



November 12, 2014

Mr. Eric Stuckey
City Administrator – City of Franklin
109 3rd Avenue South
Franklin, TN 37064

RE: Road Impact Fee Offset Agreement COF Contract No 2014-0116; Cool Springs Blvd and Windcross Court Traffic Signal Installation (COF Project 2986)

Dear Mr. Stuckey,

Embrey Partners, Ltd has completed the construction of the traffic signal located at the intersection of Windcross Court and Cool Springs Blvd. The City of Franklin has signed off and accepted the improvements. Embrey Partners, Ltd is now requesting the reimbursement of a portion of the total costs associated with the design and construction of the signal.

Per the Road Impact Fee Offset Agreement COF Contract No 2014-0116, Embrey's eligible reimbursement is \$192,125. Per section 4 of the agreement, we are providing:

- 1) Invoice from Embrey Builders, LLC to Artessa Franklin, LLC for \$303,022.35.
- 2) Letter from Embrey Builders, LLC to Artessa Franklin, LLC acknowledging payment in full.
- 3) Final pay application from Embrey Builders, LLC to Stansell Electric including Stansell's acknowledgement (waiver of lien) that they have been paid in full the amount of \$269,353.20.
- 4) Letter from Fischbach Transportation Group, LLC to Embrey Partners, Ltd acknowledging that they have been paid in full \$8,500 for the design of the signal.
- 5) Copy of the check from Embrey Partners, Ltd to FTG, LLC (Fischbach Transportation) for \$8,500.-
- 6) Excerpts from the design contract between Embrey Partners, Ltd and FTG, LLC.
- 7) Letter from Littlejohn Engineering Associates, Inc. to Embrey Partners, Ltd. acknowledging that they have been paid in full \$2,000 for the partial boundary and topographic survey related to the signalization plan.
- 8) Fee schedule from Littlejohn Engineering Associates showing the contracted amount of \$2,000.

Please let me know if you need additional information regarding the design, construction and payment for this work.

Sincerely,

Brad D. Knolle
Senior Vice President - Development
Embrey Partners, Ltd

5/8 1 1/2 1 4/8

Approved

reimbursant shall be
for 50% cost
\$156,761.25



EMBREY

B u i l d e r s

INVOICE

DATE: November 3, 2014

INVOICE: EB14-9001

TO: Artessa Franklin LLC
1020 NE Loop 410, Suite 700
San Antonio, TX 78209

Installation of streetlight at intersection of Windcross and Cool Springs Blvd.

Contract with Stansell Electric Co., Inc.	\$269,353.20
Contractors General Requirements (7.5% of cost of work)	20,201.49
Overhead Fee (5% of cost of work)	<u>13,467.66</u>

Total Due

\$303,022.35

Please make check payable to: Embrey Builders LLC
1020 NE Loop 410, Suite 700
San Antonio, TX 78209



November 11, 2014

Brad Knolle
Senior Vice President – Development
Artesa Franklin, LLC
1020 NE Loop 410 Suite 700
San Antonio, TX 78209

RE: Payment Received for Invoice EB14-9001

Dear Brad,

This letter is to confirm that Embrey Builders, LLC has received payment in full from Artesa Franklin, LLC in the amount of \$303,022.35 for the installation of a traffic signal at the intersection of Windcross Court and Cool Springs Blvd. in Franklin, TN.

Sincerely,


Ted Emrie
President
Embrey Builders, LLC

EXHIBIT "G"

EMBREY BUILDERS, LLC
 1020 N.E. Loop 410, Suite 700 San Antonio, TX 78209
 Office (210) 210-6044 Fax (210) 824-7656



Subcontractor's Note: Application for payment must be received by noon on the 20th of the month at the jobsite office for EMBREY BUILDERS, LLC for the month payments are requested. Application for payment not received by noon on the 20th will not be included in the request by EMBREY BUILDERS, LLC for payment to the owner and thus will not be processed until the following month.

SUBCONTRACTOR'S APPLICATION FOR PAYMENT

Project Name:	Artesa at Franklin	Project Number:	EB-14
Address:	1000 Artesa Circle	Vendor Number:	14609
	Franklin, TN 37067	Contract Number:	EB14-9001
Subcontractor:	Stansell Electric Co. Inc.	Cost Code:	17.1765.01
Address:	860 Visco Dr.	Application Number:	Request for Retainage
	Nashville, TN 37210	SEC Invoice Number:	143150R1
Application Period:	Project Start to October 20, 2014		

		Office Use Only
1.	Original Subcontract Amount	\$ 265,558.20
2.	Approved Change Order <u>2</u> through <u>2</u>	\$ 3,795.00
3.	Current Subcontract Sum	\$ 269,353.20
4.	Total Work in Place (per attached schedule)	\$ 269,353.20
5.	Total Stored Materials (per attached schedule)	\$ 0.00
6.	Total Value to Date	\$ 269,353.20
7.	Total Previous Application	\$ 269,353.20
8.	Total Amount This Application	\$ 0.00
9.	5% Retainage (5% of Line 8)	\$ 0.00
10.	Payment Amount Requested - Retainage Due	\$ 13,467.66
11.	Total Retainage to Date (5% of Line 6)	\$ 0.00

WAIVER OF LIEN TO DATE FOR PREVIOUS APPLICATIONS FOR PAYMENT

The undersigned, for payments previously received and other good and valuable considerations, the receipt whereof is hereby acknowledged, does hereby waive and release all bond claims, payment claims and all liens or claim of, or right to, lien under statutes of the State of Tennessee relating to mechanics liens, with respect to above described premises, and improvements thereon, and on material, fixture apparatus or machinery furnished, and on the monies, funds or other considerations due or become due from the owner, or account labor, services, materials, fixtures, apparatus or machinery, furnished to that previous payment ending date by the undersigned for the above described premise. The undersigned further certify that amounts shown in this request for payment are correct; that work performed and materials stored are as specified for the Project and that all applicable requirements of the subcontract have been fulfilled.

Subscribed and sworn before me this 22nd day of October 2014.

