



# AIA<sup>®</sup> Document A401<sup>™</sup> – 1997

## Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the 21 day of January in the year 2005  
(In words, indicate day, month and year)

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

Odyssey Residential Construction, LP  
Three Lincoln Centre Suite 1200 5430 LBJ Freeway  
Dallas, Texas 75240  
Telephone Number: 972-455-9294  
Fax Number: 972-455-9297

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

Carleton Construction, Ltd.  
5485 Beltline Road  
Suite 300  
Dallas, Texas 75254  
972-980-9810 office  
972-980-1594 fax

The Contractor has made a contract for construction dated:  
With the Owner:  
(Name, address and other information)

Chicory Court Simpson Stuart, LP  
Three Lincoln Centre  
Suite 1200  
5430 LBJ Freeway  
Dallas, Texas 75240

For the following Project:  
(Include detailed description of Project, location and address)

Pecan Grove Town Homes, Dallas, Texas  
A 250 Town Homes Community in Dallas, Texas with five (5) floor plan options and one  
(1) 3,564 S.F.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

This document has been approved and endorsed by the American Subcontractors Association and the Associated Speciality Contractors, Inc.

**GOVERNMENT  
EXHIBIT  
3293**

**3:07-CR-0289-M**

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which Contract is hereinafter referred to as the Prime Contract and which provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein has been made available to the Subcontractor.

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

Galier.Tolson.French Design & Associates, LLC  
8251 Bedford-Eules Road  
Suite 250  
North Richland Hills, Texas 76180  
Telephone Number: 817-514-0584

The Contractor and the Subcontractor agree as follows.

#### ARTICLE 1 THE SUBCONTRACT DOCUMENTS

§ 1.1 The Subcontract Documents consist of (1) this Agreement; (2) the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; (3) Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Agreement; (4) other documents listed in Article 16 of this Agreement; and (5) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Subcontract Documents, other than Modifications issued subsequent to the execution of this Agreement, appears in Article 16. Subcontractor's scope of work shall be as described on the construction drawings and Specifications attached hereto as Exhibit "A" or which is reasonably inferable therefrom by Subcontractor experienced in similar basis types of projects being constructed in the Dallas area. Subcontractor has satisfied itself that the Scope of Work shown on Exhibit "B" is a viable and practical system and Subcontract acts represents that it has the experience, employees, equipment and capital to perform such work in a timely manner and competent manner. No Additional cost will be authorized unless there is a significant change in the work described herein.

§ 1.2 Except to the extent of a conflict with a specific term or condition contained in this Standard form of agreement (AIA DOC. A-401 and its exhibits) the Subcontract Documents; the General Conditions governing this Subcontract shall be the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. Standard form of agreement, AIA Doc. A-401 and its exhibits shall take precedence over the Prime Contract in the event of inconsistencies.

§ 1.3 The Subcontract may be amended or modified only by a written Modification. The Subcontract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and the Subcontractor, (2) between the Owner and the Subcontractor, or (3) between any persons or entities other than the Contractor and Subcontractor.

§ 1.4 The Subcontractor shall be furnished copies of the Subcontract Documents upon request, but the Contractor may charge the Subcontractor for the reasonable cost of reproduction.

#### ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

§ 2.1 The Contractor and Subcontractor shall be mutually bound by the terms of this Agreement and, to the extent that the provisions of the edition of AIA Document A201 current as of the date of this Agreement apply to this Agreement pursuant to Section 1.2 and provisions of the Prime Contract apply to the Work of the Subcontractor, the Contractor shall assume toward the Subcontractor all obligations and responsibilities that the Owner, under such documents, assumes toward the Contractor, and the Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor, under such documents, assumes toward the Owner and the Architect. The Contractor shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, under such documents, has against the Contractor, and the Subcontractor shall have the benefit of all rights,

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remedies and redress against the Contractor which the Contractor, under such documents, has against the Owner, insofar as applicable to this Subcontract. Where a provision of such documents is inconsistent with a provision of this Agreement, this Agreement shall govern.

§ 2.2 The Contractor may require the Subcontractor to enter into agreements with Sub-subcontractors performing portions of the Work of this Subcontract by which the Subcontractor and the Sub-subcontractor are mutually bound, to the extent of the Work to be performed by the Sub-subcontractor, assuming toward each other all obligations and responsibilities which the Contractor and Subcontractor assume toward each other and having the benefit of all rights, remedies and redress each against the other which the Contractor and Subcontractor have by virtue of the provisions of this Agreement.

### ARTICLE 3 CONTRACTOR

#### § 3.1 SERVICES PROVIDED BY THE CONTRACTOR

§ 3.1.1 Time is of the essence in the performance of this Subcontract. Subcontractor shall complete its work in accordance with the Contractor's schedule, as it may be modified by Contractor during construction. The parties hereto have heretofore agreed upon an initial schedule for the Work; attached hereto Exhibit "B". With each monthly draw, Subcontractor shall submit a revised CPM schedule and it shall provide in narrative fashion an explanation for any delays which are anticipated. If and in the event Subcontractor is ten or more days behind schedule, Contractor shall also, as a part of said monthly report, include a recovery plan specifically describing Subcontractor's proposed methods of recovering said delay. No additional compensation shall be paid to Subcontractor by way of Change Order for any necessary recovery effort to the extent the delay is unexcused. The Contractor shall cooperate with the Subcontractor in scheduling and performing the Contractor's Work to avoid conflicts or interference in the Subcontractor's Work and shall expedite written responses to submittals made by the Subcontractor in accordance with Section 4.1 and Article 5. As soon as practicable after execution of this Agreement, the Contractor shall provide the Subcontractor copies of the Contractor's construction schedule and schedule of submittals, together with such additional scheduling details as will enable the Subcontractor to plan and perform the Subcontractor's Work properly. The Subcontractor shall be notified promptly of subsequent changes in the construction and submittal schedules and additional scheduling details.

§ 3.1.2 The Contractor shall provide suitable areas for storage of the Subcontractor's materials and equipment during the course of the Work. Additional costs to the Subcontractor resulting from relocation of such facilities at the direction of the Contractor, except as previously agreed upon, shall be reimbursed by the Contractor.

§ 3.1.3 Except as provided in Article 14, the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.

#### § 3.2 COMMUNICATIONS

§ 3.2.1 The Contractor shall promptly make available to the Subcontractor information, including information received from the Owner, which affects this Subcontract and which becomes available to the Contractor subsequent to execution of this Subcontract.

§ 3.2.2 The Contractor shall not give instructions or orders directly to the Subcontractor's employees or to the Subcontractor's Sub-subcontractors or material suppliers unless such persons are designated as authorized representatives of the Subcontractor.

§ 3.2.3 The Contractor shall permit the Subcontractor to request directly from the Architect information regarding the percentages of completion and the amount certified on account of Work done by the Subcontractor.

§ 3.2.4 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Contractor, Subcontractor or anyone directly or indirectly employed by them (other than the Subcontractor), the Contractor Subcontractor shall, prior to harmful exposure of the Subcontractor's employees to such substance, give written notice of the chemical composition thereof to the Subcontractor - Contractor in sufficient detail and time to permit the Subcontractor's compliance with such laws.

§ 3.2.5 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property.

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usually referred to as the site, on which the Project is located and the Owner's interest therein. Subcontractor consents to assignment of this contract as may be reasonably requested by the Contractor. Subcontractor agrees to execute, if requested, a consent to assignment in a form substantially similar to that set forth in Exhibit "\_\_\_" hereof.

§ 3.2.6 If the Contractor asserts or defends a claim against the Owner which relates to the Work of the Subcontractor, the Contractor shall make available to the Subcontractor information relating to that portion of the claim which relates to the Work of the Subcontractor.

### § 3.3 CLAIMS BY THE CONTRACTOR

§ 3.3.1 Liquidated damages for delay, if provided for in Section 9.3 of this Agreement, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

§ 3.3.2 The Contractor's claims for services or materials provided the Subcontractor shall require:

- .1 Seven days' prior written notice except in an emergency;
- .2 written compilations to the Subcontractor of services and materials provided and charges for such services and materials no later than the fifteenth day of the following month.

§ 3.3.3 If Contract has available and Subcontractor elects to use Contractor's equipment or facilities, and agreed price in writing must be determined before use. Subcontract shall make its own determination before commencing use of the equipment or facilities regarding whether or not said equipment or facilities are adequate and safe for the work to be performed such equipment and facilities are **ACCEPTED BY SUBCONTRACT IN AN "AS IS" CONDITION WITHOUT WARRANTY OR REPRESENTATION BY CONTRACT AS TO THEIR CONDITION OR ADEQUACY TO PERFORM THEIR RESPECTIVE FUNCTION.** Subcontract agrees to allow only trained authorized personnel to operate the equipment and to return the equipment and facilities to Contract at the conclusion good condition, ordinary wear and tear excepted.

### § 3.4 CONTRACTOR'S REMEDIES

§ 3.4.1 If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within three working days after receipt of written notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, after three days following receipt by the Subcontractor of an additional written notice, and without prejudice to any other remedy the Contractor may have, make good such deficiencies and may deduct the reasonable cost thereof from the payments then or thereafter due the Subcontractor.

## ARTICLE 4 SUBCONTRACTOR

### § 4.1 EXECUTION AND PROGRESS OF THE WORK

§ 4.1.1 The Subcontractor shall supervise and direct the Subcontractor's Work, and shall cooperate with the Contractor in scheduling and performing the Subcontractor's Work to avoid conflict, delay in or interference with the Work of the Contractor, other subcontractors or Owner's own forces.

§ 4.1.2 The Subcontractor shall promptly submit Shop Drawings, Product Data, Samples and similar submittals required by the Subcontract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Contractor or other subcontractors. Subcontractor shall submit by method of progression.

§ 4.1.3 The Subcontractor shall submit to the Contractor a schedule of values allocated to the various parts of the Work of this Subcontract, aggregating the Subcontract Sum, made out in such detail as the Contractor and Subcontractor may agree upon or as required by the Owner, and supported by such evidence as the Contractor may require. In applying for payment, the Subcontractor shall submit statements based upon this schedule. (See Exhibit "E")

§ 4.1.4 The Subcontractor shall furnish to the Contractor periodic progress reports on the Work of this Subcontract as mutually agreed, including information on the status of materials and equipment which may be in the course of preparation, manufacture or transit.

§ 4.1.5 The Subcontractor agrees that the Contractor and the Architect will each have the authority to reject Work of the Subcontractor which does not conform to the Prime Contract. The Architect's decisions on matters relating to aesthetic effect shall be final and binding on the Subcontractor if consistent with the intent expressed in the Prime Contract.

§ 4.1.6 The Subcontractor shall pay for all materials, equipment and labor used in connection with the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.

Contractor reserve the right to issue joint checks to Subcontractor and creditors of Subcontractor and creditors of Subcontractor shall issue a release of lien or lien rights. Subcontractor waives its rights to any notice of intent to issue joint checks. No agreement by Contractor to issue joints checks shall be construed to bond Contractor to Subcontractor's creditors in the event of a breach by Subcontractor or termination of the Subcontractor. If Subcontractor refuses to sign joint check; Contractor may make payments directly to Subcontractor's suppliers, lowered tired subcontractors and/or employees to avoid mechanics' lien claims and may deduct the cost from ant amounts due from Contractor. The reservation of this right to make direct payments shall constitute no obligation on the part of Contractor to do so.

§ 4.1.7 The Subcontractor shall take necessary precautions to protect properly the Work of other subcontractors from damage caused by operations under this Subcontract. Subcontract shall be responsible for and protect the work in place from the elements and other causes of damage until completion and final acceptance by Contract and shall adequate store and protect its own materials and material furnished it by Contracts and/or others.

§ 4.1.8 The Subcontractor shall cooperate with the Contractor, other subcontractors and the Owner's own forces whose Work might interfere with the Subcontractor's Work. The Subcontractor shall participate in the preparation of coordinated drawings in areas of congestion, if required by the Prime Contract, specifically noting and advising the Contractor of potential conflicts between the Work of the Subcontractor and that of the Contractor, other subcontractors or the Owner's own forces.

§ 4.1.9 Subcontractor shall be represented at the project while the work is in progress by a competent, full-time Superintendent satisfactory to Contractor. All workmen of Subcontractor are to work in harmony with those of Contractor and other Contractors and Subcontractors.

#### § 4.2 LAWS, PERMITS, FEES AND NOTICES

§ 4.2.1 The Subcontractor shall give notices and comply with laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for ~~permits and~~ governmental fees, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work, the furnishing of which is required of the Contractor by the Prime Contract.

§ 4.2.2 The Subcontractor shall comply with Federal, state and local tax laws, social security acts, unemployment compensation acts and workers' compensation acts insofar as applicable to the performance of this Subcontract.

