knowing and intentional negligence in managing and scheduling the project.

#### SITE MAINTENANCE/WORK ENVIRONMENT:

1. Upon completion of any part or unit of the work, from time to time during performance of the work (on a twice a week basis at minimum), and upon final completion thereof, the Subcontractor shall clean up and remove from the site all refuse and rubbish around or alongside said work or as deposited on the site, the same caused by said Subcontractor. The Subcontractor shall promptly remove all excess material, tools, etc., which may have been brought on the premises by the Subcontractor. In the event of the failure of the Subcontractor to do so, the Contractor may, after two (2) hours of notice to the Subcontractor, clean up the premises at the cost and expense of the Subcontractor. **Contractor's dumpster will not be available for disposal of this Subcontractor's debris.** Subcontractor is prohibited from using Contractor's dumpster or trash pile or trash truck. If the Subcontractor's debris gets into the Contractor's dumpster, trash pile, or trash truck, this shall constitute the Subcontractor's agreement to reimburse the Contractor for the full cost of emptying that load. Subcontractor shall be back-charged for these costs.
2. The consumption of food and drink shall not be permitted on the premises except in areas specifically designated for same by Contractor. The interior of all buildings are designated as non-smoking areas. The use of smokeless tobacco will not be permitted. At no time will the interiors of any building(s) be designated as a smoking, eating, or drinking area; this applies at all stages of construction.
3. Subcontractor acknowledges that there is limited employee parking area available on site. Subcontractor employee parking area will be defined by Contractor's Superintendent. This Subcontractor shall avoid at all costs damaging new and existing areas. Any Subcontractor who damages the existing site or adjacent areas shall be responsible for repairing same to the Owner's satisfaction and at Subcontractor's cost.
4. **This project is designated as a DRUG FREE and ALCOHOL FREE work place.** The use, possession, or influence of any drugs or alcohol is strictly prohibited on this project. Subcontractor shall require all of its employees and Sub-Subcontractors (if any) to comply with Contractor's rules

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regarding same. Any employee injured on the job must submit to post-accident drug and alcohol testing. Subcontractor shall inform his employees of this requirement and they must also agree to same as a condition of working on this site. Any non-complying personnel will not be allowed to remain on this project.

5. The Subcontractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the work by the Architect, the Contractor or his authorized representatives. He shall, at once remove all materials and take down and rebuild all portions of the work condemned by the Architect or Contractor, upon receiving notice in writing of such condemnation.
6. The Subcontractor shall not employ any workmen whose employment on the building or improvements may be objected to by any of the other Subcontractors, the Contractors, the Contractor, the Architect, or the Owner.

#### SAFETY:

1. The Subcontractor shall be responsible for the notification, training, and enforcement of the Federal Hazardous Chemical Law, OSHA Standards 1926.1200, and the Tennessee Right-To-Know Law.
2. Subcontractor agrees to abide by (and to require all of its employees and Sub-Subcontractors, if any) all local, state, and federal safety regulations (including TOSHA and OSHA) and also all of Contractor's safety policies, rules, and regulations. Further, Subcontractor agrees to indemnify and hold harmless Contractor and its employees for any and all fines, awards, judgments, etc., levied due to noncompliance of same.
3. Contractor may publish "site specific" safety rules for this project, based on specific safety concerns and/or hazards; these "site specific" rules shall also be binding on the Subcontractor, just as the other safety rules specified above. These "site specific" safety rules may be revised from time to time, as the project's safety considerations change. All such "site specific" safety rules will be consistent with OSHA standards. If the Subcontractor objects to same, he shall respond in writing to Contractor within 48 hours of the issuance on jobsite of these "site specific" safety rules; specific objections, accompanied by documentation referencing OSHA standards which justify such objections will be considered for revision by Contractor. **It is the Subcontractor's sole responsibility to implement and maintain its own safety program, and to maintain safe working conditions for all of its employees, as well as for all others who may be exposed to safety hazards when working around the Subcontractor's work.**
4. If the Subcontractor, or anyone in his employ or control, violates any of the above safety rules, the violation shall be immediately corrected by the Subcontractor responsible. At Contractor's option, any individual who violates any safety rule may be ordered off the project, either temporarily or permanently. If the Subcontractor, after 2 hours notice by Contractor, has not corrected every such identified safety deficiency, Contractor shall have the right, but not the obligation, to immediately stop all work on that project by that Subcontractor until such deficiency(s) are corrected. If, after 2 hours, the deficiency has still not been corrected, Contractor shall have the right, but not the obligation, to

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correct such deficiency(s) at the cost and expense of the Subcontractor responsible for same. If any reinspection of the deficiency(s) are required or made by Contractor, the full cost of such reinspection(s) shall be paid by the responsible Subcontractor(s).

