

BAY MINETTE ROOFING & SHEET
METAL, INC., a corporation,

Plaintiff,

vs.

JEFFERSON MORTGAGE COMPANY,
INC., a corporation,

Defendant.

X

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IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 6903

AMENDED PLEA

Comes the Defendant in the above styled cause and amends Plea 3 filed in said cause so that the same shall read as follows:

3. For further plea to the Complaint by way of recoupment the Defendant claims of the Plaintiff the sum of One Thousand Nine Hundred Sixty-five Dollars and Fifty-eight Cents (\$1,965.58) as damages for that the Plaintiff was a sub-contractor of the Defendant under an agreement in writing, made and entered into by and between the parties on August 18, 1965, a copy of such sub-contract being attached hereto, marked Exhibit A, and made a part hereof. That such Plaintiff breached such sub-contract in that he agreed to perform the work and furnish the materials on twenty (20) units and he only performed the work and furnished the materials for four (4) units and such units were rejected by the inspector on the project inasmuch as the strip shingles were not securely sealed to the undercourse by means of an approved adhesive. That such Plaintiff further breached such contract in that he failed and refused to fulfill such sub-contract by performing services and furnishing materials for the remaining sixteen (16) units and the Defendant was required to negotiate with another company for such work and materials. That the

Defendant did employ Amerson Roofing Company, of Atmore, Alabama, to perform such services and furnish necessary materials and there is attached hereto, marked Exhibit B and made a part hereof, a statement showing the loss to the Defendant by reason of such re-negotiation, all to the damage of the Defendant in the sum above mentioned.

FILED

AUG 17 1906

ALICE L. DICK, CLERK
REGISTER

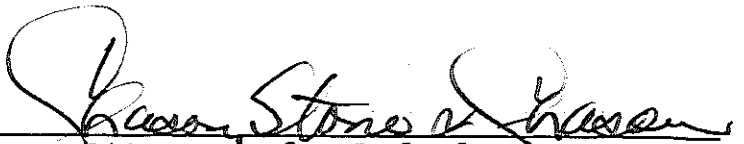

Attorneys for Defendant

EXHIBIT A
SUB CONTRACT

THIS AGREEMENT, made this 18th day of August, 19 65, by and between JEFFERSON MORTGAGE COMPANY, INC., hereinafter called the Contractor, and BAY MINETTE ROOFING AND SHEET METAL, INC. - - - - - hereinafter called the Subcontractor.

WITNESS that the Contractor and the Subcontractor for the considerations hereinafter named, agree as follows:

SECTION 1.

The Subcontractor agrees to furnish all material and perform all work as described in Section 35 hereof in accordance with the general conditions of the contract between THE HOUSING AUTHORITY OF THE CITY OF BAY MINETTE, hereinafter called the Owner, and the Contractor, in accordance with the drawings and specifications prepared by Marshall Fischrupp, hereinafter called the Architect, and RESTER & COLEMAN ENGINEERS, INC., hereinafter called Engineer. The general conditions and special conditions of the contract between the Owner and Contractor, drawings and specifications prepared by the Architect and Engineer form a part of the contract between the Contractor and the Owner dated the 10th day of October, 1964. The Subcontractor hereby agrees to be bound to the Contractor by the terms of the contract between the Owners and the Contractor, plans and specifications and to assume toward the Contractor all the obligations and responsibilities that the Contractor, by those documents, assumes toward the Owner.

SECTION 2.

The Subcontractor shall, upon entering into this Subcontract, furnish and file with the Contractor an acceptable contract bond in a sum equal to \$5161.50 amount of this Subcontract and a labor and material bond in a sum equal to \$5161.50 amount of this Subcontract. In case of default on the part of the Subcontractor, the work shall be completed in accordance with this Subcontract and the surety shall be bound by the terms and conditions and guaranties of this Subcontract the same as the Subcontractor shall be bound prior to default. Any and all premium expense in connection with the contract bond and the labor and material bond shall be paid by the Subcontractor and included in the price of the work.

SECTION 3. Errors and Omissions.

(a) Any correction of errors or omissions in drawings and specifications may be made by the Architect or Contractor when such correction is necessary for the proper fulfillment of their intention as construed by him.

(b) The fact that specific mention of a fixture, or of any part of the work is omitted in the specifications, whether intentionally or otherwise, when the same is clearly shown or indicated on the drawings, or is usually and customarily required to complete fully such work as is specified herein, will not entitle the Subcontractor to consideration in the matter of any claim for extra compensation, but the said fixtures or work, or both, shall be installed for done the same as if called for both by the drawings and by the specifications.

(c) All work indicated on the drawings and not mentioned in the specifications, or vice versa, and all work and material usual and necessary to make the work complete in all its parts, whether or not they are indicated on the drawings or mentioned in the specifications, shall be furnished and executed the same as if they were called for by both the drawings and the specifications.

(d) If, in the process of the work, the Subcontractor discovers any errors or omissions in the drawings or the specifications or in the points, lines and elevations furnished by the Engineer or Architect or in the work undertaken and executed by him he shall immediately notify the Contractor. If, with the knowledge of such error or omission and prior to the correction thereof, the Subcontractor proceeds with any work affected thereby, he shall do so at his own risk and the work so done shall not be considered as work done under and in performance of this Subcontract unless approved and accepted.