#### § 4.3 SAFETY PRECAUTIONS AND PROCEDURES

§ 4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and with applicable laws, ordinances, rules, regulations and orders of public authorities (included but not limited to the Occupational Safety and Health Act (OSHA) of 1970, as amended) for the safety of persons and property in accordance with the requirements of the Prime Contract. The Subcontractor shall report to the Contractor within three days an injury to an employee or agent of the Subcontractor which occurred at the site.

§ 4.3.1.1 Subcontract shall also comply with those safety policies established by Contractor's safety program, attached to project Manual (Exhibit -) the jobsite must be maintained as a drug and alcohol free workplace. Subcontractor shall endured said policy among its employees. its own Sub-subcontractors and theirs employees for

the duration of this Subcontract. If Subcontractor does not have its own substance abuse policy it may adopt Contractors. When and it so ordered Subcontractor shall stop or correct any part of the work. which Contractor deems unsafe or otherwise improper. If Subcontractor neglect's to take corrective measures Contractor may do so at the cost and expense of Subcontractor or, its option. Contractor may withhold progress payments until Subcontractor corrects any safety violations. Failure on the part of Contract to stop performance of the work in violation of legal or safety requirements shall in no way relieve Subcontract of its sole responsibility therefore.

§ 4.3.1.2 Contractor's right to inspect. Contractor has the right, but not the duty: except as required by law, to inspect and direct correction of Subcontractor's work to comply with safety, health and environmental standards. Subcontractor acknowledges that Contractor's right to inspect shall not relieve Subcontractor of its obligations, nor shall failure to properly inspect: nothing herein shall submit Contractor to any obligation to determine proper compliance by Subcontractor. Subcontractor agrees to indemnify, defend and hold harmless Contractor from any and liability damage's, fines, costs and comply with all safety standards, laws, and environmental regulations applicable to the work.

§ 4.3.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by the Subcontractor, the Subcontractor's Sub-subcontractors or anyone directly or indirectly employed by them, the Subcontractor shall, prior to harmful exposure of any employees on the site to such substance, give written notice of the chemical composition thereof to the Contractor in sufficient detail and time to permit compliance with such laws by the Contractor, other subcontractors and other employers on the site.

§ 4.3.3 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a unanticipated material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Subcontractor, the Subcontractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Contractor in writing. When the material or substance has been rendered harmless, the Subcontractor's Work in the affected area shall resume upon written agreement of the Contractor and Subcontractor. The Subcontract Time shall be extended appropriately and the Subcontract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of demobilization, delay and remobilization, which adjustments shall be accomplished as provided in Article 5 of this Agreement.

§ 4.3.4 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Subcontractor, the Subcontractor's Sub-subcontractors, 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 Section 4.3.3 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) including loss of use resulting therefrom and provided that such damage, loss or expense is not due to the sole negligence of a party seeking.

§ 4.3.5 Prior to the commencement of work. Subcontractor shall designate an employee to be responsible for compliance with all federal, State, and local safety and health regulations. Subcontractor's representative must meet the requirements of the "competent person" as identified in CFR 29 part 1926.32F or applicable state regulations. Unless the Subcontractor's designates otherwise the responsible employee shall be Subcontractor job site supervisor. Subcontractor shall be liable to Contractor for any additional costs which Contractor occurs as result of Subcontractor's failure to operate safely includes fines. Any safety inspections which may be conducted by Contractor shall not relieve Subcontractor from its obligations to adhere to safety requirements. The Subcontractor's jobsite safety representative will be required to attend all Contractor safety meetings. The safety representative must also be fluent in the necessary language to communicate effectively with Contractors personnel and Subcontractor's personnel must be onsite at all times when Subcontractor is performing work. Subcontract shall conduct safety meetings with its employees and agents prior to and throughout construction of the Project (at least as often as weekly) Contractor shall maintain minutes of all Subcontractor's safety meetings. Subcontractor shall maintain and provide Contractor with a Copy of a written health and safety program and written hazard communications program.

§4.3.6 Subcontractor agrees to provide to Contractor a copy of its Hazard Communication Program for the project. OSHA has a communication Standard 1926.59 which will be aggressively enforced by Contractor.

§ 4.3.7 If Subcontractor subcontracts any portions of the subcontracted work, the provisions of the Article 4.3. shall apply to all lower tier sub-subcontractor and subcontractors shall be responsible for insuring compliance with same.

#### § 4.4 CLEANING UP

§ 4.4.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations performed under this Subcontract. The Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors. Contractor shall provide Subcontractor twenty-four (24) hours written notice of Subcontractor's failure under this paragraph prior to back charging for clean up charges.

§ 4.4.2 As provided under Section 3.3.2, if the Subcontractor fails to clean up as provided in the Subcontract Documents, the Contractor may charge the Subcontractor for the Subcontractor's appropriate share of cleanup costs.

#### § 4.5 WARRANTY

§ 4.5.1 The Subcontractor warrants to the Owner, Architect and Contractor that materials and equipment furnished under this Subcontract will be of good quality and new unless otherwise required or permitted by the Subcontract Documents, that the Work of this Subcontract will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Subcontract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Subcontractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Subcontract Documents. This warranty and all warranties founding the General Conditions to this contract including 3.5.1 and 12.2. shall run to and be enforceable by all Owners of the Project and said warranties are specifically assignable to such Owners and their Lenders. The warranties contained herein are in addition to any warranties required by the Contract documents or warranties implied by law.

#### § 4.6 INDEMNIFICATION

§ 4.6.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Lender, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that any 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 is but only to the extent but only to the extent caused by the negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-subcontractors, 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 otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 4.6. This indemnification obligation applies even though the matter to be indemnified is the result of the concurrent negligence of Contractor, Owner, and or Architect and or their employees, servants, agents or other subcontractor. The indemnification obligation is not limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor, or any lower tier subcontractor, under applicable worker acts, nor by the requirement for insurance, or the furnishing of insurance by subcontractor under this agreement. This indemnification provision does not require subcontractor to assume liability for loss or damage due solely to the negligence of Contractor, Owner and or Architect and /or their employees, servants, agents or other subcontractors. Anything to the contrary notwithstanding, Subcontractor's obligations to indemnify Contractor shall be limited to the sum of 150% of the Article 10.1 Subcontract sum then prevailing at the time of each occurrence: which said sum the parties acknowledge bears a reasonable commercial relationship this agreement and shall be deemed part of the Project specifications and bid documents.

§ 4.6.2 In claims against any person or entity indemnified under this Section 4.6 by an employee of the Subcontractor, the Subcontractor's Sub-subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.6.1 shall not be limited by a

limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### § 4.7 REMEDIES FOR NONPAYMENT

§ 4.7.1 If the Contractor does not pay the Subcontractor through no fault of the Subcontractor, within seven days from the time payment should be made as provided in this Agreement, the Subcontractor may, without prejudice to any other available remedies, upon seven additional days' written notice to the Contractor, stop the Work of this Subcontract until payment of the amount owing has been received. The Subcontract Sum shall, by appropriate adjustment, be increased by the amount of the Subcontractor's reasonable costs of demobilization, delay and remobilization. Anything to the contrary notwithstanding, in the event of a good faith dispute concerning payment. Subcontractor shall proceed with the work pending dispute resolution as provided for herein.

§ 4.8 Contractor shall pay all royalties and license fee which may be due with respect to its work and Subcontractor shall pay all royalties and license fees which may be due with respect to its Work and subcontractor shall indemnify and say harmless Contractor and Owner from any claims or suits from infringements of patents trademarks or proprietary rights or violations of same.

#### ARTICLE 5 CHANGES IN THE WORK

§ 5.1 The Owner may make changes in the Work by issuing Modifications to the Prime Contract. Upon receipt of such a Modification issued subsequent to the execution of the Subcontract Agreement, the Contractor shall promptly notify the Subcontractor of the Modification. Unless otherwise directed by the Contractor, the Subcontractor shall not thereafter order materials or perform Work which would be inconsistent with the changes made by the Modifications to the Prime Contract.

§ 5.2 The Subcontractor may be ordered in writing by the Contractor, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Prime Contract issued subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. Contractor at any time without notice to sureties, make changes in the work either by (i) written change order signed by Contractor and Subcontractor prior to commencement specifying the extra or deductive work or changes to be made and the lump sum increase or decrease in the Contract price including Subcontractor's cost, profit and overhead, extension of time or (ii) by written direction to Subcontractor to proceed with changes specifying the extra work or changes to be made within twenty (20) days of completion of the changed work to (iii) by written direction to Subcontractor to proceed with changes in the work on a cost-plus basis. Subcontractor shall proceed with extra work to changes ordered so as not to delay the work and shall file with Contractor within seven (7) days from the date of such order, its, written itemized estimate for the cost of performing extra work or changes to be made. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to the Contractor written copies of a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents. If the Contractor and Subcontractor cannot agree on an adjustment in the contract sum, contract time, or both with respect to any change directive or requested change order, the contractor and subcontractor shall execute a change order in the maximum amount which Contractor is willing to increase the contractor sum, contract time, or both, as applicable, with express notation that Subcontractor has asserted a claim for the additional amount of increase contract time, contract sum or both and which Subcontractor asserts is proper. Pending final determination thereof, such amounts not in dispute for such changes in the work shall be included in applications for payment accompanied by such change orders indicating the parties' agreement with all or part of such costs. Subcontractor's claim for additional amounts in such change order shall be resolved under the Dispute resolution provision of the contract documents.

§ 5.3 The Subcontractor shall make all claims promptly to the Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound. All Subcontractors

claims for additional costs or time must be made in writing and delivered to Contractor within three working days after the events creating the request occurs and in the case of a request for additional cost because of an alleged change before the work is performed. The written notice must be specific in terms of time and cost involved and failure to provide same shall constitute a waiver of request for additional cost or time. Subcontractor shall not be entitled to damages for delay except and to the extent said delay is the result of Contractor's material breach of this contract and, in that event only for delays which occur after written notice has been provided to Contractor. There will be no changes order granted as the result of refinement or detailing in the drawings listed as Exhibit "A" unless such refinement or detailing results in material change in the scope, quality, function and or intent of the drawings and specifications not reasonably inferable by a contractor or subcontractor experienced in building jobs of similar scope and quality.

#### § 5.4 Pricing of Changes

a. Lump Sum Change Order Proposals - The Subcontractor will submit a properly itemized Lump Sum Change Order Proposal covering additional work/or the work to be deleted. This proposal will be itemized for the various components of Work segregated by labor, material and equipment in a detailed format satisfactory to contractor. The contractor will require itemized change orders on all change order proposals over \$1,000.00 from the Subcontractor, subcontractors and suppliers regardless of their tier. Details to be submitted will include item estimates showing detailed material and labor Quantity take-offs, material prices by item and related labor hour pricing information, extensions (by line item or by drawing as applicable) and Subcontractor's mark-up for profit and overhead. Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Subcontractor for those worker or crews of workers who the Subcontractor reasonably anticipates will perform the change order work. (Supervision above the level of working foreman (such as general foreman, Superintendent, Project Manager etc.) is to be included in the Mark-up Percentages. Estimated material change order costs shall reflect the Subcontractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Subcontractor due to trade discounts, free material credits and/or volume rebates. With respect to pricing the portion of change order proposals involving work performed by lower tier contractors, the maximum Mark-up Percentage Fee allowable to the Subcontractor supervising the lower tier subcontractor's work shall not exceed five percent (5%) of the net of all approved change order work performed by all subcontractors combined for any particular change order proposal.

b. Cost Plus Fee Change Order Proposals- As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals Contractor may elect to have any extra work performed on a cost plus work mark-up percentage fee basis. Upon written notice to proceed, the Subcontractor shall perform such authorized extra work at actual cost for direct labor, actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general foreman or the cost of rental of small tools, minor equipment, or plant) plus mark-up percentage fee of five percent (5%). At Contractor's request on changes of \$1,000 daily time sheets with names of all Subcontractors for time periods during which extra work is performed on a cost plus fee basis shall be provided. Daily time sheets will break down the paid hours worked by the Subcontractor's employees showing both base contract work as well as extra work performed by each employee.

c. Unit Price Change Order Proposals- As an alternative to Lump Sum Change Order Proposals or Cost Plus Fee Change Order Proposals, Contractor and Subcontractor may agree on the option to use Contract Unit Prices. Agreed upon Contract Unit Prices shall be the same for added quantities and deductive quantities. Unit Prices are not required to be used for pricing 'change orders where other methods of pricing change order work are more equitable. The Subcontractor will submit within seven (7) days after receipt of the Contractor's written request for a Unit Price Proposal a written Unit Price Proposal itemizing the quantities of each item of work for which there is a Unit Price Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the Subcontractor's Mark-up Percentage Fee.

d. Accurate Change Order Pricing Information- Subcontractor agrees that it is responsible for submitting accurate costs and pricing data to support its contract price adjustments under the Contract.

