

Cover House

**OWNER AND PRIME TRADE CONTRACTOR AGREEMENT
(NO LIEN AGREEMENT)**

36.10

THIS AGREEMENT, made and entered into this 17th day of November 1994,

by and between: ISRAEL C.M.E. CHURCH

Address: 2337 WASHINGTON STREET City: GARY
State: IN Zip Code: 46407 Phone #: 219-883-3859

hereinafter referred to as "Owner", and SCHRICKER CO. INC.

Address: P.O. BOX 19719 City: INDIANAPOLIS
State: IN Zip Code: 46219 Phone #: 317-357-8496

hereinafter referred to as "Prime Trade Contractor",
WITNESSETH, THAT:

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**SECTION ONE
CONTRACT PRICE**

Owner agrees to pay Prime Trade Contractor for the work described, the
total price of (\$ 1,746.00) DOLLARS
One Thousand Seven Hundred Forty-Six

Payment of this amount is subject to additions or deductions in
accordance with provisions of this contract and of the other documents
to which this contract is subject.

DESCRIPTION OF WORK

Prime Trade Contractor shall perform the following described work in
accordance with contract plans, specifications, and documents as prepared
by MYLER CHURCH BUILDING SYSTEMS

Project # J1292466 and addendums: _____ Dated: 8/10/94
Dated: _____

and hereinafter referred to as "Contract Documents", at the following
described real estate, to-wit:

Project Name: Israel C.M.E. Church
Address: 2337 Washington Street
City: Gary State: IN Zip Code: 46407

as follows: Work shall include but not be limited to all plant, labor,
material and equipment necessary for and reasonably incidental to all
toilet partitions. All work shall be as per plans, specifications,
approved shop drawings, and your quote dated 10-4-04.

Myler Church

94085815

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SECTION TWO

If the Owner supplies any materials incorporated into the work, the Prime Trade Contractor will be responsible for and will be charged for excessive waste. Also, if materials are installed incorrectly or unsatisfactorily by the Prime Trade Contractor, the Prime Trade Contractor will be responsible not only for tearing out the incorrect material and disposing of same, but will also be responsible for replacing the material at the Prime Trade Contractor's own expense. In the event the owner is supplying material and site or storage restrictions do not allow for the full amount of material required to be on site at commencement of the work, the Prime Trade Contractor shall coordinate with the project superintendent 48 hours in advance or within a reasonable time determined by the superintendent prior to the material requirement. This provision of the contract is not applicable if the Prime Trade Contractor provides the material.

SECTION THREE PROGRESS PAYMENTS

Owner shall make progress payments on account of the contract price to Prime Trade Contractor as the work progresses and in accordance with the following schedule: **PROGRESSIVE PAYMENTS IN PROPORTION TO WORK COMPLETED LESS 10% RETAINAGE.**

The Prime Trade Contractor shall be required to submit its requests for progressive payments on specific forms provided by the Construction Manager as agent for the Owner. The Prime Trade Contractor shall first obtain the signature of the on-site project foreman and then submit the forms to Myler Church Building Systems for authorization to the Owner.

Progress payments may be withheld if:

- (a) Work is found defective and not remedied;
- (b) Prime Trade Contractor does not make prompt and proper payments to Trade Subcontractors;
- (c) Prime Trade Contractor does not make prompt and proper payments for labor, materials, or equipment furnished him;
- (d) Another Prime Trade Contractor is damaged by an act for which Trade Subcontractor is responsible;
- (e) Claims or liens are filed, or attempted to be filed on the job; or
- (f) In the opinion of Manager, Prime Trade Contractor's work is not progressing satisfactorily.

SECTION FOUR FINAL PAYMENT

Owner shall make final payment to Prime Trade

Contractor within thirty (30) days after the project is completed, if the contract be at that time fully performed, and subject to the condition that final payment shall not be due until Prime Trade Contractor has delivered to Owner a complete release in full covering all labor, materials, and equipment for which a lien could be filed, or in the alternative a bond satisfactory to Owner indemnifying him against such liens.