(e) The Subcontractor warrants that he is familiar with any and all of the building regulations of the City of Bay Minette pertaining to the work covered by this Subcontract and that he has taken into consideration in his bid all of the necessary labor, material, equipment, etc., that is required by the building regulations of the City of Bay Minette, and that he will perform all work to be performed under this Subcontract, in full accordance with the building regulations of the City of Bay Minette. The Subcontractor assumes full responsibility for obtaining approval by the building inspector of the City of Bay Minette and any other governmental authority of any and all work performed by him under this Subcontract.

SECTION 4. Inspection

The Owner, Contractor, Architect and Engineer are authorized to inspect all work done and all materials furnished under this Subcontract. In case of disputes arising between the Contractor and the Subcontractor as to materials furnished or the manner of performing the work, the Contractor shall have authority to reject materials or suspend work until the question at issue can be referred to and decided by the Architect.

SECTION 5. Suspension of Work

The Contractor shall have the right to suspend any portion of the work embraced in this Subcontract whenever, in his opinion, it would be inexpedient to carry on said portion of the work. The Subcontractor shall not have any claim against the Contractor for suspension of work.

SECTION 6. Contractor's Obligation

(a) The Subcontractor shall in good and workmanlike manner, do and perform all the work and furnish all labor and materials necessary to perform and complete all the work required by this Subcontract.

(b) The Subcontractor agrees that time of performance is of the essence of this Subcontract. The Subcontractor agrees to commence work when notified. The Subcontractor agrees to perform all work under this Subcontract with all possible dispatch, to execute all work in such a manner so as not to delay any other Subcontractor or the Contractor in the general progress of the whole work.

(c) The Subcontractor is responsible for the care of the work under this Subcontract, the materials delivered to the site and all losses or damages that may accrue in or about the work under this Subcontract. The Subcontractor assumes the risk of loss or damage to the work under this Subcontract prior to the final acceptance of the work. In the event of such loss or damage the Subcontractor shall forthwith repair, replace and make good the work without cost to the Contractor. The Subcontractor assumes the risk of claims and demands, just or unjust, by third persons arising or alleged to arise under the performance of the work under this Subcontract, whether made before or after rendition of final payment. The Subcontractor assumes all risk of loss or damage resulting from any and all labor disturbances.

(d) The fact that the Contractor or Architect has accepted the material and work of the Subcontractor shall not relieve the Subcontractor from his obligation to meet all other requirements of the plans and specifications and it shall not prevent subsequent rejection if such material or work is later found to be defective.

(e) The Subcontractor shall remove all defective work and material immediately.

(f) The Subcontractor shall perform this Subcontract to the entire satisfaction of the Contractor, Architect and Engineer.

SECTION 7. Progress.

If, in the opinion of the Contractor, the rate of progress of the work under this Subcontract is behind schedule, the Contractor shall have the right to order the Subcontractor to employ more men or to increase his plant or to prosecute by day and night any portion of the work, and the Subcontractor shall forthwith comply with such orders without additional compensation.

SECTION 8. Assignment.

The Subcontractor shall not sublet or assign either equitably or legally any portion of his work without the express written permission of the contractor, and said Subcontractor shall in no case re-subcontract different from the terms and conditions of this said Subcontract.

The Subcontractor shall be as fully responsible for the acts and omissions of his Subcontractors and all persons either directly or indirectly employed by them as he is for the acts and omissions of those directly employed by him.

SECTION 9. Character of Workmen and Equipment.

Any superintendent, engineer, foreman or workman employed by the Subcontractor or by any subcontractor of the Subcontractor, who, in the opinion of the Contractor, or his authorized representative, does not perform his work in a proper and skillful manner or is disrespectful, intemperate, disorderly or otherwise objectionable, shall at the request of the Contractor be forthwith discharged by the Subcontractor employing such superintendent, engineer, foreman or workman and shall not be employed again on any portion of the work without the written consent of the Contractor.

SECTION 10. Work of Other Subcontractors.

The Contractor and other subcontractors will be performing work in the immediate vicinity of the work to be performed by the Subcontractor under this Subcontract. The Subcontractor shall plan and conduct all his operations so as to work in harmony with others engaged in work in the vicinity of the Subcontractor's work and not to delay, endanger or avoidably interfere with the operations of others.

SECTION 11. Scaffolding and Protection.

The Subcontractor shall furnish safe scaffolding for the performance of its work and shall protect its work against accidents. In the event the Subcontractor uses any material belonging to the Contractor for scaffolding or for any other purpose the Subcontractor will pay the Contractor one and one-half times the cost of any such material and the Contractor may deduct such amount from the Subcontractor's next estimate.

SECTION 12. Compliance with Laws.

The Subcontractor shall keep himself fully informed of all existing and future county, state and federal laws and municipal ordinances and regulations that in any manner affect those engaged or employed in the work under this Subcontract or the materials used in the work under this Subcontract or in any way affect the conduct of the work under this Subcontract. The Subcontractor agrees to perform all work under this Subcontract in full compliance with any existing and future federal, state, county and municipal ordinances, rules and regulations.

The Subcontractor agrees that he will be responsible for securing the approval, if required, of any and all governmental units.

SECTION 13. Permits and Licenses.

The Subcontractor shall, at its own expense, procure all permits and licenses from municipal, county, state and other public authorities; and shall give all notices required by law or ordinance and shall post all bonds and pay all fees and charges, including inspection fees, incident to the due and lawful prosecution of the work covered by this Subcontract except that the general Contractor shall acquire the general building permit and pay the water and sewerage hook-on fees.