5.5 In the event of a dispute over whether or not an item or work constitutes extra work, the directions of Contractor shall be followed subject to the Subcontractor's rights to make claims under this agreement if and when there is a

dispute as to the amount of a change order. undisputed amounts shall be paid pending resolution of that dispute.

## ARTICLE 6 MEDIATION AND ARBITRATION

### § 6.1 MEDIATION

§ 6.1.1 Any claim arising out of or related to this Subcontract, except claims as otherwise provided in Section 4.1.5 and except those waived in this Subcontract, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. All claims by Subcontractor against Contractor shall be made in writing within three (3) days from commencement of the alleged damage or additional cost or shall be waived. Subcontractor shall submit any disputes or claims to Contractor in writing with supporting details and damage calculations. Contractor shall review all such claims and disputes and advise Subcontractor of its decision on same within thirty-five (35) days of receipt of Subcontractor's claim. If such disputes or claims cannot be amicably resolved they shall be resolved as set forth in Article 6.2. but no such action shall be instituted until receipt of Contractor's decision or expiration of the thirty-five day time frame referenced above. In the event of any dispute between Contractor and Subcontractor due to any action or omission of Owner or involving the Contract documents. Subcontractor agrees to be bound to Contractor to the same extent that Contractor is bound to Owner by the terms of the Contract documents and by any all preliminary and final decisions or determinations made there under by the party, tribunal, or court so authorized in the Contract documents or by law. In case of such dispute, Subcontractor will comply with all provisions of the Contract documents allowing a reasonable time for Contractor to analyze and to forward to Owner any required communications or documentation. Contractor will, at its option (I) present to Owner, in Subcontractor's name or (II) authorize Subcontractor to present to Owner in Contractor's name all of Subcontractor's claim and answer Owner's claim Involving Subcontractor's work and Contractor's name claims whenever Contractor is permitted to do so by the terms of the Contract documents. Contractor will further invoke on behalf of Subcontractor, or allow Subcontractor to invoke those provisions in the Contract documents for determining disputes. Subcontractor agrees to be bound by any such decision and to become a party to any dispute resolution proceeding if requested by Contractor to do so. If such dispute is prosecuted or defended by Contractor Subcontractor agrees to furnish all documents, statements, witnesses, and other information required by Contractor and to payer reimburse Contractor for all costs and attorneys' fees incurred in connection therewith. With respect to any controversy between Contractor and Subcontractor not involving Owner or the Contract documents, Contractor may issue a decision. this shall be complied with by Subcontractor without interruption or delay.

~~§ 6.1.2 The parties shall endeavor to resolve their claims 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 Subcontract and 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.~~

~~§ 6.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

### § 6.2 ARBITRATION

§ 6.2.1 Any claim arising out of or related to this Subcontract, except claims as otherwise provided in Section 4.1.5 and except those waived in this Subcontract, shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 6.1. Anything to the contrary notwithstanding all claims or disputes between Subcontractor and Contractor arising out of or relating to the Contract documents or the breach thereof (except claims resolved under 6.1.1 above) involving \$200,000.00 or less shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Discovery will be limited to the production by each party of all relevant and non-privileged documents and the depositions of expert witnesses and a maximum of three other depositions. Additional discovery shall only be allowed by the arbitrators for good cause shown. The arbitration hearing shall occur at such location as the parties may mutually agree or in Dallas, Texas. The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. This agreement to arbitrate shall be specifically enforceable. Claims or disputes in excess of \$200,000.00 shall be decided by litigation and the prevailing party shall be entitled to recovery of reasonable attorneys' fees and costs. The Subcontractor

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agrees to continue performance of the Subcontract work and shall proceed in accordance with the directives of Contractor under protest in the event of any disputed controversy and/or arbitration and/or litigation. Failure to proceed pending resolution of the protest shall constitute a material breach of this agreement, regardless of the ultimate decision on the dispute: It being understood and agreed that any controversy between the parties shall not be deemed a basis to delay or suspend the work unless otherwise directed in writing by Contractor.

§ 6.2.2 Claims not resolved by mediation 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. Demand for arbitration shall be filed in writing with the other party to this Subcontract and with the American Arbitration Association, and a copy shall be filed with the Architect.

§ 6.2.3 A demand for arbitration shall be made within the time limits specified in the conditions of the Prime Contract as applicable, and in other cases within a reasonable time after the claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim would be barred by the applicable statute of limitations.

§ 6.2.4 Limitation on Consolidation or Joinder. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Subcontract shall include, by consolidation or joinder or in any other manner, any person or entity not a party to the Subcontract under which 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, the Architect's employee, the Architect's consultant, or an employee or agent of any of them. This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The Owner may be joined and/or consolidated in arbitration between Subcontractor and Contractor as permitted by Section 4.6.4 of the General Conditions of the Owner/Contractor agreement. If and in the event a dispute between Subcontractor and Contractor involves actions or inactions by the Owner, the Owner consents to consolidation or joinder in arbitration.

§ 6.2.5 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.

§ 6.2.6 Judgment on Final Award. 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.

## ARTICLE 7 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

### § 7.1 TERMINATION BY THE SUBCONTRACTOR

§ 7.1.1 The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to the Contractor as the Contractor may terminate with respect to the Owner under the Prime Contract, or for nonpayment of amounts due under this Subcontract for 60 days or longer. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-subcontractors or their agents or employees or other persons performing portions of the Work under contract with the Subcontractor, the Subcontractor shall be entitled to recover from the Contractor 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.

### § 7.2 TERMINATION BY THE CONTRACTOR

§ 7.2.1 If the Subcontractor persistently or repeatedly fails or neglects to carry out the Work in accordance with the Subcontract Documents or otherwise to perform in accordance with this Subcontract and fails within seven days after receipt of written notice to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, after seven days following receipt by the Subcontractor of an additional written notice and without prejudice to any other remedy the Contractor may have, terminate the Subcontract and finish the Subcontractor's Work by whatever method the Contractor may deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work and other damages incurred by the

Contractor and not expressly waived, such excess shall be paid to the Subcontractor. If such expense and damages exceed such unpaid balance, the Subcontractor shall pay the difference to the Contractor. Contractor may terminate the Subcontract if Subcontractor: (a) fails to fully and punctually perform any of the terms, conditions and covenants of the Contract Documents and fails to commence to remedy such default within three (3) business days after receipt of a written notice specifying such failure or to prosecute such remedial measures diligently and continuously to completion thereafter; or (b) refuses or fails to supply enough properly skilled workers or proper materials; or (c) fails to make payment to subcontractors, laborers or material men for materials or labor; or (d) fails to abide by Laws, ordinances or rules, regulations or order of a public authority having jurisdiction; or (e) abandons actually or constructively, or puts Contractor on actual or constructive notice that it intends to abandon, the Project; or (f) Otherwise is guilty of substantial breach of any provisions of the Contract Documents; or (g) fails to provide the insurance coverage and certificates required by this Subcontract. When any of the above reasons exist Contractor may, without prejudice to any other rights or remedies of Contractor and after giving Subcontractor the three (3) business days' written notice referenced above, terminate employment of the Subcontractor AGREEMENT and may (i) take possession of all materials, equipment, tools and construction equipment and machinery placed on site by Subcontractor and (j) finish the work by whatever reasonable method Contractor may deem expedient. Subcontractor shall not be entitled to receive further payment until the work is finished. If the unpaid balance of the Contract price exceeds the costs of finishing the work, such excess shall be paid to Subcontractor. Notwithstanding the provisions set forth above or herein, in the event of the termination of this Contract, the warranties and obligations of Subcontractor set forth in the Subcontract as to the work performed by Subcontractor in no manner shall be altered, limited or extinguished as a result of such termination. Should the Subcontractor at any time refuse or neglect to supply a sufficient number of properly skilled workmen or materials of the proper quality or should it fail in any respect to prosecute the work with promptness and diligence or materially breach the Contract documents, Contractor shall have the right after two (2) days prior written notice to Subcontractor to provide any such labor or materials or remedy any such failure and to deduct the cost thereof from any money then due or thereafter to become due Subcontractor under this Subcontract. If Contractor extends its supervision and overhead costs because of Subcontractor's delays or defaults Subcontractor shall be charged for the reasonable cost of same; and If more than one Subcontractor is responsible, the costs will be divided among the Subcontractor's in proportion to the total dollar consideration of each Subcontract. In addition Subcontractor shall reimburse Contractor for any loss, damage or extra expense paid or incurred by Contractor which is due to Subcontractor's failure to supply materials or labor to properly perform the work. Contractor's rights under this paragraph are in addition to its rights to terminate or default If It so elects under paragraph 7.2.1.

§ 7.2.2 If the Owner terminates the Contract for the Owner's convenience, the Contractor shall deliver written notice to the Subcontractor.

§ 7.2.3 Upon receipt of written notice of termination, the Subcontractor shall:

- .1 ceases operations as directed by the Contractor in the notice;
- .2 take actions necessary, or that the Contractor may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Sub-subcontracts and purchase orders and enter into no further Sub-subcontracts and purchase orders.

§ 7.2.4 In case of such termination for the Owner's convenience, the Subcontractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed. Notwithstanding any other provision of this Subcontract or the Prime Contract Contractor may terminate this Subcontract for convenience at any time, after three (3) days written notice. In the event of such termination for convenience, Subcontractor shall immediately take all necessary steps to stop work and cancel purchase orders and/or sub-subcontracts and termination for convenience provisions shall be included in all such sub-subcontracts. In the event of termination for convenience, after the closing of Project financing, Subcontractor shall be entitled to receive payment for work executed and reasonable costs incurred prior to such termination along with lost profits in the amount of five (5%) percent of work not yet completed, the five (5%) percent lost profit number not to exceed \$125,000.00 if the project has not yet reached fifty (50%) percent completion status and \$75,000.00 if the project has reached fifty (50%) percent completion status at the time of termination for convenience. Subcontractor understands and agrees that in the event that Owner does not close upon the Project's financing upon terms and conditions acceptable to Owner, then this agreement shall be null and void.

with no further obligations or responsibilities on the part of either party to the other. If the Contract is terminated prior to issuance of a Notice to Proceed, no compensation will be due to Subcontractor.

### § 7.3 SUSPENSION BY THE CONTRACTOR FOR CONVENIENCE

§ 7.3.1 The Contractor may, without cause, order the Subcontractor in writing to suspend, delay or interrupt the Work of this Subcontract in whole or in part for such period of time as the Contractor may determine. In the event of suspension ordered by the Contractor, the Subcontractor shall be entitled to an equitable adjustment of the Subcontract Time and Subcontract Sum. . The completion date will be extended by the same number of days as the work is suspended. In the event the work is suspended for more than thirty (3) consecutive days, Subcontractor or may at its option, terminate the Contract or charge a reasonable fee for remobilizing on the Project. In the event that a suspension of the work causes Subcontractor to incur charges or damages for canceling orders for materials or subcontracts. Contractor agrees to reimburse Subcontractor for any such charges or damages.

§ 7.3.2 An adjustment shall be made for increases in the Subcontract Time and Subcontract Sum, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

- .1 That performance is was or would have been so suspended, delayed or interrupted by another cause for which the Subcontractor is responsible;
- .2 that an equitable adjustment is made or denied under another provision of this Subcontract.

### § 7.4 ASSIGNMENT OF THE SUBCONTRACT

§ 7.4.1 In the event of termination of the Prime Contract by the Owner, the Contractor may assign this Subcontract to the Owner, with the Owner's agreement, subject to the provisions of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. In such event, the Owner shall assume the Contractor's rights and obligations under the Subcontract Documents. If the Work of the Prime Contract has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted.

§ 7.4.2 The Subcontractor shall not assign the Work of this Subcontract without the written consent of the Contractor, nor subcontract the whole of this Subcontract without the written consent of the Contractor, nor further subcontract portions of this Subcontract without written notification to the Contractor when such notification is requested by the Contractor.

### ARTICLE 8 THE WORK OF THIS SUBCONTRACT

§ 8.1 The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, materials, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others. Subcontractor's scope of work includes the performance of all work and the furnishing of all supervision, labor, materials, plans, scaffolding, tools equipment, supplies and anything else necessary for the construction and completion of all work described in the plans and specifications listed in Exhibit "A" and all work incidental thereto or reasonably inferable therefrom in strict accordance and in full compliance with the terms of the Contract Documents.

*(Insert a precise description of the Work of this Subcontract, referring where appropriate to numbers of Drawings, sections of Specifications and pages of Addenda, Modifications and accepted Alternates.)*

### ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 The Subcontractor's date of commencement is the date from which the Contract Time of Section 9.3 is measured; it shall be the date of this Agreement, as first written above, 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 Contractor. (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.)