Notary Public: Margaret W. Smith By: Amy Adschmidt by JB
 My Commission Expires: May 5, 2015 Title: Project Mgr

----- EMBREY BUILDERS, LLC. Approvals -----
 Project Supt. James Hill Project Manager: [Signature] Payroll: _____

THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project: Artessa Franklin
Job No: EB-14

Contract #: EB14-9001

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to Embrey Builders, LLC (person with whom siger contracted) on the property of Artessa Franklin, LLC("Owner") located at 1000 Artessa Circle, in the city of Franklin, Williamson County, Tennessee, known as Artessa Franklin,(Location) to the following extent: Traffic Signal Installation (job description) and summarized as follows:

*Executed an Original Contract in the amount of:	265,558.20
*Received Change Orders as follows:	3,795.00
Revised Contract Amount:	269,353.20
*Completed work to date on Revised Contract:	269,353.20
*Payments received through 10/20/2014 ("Completion Date")	269,353.20
*Is not owed any amounts, and no amounts have bee retained:	

The Signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statue, and any common law payment bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer as already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

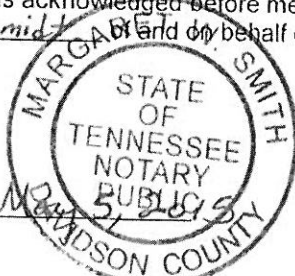
In consideration of its funding of loan proceeds to be used to pay for Work furnished by the undersigned, the undersigned hereby agrees and acknowledges for the benefit of Wells Fargo Bank ("Lender") that all mechanic's liens or rights to the same now or hereafter owned or held by the undersigned are and shall be subordinate and inferior to the lien of the deed of trust held by the Lendor on the Property.

Stansell Electric Co., Inc.
Company Name

By: Amy Goldschmidt
Name: Amy's Goldschmidt
Title: Project Manager

THE STATE OF Tennessee
COUNTY OF Davidson

This instrument was acknowledged before me on the 12th day of November
by Amy Goldschmidt and on behalf of Stansell Electric Co., Inc. a Corporation



Margaret W. Smith
Notary Public in and for the State of _____
Margaret W. Smith
Printed or Typed Name of Notary

My Commission Expires: Nov 5, 2015

THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. IT IS PROHIBITED FOR A PERSON TO REQUIRE YOU SIGN THIS DOCUMENT IF YOU HAVE NOT BEEN PAID THE PAYMENT AMOUNT SET FORTH BELOW. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project: Artessa Franklin
Job No: EB-14

Contract #: EB14-9001
Cost Code: 17.1675.01

The signer of this document has been paid and has received a progress payment in the amount of \$92,175.83 for all labor, services, equipment, or materials furnished to the property or to Embrey Builders, LLC (person with whom signer contracted) on the property of Artessa Franklin, LLC ("Owner") located at 1000 Artessa Circle, in the city of Franklin, Williamson County, Tennessee, known as Artessa Franklin, (Location) to the following extent: Traffic Signal Installation (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule or statute related to claim or payment rights for persons in signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment or materials furnished to the property or to Embrey Builders, LLC (person with whom signer contracted as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished, summarized as follows:

*Executed an Original Contract in the amount of:	265,558.20
*Received Change Orders as follows:	3,795.00
Revised Contract Amount:	269,353.20
*Completed work to date on Revised Contract:	269,353.20
*Payments received through 9/20/14 ("Prior Down Date")	177,177.37
*Current Payment: 10/20/2014 ("Current Down Date")	92,175.83
*Except for retainage, not yet due and payable:	13,467.67

The Signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

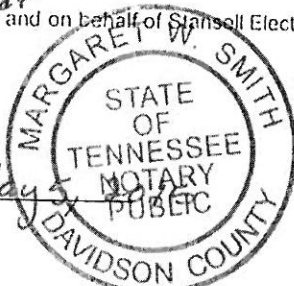
In consideration of its funding of loan proceeds to be used to pay for Work furnished by the undersigned, the undersigned hereby agrees and acknowledges for the benefit of Wells Fargo Bank ("Lender") that all mechanic's liens or rights to the same now or hereafter owned or held by the undersigned are and shall be subordinate and inferior to the lien of the deed of trust held by the Lender on the Property.

EXECUTED this 12th day of November 2014.

Stansell Electric Co., Inc.
By: Amy S. Goldschmidt
Name: Amy S. Goldschmidt
Title: Project Manager
Stansell Electric Co., Inc.
860 Visco Drive
Nashville, TN 37210

THE STATE OF TENNESSEE
COUNTY OF WILLIAMSON

This instrument was acknowledged before me on the 12th day of November
by Amy Goldschmidt of and on behalf of Stansell Electric Co., Inc. a Corporation



Margaret W. Smith
Notary Public in and for the State of
Margaret W. Smith
Printed or Typed Name of Notary

My Commission Expires: May 5

SUBCONTRACTOR DRAW SCHEDULE

COMPANY: Embury Builders, LLC
 PROJECT NAME: Franklin (Artessa)
 PROJECT NO.: EB-14
 SUBCONTRACT NO.: EB14-9001
 SUBCONTRACTOR: Stansell Electric Co., Inc
 ADDRESS: 860 Visco Drive
 CITY / STATE / ZIP: Nashville, TN 37210
 CONTACT: 615369.4944

APPLICATION NUMBER: Request for Retainage
 APPLICATION DATE: October 20, 2014
 PERIOD TO: 10/20/2014