SECTION 14. Patents.

The Subcontractor shall hold and save the Contractor and the Owner, their officers and employees, harmless from liability of any nature or kind, including costs and expenses, for or on account of any patented or unpatented invention, process, article or appliance, manufactured or used in the performance of this Subcontract, including its use by the Contractor and the Owner.

SECTION 15. Insurance.

The Subcontractor shall procure and maintain until acceptance of the work, insurance as specified below in such form as shall protect it from all claims and liabilities for damages or bodily injury, including accidental death, and for property damage which may arise from the operations under this Subcontract.

(a) For liability for bodily injury, including accidental death
\$50 - \$100,000.00 .

(b) For liability for property damage for \$50 - 100,000.00 on account of any one accident and \$50 - \$100,000.00 on account of all accidents.

(c) Builder's risk insurance in the amount of Subcontract price.

(d) Workmen's compensation insurance as required by the laws of the State of Alabama.

(e) Bodily injury and contractor's protective bodily injury insurance in the amount required in "a" above.

(f) Property damage and contractor's protective property damage.

(g) Bodily injury covering the operation of all motor vehicles owned by the Subcontractor in the amount required by \$50 - \$100,000.00 .

(h) Property damage insurance covering the operation of all motor vehicles owned by the Subcontractor in the amount of not less than \$5,000.00.

(i) Insurance in the amount required in "a" and "e" to cover bodily injuries and property damage resulting from the use of motor vehicles not owned by the Contractor while such vehicles are being operated in connection with the prosecution of the work under the contract.

All policies required under this article shall be so written at fifteen (15) days notice of cancellation or restrictive amendments will be sent to the Contractor. Certificates in triplicate from the insurance carrier stating the limits of the liabilities and expiration date shall be filed with the Contractor for all policies.

SECTION 16. Mutual Responsibility of Contractors.

(a) If through the act or negligence of the Subcontractor, the Contractor, or any other Subcontractor shall suffer loss or damage on the work, the Subcontractor agrees to settle with the Contractor or Subcontractor immediately.

(b) If the Subcontractor shall assert any claim against the Owner or Contractor or another Subcontractor on account of any damage alleged to have been sustained, then such claim shall be rendered in writing within three (3) days from such occurrence to the party alleged to have caused the damage with a copy of such claim being sent to the Contractor.

SECTION 17. Trade Names.

Whenever the words "or equal" appear on the drawings or in the specifications the material specified must be used unless the Subcontractor first received specific written permission from the Contractor for substitution of other material.

SECTION 18. Unauthorized work.

Any extra work done or any changes made without written authority of the Contractor on the prescribed change order form shall be considered unauthorized and at the expense of the Subcontractor and shall not be paid for by the Contractor. At the option of the Contractor unauthorized work so done may

be ordered removed or removed and replaced at the Subcontractor's expense.

SECTION 19. Changes in the Work.

The Owner and Contractor may make changes in the work of the Subcontractor by making alterations therein or by making additions thereto or by omitting work therefrom without invalidating this Subcontract and without relieving or releasing the Subcontractor from any guaranty given by him pursuant to this Subcontract and without affecting the validity of the contract bonds and without relieving or releasing the surety or sureties on said bonds. All such work shall be executed under the conditions of this Subcontract.

No changes will be made in the work without the specific written approval of the Contractor on a proper change order form. The change order shall specify the dollar amount to be added to or deducted from the Subcontract price and shall be signed by the Contractor and the Subcontractor.

SECTION 20. Guaranty.

(a) The Subcontractor guaranties the work performed under this Subcontract for a period of one (1) year unless a longer period is specified after the date of final acceptance of the work by the Owner and the Subcontractor shall make good all defects arising out of faulty workmanship and defective materials which may appear within the said guaranty period, and shall bear all cost for replacement of materials and labor for installation required to correct such defects.

(b) The Subcontractor shall commence such corrective measures within a period of not less than Three (3) calendar days after written notice from the Contractor that such defects exist, unless a condition of emergency exists and the Subcontractor is unable to take immediate action, then the Contractor and Owner reserve the right to proceed immediately with corrective measures, the cost of which shall be borne by the Subcontractor. Neither the final acceptance nor payment, nor any provision in this Subcontract nor the contract documents shall relieve the Subcontractor of responsibility for faulty materials and workmanship. This guaranty shall be covered by the Contract bond.

SECTION 21. Cutting and Patching.

Cutting and patching shall be done only with the approval of the Contractor and in a manner satisfactory to the Contractor.

SECTION 22. Taxes.

The Subcontractor shall pay all taxes, including city and state sales taxes, if required, and shall hold the Contractor and Owner harmless in every respect against any tax claims.

SECTION 23. Cleaning Up.

The Subcontractor shall at all times keep the premises free from any accumulation of waste material or rubbish caused by its employees or work, and at the completion of the work it shall remove all the rubbish from and about the building and its tools, scaffolding, and surplus materials, and shall leave its work "broom clean" or its equivalent unless more exactly specified. In the case of dispute the Contractor may remove the rubbish and charge the cost to the several Subcontractors as he shall determine to be just.

SECTION 24. Right to Materials.

Nothing in this Subcontract shall be construed as vesting in Subcontractor any right of property and the materials used after they have been attached or affixed to the work or the soil, but all such materials shall upon being so attached or affixed, become the property of the Owner. Contractor shall not be responsible for theft of said material or other safe-keeping.