PRIME TRADE CONTRACTOR IS HEREBY SERVED WITH NOTICE that, notwithstanding the requirement that Prime Trade Contractor furnish a release of all liens arising out of the contract herein, or a sufficient bond, in lieu thereof, as hereinabove provided, after payment to the Prime Trade Contractor, no lien shall attach to the real estate, building, structure, or any other improvement of the Owner, and it shall be the duty, and responsibility of the Prime Trade Contractor to so advise any of his Subcontractors, mechanics, journeyman, laborers, or persons performing labor upon and/or furnishing supplies, materials, or machinery for such property or improvement of the Owner of such stipulation and requirement of this contract.

Owner, by making payment, waives all claims except those arising out of:

- (a) Faulty work appearing after substantial completion has been granted;
- (b) Work that does not comply with the contract documents;
- (c) Outstanding claims of lien, or attempts of claims of lien; or
- (d) Failure of Prime Trade Contractor to comply with any special guarantees required by the contract documents.

Prime Trade Contractor, by accepting final payment, waives all claims except those which he had previously made in writing to the attention of the Owner and duly acknowledged, and which remain unsettled at the time of acceptance.

SECTION FIVE STARTING AND COMPLETION DATES

Work shall commence promptly upon proper notification by Manager and shall proceed in an expeditious manner so as not to delay the completion of the project. The total project is to be completed by all parties within the time allotted on the initial construction schedule as agreed to by the Owner and the Construction Manager.

Prime Trade Contractor agrees to promptly begin the

hereinabove described work upon notification by Manager, and Prime Trade Contractor is to complete the work with no delay.

SECTION SIX CONTRACT DOCUMENTS

The contract documents on which the agreement between Owner and Prime Trade Contractor is based, which contain the plans and specifications in accordance with which the work is to be done, and which provide for the method of payment of the contract price are as follows:

- (a) This agreement, with supplementary agreements and conditions attached hereto (if any);
- (b) All working drawings, plans, and surveys, including all addenda attached hereto, issued before execution of this agreement, and any amendments hereafter to be made;
- (c) Specification, including all addenda attached hereto, issued before execution of this agreement, and any amendments hereafter to be made.
- (d) Written interpretations of the contract documents and directives to be made from time to time by the Manager or Owner; and
- (e) Work change orders issued or to be issued.

The contract documents together form the contract for the work herein described.

Any incongruity between documents or conflict in language, such as that cited in (c) above, shall be construed in a manner most satisfactory to this agreement and in the event of such direct conflict, the language in this agreement will supersede all other language and prevail. The parties intend that the documents include provisions for all labor, materials, equipment, supplies, and other items necessary for the execution and completion of the work, and all terms and conditions of payment. The documents also include all work and procedures not expressly indicated herein necessary for proper execution for this agreement.

Prime Trade Contractor, by executing the contract documents, represents that he has inspected and is familiar with the work site and the local conditions under which the work is to be performed.

SECTION SEVEN DESIGNATION OF MANAGER DUTIES AND AUTHORITY

The Manager for this overall project and specifically for this agreement, is Myler Church Building Systems, having an office at 970 North Englewood Drive, in the city of Crawfordsville, County of Montgomery, State of Indiana.

Phone (317) 362-3353.

The duties and authority of the Manager are as follows:

- (a) **General Administration of Contract.** The primary function of the Manager is to provide the general administration of the contract. In performing these duties, he is the Owner's representative and agent during the entire period of construction.
- (b) **Inspections, Opinions, and Progress Reports.** Manager shall keep familiar with the progress and quality of the work by making periodic visits to the work sites. He will make general determinations as to whether the work is proceeding in accordance with the contract. He will keep the Owner informed of such progress, and will use his best efforts to protect the Owner from defects and deficiencies in the work. He will not be responsible for the means of construction, or for the sequences, methods, and procedures used therein, or for Prime Trade Contractor's failure to perform the work in accordance with the contract documents. However, he shall use on a best effort basis, every means available to him to see that satisfactory performance does occur.
- (c) **Access to Work Site for Inspections.** Manager shall be given free access to the work site at all times during its preparation and progress.
- (d) **Interpretation of Contract Documents.** Decisions on disputes, Manager will be the initial interpreter of the contract document requirements, and make primary decisions on claims and disputes between Prime Trade Contractor and Owner. All of the Manager's decisions are subject to arbitration as provided herein.
- (e) **Rejection and Stoppage of Work.** Manager shall have authority to reject work which in his opinion does not conform to the contract documents and in this connection to stop the work or a portion thereof, when necessary.
- (f) **Payment Certificates.** Manager will determine the amounts owing to Prime Trade Contractor as the work progresses, based on Prime Trade Contractor's applications and Manager's inspections and observations, and will issue certificates for progress and final payment in accordance with the terms of the contract documents. The authorizing of payment certificates to Prime Trade Contractors by the Manager does not waive the requirement of the Prime Trade Contractor to correct prior nonconforming or defective work or to correct work not acceptable to the Owner.

SECTION EIGHT RESPONSIBILITIES OF OWNER

Owner shall give all instructions to Prime Trade Contractor through Manager. The Owner shall furnish all necessary surveys for the work and shall secure and

pay for easements for permanent structures or permanent changes in existing structures or facilities on the work site, or which are necessary for its proper completion.

The Owner shall be responsible for making all payments to the Prime Trade Contractor in accordance with the provisions of this Agreement.

SECTION NINE

RESPONSIBILITIES OF PRIME TRADE CONTRACTOR

Prime Trade Contractor's duties and rights in connections with the agreement and project herein are as follows:

- (a) **Responsibility for the Supervision of Construction.** Prime Trade Contractor shall be solely responsible for all construction under this contract, including the techniques, sequences, procedures, and means, and for coordination of all work. However, the Prime Trade Contractor shall cooperate with the on site project superintendent and other Prime Trade Contractors in coordinating his work to coincide with the expeditious completion of the whole project. He shall supervise and direct the work to the best of his ability, and give it all attention necessary for such proper supervision and direction.
- (b) Owner shall cooperate with all other Prime Trade Contractors to the effect that their work shall not be impeded by his respective construction (by volunteer church labor) and shall give them access to the work site necessary to perform their contracts.
- (c) **Discipline and Employment.** Prime Trade Contractor shall maintain at all times strict discipline among his employees, and he agrees not to employ for work on this project any person unfit or without sufficient skill to perform the job for which he was employed. Prime Trade Contractor shall endeavor to ensure that the language, apparel and general behavior of his employees shall reflect a respect for the values represented in a project of this type.
- (d) **Furnishing of Labor, Materials, etc.** Prime Trade Contractor shall provide and pay for all labor, materials (unless specifically excluded), and equipment, including tools, construction equipment, machinery, transportation, and all other facilities and services necessary for the proper completion of work on the project in accordance with the contract documents.
- (e) **Payment of Taxes; Procurement of Licenses and Permits.** Prime Trade Contractor shall pay all taxes required by law in connection with work on the project in accordance with this contract, including all sales, use, and similar taxes, and shall secure all licenses and permits necessary for proper completion of the work, paying the fees therefore.
- (f) **Compliance with Construction Laws and Regulations.**

Prime Trade Contractor shall comply with all laws and ordinances, and the rules and regulations, or orders of all public authorities relating to the performance of the work herein. If any of the contract documents are at variance therewith, he shall notify the Manager promptly on discovery of such variance.

(g) **Responsibility for Negligence of Employees and Prime Trade Contractors.** Prime Trade Contractor assumes full responsibility for acts, negligence, or omissions of all his employees on the project and for those of his Trade Subcontractors and their employees, and for those of all other persons doing work under a contract with him.

(h) **Warranty of Fitness of Equipment and Materials.** Prime Trade Contractor represents and warrants to Owner and Manager that all equipment and materials used in the work, and made a part of the structures thereon, or placed permanently in connection therewith, will be new unless otherwise specified in the contract documents, of good quality, free of defects, and in conformity with the contract documents. It is understood between the parties hereto that all equipment and materials not so in conformity are defective.