SEC INVOICE NO: 143150RI

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G/C)	H BALANCE TO FINISH (C-G)	I RETAINAGE
			D FROM PREVIOUS APPLICATION (D + E)	E THIS PERIOD					
	<i>Description (30 characters or less)</i>	<i>Cost Code (Embury Use)</i>							
1	CONCRETE HANDICAP RAMP	\$ 7,800.00	\$ 7,800.00	\$ -	\$ -	\$ 7,800.00	100%	\$ -	\$ 390.00
2	TRAFFIC CONTROL	\$ 2,676.00	\$ 2,676.00	\$ -	\$ -	\$ 2,676.00	100%	\$ -	\$ 133.80
3	SIGNS (SIGNAL AHEAD)	\$ 352.00	\$ 352.00	\$ -	\$ -	\$ 352.00	100%	\$ -	\$ 17.60
4	SIGNS (BE PREPARED TO STOP)	\$ 241.00	\$ 241.00	\$ -	\$ -	\$ 241.00	100%	\$ -	\$ 12
5	SIGNS (WHEN FLASHING)	\$ 214.00	\$ 214.00	\$ -	\$ -	\$ 214.00	100%	\$ -	\$ 10
6	SIGNS (INTERN ILLUM ST NAME)	\$ 10,812.00	\$ 10,812.00	\$ -	\$ -	\$ 10,812.00	100%	\$ -	\$ 540.60
7	LUMINAIRES (LED)	\$ 3,564.00	\$ 3,564.00	\$ -	\$ -	\$ 3,564.00	100%	\$ -	\$ 178.20
8	PLAS PVT MKG (8" BARRIER LN)	\$ 3,250.00	\$ 3,250.00	\$ -	\$ -	\$ 3,250.00	100%	\$ -	\$ 162.50
9	PLAS PVT MKG (CHNZ STRIPE)	\$ 585.00	\$ 585.00	\$ -	\$ -	\$ 585.00	100%	\$ -	\$ 29.25
10	PLAS PVT MKG (STOP LINE)	\$ 2,200.00	\$ 2,200.00	\$ -	\$ -	\$ 2,200.00	100%	\$ -	\$ 110.00
11	PLAS PVT MKG (TURN LN ARROW)	\$ 1,173.00	\$ 1,173.00	\$ -	\$ -	\$ 1,173.00	100%	\$ -	\$ 58.65
12	PLAS PVT MKG (LONG XWALK)	\$ 13,800.00	\$ 13,800.00	\$ -	\$ -	\$ 13,800.00	100%	\$ -	\$ 690.00
13	SPRY THERM PVT MKG (4" LINE)	\$ 1,694.20	\$ 1,694.20	\$ -	\$ -	\$ 1,694.20	100%	\$ -	\$ 84.71
14	MOBILIZATION	\$ 958.00	\$ 958.00	\$ -	\$ -	\$ 958.00	100%	\$ -	\$ 47.90
15	FIBER SPLICE ENCLOSURE	\$ 700.00	\$ 700.00	\$ -	\$ -	\$ 700.00	100%	\$ -	\$ 35.00
16	FUSION SPLICE	\$ 552.00	\$ 552.00	\$ -	\$ -	\$ 552.00	100%	\$ -	\$ 27.60
17	PRETERM FO CABLE ASSEM (6FSM)	\$ 790.00	\$ 790.00	\$ -	\$ -	\$ 790.00	100%	\$ -	\$ 39.50
18	FIBER OPTIC CABLE (48FSM)	\$ 4,200.00	\$ 4,200.00	\$ -	\$ -	\$ 4,200.00	100%	\$ -	\$ 210.00
19	SIGNAL HEAD ASSEM (110)	\$ 1,454.00	\$ 1,454.00	\$ -	\$ -	\$ 1,454.00	100%	\$ -	\$ 72.70
20	SIGNAL HD ASSEM (130 W/BP)	\$ 6,853.00	\$ 6,853.00	\$ -	\$ -	\$ 6,853.00	100%	\$ -	\$ 342.65
21	SIGNAL HD ASSEM (150A2H W/BP)	\$ 1,592.00	\$ 1,592.00	\$ -	\$ -	\$ 1,592.00	100%	\$ -	\$ 79.60
22	INSTALL PULL BOX (TYPE A)	\$ 1,842.00	\$ 1,842.00	\$ -	\$ -	\$ 1,842.00	100%	\$ -	\$ 92.10
23	INSTALL PULL BOX (FO-TYP-A)	\$ 2,105.00	\$ 2,105.00	\$ -	\$ -	\$ 2,105.00	100%	\$ -	\$ 105.25
24	ELECTRICAL SVC CONNECTION	\$ 6,250.00	\$ 6,250.00	\$ -	\$ -	\$ 6,250.00	100%	\$ -	\$ 312.50
25	SERVICE CABLE (LUMIN AC)	\$ 3,840.00	\$ 3,840.00	\$ -	\$ -	\$ 3,840.00	100%	\$ -	\$ 192.00
26	SIGNAL CABLE - 3 COND	\$ 637.50	\$ 637.50	\$ -	\$ -	\$ 637.50	100%	\$ -	\$ 31.88
27	SIGNAL CABLE - 5 COND	\$ 1,525.00	\$ 1,525.00	\$ -	\$ -	\$ 1,525.00	100%	\$ -	\$ 76.25
28	SIGNAL CABLE - 7 COND	\$ 520.00	\$ 520.00	\$ -	\$ -	\$ 520.00	100%	\$ -	\$ 26.00
29	SIGNAL CABLE (DETECTOR 138)	\$ 1,260.00	\$ 1,260.00	\$ -	\$ -	\$ 1,260.00	100%	\$ -	\$ 63.00
30	CONDUIT 2" (PVC)	\$ 1,360.00	\$ 1,360.00	\$ -	\$ -	\$ 1,360.00	100%	\$ -	\$ 68.00
31	CONDUIT 2" (PVC)	\$ 7,030.00	\$ 7,030.00	\$ -	\$ -	\$ 7,030.00	100%	\$ -	\$ 351.50
32	CONDUIT 3" (PVC)	\$ 470.00	\$ 470.00	\$ -	\$ -	\$ 470.00	100%	\$ -	\$ 23.50
33	CONDUIT 3" (RGS)	\$ 8,460.00	\$ 8,460.00	\$ -	\$ -	\$ 8,460.00	100%	\$ -	\$ 423.00
34	CONDUIT 2" (DIRECT BORE)	\$ 2,100.00	\$ 2,100.00	\$ -	\$ -	\$ 2,100.00	100%	\$ -	\$ 105.00
35	CONDUIT 3" (DIRECT BORE)	\$ 5,200.00	\$ 5,200.00	\$ -	\$ -	\$ 5,200.00	100%	\$ -	\$ 260.00
36	CONDUIT 3" (DIRECT BORE)	\$ 7,280.00	\$ 7,280.00	\$ -	\$ -	\$ 7,280.00	100%	\$ -	\$ 364.00
37	VEHICLE DETECT (4-CHAN, RACK)	\$ 4,500.00	\$ 4,500.00	\$ -	\$ -	\$ 4,500.00	100%	\$ -	\$ 225.00
38	VEHICLE DETECT (OPT ACT)	\$ 1,600.00	\$ 1,600.00	\$ -	\$ -	\$ 1,600.00	100%	\$ -	\$ 80.00
39	VEHICLE DETECT (RADIO/GPS)	\$ 4,503.00	\$ 4,503.00	\$ -	\$ -	\$ 4,503.00	100%	\$ -	\$ 225.15
40	SHIELDED DETECTOR CABLE	\$ 9,715.00	\$ 9,715.00	\$ -	\$ -	\$ 9,715.00	100%	\$ -	\$ 485.75
41	SAW SLOT	\$ 3,780.00	\$ 3,780.00	\$ -	\$ -	\$ 3,780.00	100%	\$ -	\$ 189.00
42	LOOP WIRE	\$ 2,880.00	\$ 2,880.00	\$ -	\$ -	\$ 2,880.00	100%	\$ -	\$ 144.00
43	CABINET (8-PH ACTUATED)	\$ 1,202.50	\$ 1,202.50	\$ -	\$ -	\$ 1,202.50	100%	\$ -	\$ 60.13
44	8-PH ACTUATED CONTROLLER	\$ 14,340.00	\$ 14,340.00	\$ -	\$ -	\$ 14,340.00	100%	\$ -	\$ 717.00
45	PEDESTAL POLE	\$ 4,732.00	\$ 4,732.00	\$ -	\$ -	\$ 4,732.00	100%	\$ -	\$ 236.60
46		\$ 1,435.00	\$ 1,435.00	\$ -	\$ -	\$ 1,435.00	100%	\$ -	\$ 71.75