5. Subcontractor acknowledges that all construction workers on site must wear hard sole shoes and shirts with sleeves. No one will be permitted to wear shorts or clothing with holes in it. Hard hats are required by all personnel at all times, even indoors in semi-finished or finished spaces.

**PAYMENT:**

1. IN CONSIDERATION WHEREOF, the said Contractor agrees that he will pay to the said Subcontractor, in weekly payments, the sum of **ninety seven thousand five hundred and 00/100 dollars (\$97,500.00)** for said materials and work. Said Contract amount shall be paid as follows: **95%** percent of all labor and material which has been placed in position and if and only if payment has been made by said "Owner" to said Contractor, to be paid one week in arrears each Friday, provided invoices are turned in by the previous Friday and approved by the Project Manager and Superintendent.
2. All requests for payment shall be submitted to the Project Manager on or before Friday each week, unless changed in writing. Any request for payment received by the Contractor after this time will not be submitted for payment until the next pay period. Subcontractor acknowledges and agrees that receipt of payment by Contractor from the Owner for Subcontractor's work is a condition precedent to payment by Contractor to Subcontractor for such work. The Subcontractor hereby acknowledges that it relies upon the credit of the Owner, not the Contractor, for payment of its work. Subcontractor further acknowledges that the acceptance or approval of the Contractor's pay application by the Architect and/or Owner does in no way approve the Subcontractor's pay application for the corresponding month, or any other pay period. Subcontractor's pay applications are the sole responsibility of the Contractor and will be paid in accordance with the Contractor's evaluation of the percentage of work and materials in place relative to the contract price.
3. It is agreed that the Subcontractor has included the cost of the full scope of this work in his Subcontract price, and that no change orders are currently anticipated for work covered by the contract documents as they existed on bid day. In the event that any additional work is ordered by the Owner, Architect, or Contractor, all such extra work must be authorized in writing in advance by the Project Manager, or an officer of the Company, to be recognized as a valid claim. Contractor's Field Superintendent and Field Engineer do not have the authority to authorize extra work or extra payment. In executing this Agreement, Subcontractor acknowledges that he has reviewed the existing facilities, plans and specifications and has included in his price all work required to complete and to coordinate his work with other trades. Subcontractor further acknowledges that he will have no valid claim for extra work unless Contractor receives a Change Order and payment from the Owner for same. In the event there is a discrepancy or conflict in the contract documents, or any portion of same, it is agreed that the Subcontractor shall have interpreted the documents in a way that will include the more expensive way of performing his work. Subcontractor has had additional

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time beyond bid date to review the bid/contract documents and has assured himself that the full scope of the work covered by this Subcontract is included.

4. Contractor agrees that the balance and retainage shall be due and payable within thirty (30) days if and only if Contractor has been paid in full by Owner and after acceptance of Subcontractor's work by the Owner, or Architect, if any, or Engineer, if any, as the case may be if the contract be at that time fully performed, and subject to the condition that final payment shall not be due until Subcontractor has delivered to Contractor a complete release of all liens arising out of the contract herein, on a form to be furnished by the Contractor and receipts in full covering all labor, materials, and equipment for which a lien could be filled or, in the alternative, a bond satisfactory to Contractor indemnifying him against such liens.
5. Subcontractor represents himself as an independent contractor and agrees to accept full and exclusive liability for compliance with all applicable ordinances, laws, and statues and for the payment of any and all sales taxes, excise taxes, old age benefits, and unemployment compensation taxes upon the material and labor furnished under this Subcontract, as required by the statues of the United States Government and of the state in which this work is to be performed and, where applicable, of the county or local governing body under whose jurisdiction this work is performed.
6. Subcontractor accepts full responsibility for payment of Tennessee Business Tax.
7. Subcontractor agrees to save, defend, indemnify and hold harmless Contractor, Construction Manager, Owner, Architect, and/or any and all officers, directors, partners, agents and employees, representatives, heirs, successors and assigns, or anyone acting on behalf of any of the foregoing (each such party being hereinafter referred to as an "Indemnified Party"), against all liability, claims, rights, demands, or judgments for damages made by any third party arising out of, resulting from, in connection with, or related to this Subcontract Agreement, and will defend any and all suits or arbitration proceedings brought or threatened against any Indemnified Party by any third party on account of any of the foregoing and will pay any judgments or awards rendered in any such suits or arbitration proceedings and will reimburse and indemnify any Indemnified Party for all expenditures or expenses, including court costs and attorney's fees made or incurred by an Indemnified Party by reason of any of the foregoing; unless the loss is proximately caused by the negligence of the Indemnified Parties.
8. If there is language relating to indemnification in the basic contract or in other contract documents, and if any portions are in conflict, then the provisions which are most restrictive on the Subcontractor shall prevail.
9. Further, Subcontractor agrees to indemnify Contractor from any disputes between this Subcontractor and any other Subcontractors and/or Suppliers on this project.
10. Prior to any payments beyond 80% of Subcontractor's contract amount, the Subcontractor must submit all closeout documents per project requirements. Final payment and all retainage will be withheld until these documents are approved.