Date of Notice to Proceed Letter

§9.1.2 SUBORDINATION. In consideration of the agreement by Lender to make a loan to Owner the advances of

which shall be used for, among other things. The funding of payments for the work and as an inducement to the execution and delivery by Contractor of this Subcontract. Subcontractor hereby agrees that any and all liens rights and interests (whether choate or inchoate) including without limitations, all mechanic's and materialmen's liens under this Subcontract and the Constitution or statutes of the State of Texas owned, claimed or held or to be held or to be owned, claimed or held, by Subcontractor in and to the Project now or hereafter constructed are and shall be subordinate and inferior to any liens and security interest securing payments of sums not hereafter borrowed by Owner in connection with the construction of the Project and all renewals, extensions, modifications, consolidations, Replacements, rearrangements and enlargements thereof. Upon request of Contractor, Subcontractor agrees to promptly execute such further and additional evidence of this subordination as lender or any other interim or permanent lender to Owner may require. The subordination set forth herein shall survive the termination of this Subcontract and shall be applicable despite any dispute and Contractor. Lender any other interim lender and any permanent lender for the Project is express third party beneficiaries who have supplied consideration for such subordination. Subcontractor shall require each of its subcontractors to agree to similar subordination terms in the respective agreements with such subcontractors.

§ 9.2 Unless the date of commencement is established by a notice to proceed issued by the Contractor, or the Contractor has commenced visible Work at the site under the Prime Contract, the Subcontractor shall notify the Contractor in writing not less than five days before commencing the Subcontractor's Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 9.3 The Work of this Subcontract shall be substantially completed not later than 12 months (365) days from the of Notice to Proceed.

*(Insert the calendar date or number of calendar days after the Subcontractor's date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Subcontractor's Work, if not stated elsewhere in the Subcontract Documents.)*

Portion of Work

ALL

Substantial Completion date

12 Months after Notice to Proceed

, subject to adjustments of this Subcontract Time as provided in the Subcontract Documents.  
*(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)*

§9.3.1 Liquidated Damages

The parties agree that if the project is not substantially completed within fourteen (14) months from the execution of this agreement or the date of commencement as stated in a notice to proceed, Contractor will suffer damages (including liquidated damages assessed by the Owner against Contractor) which are difficult of precise ascertainment. The parties agree that the sum of \$3,600.00 dollars per calendar day shall be assessed a liquidated damages, and not as a penalty, against subcontractor for unexcused delays in achieving substantial completion and agree that said sum is a reasonable approximation of damages Contractor may suffer by reason of such delay. The assessment of liquidated damages shall constitute an exception to the waiver of consequential damages provision contained in the general condition. Liquidated damage provisions set forth herein shall constitute the Contractor's sole remedy for delay.

§9.3.2 Substantial completion means, with respect to each building, such time as: (a) a temporary or permanent certificate of occupancy evidencing completion of the work is issued by all applicable governing authorities, (b) the work is completed in a finished condition consistent with the high quality of workmanship called for in a first class project and so that completed units and all common areas can be delivered to residents, with only minor punch list items of detail and decoration left unfinished which said details will not interfere with the practical utilization of the units and all intended common amenities, which minor punch list items may include items such as the following: paint touch up, window cleaning, carpet cleaning, power washing of buildings and sidewalks, replacement of damaged VCT tile or carpet seams and minor drywall patching and painting; (c) all temporary utilities are disconnected; and (d) subcontract is in compliance with the payment and lien provisions of this agreement.

§9.3.3 Early Completion Bonus. Contractor shall be entitled to an early completion bonus if and in the event the project is completed earlier than twelve (12) calendar months from the execution of this agreement, or the date of

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commencement as stated in a notice to proceed The early completion bonus will be computed as follows: \$1,600.00 per day not to exceed \$96,000. An excusable delay shall not extend the (12) twelve calendar month time frame for the purpose for computing early completion.

§ 9.4 With respect to the obligations of both the Contractor and the Subcontractor, time is of the essence of this Subcontract.

§ 9.5 No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Section 5.3. Extensions of time. Anything to the contrary notwithstanding, Subcontractor shall only be entitled to time extensions if the Project critical path is delayed as the sole result of any act or omission by Owner or Contractor or by authorized change orders or by unusually bad weather not reasonably anticipatable fire or other Acts of God. A task is critical within the AGREEMENT meaning of this paragraph only if said task is on the critical path of the Project so that a delay in performing such tasks will delay the ultimate completion of the Project. weather which was not reasonably anticipatable for each month by the fifth day of the next succeeding month or such claims shall be waived. If there is adverse weather not reasonably anticipatable which delays the critical path in one month and there is abnormally good weather in another month. Contractor may offset said time frames for the purpose of evaluating a time extension request. Subcontractor shall not be entitled to any additional compensation. by way of change order or otherwise. for any time extension unless and to the extent Contractor elects to pay additional compensation under 3.1.1 to overcome the effects of excusable delay and denies the time extension.

#### ARTICLE 10 SUBCONTRACT SUM

§ 10.1 The Contractor shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of Fourteen million eight hundred fifty-five thousand six hundred and ninety-five dollars and seventy cents. \$ (14,855,695.70), subject to additions and deductions as provided in the Subcontract Documents.

§ 10.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractor:  
*(Insert the numbers or other identification of accepted alternates.)*

§ 10.3 Unit prices, if any, are as follows: See Allowances

Description	Units	Price (\$ 0.00)
Allowance Contract	275,128 NRSF Exhibit "E"	\$54.00 per NRSF

#### ARTICLE 11 PROGRESS PAYMENTS

§ 11.1 Based upon applications for payment submitted to the Contractor by the Subcontractor, corresponding to applications for payment submitted by the Contractor to the Architect, and certificates for payment issued by the Architect, the Contractor shall make progress payments on account of the Subcontract Sum to the Subcontractor as provided below and elsewhere in the Subcontract Documents. Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor and Subcontractor for Work properly performed by their contractors and suppliers shall be held by the Contractor and Subcontractor for those contractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor or Subcontractor for which payment was made to the Contractor by the Owner or to the Subcontractor by the Contractor, as applicable. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor or Subcontractor, shall create any fiduciary liability or tort liability on the part of the Contractor or Subcontractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor or Subcontractor for breach of the requirements of this provision. Subcontractor shall make all payments to sub-subcontractors and suppliers as required by the Texas Trust Fund Act (Section 162 of the Texas Property Code) and within the time frame required by the Prompt Payment Act (Texas Property Code Chapter 28.

§ 11.2 The period covered by each application for payment shall be one calendar month ending on the 25th day of each month ~~the last day of the month,~~ or as follows:

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Each Subcontractor Application for Payment following the first such application shall be accompanied by a periodic waiver of lien, in a form reasonably satisfactory to Contractor, Owner and Lender, provided by Subcontractor and each major sub-subcontractor (defined as a sub-subcontractor with a contract in excess of \$75,000.00); said partial waiver of lien to be executed by an officer of said entity and waiving all lien rights for any period of time covered by previous application for payment.

§ 11.3 Provided an application for payment is received by the Contractor not later than the 5th day of a month, the Contractor shall include the Subcontractor's Work covered by that application in the next application for payment which the Contractor is entitled to submit to the Architect and/or Owner. The Contractor shall pay the Subcontractor each progress payment within five working days after the Contractor receives payment from the Owner. If the Architect does not issue a certificate for payment or the Contractor does not receive payment for any cause which is not the fault of the Subcontractor, the Contractor shall pay the Subcontractor, on demand, within forty-five days after payment should have been made a progress payment computed as provided in Sections 11.7, 11.8 and 11.9. Payment by the Owner to Contractor shall be an express condition precedent to the obligation of Contractor to pay Subcontractor for any work, claim or damage.

§ 11.4 If an application for payment is received by the Contractor after the application date fixed above, the Subcontractor's Work covered by it shall be included by the Contractor in the next application for payment submitted to the Architect.

§ 11.5 Each application for payment shall be based upon the most recent schedule of values submitted by the Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire Subcontract Sum among the various portions of the Subcontractor's Work and be prepared in such form and supported by such data to substantiate its accuracy as the Contractor may require. This schedule, unless objected to by the Contractor, shall be used as a basis for reviewing the Subcontractor's applications for payment.

§ 11.6 Applications for payment submitted by the Subcontractor shall indicate the percentage of completion of each portion of the Subcontractor's Work as of the end of the period covered by the application for payment.

§ 11.7 Subject to the provisions of the Subcontract Documents, the amount of each progress payment shall be computed as follows:

§ 11.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion of the Subcontractor's Work in the schedule of values, less that percentage actually retained, if any, from payments to the Contractor on account of the Work of the Subcontractor. Pending final determination of cost to the Contractor of changes in the Work which have been properly authorized by the Contractor, amounts not in dispute shall be included to the same extent provided in the Prime Contract, even though the Subcontract Sum has not yet been adjusted; Anything to the contrary notwithstanding, 5% retainage shall be held from each Subcontractor draw with the aggregate amount of the retainage to be paid to Subcontractor thirty (30) - days after final completion of the work and acceptance thereof by the Owner. No periodic payment by the Contractor shall be deemed to constitute acceptance of any faulty or defective work. If allowed by Lender, no retainage will be held on stored material under 11.7.2. General Condition costs, fees, bonds or permits.

§ 11.7.2 Add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing, less the same percentage retainage required by the Prime Contract to be applied to such materials and equipment in the Contractor's application for payment; With Owner's approval, payment may be made for stored materials offsite if the location is pre-approved by Owner and Contractor and if Subcontractor adequately establishes Owner's title to such materials and equipment and otherwise protects Owner's interest to a degree satisfactory to Owner including applicable insurance, storage and transportation to the site.

§ 11.7.3 Subtract the aggregate of previous payments made by the Contractor; and

§ 11.7.4 Subtract amounts, if any, calculated under Section 11.7.1 or 11.7.2 which are related to Work of the Subcontractor for which the Architect has withheld or nullified, in whole or in part, a certificate of payment for a cause which is the fault of the Subcontractor.

§ 11.8 Upon the partial or entire disapproval by the Contractor of the Subcontractor's application for payment, the Contractor shall provide written notice to the Subcontractor. When the basis for the disapproval has been remedied, the Subcontractor shall be paid the amounts withheld.

§ 11.8.1 Notwithstanding any provision of a subcontract to the contrary, Contractor is not obligated to make any payment to Subcontractor under the subcontract if any one or more of the following conditions exist:

(a) Subcontractor has failed to perform its obligations under the subcontract or otherwise is in default under the subcontract or the contract documents:

(b) If any part of such payment is attributable to work which is not performed in accordance with the Contract documents: provided however, payment will be made for the portions of the work which have been performed in accordance with the Contract Documents:

(c) Subcontractor or any sub-subcontractor has filed to make payments promptly to any lower tier subcontractor, as applicable, or to pay for material or labor used in the work for which subcontractor has received payment:

(d) Subcontractor has suspended the work other than as authorized by Owner, Contractor or this Contract:

(f) Subcontractor has filed a voluntary petition for protection or relief under, or a petition has been filed placing Subcontractor under the protection of the bankruptcy laws of the United States and Subcontractor has not (1) notified Contractor that Subcontractor has the necessary capacity and resources to finish the work and honor the Subcontract and will dismiss such petition and remove itself from bankruptcy protection with ninety days of the filing or (2) affirmed and had the bankruptcy court approve its obligations under this Subcontract to Contractor and evidence Subcontractor's ability to perform this Subcontract to Contractor's reasonable satisfaction:

(g) Subcontractor has failed to provide or maintain required insurance and/or bonds:

(h) Contractor determines, in good faith, that Subcontractor has breached any other agreement it might have with Contractor on any other Project.

(i) Contractor in good faith determines that an amount it paid to Subcontractor with respect to an application for payment was greater than the amount to which Subcontractor was entitled.

(j) Contractor corrects safety violations under 4.3 of this agreement.

§ 11.8.2 In the event any of the conditions outlined in 11.8.1 exist, Contractor may withhold such funds as may be reasonably necessary to protect it from liability or to compensate it for its damages: provided, however, that the exercising of the right of withholding by contractor should not be conclusive with respect to any liability of Subcontractor to Contractor.

#### § 11.9 SUBSTANTIAL COMPLETION

§ 11.9.1 When the Subcontractor's Work or a designated portion thereof is substantially complete and in accordance with the requirements of the Prime Contract, the Contractor shall, upon application by the Subcontractor, make prompt application for payment for such Work. Within 30 days following issuance by the Architect of the certificate for payment covering such substantially completed Work, the Contractor shall, to the full extent allowed in the Prime Contract, make payment to the Subcontractor, deducting any portion of the funds for the Subcontractor's Work withheld in accordance with the certificate to cover costs of items to be completed or corrected by the Subcontractor. Such payment to the Subcontractor shall be the entire unpaid balance of the Subcontract Sum if a full release of retainage is allowed under the Prime Contract for the Subcontractor's Work prior to the completion of the entire Project. If the Prime Contract does not allow for a full release of retainage, then such payment shall be an amount which, when added to previous payments to the Subcontractor, will reduce the retainage on the

Subcontractor's substantially completed Work to the same percentage of retainage as that on the Contractor's Work covered by the certificate.