SUBCONTRACTOR DRAW SCHEDULE

COMPANY: Embrey Builders, LLC
 PROJECT NAME: Franklin (Artesa)
 PROJECT NO.: EB-14
 SUBCONTRACT NO.: EB14-9001
 SUBCONTRACTOR: Stansell Electric Co., Inc
 ADDRESS: 860 Vison Drive
 CITY / STATE / ZIP: Nashville, TN 37210
 CONTACT: 615/369-4944

APPLICATION NUMBER: Request for Retainage
 APPLICATION DATE: October 20, 2014
 PERIOD TO: 10/20/2014

SEC INVOICE NO: 143150R1

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G / C)	H BALANCE TO FINISH (C-G)	I RETAINAGE
			D FROM PREVIOUS APPLICATION (D + E)	E THIS PERIOD					
	<i>Description (30 characters or less)</i>								
	<i>Cost Code (Embrey Use)</i>								
47	CANT SIG SUPT 1 (@40)	\$ 14,367.00	\$ 14,367.00	\$ -	\$ -	\$ 14,367.00	100%	\$ -	\$ 718.35
48	CANT SIG SUPT 1 (@55 W/LUM ARM)	\$ 45,818.00	\$ 45,818.00	\$ -	\$ -	\$ 45,818.00	100%	\$ -	\$ 2,290.90
49	CANT SIG SUPT 1 (@65 W/LUM ARM)	\$ 23,836.00	\$ 23,836.00	\$ -	\$ -	\$ 23,836.00	100%	\$ -	\$ 1,191.80
50	PED PUSHBUTTON W 15" SIGN	\$ 1,974.00	\$ 1,974.00	\$ -	\$ -	\$ 1,974.00	100%	\$ -	\$ 98.77
51	COUNTDOWN PED SIGNAL	\$ 4,536.00	\$ 4,536.00	\$ -	\$ -	\$ 4,536.00	100%	\$ -	\$ 226.00
52	BATTER BACKUP PWR CONDITION	\$ 11,000.00	\$ 11,000.00	\$ -	\$ -	\$ 11,000.00	100%	\$ -	\$ 550.00
	CHANGE ORDER #1								
53	RMIS REGISTRATION COSTS	\$ 670.00	\$ 670.00	\$ -	\$ -	\$ 670.00	100%	\$ -	\$ 33.50
	CHANGE ORDER #2								
53	TREE TRIMMING	\$ 3,125.00	\$ 3,125.00	\$ -	\$ -	\$ 3,125.00	100%	\$ -	\$ 156.25
		\$ 269,353.20	\$ 269,353.20	\$ -	\$ -	\$ 269,353.20	100%	\$ -	\$ 13,467.66

F i s c h b a c h
Transportation Group, LLC

Traffic Engineering and Planning

Ms. Gillian L. Fischbach, P.E., PTOE, President

November 11, 2014

Mr. Brad Knolle
Executive Vice President-Development
Embrey Partners, Ltd.
1020 NE Loop 410, Suite 700
San Antonio, TX 78209

Dear Brad:

FTG, LLC (Fischbach Transportation Group) has been paid in full for all traffic engineering services related to the Artessa multi-family project on Windcross Court in Franklin, TN. Specifically, FTG, LLC's fees for the traffic signal design for the intersection of Cool Springs Boulevard and Windcross Court have been paid in full.

Sincerely,

Gillian L. Fischbach, P.E., PTOE

Ms. Gillian L. Fischbach, P.E., PTOE
President

OPERATIONAL ASSETS LTD

DATE	INVOICE NO	DESCRIPTION	INVOICE AMOUNT	DEDUCTION	BALANCE		
1/06/14	014946	#10529 TRAFFIC CONSULT	8500.00	.00	8500.00		
CHECK DATE	2/13/14	CHECK NUMBER	1445	TOTAL >	8500.00	.00	8500.00

PLEASE DETACH AND RETAIN FOR YOUR RECORDS

TAC (TV) SHARONH CCB3CBE1DBFAE04CB-4E 2/12/2014 11:34:51 1445 8500 00

OPERATIONAL ASSETS LTD

1020 NE Loop 410, Suite 700
San Antonio, TX 78209

BBVA Compass Bank
200 Concord Plaza
San Antonio, TX 78216

DATE CHECK NO. AMOUNT
February 13, 2014 1445 \$*****8,500.00

Pay: *****Eight thousand five hundred dollars and no cents



Pink-Invoice File Copy

** VOID * VOID * VOID **

PAY TO THE ORDER OF FTG, LLC
P.O. Box 682736
Franklin, TN 37068

**** NOT NEGOTIABLE ****

F i s c h b a c h
Transportation Group, Inc.