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**STORED MATERIALS:**

1. Subcontractor shall be responsible for storage and protection of materials furnished by him. Subcontractor shall also bear the risk of loss of such materials, even though title thereto may have been vested in Contractor or Owner until the project is deemed substantially complete by the Architect. Deductible on builders risk policy is to be paid by each Subcontractor in proportion to their loss, if any.
2. Payment for stored materials will be made (contingent upon Architect's and Owner's approval, and provided that the Subcontractor is on schedule and fully in compliance with all terms of this Subcontract) for value of stored materials, exclusive of overhead and profit or any other markup. Copies of invoices from Supplier (showing price paid by Subcontractor) must be submitted with application for payment to substantiate value of stored materials. Certificates of Insurance for stored materials not stored on site must make specific reference to stored materials in question and name Contractor and Owner as "Loss Payees". Cost of Certificate of Insurance is to be paid by Subcontractor. A log showing all stored materials (previously billed for, materials put in place this period, added this period, balance stored, etc.) shall be provided along with each billing which involves stored materials.

**WARRANTY/PROJECT CLOSEOUT:**

1. Subcontractor's Warranty shall be for a period of one (1) year from the date of which the completed work is accepted by the Owner, except where otherwise required. Should the Warranty required under any section of the specifications be for a period longer than one year, the Subcontractor's Warranty, with respect to such trade or trades, shall be for such longer period.
2. All closeout documents and as-built drawings are required to be submitted in proper form, in 4 complete sets (or more copies, if required by contract documents), prior to processing of Subcontractor's regular or final application for payment as covered under Paragraph 10 above under PAYMENT (not counting or including retainage billing). Failure to provide same shall be grounds for withholding said regular or final monthly draw until required closeout documents are received by Contractor in proper form.
3. Further, all portions of closeout documents which are possible to submit early (i.e., approved submittals and shop drawings, warranties, owner operations and maintenance manuals, etc.) are required to be secured by the Subcontractor and provided to Contractor for preliminary review no later than the 70% completion stage of the project. Items submitted for preliminary review will be returned to the Subcontractor for inclusion in his final closeout package.