(i) **Furnishing of Samples and Shop Drawings.** Prime Trade Contractor agrees to furnish to the Manager and direct all samples and shop drawings for his consideration and approval as to conformance with the specifications of the contract documents and his concepts of design called for therein.

(j) **Clean-up.** Prime Trade Contractor agrees to daily keep the work premises broom clean and adjoining ways free of waste materials and rubbish caused by his work or that of his Trade Subcontractors. He further agrees to remove all such waste material and rubbish daily and on termination of his phase of the project, together with all his tools, equipment, machinery, and surplus materials. He agrees, on termination of his work at the work site, to conduct general clean-up operations of those areas for which he is responsible, or in which he was working; including the cleaning of all glass surfaces, paved streets and walks, steps, and interior floors and walls.

(k) **Indemnity and Hold-Harmless Agreement.** Prime Trade Contractor agrees to indemnify and hold harmless Owner and Manager, and their agents, and employees, from and against all claims, damages, losses, and expenses, including reasonable attorney's fees in case it shall be necessary to file an action, arising out of performance of the work herein, which is (1) for bodily injury, illness, or death, or for property damage, including loss of use, and (2) caused in whole or in part by the Prime Trade Contractor's negligent act or omission, or that of a Trade Subcontractor or that of anyone employed by them or for whose acts Prime Trade Contractor or Trade Subcontractor may be liable.

(l) **Payment of Royalties and License Fees; Hold-**

Harmless Agreement. Prime Trade Contractor agrees to pay all royalties and license fees necessary for the work, and to defend all actions and settle all claims for infringement of copyright or patent rights, and to save Owner harmless therein.

(m) Safety Precautions and Program. Prime Trade Contractor has the duty of providing for and overseeing all safety orders, precautions, and programs necessary to the reasonable safety of the work. In this connection, he shall take reasonable precautions for the safety of all work employees and other persons whom the work might affect, all work and materials incorporated in the project, and all property and improvements on the construction site and adjacent thereto, complying with all applicable laws, ordinances, rules, regulations, and orders.

SECTION TEN

TIME OF ESSENCE, EXTENSION OF TIME

All times stated herein or in the contract documents are of the essence hereof.

The contract times may be extended by a change order from Manager for such reasonable time as he may determine, which in his opinion Prime Trade Contractor is delayed in work progress by changes ordered, labor disputes, fire, prolonged transportation delays, injuries, or other causes beyond his control or which justify the delay.

SECTION ELEVEN

TRADE SUBCONTRACTORS OF PRIME TRADE CONTRACTORS

Prime Trade Contractor agrees to furnish Manager, prior to the execution of this contract or at any time thereafter, a list of names of Trade Subcontractors to whom he proposes to award any portions of the Prime Trade Contractor's work. A Trade Subcontractor, for the purposes of this contract, shall be a person with whom Prime Trade Contractor has a direct contract for work at the project site. Prime Trade Contractor agrees not to employ a Trade Subcontractor to whose employment Manager or Owner reasonably objects, nor shall be required to hire a Trade Subcontractor to whose employment he reasonably objects. All contracts between Prime Trade Contractor and Trade Subcontractors shall conform to the provisions of the contract documents, and shall incorporate in them the relevant provisions of this contract.

SECTION TWELVE

ARBITRATION

All claims and disputes relating to this contract shall be subject to arbitration at the option of either Owner, Prime

Trade Contractor, or Manager in accordance with the Arbitration Rules of the American Arbitration Association for the construction industry, then obtaining. Written notice of demand for arbitration shall be filed with the other party to the contract and with the American Arbitration Association, within a reasonable time after the dispute has arisen, but in no event shall such period exceed seven (7) days or the claiming party shall be held in default on such claims.