SECTION 25. Retainage.

The Contractor may keep any moneys which would otherwise be payable at any time hereunder to the Subcontractor and apply said moneys or so much thereof as may be necessary for the payment of any expenses, loss or damage caused by the Subcontractor, and the Contractor may retain until all claims are settled so much money otherwise due the Subcontractor, as the Contractor shall be of the opinion will be required to settle all claims with the Owner, other subcontractors and any other person arising out of any act or failure to act of the Subcontractor. The Contractor may in its sole discretion retain the sum of ten per cent (10%) of the entire amount of this Subcontract for a period of one (1) year to ensure the full performance of the guarantee.

SECTION 26. Progress Payments.

Once in each month, but prior to the tenth of such month, the Subcontractor shall make an estimate in writing of the total amount of work done to the first of the month and the amount earned by the Subcontractor. The Contractor shall retain ten per cent (10%) of such estimated value as part of the security for the fulfillment of this Subcontract by the Subcontractor and shall deduct the balance from all previous payments and all sums to be retained under the provisions of this Subcontract. The Contractor shall pay to the Subcontractor the balance not retained as aforesaid within fifteen (15) days from the date of the filing of said estimate except that the Contractor may withhold payments at any time that the work is not proceeding in accordance with the Subcontract. The Contractor may, if the Contractor deems it expedient so to do, cause estimates and payments to be made more frequently than once in each month. If the Contractor is of the opinion that proper protection is not being maintained on materials in storage furnished by the Subcontractor under this Subcontract, the Contractor may, after notice in writing to the Subcontractor, retain from subsequent progress estimates all or any portions of the amounts previously paid until such time suitable protection is afforded or the materials are placed in the works and accepted.

SECTION 27. Final Estimate.

The Subcontractor, as soon as practical after completion of this Subcontract, shall make a final estimate in writing of the amount of work done thereon and the amount earned by the Subcontractor and the Contractor shall fix the date of completion of the said work and incorporate the same into the final estimate. Provided, however, that the Subcontractor must get written proof of all payments to his employees or supplies for materials and labor shall have been made and all defective work, if any, has been remedied and there is no reasonable evidence indicating probable filing of claims and that there has been no damage to the Contractor or to the Subcontractor. All progress estimates and payments shall be made subject to correction in the final estimate and payment.

SECTION 28. Payment.

The Contractor shall pay and the Subcontractor shall receive
\$5,161.50 for full compensation for everything furnished and done

by the Subcontractor under this subcontract including all work required but not specifically mentioned and also for all loss or damage arising out of the nature of the work aforesaid or from the action of the elements or from any unforeseen obstruction or difficulty encountered in the prosecution of the work and for all risks of every description connected with the work and for all expenses incurred by or in consequence of suspension or discontinuance of the work as herein specified and for well and faithfully completing all the work as herein provided.

SECTION 29. Claims and Liens.

The Subcontractor agrees to hold the Contractor harmless from any and all liens and all claims of persons furnishing materials, labor or appliances in connection with this Subcontract. The Contractor may require of the Subcontractor satisfactory evidence as to the status of his accounts at any time.

SECTION 30. Attorney's Fees.

The Subcontractor agrees to pay to the Contractor the amount of expense and attorney fees incurred by the Contractor because of any default of the Subcontractor in the performance of the work under the Subcontract or in the payment of labor and or material bills, or arising from the filing of claims for such bills.

SECTION 31. Annulment of Subcontract.

If the Subcontractor fails to begin the performance of this Subcontract within the time specified by the Contractor or fails to make deliveries, or to provide sufficient workman, equipment or sufficient materials to ensure the prompt completion of the work or shall sub-let any part or all of this Subcontract without the previous written approval of the Contractor or shall perform the Subcontract unsuitably or shall neglect or refuse to remove materials or personnel pursuant to the direction of the Contractor or to perform such new work as shall have been rejected as defective or unsuitable or shall discontinue the prosecution of the work or shall default in the performance of this Subcontract, or if the Subcontractor becomes insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency or to allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours or shall make an assignment for the benefit of creditors or for any other cause whatsoever shall not carry on the work or perform this Subcontract in an acceptable manner, the Contractor may give notice in writing to the Subcontractor and his surety of such delay, neglect or default, and if the Subcontractor within forty-eight (48) hours after such notice shall not proceed in strict accordance with this Subcontract to correct such delay, neglect or default, the Contractor shall have full power and authority without violating this Subcontract to take the prosecution of the work out of the hands of the Subcontractor and Subcontractor's surety, to appropriate or use any and all materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement for the completion of this Subcontract according to the terms and provisions hereof or to use such other method as the Contractor's sole opinion shall be required for the completion of this Subcontract in an acceptable manner. All costs and charges incurred by the Contractor together with additional compensation to the Architect or Engineer for his extra services and the cost of completing the work shall be borne by the Subcontractor and his surety. Any and all damages arising out of such delay, neglect or default of the Subcontractor shall be deducted from any money due or which may become due the Subcontractor. In case the cost and expense so incurred by the Contractor shall be less than the sum which shall be payable under this Subcontract to the Subcontractor if this Subcontract had been completed by the Subcontractor then the Subcontractor will be entitled to

receive the difference. In the event the expense to the Contractor shall exceed the sum which shall have been payable under this Subcontract, then the Subcontractor and the Subcontractor's surety shall be liable and shall pay to the Contractor the amount of said excess.