Traffic Engineering and Planning

Ms. Gillian L. Fischbach, P.E., PTOE, President

January 6, 2014

Mr. Brad Knolle
Senior Vice President - Development
Embrey Partners, Ltd.
1020 NE Loop 410, Suite 700
San Antonio, TX 78209

Invoice for Traffic and Transportation Consulting Services
The Artessa Multi-Family Development
Windcross Court and Jordan Road
Fischbach Transportation Group Project Number 10529

Services (October 2013 – January 2014)	TOTAL AMOUNT DUE
Preparation of Traffic Signal Installation Plans	\$8,500.00

The current amount due is payable upon receipt. Please make check payable to:

FTG, LLC
P.O. Box 682736
Franklin, TN 37068

I have enjoyed working on this project, and I look forward to working with you in the future. Please let me know if I can help you with any other traffic and transportation engineering and planning needs.

Approved by:	<i>[Signature]</i>
JOB:	1208
Date:	1/30/14
Cost Code:	50.9019.01

JAN 23 2014
PO Box 682736

Franklin, TN 37068

(615)771-8022 phone

Gillian@FTGtraffic.com

Attachment C - Compensation

The fee for completing the scope of services for the proposed signal design will be a lump sum amount of **\$8,500.00**. This fee is based on the estimated time and hourly rates shown below. Significant changes to the proposed scope of services will be considered additional services and billed at a rate of \$125.00 per hour.

Services	Hours	Rate	Fee
Prepare Signal Installation Plans (engineering time)	40	\$125.00	\$5,000.00
Coordinate with the City	8	\$125.00	\$1,000.00
Project Management	20	\$125.00	\$2,500.00
GRAND TOTAL			\$8,500.00



November 11, 2014

Mr. Brad Knolle
Embrey Partners, Ltd.
1020 NE Loop 410, Suite 700
San Antonio, TX 78209

Dear Mr. Knolle:

This letter serves as confirmation that Littlejohn Engineering Associates, Inc. has received payment in full for the Partial Boundary and Topographic Survey related to the Signalization Plan at the Artessa Apartment Site in Franklin, TN.

Should you have any questions regarding this matter, I can be reached at 615-324-6988.

Sincerely,

LITTLEJOHN ENGINEERING ASSOCIATES, INC.


Marshall Gregory
Staff Accountant

1935 21ST AVENUE SOUTH, NASHVILLE, TENNESSEE 37212
T 615.385.4144 F 615.385.4020

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Health and Safety
Economic Development



LITTLEJOHN ENGINEERING ASSOCIATES

Tree Location Survey

The Consultant will provide locations of 14" and larger trees in the Incompatible Use Buffer Zone located along the southern boundary being approximately 50'x780' as shown on the Development Plan. All trees shall be tagged in the field with the corresponding number on the tree survey provided on the drawing.

Partial Boundary & Topographic Survey Required for Signalization Plan

The Consultant will provide a Partial Boundary and Topographic Survey to the Minimum Standard Detail Requirements listed in the Tennessee Standards of Practice for Land Surveying. Said survey will serve as a basis for the Signalization plans (by others) at the intersection of Cool Springs Blvd. and Windcross Ct.

Partial Boundary & Topographic Survey Required for Offsite Sidewalk Plan

The Consultant will provide a Partial Boundary and Topographic Survey to the Minimum Standard Detail Requirements listed in the Tennessee Standards of Practice for Land Surveying, including location of all trees greater than 12" diameter within the scope area. Said survey will serve as a basis for the Offsite Sidewalk plans from the proposed development, along Jordan Road, to the intersection with McEwen Drive.

Offsite Sidewalk Infrastructure Plans

The Consultant will provide a construction document set detailing the routing of a proposed sidewalk from the proposed development to McEwen Drive (approximately 800 linear feet). Said plan will identify the proposed layout, proposed grading, necessary erosion prevention and sediment control devices, identify necessary offsite easements, and provide construction details. This scope includes providing metes & bounds descriptions of the offsite easements, but does not include any easement acquisition services.

Our fees for the professional services described herein are estimated as follows:

• Site Plan Submittal Documents	\$29,500
• Storm Water Detention/Water Quality Analysis Design and Permitting	\$ 4,800
• Detailed Hardscape Design Documents.....	\$ 6,500
• Post Planning Commission Submittals.....	\$14,800
• Construction Admin and Meeting/Coordination Services (hourly estimate)	(\$22,000)
• Record Documents & Bond Release Requests.....	\$ 4,800
• Consolidation Plat	\$ 6,900
• Detailed Stormwater Detention Design.....	\$10,000
• Tree Location Survey	\$ 2,400
* Partial Boundary & Topographic Survey – Signalization Plan	\$ 2,000 *
• Partial Boundary & Topographic Survey – Offsite Sidewalk Plan.....	\$ 3,600
• Offsite Sidewalk Infrastructure Plans.....	\$ 9,500

Approximate Total = \$116,800

Excluded from the above fees shall be all reimbursable expenses incurred on the project's behalf, including printing, plotting, reproduction, postage, long distance telephone, travel, and express mail and courier services. Reimbursable expenses will be billed at a cost plus fifteen (15) percent. We will bill monthly for all expenses incurred on the project's behalf. Unpaid invoices after 30 days will accrue service charges at 1 ½% per month and will also include any costs of collection and reasonable attorney's fees.