**SOLVENCY:**Project No. 584Cost Code: 16000.00

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1. Subcontractor represents and warrants that he has the financial ability and solvency to fully perform all of the duties and work as described by this Subcontract. Further, Subcontractor warrants that he has the cash, line of credit, and other financial assets necessary to fully and completely perform all aspects of the scope of this Subcontract, and in the manner and sequence that will be necessary as indicated in the schedule. Subcontractor further warrants that there are no outstanding lawsuits or judgments against him that will or would jeopardize his financial position or his ability to perform this work in accordance with this and other provisions of this Subcontract Agreement; nor does he anticipate same as of the date of this Subcontract. Subcontractor further warrants that he is current and in good standing with his suppliers and vendors, and that no two-party checks (i.e., joint checks) will be necessary in order for him to perform this work. Contractor reserves the right to issue such checks if Contractor so desires. Subcontractor agrees that if any of the above-described conditions change (or other conditions related to the same, and which might have a similar or the same impact), that might result in the Contractor being penalized by same, Subcontractor agrees that any such change for the worse in Subcontractor's financial position shall be considered as grounds for default on the part of the Subcontractor under this Subcontract. Thus, if this Subcontractor becomes insolvent, or threatens to become insolvent, or if any of his creditors takes legal collection action in the court system for any debts on this project or related to this project, or if this Subcontractor assigns any part of the Subcontract or the receivable portion of this Subcontract to a third party without the Contractor's prior specific and written approval, or if this Subcontractor incurs debt through any type of receivables financing (including factoring) using in whole or in part the proceeds of this Subcontract, then the parties agree that any one or more of the above actions shall be considered an indication of a lack of solvency on the part of the Subcontractor; and the Subcontractor gives Contractor the right to terminate this Subcontract, in full or in part, by giving the Subcontractor 48 hours notice. In this event, Contractor shall have the right to employ others to complete the remaining work under this Subcontract on behalf of this Subcontractor, as well as the right to take possession of the tools, equipment, and materials brought onto this jobsite by this Subcontractor and to utilize same in the completion of the work covered by this Subcontract. All of the expenses and costs for same shall be deducted in full from the remaining unpaid balance of the Subcontract. If there are not enough funds available using the unpaid balance of the contract funds, then the Subcontractor and his successors and assigns shall be liable for the balance. All of the foregoing shall be in addition to other remedies available to the Contractor under the related or similar provisions of this Subcontract which relate to the default by Subcontractor. Further, Subcontractor agrees that all of the Contractor's legal expenses shall be chargeable against this Subcontract, and that Subcontractor shall be liable for same; these expenses shall include attorney's fees, court costs, costs of preparation and presentation of the case and/or court pleadings, and all other related legal matters which result from the default on the part of the Subcontractor and enforcement of this provision of the Subcontract Agreement.

Subcontractor, by accepting final payment waives all claims which he might have against Owner or Contractor.

It is further understood and agreed that no payment on account shall operate as approval of said work or materials, or any part thereof.

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Upon signature of this contract the Subcontractor must submit certificate of insurance to include Owner's or Contractor's Protective Liability and meet all requirements set forth in the project documents and in this Agreement. Contractor shall be named as co-insured.

Should this Subcontractor fail to execute and return this Subcontract Agreement within **fourteen (14) days** from receipt, Contractor may, at its sole option, void said offer. In that event, Contractor will not be liable for any costs incurred by Subcontractor. However, Contractor reserves the right to hold the Subcontractor responsible for all costs incurred by Contractor in replacing this Subcontract Agreement as a result of this Subcontractor's offer to Contractor.

All negotiations and agreements prior to the date of this Subcontract Agreement are merged herein. The Contractor and the Subcontractor for themselves, their successors, executors, administrators, and assigns, hereby agree to the full performance of the covenants of this agreement.

Any legal proceedings, Court cases, litigation arbitration, or any other such actions associated with this Agreement will take place in Williamson County, Tennessee.

The Subcontractor acknowledges that he is not an agent or employee of the Contractor, but that he is an independent contractor, and as such is responsible for all payroll, payroll taxes and contributions and all other direct and indirect expenses related to work done under this contract. Subcontractor further agrees to comply with all applicable laws, ordinances, acts, orders, regulations and directives in any manner relating to or connected with employment. Without limiting the requirements of the Subcontract Agreement, Subcontractor shall comply with and abide by all the provisions of a State or Municipal safety and health act not covered by said Occupational Safety and Health Act of 1970 and the Contract Work Hours and Safety Standards Act howsoever said Acts may be amended, labeled or designated from time to time. In addition to all other indemnities provided for in the Subcontract Agreement, Subcontractor shall indemnify cost, damage, and expense (including attorney's fees) incurred by or assessed against the Contractor for any acts of commission or omission by the Subcontractor, its agents, employees, and representatives for failure to comply with any such safety laws, rules and regulations, including, but not limited to, any fines, penalties, corrective measures or delays in performance that may result from the acts of commission or omission of the Subcontractor.

Subcontractor shall furnish all tools and equipment required in the performance of this contract.

Subcontractor agrees to procure, at his own expense, all permits and licenses required to the performance of work done under this contract. Subcontractor further agrees to comply with and abide by all federal, state, county, and municipal laws, ordinances, regulations, acts, and directives applicable to his work.