SECTION THIRTEEN

INSURANCE

(a) Prime Trade Contractor's Liability Insurance. Prime Trade Contractor agrees to keep in force at his own expense during the entire period of construction on the project such liability insurance as will protect him from claims, under workmen's compensation and other employee benefit laws, for bodily injury and death, and for property damages, that may arise out of work under this contract, whether directly by a Trade Subcontractor. The minimum liability limits of such insurance shall not be less than the limits specified in the contract documents or by law for that type of damage claim. Such insurance shall include contractual liability insurance applicable to Prime Trade Contractor's obligations under this contract. Proof of such insurance shall be filed by Prime Trade Contractor with Construction Manager, preferably with the execution of contract and in no event later than ten (10) days after signing of contract. Note: The Owner and Myler Church Building Systems shall be named as "additional insured" on the Prime Trade Contractor's policies.

(b) Owner's Liability Insurance. Owner agrees to maintain in force his own liability insurance during the construction of this project and reserves the right to purchase such additional insurance as in his opinion is necessary to protect him against claims arising out of Prime Trade Contractor's operation, without diminishing Prime Trade Contractor's obligation to carry the insurance specified herein on his part to be carried.

(c) Property Damage Insurance on Work Site. Owner agrees to maintain at his expense during construction of the project, property damage insurance on the work at the site to its full insurable value, including interests of Owner, Construction Manager, Prime Trade Contractor, and Trade Subcontractors, against fires, vandalism, and other perils ordinarily included in extended coverage. Losses under such insurance will be adjusted with and made payable to Owner as trustee for the parties insured as their interests appear.

(d) Waiver of Work Site Property Damage Claims to Extent of Insurance Coverage. Owner and Prime Trade Contractor hereby waive all claims against each other for fire damage or damages from other perils covered by insurance provided in paragraph (c) of this section.

Prime Trade Contractor agrees to obtain waivers of such claims by all Trade Subcontractors.

SECTION FOURTEEN **CORRECTING WORK**

When it appears to Prime Trade Contractor or to Manager, or to the Project Superintendent, or to the Architect/Engineer or to the Owner during the course of construction that any work does not conform to the provisions of the contract documents, Prime Trade Contractor shall make necessary corrections so that such work will so conform, and in addition will correct any defects caused by faulty materials, equipment, or workmanship from the date of issuance of a certificate of substantial completion, or within such longer periods as may be prescribed by law or as may be provided for by applicable special guarantees in the contract documents.

SECTION FIFTEEN **WORK CHANGES**

Verbal change orders resulting in changes in the contract price will not be acceptable. The Prime Trade Contractor will not be paid for any work not authorized in writing by the Owner.

The Owner, through the Construction Manager, reserves the right to order work changes in the nature of additions, deletions, or modifications, without validating the contract price and time for completion. All changes will be authorized by a written change order signed by Owner or by Manager as his agent. The change order will include conforming changes in the contract and completion time.

Work shall be changed and the contract price and completion time shall be modified only as set out in the written change order. Any adjustment in the contract price resulting in a credit or a change to Owner shall be determined by a mutual agreement of the parties, or by arbitration, before starting the work involved in the change.

SECTION SIXTEEN

TERMINATION

(a) Prime Trade Contractor's Termination. Prime Trade Contractor may, on ten (10) days' notice to Owner and Manager, terminate this contract before the completion date hereof when for a period of thirty (30) days after a progress payment is due, through no fault of Prime Trade Contractor, Manager fails to issue a certificate of payment therefore, or Owner fails to make the payment. On such

termination, Prime Trade Contractor may recover from Owner payment for all work completed and for any loss sustained by him for materials, equipment, tools, or machinery to the extent of actual loss thereon pays loss of reasonable profit, provided he can prove such loss and damage.

(b) Owner's Termination. Owner may, on ten (10) days' notice to Prime Trade Contractor, terminate this contract before the completion date hereof, and without prejudice to any other remedy he may have, when Prime Trade Contractor defaults on performance of any provision herein, or fails to carry out the construction in accordance with the provisions of the contract documents. On such termination, Owner may take possession of the work site and all materials, equipment, tools, and machinery thereon, and finish the work in whatever way he deems expedient. If the unpaid balance on the contract price at the time of such termination exceeds the expense of finishing the work, Owner will pay such excess to Prime Trade Contractor. If the expense of finishing the work exceed the unpaid balance on the contract price at the time of termination, Prime Trade Contractor agrees to pay the difference to Owner.