#### ARTICLE 12 FINAL PAYMENT

§ 12.1 Final payment, constituting the entire unpaid balance of the Subcontract Sum, shall be made by the Contractor to the Subcontractor when the Subcontractor's Work is fully performed in accordance with the requirements of the Subcontract Documents, the Architect has issued a certificate for payment covering the Subcontractor's completed Work and the Contractor has received payment from the Owner. If, for any cause which is not the fault of the Subcontractor, a certificate for payment is not issued or the Contractor does not receive timely payment or does not pay the Subcontractor within three working days after receipt of payment from the Owner, final payment to the Subcontractor shall be made upon demand. Subcontractor shall commence work on all punch lists within two (2) days after notification by Contractor and shall pursue the punch list work diligently to the satisfaction of Contractor until final completion. (Insert provisions Final payment shall not be due until Subcontractor has delivered to Contractor a complete recordable affidavit and release of all liens arising out of this Subcontract covering all labor, materials and equipment for affidavit which a lien could be filed, or a bond in such amount and with such insurer as Contractor in its sole discretion approves indemnifying Contractor and the Project against any lien. If any lien remains unsatisfied after all payments are made. Subcontractor shall refund to Contractor all monies the later may be compelled to pay in discharging such lien including all court costs reasonable attorneys' fees, bond fees, and related expenses. The making of final payment shall constitute a waiver of all claims by Contractor except those arising from (i) unsettled liens, (ii) faulty or defective work appearing after substantial completion, (iii) failure of the work to comply with the Subcontractor if applicable, requirements of the Contract documents, (iv) Subcontractor's remaining indemnity defense and hold harmless obligations under this Subcontract, or (v) claims not known by Contractor at the time of payment. The acceptance of final payment shall constitute a waiver of all claims of Subcontractor against Contractor and Owner except those previously made in writing and identified by Subcontractor as unsettled on its final application for payment.

The delivery of as-built drawings and specifications and a Consent of Surety shall be additional requirements of final payment.

§ 12.2 Before issuance of the final payment, the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied.

#### ARTICLE 13 INSURANCE AND BONDS

§ 13.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability: (See Attached Exhibit "C")

Type of insurance	Limits of liability (\$ 0.00)
N/A	N/A

§ 13.2 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Subcontractor's Work until date of final payment and termination of any coverage required to be maintained after final payment to the Subcontractor. All policies provided pursuant to Exhibit "c" with the exception of Workers' Compensation, shall name Contractor and Owner as additional insured parties on a primary basis. Contractor will furnish and pay for a Builder's Risk insurance, including fire, extended coverage, vandalism and malicious mischief, with such coverage and deductibles as Contractor shall determine in its sole discretion. Subcontractor's work performed and materials stored on the site and incorporated into the Project shall be covered to the extent of Contractor's Builder's Risk coverage and to the extent allowed by Contractor's insurance carrier subject to deductibles. Subcontractors shall not cancel, nor allow to be cancelled any policy required by this Contract without giving Contractor five (5) days prior written notice. Once Contractor receives any such notice Contractor shall have the right to pay the required premium necessary to maintain the policy in effect and then to deduct the amount of premiums from the amounts owed Subcontractor. Subcontractor shall submit all claims under its insurance policies immediately to its insurance carriers and shall submit all claims under

Contractor's Builder's Risk Insurance immediately to Contractor. Contractor shall simultaneous Iv Copy Contractor with any claim that Subcontractor submits to its carriers. **SUBCONTRACTOR UNDERSTANDS THAT ANY DELAY IN FILING ITS CLAIMS WILL INVALIDATE ITS COVERAGE.** Contractor and Subcontractor hereby waive all rights against each other for damage caused by fire and other casualties to the extent covered by any property insurance policy required to be carried hereunder except such rights as they may have to proceeds of such insurance. If any such insurance policies require permission from insurance carrier for such waiver, the party required to carry such insurance shall obtain such permission. Subcontractor agrees that all tools and equipment used by it in connection with the work shall not be covered by Contractor's Builder's Risk insurance policy and that Subcontractor must obtain and pay for insurance it desires for such items. The requiring of any and all insurance as set forth in these paragraphs or elsewhere is in addition to and not in any way in substitution for all other protection provided under the Subcontract to Contractor including indemnity provisions hereunder.

§ 13.3 Certificates of insurance acceptable to the Contractor shall be filed with the Contractor prior to commencement of the Subcontractor's Work. These certificates and the insurance policies required by this Article 13 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 12. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Subcontractor with reasonable promptness according to the Subcontractor's information and belief.

§ 13.4 The Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

~~§ 13.5 The Contractor shall promptly, upon request of the Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract.~~

§ 13.6 Performance Bond and Payment Bond: Subcontractor must furnish to Contractor and keep in force during the term of the Subcontract both a Performance Bond and a Labor and Material Payment Bond guaranteeing that Subcontractor will perform its obligations under the Subcontract and will pay for all labor and materials furnished for the work. Each bond must be issued in a form reasonably acceptable to Lender and by a surety reasonably acceptable to Lender and Contractor. The bond forms attached hereto as Exhibit "D", after approval shall be deemed acceptable. Each bond must name Contractor, Owner and Lender as Joint Obligees and must be in an amount equal to at least 100% of the Subcontract amount (as the same may be adjusted from time to time pursuant to the Contract). The subcontractor must deliver the approved and executed bonds to Contractor within five days after the execution of this agreement and prior to starting work. In the event the surety which provided bonding becomes insolvent or fails during the terms of the Subcontract, Subcontractor shall immediately replace, at its expense, the bonds with valid bonds from a new surety meeting the above requirements. Failure of the Subcontractor to replace bonds would constitute a material breach of the Contract.

The payment bond must be issued in a form consistent with and as may be required by all applicable laws of the State of Texas such that, to the fullest extent possible at law, no liens can be attached to the Project and all mechanic's and material men's liens filed in connection with the fork or the Project will attach only to the bonds.

Notwithstanding the above, if and in the event liens are filed, Subcontractor agrees to have the same discharged by posting a bond (see Subchapter H of Chapter 53 of the Texas Property Code) with the appropriate authorities within five days of notice. In the event such lien is not so discharged, Contractor may discharge the lien itself and hold Subcontractor responsible for costs and obligations incurred.

*(If the Subcontractor is to furnish bonds, insert the specific requirements here.)*

Bond type	Bond amount (\$ 0.00)	Bond delivery date	Bond form
Payment / Performance		At Closing	

### § 13.7 PROPERTY INSURANCE

§ 13.7.1 When requested in writing, the Contractor shall provide the Subcontractor with copies of the property and equipment policies in effect for the Project.

§ 13.7.2 If the required property insurance is not in effect for the full value of the Subcontractor's Work, then the Subcontractor shall purchase insurance for the value of the Subcontractor's Work, and the Subcontractor shall be reimbursed for the cost of the insurance by an adjustment in the Subcontract Sum.

§ 13.7.3. Property insurance for the Subcontractor's materials and equipment required for the Subcontractor's Work, stored off site or in transit and not covered by the Project property insurance, shall be paid for through the application for payment process.

§ 13.7.4 Before an exposure to loss may occur, the Subcontractor shall file with the Contractor a copy of each policy that includes insurance coverages required by this paragraph 13.7. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. All insurance policies will have a cancellation provision that provides that the carrier will notify the Contractor and Mortgagee in writing at least thirty (30) days in advance of any policy reduction or cancellation for a reason other than non-payment of premium and at least ten (10) days in advance of any policy cancellation for non-payment of premium. Each policy must also include a mortgage clause acceptably to Lender and/or provider and their respective successors and assigns as their interest may appear as Mortgagee.

§ 13.7.5 Contractor and Subcontractor and Owner waive all rights against each other and the Architect Lender and other design professionals, subcontractors, agents and employees, each of the other, for damages caused by fire or other peril to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Work except such right as they may have to proceeds of such insurance held by Contractor an Owner as Trustee. Contractor or owner shall require that Subcontractor obtain similar agreements for all sub-subcontractors. 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.

§ 13.7.6 Contractor and/or Owner as Trustee shall have the power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five (5) days after occurrence of loss to the exercise of this power, and if such objection is made, the parties shall enter into dispute resolution under the procedures provided herein.

### § 13.8 WAIVERS OF SUBROGATION

§ 13.8.1 The Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractors, 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 provided under the Prime Contract or other property insurance applicable to the Work, except such rights as they may have to proceeds of such insurance held by the Owner as a fiduciary. The Subcontractor shall require of the Subcontractor's Sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of the 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.

### ARTICLE 14 TEMPORARY FACILITIES AND WORKING CONDITIONS

§ 14.1 The Contractor shall furnish and make available to the Subcontractor the following temporary facilities, equipment and services; these shall be furnished at no cost to the Subcontractor unless otherwise indicated below:

Temporary Facility, Equipment or Service  
N/A

Cost, if any (\$ 0.00)  
N/A

**§ 14.2 Specific working conditions:**

*(Insert any applicable arrangements concerning working conditions and labor matters for the Project.)*

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

**§ 15.1** Where reference is made in this Subcontract to a provision of another Subcontract Document, the reference refers to that provision as amended or supplemented by other provisions of the Subcontract Documents.

**§ 15.2** Payments due and unpaid under this Subcontract shall bear interest from the date payment is due at such rate as the parties may agree upon in writing 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.)*

per annum

*(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, Contractor's and Subcontractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

**§ 15.3** Retainage and any reduction thereto are as follows:

**§ 15.4** The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 7.-This paragraph does not constitute a waiver of liquidated damages, if any.

**§ 15.5 MINORITY PARTICIPATION REQUIREMENT**

The Subcontractor understands minority participation is required pursuant to the laws governing this Project. It is the intent of the Owner that minority participation be sought established means and pursuant to the Subcontractor business plan. The requirement stipulates 30% minority labor should be incorporated into the Project. The Subcontractor is free to use as part of the equation, offsite material manufacturing and fabricating facilities as means to meet the requirements.

**§ 15.6** Subcontractor acknowledges that a Contractor and its affiliates have a policy prohibiting their employees from receiving gifts with a value in excess of \$150 from vendors or subcontractors. Subcontractor agrees that it will not make or attempt to make any gift, payment or other transfer of material value to any employee of Contractor or its affiliates in excess of this limit.

**§ 15.7 Severability.** If any provision of these General Provisions is found to be invalid unenforceable or unlawful, such provisions shall be enforced in such manner as shall most nearly affect the intent of the parties and yet conform to the law applicable thereto and the remainder of these General Provisions shall remain in full force and effect.

**§ 15.8 Notices.** All notices, requests, approvals and other communications required or permitted to be delivered under the Contract Documents must be in writing and shall be effective (i) upon receipt if delivered personally or by any method other than by mail or (in three (3) days after being deposited in the United States mail postage prepaid addressed to the respective party at the address set forth in the Subcontract. A Copy of any notices of claims and/or claims shall be sent to Odyssey Residential Holdings, LP Construction, LP 1200 Three Lincoln Centre 5430 LBJ Freeway Suite 1200 Dallas, Texas 75240. Either party may change its address by notice in writing to the other party.

Notices of claims or disputes and claims for compensation for extra work are conditions precedent to Subcontractor's entitlement for it.

§15.9 Non-waiver and Offset. Any failure by Contractor at any time to enforce or require the strict performance of any of the terms or conditions hereof shall not affect nor impair Contractor's right at any time to avail itself of the remedies available for the subsequent breach of such terms or conditions. Subcontractor's rights hereunder are subject to the right of Contractor to offset any claims Contractor or a company related to Contractor, has against Subcontractor, whether or not arising under this Subcontract.

§15.10 In the event of a conflict between this Subcontract and the Contract Documents, this Subcontract shall prevail. In the event of a conflict between the printed, typewritten and handwritten portions of this agreement the handwritten portions shall prevail. In the event of a conflict between the printed and typewritten portions of this agreement, the typewritten portion shall prevail.

§15.11 The undersigned individual represents and guarantees to the Contractor that he/she is a duly authorized officer of the Subcontractor authorized to execute this Sub-Contract. If so requested, the sub-contractor shall provide a copy of the latest annual corporate minutes.

§15.12 Contractor shall have the right to inspect the work or any portion thereof at any time. Contractor shall have the right to inspect, audit and copy at any time during normal business hours Subcontractor's books and records concerning the work. Subcontractor shall keep complete and accurate records concerning the work at its principal office for at least four (4) years after the work is completed and accepted by Contractor.