SECTION 32. Owner of Drawings and Specifications.

All drawings and specifications are and shall remain the property of the Owner.

SECTION 33. Waiver.

Neither inspection by the Contractor, nor any of its agents, nor any orders, measurement or certificate by the Engineer, nor any order by the Contractor for the payment of money, nor any payment for, nor acceptance of the whole, or any part of the work by the Contractor, nor any extension of time, nor any possession taken by the Contractor or its employees, shall operate as a waiver of any provisions of this Subcontract, or of any power herein reserved to the Contractor, or any right to damages herein provided, nor shall any waiver of any breach of this Subcontract be held to be a waiver of any other or subsequent breach. Any remedy provided in this Subcontract shall be taken and construed as cumulative, that is, in addition to all other suits, actions, or legal proceedings, the Contractor shall also be entitled as of right to a writ of injunction against any breach of any of the provisions of this Subcontract.

SECTION 34. Notice - Service Thereof.

Any notice to the Contractor, Subcontractor, Architect or Engineer or their duly authorized agents relative to any part of this Subcontract shall be in writing and considered delivered and served when said notice is posted by registered mail to the following addresses as the case may be:

Contractor	Jefferson Mortgage Company, Inc. P. O. Box 394 Mobile, Alabama
Engineer	Rester & Coleman Engineers, Inc. 51 St. Michael Street Mobile, Alabama
Architect	Marshall Fischrupp Van Antwerp Building Mobile, Alabama
Subcontractor	Bay Minette Roofing & Sheet Metal, Inc. 603 D'Olive Street Bay Minette, Alabama

SECTION 35. PREVAILING SALARIES OR WAGES.

a. The Contractor shall pay to all architects, technical engineers, draftsmen, and technicians employed in connection with this Contract not less than the salaries or wages prevailing in the locality of the project, as determined or adopted (subsequent to a determination under applicable State or local law) by the PHA.

b. The Contractor shall pay to all laborers and mechanics employed in the development of the project not less than the wages prevailing in the locality of the project, as predetermined by the Secretary of Labor of the United States pursuant to the Davis-Bacon Act (Title 40, U.S.C., Secs. 275a-276a-5).

c. All laborers and mechanics employed in the development of the project shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor of the United States, the substance of which is included in the Special Conditions, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics; and the wage determination decision and the Department of Labor Wage Rate Information Poster shall be posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

d. If the Contractor or any of his subcontractors finds it necessary or desirable to exceed the prevailing salary or wage rates specified in his contract, any expense incurred by the Contractor or subcontractors because of the payment of salaries or wages in excess of such amounts shall not be cause for any increase in the amount payable under his Contract. The Local Authority shall not consider or allow any claim for additional compensation made by the Contractor or subcontractors because of such payments.

e. The Local Authority will not make any payment under this Contract unless and until the Local Authority has received a certification from the Contractor that such Contractor and each of his subcontractors have made payment to each class of employees in compliance with the applicable provisions of a, b, and c of this Section.

f. Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a state apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U. S. Department of Labor; or, if no such recognized agency exists in a state, under a program registered with the Bureau of Apprenticeship and Training, United States Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor will be required to furnish written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, prior to using any apprentices on the contract work.

g. No laborer or mechanic employed in the development of the project shall be discharged or in any other manner discriminated against because such laborer or mechanic has filed any complaint or instituted or caused to be instituted any proceedings or has testified or is about to testify in any proceedings under or relating to the Labor standards incorporated in this Construction Contract.

h. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract, shall be classified or re-classified conformably to the wage determination, and a report of the action taken will be sent by the PHA to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the contracting officer shall be referred to the PHA for transmission to the Secretary for final determination.

SECTION 36. CONTRACT WORK HOURS STANDARDS ACT-OVERTIME
COMPENSATION

a. Overtime requirements

No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any such workweek, as the case may be.

b. Violation, liability for unpaid wages, liquidated damages

In the event of any violation of the clause set forth in subparagraph a, the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the clause set forth in subparagraph a, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph a.

c. Withholding for liquidated damages

The Local Authority may withhold, or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in the clause set forth in subparagraph b.

d. Subcontracts

The Contractor shall insert in any subcontracts the clauses set forth in subparagraphs (a), (b), and (c) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

SECTION 37. QUALIFICATIONS FOR EMPLOYMENT

a. No person under the age of sixteen (16) years and no person undergoing sentence of imprisonment at hard labor shall be employed in the development of the Project. No person whose age or physical condition is such as to make his employment dangerous to his health or safety or to the health and safety of others shall be employed in the development of the Project; provided, that this shall not operate against the employment of physically handicapped persons, otherwise employable, where such persons may be safely assigned to work which they can ably perform.

b. During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended by Executive Order No. 11114 of June 22, 1963, and of the rules, regulations and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The contractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended by Executive Order No. 11114 of June 22, 1963, and by the rules, regulations and orders of the said Committee, or pursuant thereto, and will permit access to his books, records and accounts by the PHA and the Committee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clause of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11114 of June 22, 1963, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(7) The contractor will include the provisions of Paragraph (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order No. 10925 of March 6, 1961, as amended by Executive Order No. 11114 of June 22, 1963, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the PHA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the PHA, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 38. COMPLIANCE WITH COPELAND REGULATIONS (29 CFR Part 3)

The Contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.