EXECUTION
VERSION (2)

**GUARANTEED MAXIMUM PRICE
CONSTRUCTION CONTRACT**

ARTESSA FRANKLIN, LLC

("OWNER")

AND

EMBREY BUILDERS, LLC

("CONTRACTOR")

*** * ***

THE ARTESSA

FRANKLIN, TENNESSEE

MARCH 31, 2014

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Exhibits:

"A"	Property Description
"B"	Description of Plans and Specifications
"C"	Progress Schedule for the Work
"D"	Schedule of Values
"E"	Schedule of Allowance Items
"F"	Schedule of Qualifications
"G"	Schedule of Exclusions
"H"	Schedule of Alternates

GUARANTEED MAXIMUM PRICE CONSTRUCTION CONTRACT

This GUARANTEED MAXIMUM PRICE CONSTRUCTION CONTRACT (this "Contract") is made as of March 31, 2014, by and between ARTESSA FRANKLIN, LLC, a Delaware limited liability company ("Owner"), and EMBREY BUILDERS, LLC, a Texas limited liability company ("Contractor"), for the purpose of evidencing their agreements as hereinafter set forth.

1. Scope of the Work. Except as hereinafter expressly provided, Contractor shall perform all of the work (the "Work") required for the construction of a multi-family residential apartment complex containing at least 249 units and ancillary parking and other facilities to be known as "The Artessa" (the "Project"), and to be located on certain real estate located in the City of Franklin, Williamson County, Tennessee, which is more particularly described in Exhibit "A" which is attached hereto and made a part hereof for all purposes (the "Property"), in a good and workmanlike manner and in accordance with the Contract Documents (as defined below), including the plans and specifications (the "Plans and Specifications") for the Project, consisting of architectural plans and specifications prepared by Beeler Guest Owens Architects ("Architect"), and engineering plans and specifications prepared by Littlejohn Engineering Associates, Inc. ("Engineer"), which Plans and Specifications are more particularly described in Exhibit "B" which is attached hereto and made a part hereof for all purposes. The Plans and Specifications are subject to the qualifications set forth in the "Schedule of Allowances" (herein so called) attached hereto as Exhibit "E" and made a part hereof for all purposes, the "Schedule of Qualifications" (herein so called) attached hereto as Exhibit "F" and made a part hereof for all purposes, the "Schedule of Exclusions" (herein so called) attached hereto as Exhibit "G" and made a part hereof for all purposes and the "Schedule of Alternates" (herein so called) attached hereto as Exhibit "H" and made a part hereof for all purposes. The term "Contract Documents," which together constitute the Contract, means this Guaranteed Maximum Price Construction Contract, the Plans and Specifications and all exhibits hereto, as the foregoing may be modified as provided herein.

2. Work Progress. Contractor hereby represents and warrants that the following provisions are true as of the date hereof and agrees that they shall be true at any time prior to Final Completion:

(a) The Work to be performed under this Contract (i) shall be commenced within twenty (20) days after the occurrence of all of the following events: (A) this Contract shall have been fully-executed by the parties; (B) Owner shall have delivered to Contractor the "For Construction Plans" from the Architect, Engineer and Owner's other design consultants; (C) the Construction Loan Documents (as hereinafter defined) shall have been fully executed by Owner and the Construction Lender (as hereinafter defined); (D) the permit for the site work for the Project shall have been issued by the City of Franklin; (E) Owner shall have given Contractor a notice to proceed (the "Notice to Proceed"); and (F) the deed of trust securing the Construction Loan (as hereinafter defined) shall have been recorded in the appropriate public records; and (ii) shall be

diligently prosecuted thereafter. Contractor shall achieve Substantial Completion (as hereinafter defined) of the Work on or before the date (the "Scheduled Completion Date") which is twenty-six (26) months after the date of commencement of construction, subject to extension as hereinafter provided. Time is of the essence in this Contract.

(b) Contractor agrees to supply materials, labor and equipment as necessary to commence each portion of the Work at a time and in a manner which will allow for Substantial Completion of the entire Project by the Scheduled Completion Date and all materials and equipment furnished under the Contract will be of good quality and new unless expressly provided for herein or in the Plans and Specifications. Contractor shall provide sufficient and properly skilled workers, either directly or through subcontractors, to perform the Work in accordance with the provisions of this Contract. Contractor shall diligently pursue the completion of each portion of the Work, and coordinate the Work of subcontractors with that being done on the Project by Contractor and other subcontractors so that any such Work shall not be delayed or impaired by any act or omission of an act by any subcontractor or Contractor. Contractor shall have complete control of the premises on which Work is to be performed and, in general, all matters relating to the timely and orderly conduct of the Work on the premises, but Owner shall have the right to decide the time or order in which the various portions of the Work shall be installed or the priority of the Work of subcontractors. The initial schedule for construction which has been approved by Owner is set forth in Exhibit "C" which is attached hereto and made a part hereof for all purposes.

(c) Contractor will maintain a coordinated Progress Schedule of the Work to be accomplished on the Project and shall notify Owner of such schedule and any changes thereto that affect the date of Substantial Completion within ten (10) working days after the establishment of the schedule or any such change. This Paragraph 2(c) shall also cover Change Orders (as defined in Paragraph 8) for extra Work.

(d) In the event that Contractor is unable to accomplish Substantial Completion of the Work by the Scheduled Completion Date and such delay is caused by reason of strikes, riots, acts of God, rain, unpredictable shortages of labor or materials, war, or governmental laws, regulations or restrictions (other than violations thereof by the Contractor), or failure of the Construction Lender to fund the Construction Loan as required under the Construction Loan Documents, or any other cause beyond the control of Contractor ("Force Majeure"), then the period for Substantial Completion of the Work and the Scheduled Completion Date shall be extended to such extent as may be necessary to allow for the delays caused by such Force Majeure not to exceed 60 days (or such longer period of time as may be permitted under the Construction Loan Documents) beyond the Scheduled Completion Date. Contractor shall provide Owner with copies of the daily job reports for the Work and a monthly recapitulation, by month and on a cumulative basis, showing the number of days of Force Majeure delays theretofore experienced within the meaning of the foregoing provision.