Before any work begins under this contract, Subcontractor shall submit certificate of insurance naming ROBERT S. BISCAN & COMPANY as additional insured on a primary and non-contributory basis using Endorsement CG2010 1985 edition or its equivalent, indicating coverage as follows:

TYPE OF INSURANCE

LIMITS OF LIABILITY

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Initials RLS

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Workmen's Compensation and Employer's Liability Statutory	\$500,000 each accident \$500,000 policy limit \$100,000 each employee
*Comprehensive General Bodily Injury Liability	\$1,000,000 each person \$2,000,000 each occurrence
*Comprehensive General Property Damage Liability	\$500,000 each occurrence \$500,000 aggregated **
Comprehensive Automobile Bodily Injury Liability	\$1,000,000 each person CSL \$2,000,000 each accident CSL **
Comprehensive Automobile Property Damage Liability	\$500,000 each accident CSL

\* Provides Broad Form Contractual Liability on hold harmless agreement included in contract. Policy includes completed operations coverage.

\*\* Covers all owned, non-owned and hired automobiles or trucks to be used in connection with this project.

In the event that the Contractor elects to waive the requirements for a Payment and Performance Bond, Subcontractor's request for progress payments shall be accompanied by lien waivers executed by the Subcontractor, his furnishers and suppliers. One dollar (\$1.00) lien waivers will not be accepted. Contractor may, as its sole option, pay Subcontractor by means of checks jointly payable to Subcontractor and his suppliers and/or furnishers or Contractor may pay such suppliers and/or furnishers direct out of Subcontractor's earnings hereunder.

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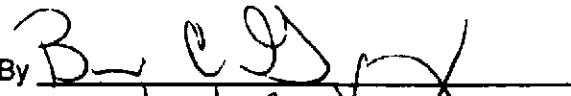
Initials

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IN WITNESS WHEREOF, we have executed this agreement as set forth herein.

SUBCONTRACTOR:  
RG ELECTRICAL


Witness:

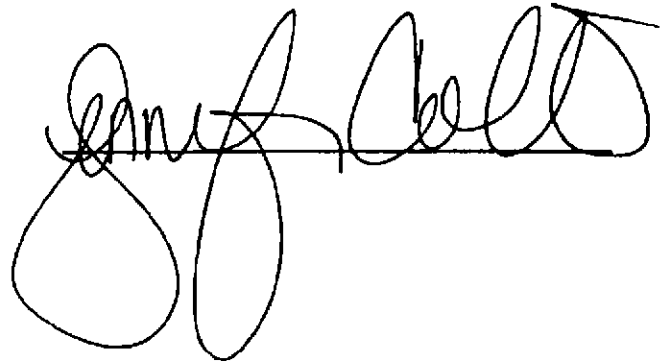
By   
Date: 3/10/17

\_\_\_\_\_

CONTRACTOR:  
ROBERT S. BISCAN & COMPANY

Witness:

By   
Date: 3.20.17





**NOTICE OF LIEN CLAIM**

To: Black Rabbit, LLC  
218 3<sup>rd</sup> Avenue, N  
Nashville, TN 37201

&

Trey Cioccia  
210 Almond Street  
Nashville, TN 37201

&

218, LLC  
213 Printers Alley  
Nashville, TN 37201

&

Sleep With Us Properties, LLC  
211 Printers Alley  
Nashville, TN 37201

Prepared by:  
Robert S. Biscan & Co.  
9160 Carothers Parkway, Suite 200  
Franklin, TN 37067

REC'D  
PROPERTY CL  
CLERK

APR 12 AM 9:48

FILED

Bill Garrett Davidson County  
Batch# 52519 LIENMSC  
01/29/2018 09:53.12 AM 4 pgs  
Fees: \$22.00 Taxes: \$0.00



20180129-0008802

STATE OF TENNESSEE

COUNTY OF Davidson

Robert S. Biscan & Company, a Tennessee corporation, after being duly sworn deposes, says and gives notice hereby:

That the undersigned is the President of Robert S. Biscan & Company located at 9160 Carothers Parkway, Suite 200, Franklin, TN 37067.