#### ARTICLE 16 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 16.1 The Subcontract Documents, except for Modifications issued after execution of this Subcontract, are enumerated as follows:

§ 16.1.1 This executed 1997 edition of the Standard Form of Agreement between Contractor and Subcontractor, AIA Document A401-1997; and, to the extent not inconsistent with this Agreement, AIA Document A201(See 1.2 hereof):

§ 16.1.2 The Prime Contract, consisting of the Agreement between the Owner and Contractor dated as first entered above and the other Contract Documents enumerated in the Owner-Contractor Agreement;

§ 16.1.3 The following Modifications to the Prime Contract, if any, issued subsequent to the execution of the Owner-Contractor Agreement but prior to the execution of this Agreement:

Modification	Date
N/A	N/A

§ 16.1.4 Other Documents, if any, forming part of the Subcontract Documents are as follows:  
*(List any additional documents that are intended to form part of the Subcontract Documents. Requests for proposal and the Subcontractor's bid or proposal should be listed here only if intended to be part of the Subcontract Documents.)*

(A) Construction Drawings and Specifications dated and more particularly described as follows: (See Attached Exhibit "A")

(B) Schedule (Scope of Work See attached Exhibit "B")

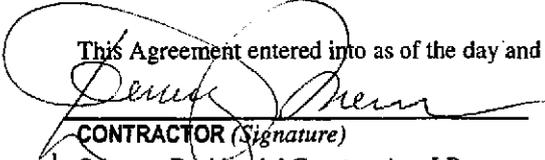
(C) Insurance Requirements (See Attached Exhibit C)

(D) Surety Letter from (See Attached Exhibit "D")

| (E) Allowance ( See attached Exhibit E)

| (F) Schedule of Values ( See attached Exhibit F)

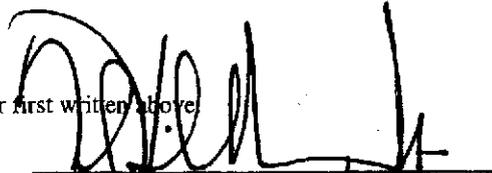
This Agreement entered into as of the day and year first written above.



**CONTRACTOR (Signature)**

Odyssey Residential Construction, LP  
By: Odyssey Residential Construction GP,  
Inc.

*(Dewey Stevens, Sr. V.P. COO)*



**SUBCONTRACTOR (Signature)**

Carleton Construction, Ltd.

*(Neal Hildebrandt, VP of GP)*

Exhibit "B"

Ogden Residential Construction  
Pecan Grove - 18 Buildings  
Dallas, TX

ID	Task Name	Start	Finish	January	February	March	April	May	June	July	August	September	October	November	December	January	February	March
127	Building 14	Fri 8/18/05	Fri 12/9/05															
128	Bldg 14 Foundation	Fri 8/19/05	Fri 8/22/05															
129	Bldg 14 Framing	Mon 8/29/05	Fri 10/21/05															
130	Bldg 14 Extentors	Mon 10/24/05	Fri 11/4/05															
131	Bldg 14 MEP Roughs	Mon 10/24/05	Fri 10/28/05															
132	Bldg 14 Interiors	Mon 10/24/05	Fri 12/16/05															
133	Bldg 14 Finework	Mon 11/21/05	Fri 11/25/05															
134	Bldg 14 Landscaping	Mon 11/29/05	Mon 1/29/06															
135	Building 15	Wed 8/23/05	Wed 12/28/05															
136	Bldg 15 Foundation	Wed 8/23/05	Wed 9/14/05															
137	Bldg 15 Framing	Thu 9/15/05	Wed 11/2/05															
138	Bldg 15 Extentors	Thu 10/13/05	Wed 11/16/05															
139	Bldg 15 MEP Roughs	Thu 10/20/05	Wed 11/9/05															
140	Bldg 15 Interiors	Thu 11/10/05	Wed 12/28/05															
141	Bldg 15 Finework	Thu 12/1/05	Wed 12/7/05															
142	Bldg 15 Landscaping	Thu 12/8/05	Thu 1/21/06															
143	Building 16	Mon 8/22/05	Mon 1/9/06															
144	Bldg 16 Foundation	Mon 8/22/05	Mon 9/28/05															
145	Bldg 16 Framing	Thu 9/27/05	Mon 11/14/05															
146	Bldg 16 Extentors	Thu 10/26/05	Mon 11/22/05															
147	Bldg 16 MEP Roughs	Thu 11/10/05	Mon 11/21/05															
148	Bldg 16 Interiors	Thu 11/23/05	Mon 1/9/06															
149	Bldg 16 Finework	Thu 12/13/05	Mon 1/29/06															
150	Bldg 16 Landscaping	Thu 12/20/05	Tue 1/27/06															
151	Building 17	Thu 8/22/05	Thu 11/9/05															
152	Bldg 17 Foundation	Thu 8/22/05	Thu 10/6/05															
153	Bldg 17 Framing	Fri 10/7/05	Thu 11/24/05															
154	Bldg 17 Extentors	Fri 11/4/05	Thu 12/9/05															
155	Bldg 17 MEP Roughs	Fri 11/11/05	Thu 12/1/05															
156	Bldg 17 Interiors	Fri 12/2/05	Thu 11/9/06															
157	Bldg 17 Finework	Fri 12/23/05	Thu 12/29/05															
158	Bldg 17 Landscaping	Fri 1/20/06	Fri 1/6/06															
159	Building 18	Tue 8/24/05	Tue 1/3/06															
160	Bldg 18 Foundation	Tue 10/4/05	Tue 10/13/05															
161	Bldg 18 Framing	Wed 10/19/05	Tue 12/6/05															
162	Bldg 18 Extentors	Wed 11/16/05	Tue 12/20/05															
163	Bldg 18 MEP Roughs	Wed 11/23/05	Tue 12/13/05															
164	Bldg 18 Interiors	Wed 12/14/05	Tue 1/31/06															
165	Bldg 18 Finework	Wed 1/4/06	Tue 1/10/06															
166	Bldg 18 Landscaping	Wed 1/11/06	Wed 1/18/06															

Project: Pecan Grove  
 Start Date: 8/22/05  
 End Date: 1/18/06  
 Status:  On Hold  Delayed  Complete

Legend:   
 ■ Foundation   
 ■ Framing   
 ■ Extentors   
 ■ MEP Roughs   
 ■ Interiors   
 ■ Finework   
 ■ Landscaping

Scale: 1" = 1 Month



Exhibit 'g'

Dallas Residential Construction  
 Town Home - 18 Buildings  
 Dallas, TX

ID	Task Name	Start	Finish	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	August	September	October	November	December	January	February	March
43	Bldg 3 MEP Roughs	Tue 8/14/05	Mon 8/22/05															
44	Bldg 3 Interiors	Tue 7/25/05	Mon 8/22/05															
45	Bldg 3 Framework	Tue 7/28/05	Mon 8/1/05															
46	Bldg 3 Landscaping	Tue 8/2/05	Tue 8/9/05															
47	BUILDING 4	Wed 8/4/05	Wed 8/11/05															
48	Bldg 4 Foundation	Wed 8/4/05	Wed 8/11/05															
49	Bldg 4 Framing	Thu 8/18/05	Wed 7/28/05															
50	Bldg 4 Exteriors	Thu 8/18/05	Wed 7/28/05															
51	Bldg 4 MEP Roughs	Thu 8/18/05	Wed 7/13/05															
52	Bldg 4 Interiors	Thu 7/14/05	Wed 8/11/05															
53	Bldg 4 Framework	Thu 8/4/05	Wed 8/11/05															
54	Bldg 4 Landscaping	Thu 8/11/05	Thu 8/18/05															
55	BUILDING 5	Fri 8/13/05	Fri 8/20/05															
56	Bldg 5 Foundation	Fri 8/13/05	Fri 8/27/05															
57	Bldg 5 Framing	Mon 8/20/05	Fri 7/15/05															
58	Bldg 5 Exteriors	Mon 8/27/05	Fri 7/29/05															
59	Bldg 5 MEP Roughs	Mon 7/4/05	Fri 7/29/05															
60	Bldg 5 Interiors	Mon 7/25/05	Fri 9/9/05															
61	Bldg 5 Framework	Mon 8/15/05	Fri 8/19/05															
62	Bldg 5 Landscaping	Mon 8/22/05	Mon 8/29/05															
63	BUILDING 6	Tue 8/24/05	Tue 8/29/05															
64	Bldg 6 Foundation	Tue 8/24/05	Tue 8/29/05															
65	Bldg 6 Framing	Wed 8/31/05	Tue 7/26/05															
66	Bldg 6 Exteriors	Wed 7/26/05	Tue 8/9/05															
67	Bldg 6 MEP Roughs	Wed 7/19/05	Tue 8/2/05															
68	Bldg 6 Interiors	Wed 8/3/05	Tue 8/2/05															
69	Bldg 6 Framework	Wed 8/24/05	Tue 8/23/05															
70	Bldg 6 Landscaping	Wed 8/17/05	Wed 8/7/05															
71	BUILDING 7	Thu 8/20/05	Thu 8/28/05															
72	Bldg 7 Foundation	Thu 8/20/05	Thu 8/16/05															
73	Bldg 7 Framing	Fri 8/17/05	Thu 8/4/05															
74	Bldg 7 Exteriors	Fri 7/15/05	Thu 8/11/05															
75	Bldg 7 MEP Roughs	Fri 7/22/05	Thu 8/11/05															
76	Bldg 7 Interiors	Fri 8/12/05	Thu 9/29/05															
77	Bldg 7 Framework	Fri 8/20/05	Thu 8/8/05															
78	Bldg 7 Landscaping	Fri 9/9/05	Fri 8/19/05															
79	BUILDING 8	Tue 8/14/05	Tue 10/11/05															
80	Bldg 8 Foundation	Tue 8/14/05	Tue 8/29/05															
81	Bldg 8 Framing	Wed 8/28/05	Tue 8/18/05															
82	Bldg 8 Exteriors	Wed 7/27/05	Tue 8/23/05															
83	Bldg 8 MEP Roughs	Wed 8/3/05	Tue 8/23/05															
84	Bldg 8 Interiors	Wed 8/24/05	Tue 10/11/05															

Project Name: Dallas Residential Construction  
 Town Home - 18 Buildings  
 Dallas, TX  
 Project Manager: [Name]  
 Date: 10/20/05  
 Page 2



## EXHIBIT "C"

14) All policies must have agreed amount endorsements to suspend any applicable coinsurance

15) The loss payable provisions of all policies must name the Bond Trustee, the Letter of Credit Provider and their respective successors and assigns as their interests may appear as lost payees. The mortgage clause (or mortgagee clause) in any applicable policy must be the standard mortgage (or mortgagee) clause without contribution and must name the Bond Trustee, the Letter of Credit Provider and their respective successors and assigns, as their interest may appear, as mortgagees. Each policy must be for a term of not less than one year. If blanket or package policies are provided the project must be listed and identifiable in each policy and there shall be a mortgage clause naming the Bond Trustee and the Letter of Credit Provider specifically applicable to the project.

## EXHIBIT "C"

1) The Subcontractor and sub-subcontractors shall procure and purchase the following Insurance from a company or companies lawfully authorized to do business in the State of Texas and which said companies are reasonably acceptable to Owner and Lender:

(a) Worker's Compensation and Employer Liability;

(b) Commercial and General Liability (including Blanket Contractual Liability Products and Completed Operations, Bodily Injury (including sickness, disease or death of any Person(s) other than Subcontractor employees) and Personal Injury and Broad form of Property Damage (ISO Form 1992 or later);

(c) Commercial Auto Liability; and

(d) Umbrella Liability

All insurance policies must be issued by an insurance carrier which has a Best's General Policy holders rating (as published in the most recent issue of Best's Key Rating Guide: Property-Casualty) of not less than A- and a financial sized category of capital V or greater (which equates to an adjusted policy holder surplus of \$10,000.00 to \$25,000.00) coverage from Lloyd's of London and Industrial Risk Insurance (IRI) is also acceptable. Companies with lesser ratings are acceptable only if there is 100% reinsurance with an acceptably rated company. The reinsurance agreement must have a total value (100%) assumption of liability endorsement. In addition, reinsurance agreements must have at least ninety (90) days prior notice of cancellation provisions.

2) Such policies, with the exception of Workers Compensation, shall name Owner, Lender, Contractor, the Bond Trustee, the Letter of Credit Provider, and their respective successors and assigns, as their interest may appear as additional insureds under all liability policies. (CG 1020 or equivalent on a primary basis) Subcontractor shall be responsible for any deductibles or self-insured retentions contained in the above policies both for itself and all additional insureds.