SECTION 39. SUBMITTAL OF PAYROLLS AND RELATED REPORTS

a. Payrolls and basic payroll records shall be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics employed in the development of the project. Such records shall contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.

b. The Contractor shall submit weekly to the Local Authority such copies and summaries (on forms prescribed by the PHA and furnished by the Local Authority) of all his payrolls and those of each of his subcontractors, as the Local Authority or the PHA may require. Each payroll and summary shall be accompanied by a statement indicating that the payroll is correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 C.F.R. Part 3) shall satisfy this requirement. The Contractor shall make his employment records available for inspection by authorized representatives of the Local Authority, the PHA, and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

c. The Contractor shall also furnish to the Local Authority any other information or certifications relating to employees in such form as the Local Authority may request.

SECTION 40. DISPUTES CONCERNING WAGE RATES AND CLASSIFICATION OF LABOR

a. All disputes concerning prevailing wage rates or classifications arising under this Contract involving (1) significant sums of money, (2) large groups of employees, or (3) novel or unusual situations shall be promptly reported by the Local Authority to the PHA for decision or, at the option of the PHA, referral to the Secretary of Labor of the United States. The decision of the PHA or the Secretary of Labor, as the case may be, shall be final.

b. All questions arising under this Contract relating to the application or interpretation of the Anti-Kickback Act or the Copeland Act or Sec. 16 (2) of the United States Housing Act of 1937, as amended, shall be referred to the Secretary of Labor of the United States for ruling or interpretation, and such ruling or interpretation shall be final.

SECTION 41. WAGE CLAIMS AND ADJUSTMENTS

In cases of underpayment of salaries or wages to any architects, technical engineers, draftsmen, technicians, laborers, or mechanics by the Contractor or any of his subcontractors, the Local Authority may withhold from such Contractor out of payments due, an amount sufficient to pay persons employed on the work covered by the Contract the difference between the salaries or wages required to be paid under the Contract and the salaries or wages

actually paid such employees for the total number of hours worked, and the amounts withheld may be disbursed by the Local Authority for and on account of the Contractor or the subcontractor to the respective employees to whom they are due.

SECTION 42. TERMINATION BECAUSE OF VIOLATION OF WAGE PROVISIONS

This Contract may be terminated by the Local Authority upon default by the Contractor of any of the provisions of Sections 37, 42, 43, 44 and 45.

SECTION 43. Scope of the Work

The work included in this Subcontract is: According to the Plans and Specifications including the General and Special Conditions done by Dietz, Prince and Fischrupp, Architects, in the Title Book Form of Low Rent Housing Project Ala. 1A and 1B, Bay Minette, Alabama with Addendums 1 and 2. This work to include everything required, Material and Labor under Division Numbers 6 and 7 Paragraph 5.

IN WITNESS WHEREOF, Jefferson Mortgage Company, Inc., a corporation, has caused this Subcontract to be executed by Abraham A. Mitchell, as its Vice President, and its corporate seal to be hereunto affixed, all as of the _____ day of _____, 196_____, and _____ and _____, partners doing business as _____, have hereunto set their hands and seals all as of the _____ day of _____, 196_____, and Ben Hinote _____ has hereunto set his hand and seal all as of the _____ day of _____, 196_____.

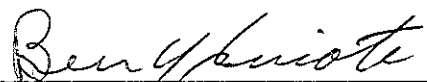
JEFFERSON MORTGAGE COMPANY, INC.

By: 
Abraham A. Mitchell, its Vice President

ATTEST:

As its _____

BAY MINETTE ROOFING & SHEET METAL, INC.

By:  (SEAL)
Ben Hinote, its President

_____ (SEAL)

_____ (SEAL)

EXHIBIT B

Bay Minette, Ala.
Low Rent Housing - 8-11-66

16 Bldgs. - Roofing

Shingles	462	@	7.18	=	\$ 3324.34
Nails 7/8	500 [±]	@	.15	=	75.00
" 1/4	80 [±]	@	.18	=	14.40
Valley Trim	330	@	.25	=	82.50
Roof to Wall Flashing	260	@	.18	=	46.80
Eave Flashing	4080	@	.06	=	244.80
					<u>\$ 3787.84</u>

Sales Tax	227.27
Total Materials	<u>\$ 4015.11</u>
Paid Amerson (Labor)	1470.02
	<u>\$ 5485.14</u>

Plus Sealing Shingles on 4 Bldgs. to be roofed	100.00
	<u>\$ 5585.14</u>

(Minute) Contract of Bay Minette Roofing - \$ 5161.50
 Less 4 Bldgs. 941.94
 Contract for 16 Bldgs. \$ 4219.56

Cost to us	\$ 5585.14
Contract	<u>4219.56</u>
	<u>\$ 1365.58</u>

Plus Loss of Time 200 ⁰⁰ per wk @ 3 weeks	600.00
Net Loss on Roofing	<u>\$ 1965.58</u>

BAY MINETTE ROOFING & SHEET METAL,
INC., a corporation,

Plaintiff,

vs.

JEFFERSON MORTGAGE COMPANY, INC.,
a corporation,

Defendant.

AMENDED
PLEA

*Refiled
3-15-67
Alice French
clerk*

FILED
AUG 12 1967
BAY MINETTE, ALABAMA

CHASON, STONE & CHASON
ATTORNEYS AT LAW
P. O. BOX 120
BAY MINETTE, ALABAMA

BAY MINETTE ROOFING and SHEET
METAL, INC., a corporation,

Plaintiff,

VS.