That Robert S. Biscan & Company, pursuant to Tennessee Code Annotated Section 66-11-101 et seq., claims, asserts and holds a mechanics' and materialmen's lien for work, labor, materials, supplies, and equipment delivered to BLACK RABBIT, LLC and TREY CIOCCIA and 218, LLC and SLEEP WITH US PROPERTIES, LLC for the improvement of real property in Davidson County, Tennessee, owned by BLACK RABBIT, LLC, and TREY CIOCCIA and 218, LLC and SLEEP WITH US PROPERTIES, LLC. Said property is located in Davidson County, Tennessee, more commonly known as 218 3<sup>rd</sup> Avenue, N., Nashville, Tennessee 37201, and more particularly described as follows:

See attached Exhibit "A" attached hereto and incorporated herein.

EXHIBIT 3




Said labor, equipment, materials and supplies were rendered, furnished and delivered to BLACK RABBIT, LLC and TREY CIOCCIA and 218, LLC and SLEEP WITH US PROPERTIES, LLC by Robert S. Biscan & Company. During that period of time, Robert S. Biscan & Company was a general contractor to BLACK RABBIT, LLC and TREY CIOCCIA and 218, LLC and SLEEP WITH US PROPERTIES, LLC pursuant to contract dated February 17, 2017, and said labor, equipment, materials and supplies were rendered for the purpose of improving said property. All the aforesaid labor, materials, supplies and equipment furnished by Robert S. Biscan & Company were used in and about the improvement of the aforesaid real estate. This Notice of Lien Claim has been filed within the time required according to the laws of the State of Tennessee, and the claimant will take all legal steps to enforce its lien as required by law.

The total amount due and owing for labor, materials, supplies and equipment furnished and delivered to the property after allowing all credits and deductions is the sum of \$474,555.77 plus maximum allowable interest by law, all of which is due and unpaid.

Now comes Arthur J. Coleman, and claims the lien upon the aforesaid property, including the improvements, buildings and structures thereon for \$474,555.77, plus maximum allowable interest by law and recording fees for filing this lien.

ROBERT S. BISCAN & COMPANY

BY:   
Arthur J. Coleman, Vice President

That the undersigned, Arthur J. Coelman, being first duly sworn, states that he is the Vice President of Robert S. Biscan & Company, that he is authorized to sign this document, that the foregoing statements set forth in this Notice of Lien Claim are true and correct to the best of his knowledge and belief and that the amount owed by BLACK RABBIT, LLC and TREY CIOCCIA and 218, LLC and SLEEP WITH US PROPERTIES, LLC for labor, materials, supplies and equipment used in improved the real property described herein is in the amount of \$474,555.77, plus the maximum allowable interest by law.

  
Arthur J. Coleman, Vice President

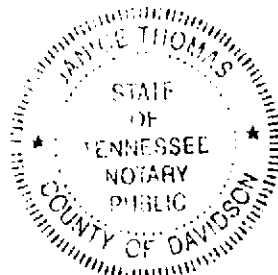
SWORN TO AND SUBSCRIBED before me this 29<sup>th</sup> day of January, 2018.

  
NOTARY PUBLIC

My Commission Expires: 1-8-19

STATE OF TENNESSEE

COUNTY OF Davidson



Before me appeared Arthur J. Coleman, to me personally known, who being duly sworn, does say that he is the Vice President of Robert S. Biscan & Company and that the signing of the Instrument is an act of the company and that the said Instrument was executed on behalf of the company, and that he acknowledges said Instrument to be the free act and deed of said Company.

WITNESS my hand and seal the 29<sup>th</sup> days of January 20 18.

Janie Thomas  
NOTARY PUBLIC

My Commission Expires: 1-8-19

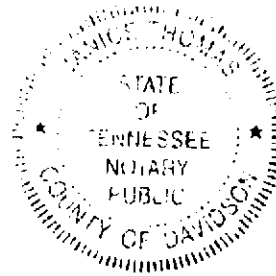


Exhibit "A"

Land in Davidson County, Tennessee, being a part of Lot No. 26 on the Plan of the Original Town of Nashville, not of record, described as follows:

Beginning at the southeast corner of Third Avenue North and Bank Alley; thence with the easterly margin of Third Avenue North, southwardly 39.4 feet, more or less, to the northwest corner of the property conveyed to C. M. Hunt, Trustee, by deed from Oscar F. Noel, *et.al*, Trustee, of record in Book 700, page 214, Register's Office for said County; thence with said Hunt's northerly line "eastwardly 108' 3", more or less, to the westerly margin of an alley, thence with said alley northwardly 39.4 feet, more or less, to the southerly margin of Bank Alley; thence with the southerly margin of Bank Alley, westerly 108' 3", more or less, to the beginning.