### 3) WORKERS COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

(a) Policy must include coverage in accordance with Workers Compensation laws of the state in which the Project is located; (b) "All States" Endorsement; (c) Employer's Liability with limits as set out in "Exhibit C" attached to Subcontract, and (d) a Waiver of Subrogation in favor of Contractor, the Owner and such other parties as may be required by Contract Documents.

(b) In the event that any employee of Subcontractor or any lower tier subcontractor shall be leased, Subcontractor shall provide an Alternate Employer Endorsement naming contract in connection with employee leasing company Workers Compensation Insurance Policy. Such policy shall contain a Waiver of Subrogation in favor of Contractor and Owner.

## EXHIBIT "C"

### 4) COMMERCIAL GENERAL LIABILITY INSURANCE

(a) Coverage must be on an occurrence basis and must be in the following minimum liability amounts:

1) Bodily Injury	\$1,000,000 each occurrence
	\$2,000,000 aggregate
2) Property Damage	\$1,000,000 each occurrence
	\$2,000,000 aggregate
3) Products and Completed Operations should be maintained for two (2) years after final payment	\$2,000,000 aggregate
4) General Aggregate Limit	\$3,000,000
5) Products and completed operations limit	\$1,000,000
6) Personal Injury Limit	\$1,000,000
7) Each Occurrence Limit	\$1,000,000

This insurance must include coverage for liabilities arising out of the Work or from Subcontractor or any of its subcontractors (at any tier) or their respective employees, agents, officers or directors (a) acts or omissions, or (b) negligence or gross negligence. Aggregate limits to apply per project.

(b) Coverage must also include contractual liability for indemnities and the contractual liability of Subcontractor under the Contract Documents.

### 5. COMMERCIAL AUTO LIABILITY INSURANCE

(a) Coverage shall include non-ownership and hired car coverage as well as owned vehicles, with minimum liability amounts as follows:

. Combined single limit for bodily injury and property damage (above owner, hired and non-owned auto (\$1,000,000)

(b) Coverage must included bodily injury, death of a person or persons, and property damage arising out of ownership, maintenance, or use of any motor vehicle, on or off the Work area or Project site.

### 6) UMBRELLA LIABILITY INSURANCE

(a) Coverage shall be maintained in the amount of \$5,000,000 (Five Million Dollars) for bodily injury and property damage

(b) Coverage, at a minimum, must be consistent with the primary liability policy (requirements following), including, but not limited to, coverage and notice provision and must be kept and maintained for the same time period as required for the applicable primary insurance.

## EXHIBIT "C"

- 7) The Subcontractor shall maintain all insurance until final completion of the Project except that completed operations coverage shall be maintained for at least two (2) years' after the date of final completion. An additional certificate evidencing continuation of coverage for completed operations will be submitted with Subcontractor' final application for payment. All applications for payment will be held and no payments made to Subcontractor until all insurance submissions are made and insurance coverage is confirmed and approved.
- 8) The Subcontractor will require each of its lower tier subcontractors to carry Commercial General Liability Insurance, Workers Compensation Insurance, Commercial Auto Liability, and Employer's Liability, together with such other insurance that may also be required of Subcontractor and will require that the insurance be furnished prior to the commencement of any Work, or entering into any contracts with said lower tier subcontractors, or approving contracts with any lower tier subcontractor, whichever is earliest. The Umbrella Insurance requirements shall not apply. SUBCONTRACTOR AGREES TO INDEMNIFY, DEFEND, AND HOLD CONTRACTOR AND OWNER HARMLESS FOR ANY FAILURE OF SUBCONTRACTOR OR ANY OF ITS LOWER TIER SUBCONTRACTORS TO OBTAIN REQUIRED INSURANCE COVERAGE.
- 9) All policies must provide for (1) at least thirty (30) days written cancellations to the Contractor, Bond Trustee, and the Letter of Credit Provider in the event of any policy reduction or cancellation for any reason other than non-payment of premium and (2) at least ten (10) written cancellation notice to the Contractor, Bond Trustee and letter of Credit Provider for cancellation due to non-payment of premium.
- 10) All such policies of insurance shall contain an endorsement where by the insurance carrier agrees to waive any rights of recovery against Contractor, the Owner, and such other parties as may be required by Contractor or the Contract Documents. Subcontractor waives all rights of recovery against Contractor, the owner and such other parties as are required: by Contractor and/or the Contract Documents for losses with scope of subcontractors.
- 11) Subcontractor shall provide Contractor, Lender, Letter of Credit Provider, and Bond Trustee with certificates of insurance prior to beginning work. The certificates must name the parties' interests, must require notice to the certificate holder of cancellation as required herein and certificate evidencing property insurance must include copies of the lender's loss payable/mortgage clause
- 12) The requiring of any and all insurance as set forth in these paragraphs, or elsewhere, is in addition to and not in anyway in substitution for all the other protection provided, under the, Subcontract, including Paragraph 2.5 (Indemnification).
- 13) No acceptance or approval of any insurance by Contractor will relieve or excuse the Subcontractor or the Surety of any bond(s) called for under the Subcontract, from any liability or obligation imposed upon either or both of them by the provisions of the Subcontract.

**HOMES AT PECAN GROVE  
SUBCONTRACTOR'S LETTER**

January 21, 2005

CharterMac and its successors and assigns  
Charter MAC Equity Issuer Trust and its successors and assigns  
625 Madison Avenue  
New York, NY 10022

Wells Fargo Bank, National Association, as trustee  
Attention: Corporate Trust Services  
MAC T5414-030  
505 Main Street, Suite 301  
Fort Worth, Texas 76102

Ladies and Gentlemen:

The undersigned ("Subcontractor") has executed an agreement (the "Subcontract") dated January 21, 2005 between Subcontractor and Odyssey Residential Construction, LP ("General Contractor") pursuant to which Subcontractor has agreed to perform the construction of a multifamily apartment complex known as "Homes at Pecan Grove" as more fully described in the Subcontract (the "Project").

Subcontractor understands that (i) the Texas Department of Housing and Community Affairs has issued or will issue its Multifamily Housing Mortgage Revenue Bonds (Homes at Pecan Grove) Series 2005 (the "Bonds"), the proceeds of which will be loaned to Chicory Court-Simpson Stuart, L.P. (the "Developer") to defray certain of the costs of acquiring and constructing the Project pursuant to a Loan Agreement dated as of January 1, 2005 (the "Loan Agreement"); (ii) that CharterMac or its designee ("Charter") has agreed to purchase the Bonds; (iv) that the General Contractor has assigned (or will assign) to the Trustee all of its right, title and interest in and to the Subcontract (the "Assignment") in order to further secure the obligations of the Developer to the Trustee.

Intending to be legally bound hereby, Subcontractor hereby covenants, represents and warrants, and agrees as follows:

1. Subcontractor (i) consents to the Assignment, and (ii) agrees that if you give notice to General Contractor that Developer is in default under the Loan Agreement, Subcontractor shall, at your request, and notwithstanding any default by the Developer under the Subcontract, continue performance on your behalf under the subcontract in accordance with the terms thereof; provided, that you pay for all services provided under the Subcontract, in accordance with the payment terms of the Subcontract. Subcontractor understands that you have no obligation to exercise your rights under the Assignment.

CharterMac  
Charter MAC Equity Issuer Trust  
Wells Fargo Bank, National Association, as trustee  
January 21, 2005  
Page 2

2. Subcontractor represents and warrants that to the best of its knowledge (i) the subcontract is in full force and effect, and (ii) neither the Subcontractor nor General Contractor is in default thereunder.

3. Subcontractor agrees that it will not terminate the Subcontract or cease to perform its work thereunder for any reason, including but not limited to the General Contractor's failure to make payments to Subcontractor, without first giving written notice to the Trustee of such intention at least thirty (30) days before taking such action.

4. Subcontractor acknowledges and agrees that it is not entitled to rely upon of the provisions of the Loan Agreement and it is not an intended third party beneficiary thereof.

5. Subcontractor agrees that you shall have no obligations or liability to subcontractor under the Subcontract or this letter unless and until you give notice to subcontractor pursuant to paragraph 1 hereof and only thereafter to the extent that subcontractor performs under the subcontract on your behalf.

6. Subject to paragraph 8 hereof, Subcontractor shall not, without Trustee's prior written consent, which may be withheld in its sole discretion, agree to the amendment or modification of the subcontract.

7. Subcontractor shall not assign its rights or obligations under the Subcontract without Trustee's prior written consent, which may be withheld in its sole discretion.

8. Subcontractor agrees that hereafter it shall not perform work that is not in accordance with the plans, drawings and specifications described in the subcontract unless Subcontractor shall have received Trustee's specific approval of such change; such approval shall be evidenced by the change order obtained by the Developer.

9. Subcontractor hereby covenants and agrees that in the event any of the proceeds of the Loan are disbursed directly to Subcontractor, it will receive and hold any such proceeds as a trust fund for the purpose of paying the costs of the labor, equipment and supplies used in constructing the Project and will apply these same first to payment of such costs before using any part thereof for any other purposes.

10. Subcontractor covenants and agrees that upon Trustee's request it shall furnish to you a current list of all persons or firms with whom subcontractor has entered into subcontracts or other agreements relating to the performance of work or furnishing of materials in connection with Project, together with a statement as to the status of each of such subcontracts or agreements and the respective amounts, if any, owed by subcontractor thereunder.

CharterMac  
Charter MAC Equity Issuer Trust  
Wells Fargo Bank, National Association, as trustee  
January 21, 2005  
Page 3

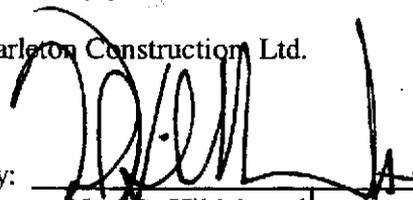
11. The officer executing this instrument on behalf of Subcontractor hereby personally certifies that he or she is authorized to do so.

12. Subcontractor represents and warrants that it has full authority under all applicable state and local laws and regulations to perform its obligations under the Subcontract in accordance with the terms thereof.

13. This letter shall be binding upon subcontractor and its successors and permitted assigns and shall inure the benefit of you and your successors and assigns.

Very truly yours,

Carleton Construction Ltd.

By: 

Name: Neal R. Hildebrand

Title: Vice President of the General Partner

EXHIBIT "E"

ALLOWANCE

Units	Price
275,128 NRSF	\$54.00 per NRSF

# Exhibit "F"

ALL LINE ITEMS ARE ALLOWANCES  
AS DIRECTED BY CLIENT

Project Name	Practicum
Location	College Ave
Estimate Number	College Construction
Date	02/2005
Location	
NRSF	275,126.00
CS	
Emergency	11/01
Units	250.00
Unit Price	1,100.00
Quantity	15.00
Quantity	22.00 Acres

CODE		\$/NRSF	\$	\$/Unit
999	Alternates/Rebates/Allowances	0.00		0.00
999.001	ALTERNATES	0.00		0.00
999.002	REBATES	0.00		0.00
999.003	ALLOWANCES	0.00		0.00
0	Conceptual Adds & Deducts	0.00		0.00
1100	Construction Manager	0.00		0.00
1101	Project Manager	0.00		0.00
1102	Field Superintendent	0.00		0.00
1103	Field Engineer	0.00		0.00
1104	Punch Carpenter	0.00		0.00
1105	Office Manager	0.00		0.00
1106	Field Secretary	0.00		0.00
1110	On-Site Supervision	1.14	315,000.00	1,260.00
1114	General Labor	0.27	75,000.00	300.00
1208	Temporary Electric Power	0.16	43,750.00	175.00
1209	Temporary Gas	0.00		0.00
1210	Temporary Water	0.00		0.00
1212	Punch Material	0.00		0.00
1213	Trash Roll-Off	0.36	100,000.00	400.00
1214	Rough Clean (Units)	0.18	49,523.04	198.09
1215	Equipment Rental	0.05	12,500.00	50.00
1216	Cold Weather Protection	0.00		0.00
1217	Rough Hardware	0.00		0.00
1218	Small Tools	0.00		0.00
1219	Temporary Storage	0.00		0.00
1220	Charitable Contribution Allowance	0.00		0.00
1221	Telephone	0.00		0.00
1222	Gas/Mileage Reimbursement	0.00		0.00
1223	Vehicles	0.00		0.00
1224	Ice/Water/Cups	0.00		0.00
1229	Miscellaneous	0.00		0.00
1235	Travel	0.00		0.00
1237	Blueprints	0.04	12,000.00	48.00
1240	Progress Photos	0.00		0.00
1255	Office Supplies	0.00		0.00
1256	Office Equipment	0.00		0.00
1305	Field Office	0.11	30,000.00	120.00
1306	Temporary Toilets	0.03	9,500.00	38.00
1310	Security	0.27	75,000.00	300.00
1313	Temporary Fence	0.00		0.00
1314	Clean-Up Subcontract	0.00		0.00
1318	Small Tools	0.05	15,000.00	60.00
1328	Signs	0.00		0.00
1334	Permits & Fees	0.00		0.00
1336	Engineering (as-builts/cost cert)	0.00		0.00
1337	Other Consultants	0.03	7,500.00	30.00
1340	Testing	0.12	33,750.00	135.00
1355	Insurance (General Liability Only)	0.16	43,788.00	175.15
1360	Reglaze	0.00		0.00
1370	Hoisting/Elevator Operator	0.00		0.00
1400	Safety	0.00		0.00
1000	General Conditions (Lump Sum)	0.00		0.00
1000	GENERAL CONDITIONS	2.99	822,344.04	3,269.24
2018	Erosion Control	0.00		0.00
2100	Site Demolition	0.00		0.00
2110	Site Preparation	0.00		0.00
2130	Utility Spoil Disposal	0.00		0.00
2200	Earthwork - Clearing & Grading	0.68	187,500.00	750.00
2214	Miscellaneous Site Work	0.14	37,500.00	150.00
2300	Structural Excavation & Backfill	0.00		0.00