(e) Contractor agrees that, in the event that Substantial Completion of the Work covered by this Contract is not accomplished within the time called for herein

(including extensions thereof permitted under Paragraph 2(d) hereof), and such delay was not caused by a failure by Owner to perform Owner's obligations hereunder, then Owner shall be entitled to retain from the amounts otherwise to be paid to Contractor hereunder the sum of Five Hundred and No/100 Dollars (\$500.00) for each working day beyond such specified date which is required in order to accomplish Substantial Completion of the Work. The parties acknowledge and agree that the actual damages Owner will incur as a result of Contractor's failure to complete the Work within the specified time are presently indeterminable or difficult to measure and that the specified amount of liquidated damages are a reasonable estimate of the actual damages which Owner will sustain per day upon failure of Contractor to complete the Work within the specified time, and no portion of such sum is to be construed as a penalty, in any sense. The retention of such sum as liquidated damages shall be the sole remedy of Owner for damages arising from any such delay in accomplishing Substantial Completion.

3. Payments and Exceptions. Subject to the other provisions of this Contract, payments by Owner to Contractor for the Work shall be made in accordance with the following provisions:

(a) Owner shall reimburse Contractor in an amount not exceeding \$29,147,970 (the "Contract Sum") (which includes a contingency amount of \$848,970) for the actual Cost of the Work to be borne by Contractor in accordance with this Contract. Such reimbursement is not available for and is in addition to the compensation to be paid to Contractor as specified in Paragraph 3(b). The Contract Sum shall be paid in accordance with the "Schedule of Values" that is attached hereto as Exhibit "D" and made a part hereof by reference for all purposes.

(b) Contractor shall be entitled to receive compensation for Contractor's services under this Contract in accordance with the following provisions. Owner shall pay Contractor a fixed fee (the "General Contractor's Fee") for the Work in the amount of \$1,457,398, payable as the Work progresses, as specified in Paragraph 3(d), with the amount of such General Contractor's Fee which is payable at the time of each payment of a portion of the Contract Sum under Paragraph 3(d) being an amount which is equal to the product of multiplying the total General Contractor's Fee by a fraction, the numerator of which is the amount of the advance for the Cost of the Work being made at that time and the denominator of which is the Contract Sum. Any portion of the General Contractor's Fee which has not been previously paid shall be paid by Owner to Contractor upon Final Completion (as hereinafter defined).

(c) In addition to terms which are defined elsewhere in this Contract, the terms specified below shall have the following meanings for purposes of this Contract:

(1) "Actual Hard Costs" means the Cost of the Work actually paid or incurred through Completion for all labor and materials used in the construction of the Project, including the General Contractor's Fee.

(2) "Allowance Items" means the categories of the Cost of the Work which are set forth in Exhibit "E" which is attached hereto and made a part

hereof for all purposes, it being understood and agreed that the actual amount to be expended for the Allowance Items shall be determined by Owner in a manner which is substantially consistent with the Work contemplated in the Plans and Specifications and with the concurrence of Contractor, with such concurrence not to be unreasonably withheld or delayed.

(3) "Company Agreement" shall mean that certain Amended and Restated Limited Liability Company Agreement of Owner dated March 27, 2014, between Managing Member and Investor Member.

(4) "Construction Lender" shall mean Wells Fargo Bank, N.A., a national banking association.

(5) "Construction Loan" shall mean that certain loan from Construction Lender to Owner in the original principal amount of \$31,300,463 which is evidenced by a promissory note in such amount from Owner to Construction Lender dated on or about the day immediately preceding the date of this Contract and is secured by the documents contemplated in such promissory note.

(6) "Construction Loan Documents" shall mean the documents evidencing and securing the Construction Loan.

(7) "Cost of the Work" shall mean costs necessarily incurred by the Contractor in good faith and in the proper performance of the Work (including any reserve established pursuant to Paragraph 5(b) hereof) which are within the Guaranteed Maximum Price. It is understood and agreed that Contractor may use cost savings and the contingency amount which is included in the Contract Sum for any reason within the Plans and Specifications and the Work and subject to compliance with the requirements of Owner's Construction Lender and the terms of the Company Agreement.

(8) "Exclusions" means the information set forth in Exhibit "G" which is attached hereto and incorporated herein by reference for all purposes.

(9) "Final Completion" means the first date by which all of the following shall have occurred: (i) Substantial Completion shall have occurred; (ii) the Contractor shall have executed a certificate of substantial completion for the Project in accordance with Paragraph 14 hereof; (iii) all contractors, subcontractors, suppliers, architects, and engineers who performed work for the Project shall have been paid in full and all liens arising from the acquisition and construction of the Project (other than liens securing the Owner's Construction Loan, if any, and liens of incidental suppliers) shall have been satisfied except for any liens (or claims which with the passage of time or notice or both could mature into liens) which are being contested by Owner or Contractor that have been bonded or otherwise secured in a manner reasonably satisfactory to Owner and Owner's counsel; and (iv) the requirements of Owner's Construction Lender for

disbursement of the final construction draw which are within Contractor's control shall have been satisfied, including, if required by the Construction Lender, the execution of a certificate of substantial completion by the Architect.

(10) "Guaranteed Maximum Price" shall mean an amount equal to the sum of the Contract Sum specified above (including contingency amount) and the General Contractor's Fee specified above, as adjusted by Change Orders approved in the manner herein prescribed.

(11) "Improvements" shall mean all of the improvements contemplated in the Plans and Specifications.

(12) "Inspector" means AECC, Inc., 11931 Wickchester, Suite 401, Houston, Texas, 77043.

(13) "Investor Member" shall mean NW-Windcross, LLC, an Ohio limited liability company.

(14) "Managing Member" shall mean Artesa Windcross, LLC, a Texas limited liability company.

(15) "Material Subcontract" has the meaning assigned to such term in Paragraph 17 hereof.

(16) "Material Subcontractor" shall mean a subcontractor which has or will have a Material Subcontract with Contractor.

(17) "Qualifications" means the matters set forth in Exhibit "F" which is attached hereto and incorporated herein as a part hereof by reference for all purposes.