On such default by Prime Trade Contractor, Owner may elect not to terminate the contract, and in such event he may make good the deficiency of which the default consists, and deduct the costs from the progress payment then or to become due to Prime Trade Contractor.



CONSOLIDATED INVESTMENTS, INC., NOW KNOWN AS THIRTEEN HUNDRED CORPORATION, AS TO LOT 3 OF PARCEL 3;

RONALD A. BROWNE AND FERRIS S. BROWNE, HUSBAND AND WIFE, AS TO LOTS 4 AND 5 OF PARCEL 3.

THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

PARCEL 1: LOTS 38 THROUGH 48, BOTH INCLUSIVE, BLOCK 37, CHICAGO-TOLLESTON LAND AND INVESTMENT COMPANY'S SECOND OAK PARK ADDITION TO TOLLESTON, IN THE CITY OF GARY, AS SHOWN IN FLAT BOOK 2, PAGE 36, IN LAKE COUNTY, INDIANA, EXCEPT THAT PART IN THE REAR OF SAID LOTS TAKEN FOR ALLEY PURPOSES.

PARCEL 2: LOTS 8 THROUGH 17, BOTH INCLUSIVE, BLOCK 37, CHICAGO-TOLLESTON LAND AND INVESTMENT COMPANY'S SECOND OAK PARK ADDITION TO TOLLESTON, IN THE CITY OF GARY, AS SHOWN IN FLAT BOOK 2, PAGE 36, IN LAKE COUNTY, INDIANA, EXCEPT THAT PART IN THE REAR OF SAID LOTS TAKEN FOR ALLEY PURPOSES.

PARCEL 3: LOTS 1 THROUGH 5, BOTH INCLUSIVE, BLOCK 37, CHICAGO-TOLLESTON LAND AND INVESTMENT COMPANY'S SECOND OAK PARK ADDITION TO TOLLESTON, IN THE CITY OF GARY, AS SHOWN IN FLAT BOOK 2, PAGE 36, IN LAKE COUNTY, INDIANA, EXCEPT THAT PART IN THE REAR OF SAID LOTS TAKEN FOR ALLEY PURPOSES.

IN WITNESS WHEREOF, the parties have executed this agreement, consisting of this and six (6) preceding typewritten pages.

OWNER:

PRIME TRADE CONTRACTOR:

ISRAEL C.M.E. CHURCH

SCHRICKER COMPANY INC.

By:

SIGNATURE

By:

SIGNATURE

Rev. Julius C. Clay, Pastor
PRINT NAME AND TITLE

Paul A. Ley, President
PRINT NAME AND TITLE

By:

SIGNATURE

By:

SIGNATURE

Mr. Garnett Bradley, Trustee
PRINT NAME AND TITLE

PRINT NAME AND TITLE

SUBSCRIBED AND SWORN TO before me

SUBSCRIBED AND SWORN TO before me

Notary Public in and for Lake

Notary Public in and for Marion

County, State of Indiana

County, State of Indiana

on this 29 day of November 19 94

on this 18 day of November 19 94

My commission expires 3-20-98

My commission expires 2/19/95

Stephen D. Deloney; Notary Public

Marian J. Wagenknecht Notary Public

Stephen D. Deloney

Marian J. Wagenknecht

PRINT NAME

PRINT NAME

Resident of Lake County

Resident of Hamilton County

Attested to:

Ray Gehart
Ray Gehart - Construction Manager

As prepared by: MYLER CHURCH BUILDING SYSTEMS

SUBSCRIBED AND SWORN TO before me Notary Public in and for Montgomery

County, State of Indiana on this 19 day of Dec 19 94

Resident of Montgomery County

My commission expires 8/7/98

Denise J. Weliver Notary Public in Montgomery County

Denise J. Weliver

DENISE J WELIVER
NOTARY PUBLIC STATE OF INDIANA
MONTGOMERY COUNTY
MY COMMISSION EXP. AUG. 7, 1998

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