JEFFERSON MORTGAGE COMPANY,
INC., a corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 6903


A M E N D E D C O M P L A I N T

COUNT ONE

The plaintiff claims of the defendant One Thousand Sixty-three and 75/100 Dollars (\$1,063.75) due from it by account on the 2nd day of February, 1966, which sum of money, with the interest thereon, is still unpaid.

COUNT TWO

The plaintiff claims of the defendant One Thousand Sixty-three and 75/100 Dollars (\$1,063.75) for work and labor done for the defendant and for materials furnished to the defendant by the plaintiff during the months of September and October, 1965, at its request, which sum of money, with the interest thereon, is still unpaid.


Attorney for Plaintiff

Filed 3-15-67
Arling J. Quake
Clerk

We the jury find for the plaintiff
in the sum of \$600.00

A.W. Pural
Foreman

BAY MINETTE ROOFING & SHEET
METAL, INC., a corporation,

Plaintiff,

VS.

JEFFERSON MORTGAGE COMPANY,
INC., a corporation,

Defendant.

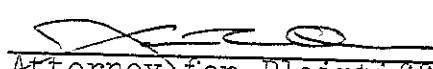
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW
NO. 6903

DEMURRER TO PLEA

Now comes the plaintiff in the above styled cause and demurs to paragraph numbered three of the plea heretofore filed by the defendant on April 19 and as grounds for said demurrer assign the following, separately and severally:

1. The said plea refers to an agreement in writing made and entered into by and between the parties on August 18, 1965, but does not attach a copy of the said agreement to the said plea.
2. The said plea refers to plans and specifications in the Title Book Form of Low Rent Housing Project Alabama 1A and 1B, Bay Minette, Alabama, with Addendums 1 and 2, but does not set forth the substance of said plans and specifications.
3. The allegation that the defendant was required to negotiate with a third person at a substantial loss to the defendant is a mere conclusion of the pleader.
4. The defendant alleges that he was required to negotiate with a third person at a substantial loss, but does not set forth the amount of such loss.
5. The allegation that the defendant was caused certain penalties to be incurred against him because of a lapse in time in performing the services that the plaintiff had agreed to perform is so vague and uncertain that the plaintiff is unable to determine what he is called upon to defend against.


Attorney for Plaintiff

FILED

MAY 8 1966

ALICE L. DICK, CLERK
130

STATE OF ALABAMA)
*
BALDWIN COUNTY)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon Jefferson Mortgage Company, Inc., a corporation, to appear within thirty days from the service of this writ in the Circuit Court, to be held for said county at the place of holding the same, then and there to answer the complaint of Bay Minette Roofing & Sheet Metal, Inc., a corporation.

WITNESS my hand this 18th day of March, 1966.

Alice J. Luck

The defendant's address is
301 St. Joseph Street, Mobile, Alabama.

* * * * *

BAY MINETTE ROOFING & SHEET
METAL, INC., a corporation,

Plaintiff,

VS.

JEFFERSON MORTGAGE COMPANY,
INC., a corporation,

Defendant.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

6903

C O M P L A I N T

COUNT ONE

The plaintiff claims of the defendant One Thousand Sixty-three and 75/100 Dollars (\$1,063.75) due from it by account on the 2nd day of February, 1966, which sum of money, with the interest thereon, is still unpaid.

COUNT TWO

The plaintiff claims of the defendant One Thousand Sixty-three and 75/100 Dollars (\$1,063.75) for work and labor done for the defendant by the plaintiff on the 11th day of February, 1966, at its request which sum of money, with the interest thereon, is still unpaid.

FILED

MAR 19 1966

ALICE J. LUCK, CLERK
REGISTER

Alice J. Luck
Attorney for Plaintiff

Executed 3-25-66

Ray Bridges - Sec

by C. J. Fitzpatrick

127

Received 18 day of March 1966
and on 25 day of March 1966
I served a copy of the within doc

on Jefferson Mortgage Co

By service on Mr. L. L. Bell

Ray. Registrar

TAYLOR & HARRIS, SHREVEPORT
By S. J. Ferguson D. S.

BY _____

MAR 21 9 05 AM '66

REC'D. SHERIFF DEPT.
MOBILE COUNTY, ALA.

CASE NO. 6903

5335

BAY MINETTE ROOFING & SHEET METAL
INC., A Corporation,

Plaintiff,

vs:

JEFFERSON MORTGAGE COMPANY, INC.,
a Corporation,

Defendant.

FILED

MAR 18 1966

ALICE L. LUCK, CLERK
MOBILE COUNTY, ALA.

James R. Owen, Attorney

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 6903

BAY MINETTE ROOFING & SHEET
METAL, INC., a corporation,

Plaintiff,

vs.

JEFFERSON MORTGAGE COMPANY,
INC., a corporation,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 6903

PLEA

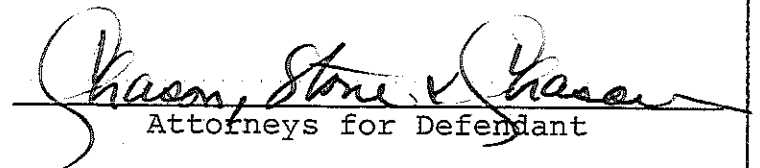
Comes the Defendant in the above styled cause and for plea to the Complaint filed in said cause and each and every count thereof, separately and severally, says:

1. Not guilty.

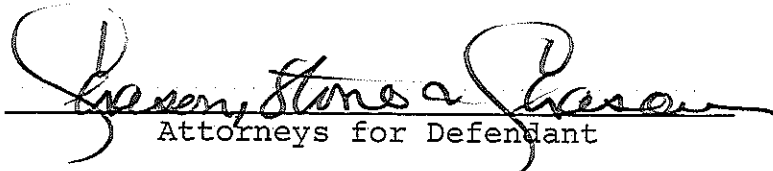
2. That the allegations of the Complaint are untrue.