# Exhibit "F"

CODE		\$/NRSF	\$	\$/Unit
2400	Soil Treatment	0.00		0.00
2450	Lime Injection	0.00		0.00
2450.01	Water Injection	0.00		0.00
2455	Lime Stabilize	0.00		0.00
2500	Cement Stabilization	0.00		0.00
2550	Finish Grading	0.07	20,000.00	80.00
2600	Concrete Paving	2.17	597,500.00	2,390.00
2606	Concrete Drive Approach	0.00		0.00
2610	Pavers & Patterns	0.00		0.00
2634	Curb & Gutter	0.00		0.00
2650	Sidewalks (Flatwork)	0.20	56,250.00	225.00
2660	Pavement Marking	0.02	6,000.00	24.00
2661	Gate Frames & Bollards	0.00		0.00
2680	Construction Staking	0.20	56,250.00	225.00
2700	On-Site Water	0.55	150,000.00	600.00
2700.01	Off-Site Water	0.00		0.00
2700.011	Water System	0.00		0.00
2700.012	Fire Protection Water	0.00		0.00
2700.02	Storm Sewer	0.50	137,500.00	550.00
2700.03	Sanitary Sewer	0.00		0.00
2700.4	Site Gas	0.00		0.00
2701	Utility Permits & Fees	0.00		0.00
2702	Utility Bond for Off-Site Work	0.00		0.00
2703	Subsurface Drainage	0.00		0.00
2704	Drainage - Downspouts	0.00		0.00
2710	Perimeter Fence	0.22	60,772.50	243.09
2710.01	Gates	0.00		0.00
2710.02	On-Site Sanitary	0.45	125,000.00	500.00
2710.03	Off-Site Sanitary	0.00		0.00
2710.04	Wood Fence	0.00		0.00
2711	Gate Entry Access Operators	0.12	32,000.00	128.00
2712	Entry Feature	0.01	3,500.00	14.00
2713	Dumpster Enclosure	0.00		0.00
2745	3rd Party Contract Fee	0.00		0.00
2750	Irrigation	0.27	75,000.00	300.00
2800	Landscaping	0.73	200,000.00	800.00
2802	Tree Trimming	0.00		0.00
2803	Tree Protection	0.00		0.00
2804	Softscape Allowance	0.00		0.00
2810	Retaining Walls (stone)	0.05	15,000.00	60.00
2812	Concrete Retaining Walls	0.00		0.00
2820	Underground Power	0.00		0.00
2825	Telephone & TV Underground	0.00		0.00
2830	Signage	0.00		0.00
2835	Picnic Equipment	0.00		0.00
2840	Flagpoles	0.00		0.00
2845	Playground	0.13	35,000.00	140.00
2855	Soccer Field	0.00		0.00
2861	Sport Courts	0.11	30,000.00	120.00
2975	Monument Sign	0.00		0.00
2800	<b>SITE WORK</b>	<b>6.60</b>	<b>1,024,772.50</b>	<b>2,299.19</b>
3001	Concrete Foundations	3.54	975,000.00	3,900.00
3003	Transformer Pads	0.00		0.00
3004	Precast Structures	0.00		0.00
3050	Cast-In-Place Concrete	0.00		0.00
3055	Precast Parking Structures	0.00		0.00
3075	Concrete Topping	0.00		0.00
3075.01	3/4" Gypcrete	0.00		0.00
3075.02	Lightweight and Gyp-Crete	0.25	70,000.00	280.00
3100	Bominite	0.00		0.00
3000	<b>CONCRETE</b>	<b>3.80</b>	<b>1,045,000.00</b>	<b>2,180.00</b>
4100	Masonry	0.00		0.00
4101	Masonry Material	2.87	790,000.00	3,160.00
4101.01	CMU/Block Walls	0.00		0.00
4101.02	Flashing	0.00		0.00
4101.03	Masonry Cleaning	0.00		0.00
4101.04	Masonry Accessories (Scaffolding, etc.)	0.00		0.00
4102	Masonry Labor	0.00		0.00
4110	Stucco and Stone	1.77	486,250.00	1,945.00
4115	Masonry & Stucco Clean-Up	0.00		0.00
4120	Stucco and Plaster	0.00		0.00

# Exhibit "F"

CODE		S/NRSF	\$	\$/Unit
4130	Plaster	0.00		0.00
4200	Stonework	0.00		0.00
4500	MASONRY	0.84	1,276,260.00	1,513.17
5500	Metal Fabrications	0.00		0.00
5505	Stairs & Rails	0.30	83,750.00	335.00
5000	STEE	0.30	83,750.00	335.00
6100	Rough Carpentry Mat'l	6.29	1,730,316.64	6,921.27
6101	Rough Carp Lbr	3.70	1,017,963.60	4,071.85
6102	Floor & Roof Trusses	2.04	560,022.64	2,240.09
6150	Interior Trim Material	0.25	70,000.00	280.00
6103	Misc. Framing Material	0.00		0.00
6104	Truss Inspection	0.00		0.00
6200	Finish Carpentry Material	0.00		0.00
6201	Finish Carpentry Labor	0.48	132,500.00	530.00
6000	WOOD & PLASTIC	12.76	3,510,802.88	14,043.22
7100	Waterproofing	0.00		0.00
7101	Waterproof Vertical Wall	0.00		0.00
7210	Insulation	0.42	115,553.76	462.22
7212	Flashing	0.06	17,000.00	68.00
7300	Shingle Roofing	0.66	181,594.48	726.38
7320	Roof Tile	0.00		0.00
7450	Standing Seam Metal Roof	0.00		0.00
7475	Siding	0.00		0.00
7500	Roofing (Mtl & Lbr)	0.00		0.00
7540	Fireproofing/Collars	0.00		0.00
7550	Flat Roofing	0.00		0.00
7600	Sheetmetal Fabrications	0.00		0.00
7655	Access Doors	0.00		0.00
7700	Roof Drainage	0.18	50,000.00	200.00
7702	Termite Control	0.04	11,250.00	45.00
7705	Roof Accessories	0.00		0.00
7000	THERMAL & MOISTURE CONTROL	1.36	375,388.24	1,507.58
8110	Door Hardware	0.15	41,250.00	165.00
8111	Exterior Doors	0.45	122,500.00	490.00
8200	Interior Doors	0.55	150,000.00	600.00
8360	Overhead Doors	0.00		0.00
8500	Attic Access Door	0.00		0.00
8505	Windows	0.41	112,500.00	450.00
8510	Metal Windows	0.00		0.00
8610	Reglazing	0.03	8,000.00	32.00
8620	Shutters (wood)	0.00		0.00
8700	Ventilated Shelving	0.14	37,500.00	150.00
8710	Finish Hardware	0.00		0.00
8715	Extras	0.14	37,500.00	150.00
8810	Glass & Glazing (mirrors)	0.05	15,000.00	60.00
8000	DOORS & WINDOWS	1.94	524,250.00	2,097.00
9100	Tape, Bed & Texture	0.84	230,000.00	920.00
9250	Drywall	2.38	654,804.64	2,619.22
9300	Ceramic Tile	0.26	72,500.00	290.00
9350	Cast Stone	0.00		0.00
9375	Club Floor Allowance	0.07	20,000.00	80.00
9380	Fireplace Surround	0.01	2,000.00	8.00
9645	Floor Covering	0.00		0.00
9650	Resilient Flooring	0.23	63,750.00	255.00
9680	Carpet	0.75	206,250.00	825.00
9700	Decorative Allowance	0.00		0.00
9800	Columns at Club Porch	0.00		0.00
9900	Paint	1.30	357,666.40	1,430.67
9950	Style Solutions Products	0.00		0.00
9000	FINISHES	5.84	1,606,974.04	6,427.88
10160	Toilet Partitions	0.00		0.00
10305	Fireplaces	0.00		0.00
10306	Club Finish	0.15	40,000.00	160.00
10552	Postal Equip	0.00		0.00
10990	Miscellaneous Hardware	0.03	7,500.00	30.00
10000	SPECIAL CONDITIONS	0.87	47,600.00	1,900.00
11452	Kitchen Appliances	0.91	250,000.00	1,000.00
11850	Parking Equipment	0.00		0.00
11851	Security Equipment	0.00		0.00
11900	Carwash Equip.	0.00		0.00
11950	Trash Compactor	0.00		0.00

# Exhibit "F"

CODE		\$/NRSF	\$	\$/Unit
11000	EQUIPMENT	0.51	250,000.00	4,000.00
12370	Residential Cabinetry	1.36	375,000.00	1,500.00
12510	Window Coverings (mini blinds)	0.09	25,000.00	100.00
12600	BURNISHINGS	0.45	400,000.00	1,800.00
13001	Clock Tower - Lbr & Mtl	0.00		0.00
13002	Traffic Signals	0.00		0.00
13850	Swimming Pools	0.33	90,000.00	360.00
13900	Chimneys	0.10	27,840.00	111.36
13976	Special Construction Allowances	0.00		0.00
13977	Ancillary Buildings	0.00		0.00
13977.01	Garages (DOORS/OPENERS ONLY)	0.44	122,200.00	488.80
13977.02	Carports	0.00		0.00
13977.03	Laundry	0.00		0.00
13977.04	Maintenance	0.00		0.00
13977.05	Mail Kiosks	0.02	6,250.00	25.00
13977.06	Gazebos	0.00		0.00
13977.07	Trellises	0.00		0.00
13000	SPECIAL CONSTRUCTION	0.45	248,290.00	471.36
14200	Elevators	0.00		0.00
14225	Trash Chutes	0.00		0.00
14250	Escalators	0.00		0.00
14000	CONVEYING SYSTEMS	0.00	0.00	0.00
15001	Plumbing	2.58	710,000.00	2,840.00
15002	Fire Service Lines	0.00		0.00
15003	Mastermeters	0.00		0.00
15010	HVAC (+ fan/dryer vents)	2.12	582,500.00	2,330.00
15011	HVAC Equipment Pads	0.00		0.00
15012	HVAC Access Doors	0.03	8,750.00	35.00
15013	Tub Repairs	0.02	6,250.00	25.00
15500	Fire Protection	0.00		0.00
16000	MECHANICAL	1.75	1,107,500.00	5,230.00
16001	Electrical (& lighting)	1.83	502,500.00	2,010.00
16001.01	Fixture Package - lighting	0.33	91,250.00	365.00
16001.02	Site Lighting	0.10	28,400.00	113.60
16002	Primary/Secondary	0.00		0.00
16003	Private Electric Meters	0.00		0.00
16010	Security (Pre-wire only)	0.09	25,000.00	100.00
16015	Fire Alarm	0.23	63,750.00	255.00
16020	Telephone/TV Prewire	0.00		0.00
16025	MATV/CATV	0.00		0.00
16000	ELECTRICAL	2.58	710,900.00	2,843.60
17000	Information Center	0.00		0.00
17000	ADDITIONAL CONSTRUCTION	0.00	0.00	0.00
	<b>SUBTOTAL</b>	<b>51.00</b>	<b>14,031,695.70</b>	<b>56,126.78</b>
	Builders Risk	0.00		0.00
	Overhead & Profit & Fee	2.58	710,500.00	2,842.00
	Sales Tax (included above)	0.00		0.00
	Performance & Payment Bond	0.41	113,500.00	454.00
	Fee (included with overhead & profit)	0.00		0.00
	Contingency	0.00		0.00
	<b>GRAND TOTAL</b>	<b>54.00</b>	<b>14,855,695.70</b>	<b>59,422.78</b>
	Adjustments			
1		0.00		0.00
2				
3				
4				
5				
		<b>54.00</b>	<b>14,855,695.70</b>	<b>59,422.78</b>