3. For further plea to the Complaint by way of recoupment the Defendant claims of the Plaintiff the sum of Fifteen Hundred Dollars (\$1500.00) as damages for that the Plaintiff was a sub-contractor of the Defendant under an agreement in writing made and entered into by and between the parties on August 18, 1965, and in and by the terms of such sub-contract the Plaintiff agreed to furnish all materials and perform all work required under Divisions No. 6 and 7, paragraph 5, according to plans and specifications, including the general and special conditions done by Dietz, Prince & Fischrupp, Architects, in the Title Book Form of Low Rent Housing Project Alabama 1A and 1B, Bay Minette, Alabama, with Addendums 1 and 2. The Defendant alleges that the Plaintiff breached such contract in that he had agreed to perform the work and furnish the materials on twenty units and he only performed the work and furnished the materials for four units and such units were rejected by the inspector on the project inasmuch

as the strip shingles were not securely sealed to the undercourse by means of an approved adhesive. The Plaintiff further breached such contract in that he failed and refused to fulfill his contract by performing services and furnishing materials for the remaining sixteen units and the Defendant was required to negotiate with a third person at a substantial loss to such Defendant. That such Defendant was also delayed approximately three weeks in time in performing the services that the Plaintiff had agreed to perform, which caused certain penalties to be incurred because of such lapse of time, all to the damage of the Defendant in the sum above mentioned.


Attorneys for Defendant

Defendant demands a trial of this cause
by a jury.


Attorneys for Defendant

FILED
APR 19 1966
ALICE J. DUCK, CLERK
REGISTER

6907

BAY MINETTE ROOFING & SHEET
METAL, INC., a corporation,

Plaintiff,

vs.

JEFFERSON MORTGAGE COMPANY,
INC., a corporation,

Defendant.

PLEA

FILED

APR 19 1960

WILLIAM L. BAKER, CLERK
U.S. DISTRICT COURT, DISTRICT OF COLUMBIA

Bay Minette Hooping
VS.
Jefferson Mfg Co

JURY LIST - MARCH 6, 1967 - SPRING SESSION

1. Ball, Johnnie Ruth, Bookkeeper, Bay Minette
2. Baskin, Levon, Bay Minette
3. Benik, Edward, Farmer, Belforest
4. Benton, Thomas H., Farmer, Gulf Shores
5. Cooper, Claude, Farmer, Rosinton
6. Pierce, Arthur, Insurance, Fairhope
7. Porter, Darrell Lea, Utility Man, Summerdale
8. Mannich, Arthur, Merchant, Fairhope
9. Matthews, Reid, Furniture Store Oper., Robertsdale
10. Clemmons, W. F., Carpenter, Fairhope
11. Cleveland, Lyle F., Nurseryman, Foley
12. Brown, Charles, Merchant, Foley
13. Crawford, Harry E., Operator, Elberta
14. Campbell, Actie, Farmer, Rosinton
15. Bush, Hobson, Farmer, Bay Minette
16. Hesse, Henry W., Linesman, Foley
17. Harris, Guy H., Merchant, Foley
18. Hastie, Joe H., Merchant, Stockton
19. McGowin, Randolph, Jr., Store Keeper, Bay Minette
20. McMillan, Raymond N., Farmer, Stockton
21. Sanders, William G., Real Estate, Gulf Shores
22. Spader, Aubrey, Office, Robertsdale
23. Spivey, Roy, Bon Secour
24. Stripline, Fred, Television Repair, Robertsdale
25. Thompson, Robert W., Merchant, Foley
26. Venson, Cecil, Civil Service, Stapleton
27. White, John R., Utilities Man, Foley
28. Parker, Floyd B., Millman, Stockton
29. Nall, Wilber C., Farmer, Bon Secour
30. Sanders, E. Frank, Banker, Foley
31. Koehler, Frank, Farmer, Lillian
32. Beverly, Marvin, Laborer, Robertsdale
33. Blair, Dorothy, Stapleton
34. Boesch, Sarah, Bay Minette
35. Nall, Glenn, Merchant, Robertsdale
36. Crosby, James W., Bookkeeper, Foley
37. Long, Volton, Electrician, Foley
38. Bryers, Ewing E., Reserve Fleet, Bay Minette
39. Weeks, William, Laborer, Magnolia Springs
40. Earls, Doris K., Bay Minette
41. DuBrock, George, Cabinet Maker, Fairhope
42. Durant, Wilma W., Bromley
43. Durant, Percy N., Merchant, Bay Minette
44. Durant, Buckner, Robertsdale
45. Jones, Sanford, Newport, Bay Minette
46. Flowers, John B., Farmer, Gulf Shores
47. Akers, Redus M., Insurance, Bay Minette
48. Fuller, David, Motel, Spanish Fort, Daphne
49. Hinote, Sherman R., Butcher, Robertsdale
50. Hankins, C. E., Farmer, Robertsdale
51. Duck, Jos Willison, Brookley Field, Bay Minette

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