(18) "Substantial Completion" means the first date by which the Work is substantially complete so that Owner can occupy or utilize the Project for its intended use and by which all necessary permits and approvals for operation of the Project, including but not limited to temporary or final certificates of occupancy for all apartment units in the Project, shall have been issued by the applicable governmental authority or other applicable person.

(d) Payments shall be made to the Contractor monthly (or semi-monthly for certain labor intensive subcontract trades such as framing, trusses, steel or drywall) as Contractor may request pursuant to Applications for Payment submitted by Contractor which comply with the requirements of the Construction Lender and are otherwise in accordance with the following provisions:

(1) Contractor shall, between the 1st and 3rd business days of each month (or between the 13th and 17th calendar days of each month with respect to mid-month applications), deliver simultaneously to Owner and Inspector an

Application and Certificate for Payment duly executed by Contractor showing all moneys paid or costs incurred by Contractor on account of the Cost of the Work during the prior month (or semi-monthly period, as applicable), for which Contractor is to be reimbursed hereunder, and the amount of the General Contractor's Fee payable for such month with each monthly advance. Within ten (10) business days after receipt of each such Application for Payment from Contractor (or such other period, if any, as shall be specified for receipt of advances by Owner from its Construction Lender), Owner shall remit payment to Contractor of the amount due based upon the Application for Payment.

(2) All progress payments are to be made at such place and at such time as herein provided or as Contractor from time to time may reasonably designate.

(3) All Applications for Payment are to be accompanied by all documents required by this Contract or reasonably requested by Owner's Construction Lender, and the submission of all such documents shall be a condition to the obligation of Owner to make progress payments to Contractor pursuant to Applications for Payment submitted by Contractor.

(4) Subject to the provisions of Paragraph 3(d)(1), above, progress payments of the Cost of the Work and the General Contractor's Fee shall be made as herein provided pursuant to Applications for Payment submitted by Contractor for the Work performed and materials stored at the Project or at some other location approved by Owner and Construction Lender subsequent to the last day of the preceding period for which the immediately preceding Application for Payment shall have been submitted.

(5) Subject to the provisions of Paragraph 3(d)(1), above, final payment, including the remaining balance of the General Contractor's Fee and all remaining retainage then being held by Owner, shall be made upon the Final Completion of the Work.

Notwithstanding any provision of this Paragraph 3 to the contrary, Owner may withhold from any payment the sum required by the provisions hereof for retainage, with such retainage to be released by Owner to Contractor as is herein provided. No amount shall be withheld as retainage hereunder for equipment, materials or supplies purchased by Contractor or with respect to disbursements to Contractor for general conditions or for the General Contractor's Fee. With respect to subcontracts, except as set forth below, retainage of five percent (5%) of the amount due under each subcontract shall be withheld until thirty (30) days after completion of the portion of the Work subject to such subcontract and satisfaction of the applicable conditions imposed by Owner's Construction Lender, whereupon the amount theretofore withheld as retainage on such subcontract shall be released to Contractor. No retainage shall be withheld on amounts expended by subcontractors for lumber, trusses, steel or drywall. Retainage shall be withheld on amounts expended on materials by subcontractors for doors/trim and

roofing materials, but such retainage shall be released to Contractor for the relevant subcontractor monthly as such materials are actually installed on the Project.

(e) In the event Owner disputes any amount set forth in an Application for Payment or is of the opinion that the Work is not being completed substantially in accordance with the Plans and Specifications or in a good and workmanlike manner, the following provisions shall be applicable:

(1) If the matter involves, or is alleged to involve, a material variation from the Plans and Specifications, a material structural defect, defective material, defective workmanship or a violation of an ordinance or regulation of the City of Franklin or any other applicable laws, Owner shall notify Contractor of same by telephone and as soon as possible thereafter send to Contractor by facsimile transmission and by first-class mail, postage prepaid, a list of said exceptions, hereinafter called "Inspection Exceptions". Upon receipt of telephone notification of the Inspection Exceptions, Contractor, not later than the next succeeding business day, shall meet with Owner and endeavor to resolve the Inspection Exceptions with Owner. In the event that: (A) Contractor agrees that there are Inspection Exceptions, and Owner and Contractor are able to agree as to the extent of the Inspection Exceptions and the manner of resolving same, then Owner and Contractor shall prepare and sign a memorandum stating the Inspection Exceptions and the actions to be taken by Contractor to correct the same; or (B) Contractor does not agree that there are Inspection Exceptions and fails to so convince Owner, or Contractor and Owner agree that there are Inspection Exceptions but are unable to agree upon the extent of the Inspection Exceptions or the course(s) of action to be taken to correct such Inspection Exceptions, then Owner and Contractor shall prepare and sign a memorandum stating the matters on which they are able to agree, if any, and the Inspection Exceptions and/or course(s) of action to be taken to correct same and the Inspection Exceptions on which Owner and Contractor are unable to agree shall be submitted to arbitration as provided in Paragraph 3(e)(3) hereof. As used herein, a "material" variation or structural defect shall be a variation or defect that: (i) violates any leases; (ii) results in a breach of any applicable insurance requirements; (iii) violates any applicable safety standards; (iv) prevents or materially detracts from the use of the property for its intended purpose; or (v) the reasonable cost of correction exceeds \$25,000.00 individually or \$100,000.00 in the aggregate, regardless of the dollar amount of each individual item comprising the total.

(2) In the event Owner does not agree with the amount of an Application for Payment, it shall give Contractor telephone notification of the items and the amounts it disputes, if any, hereinafter called "Draw Request Exceptions", within three (3) days after receipt thereof; and within five (5) days after receipt of such Application for Payment, it shall send to Contractor a list of the Draw Request Exceptions by facsimile transmission and by first-class mail, postage prepaid. Upon receipt of telephone notification of Owner's Draw Request

Exceptions, Contractor shall endeavor to resolve such exceptions with Owner. In the event that: (A) Contractor and Owner are able to agree about the amount of the Draw Request Exceptions, Contractor and Owner shall prepare and sign a memorandum stating the Draw Request Exceptions and the agreed amount thereof, and a revised Application for Payment shall reflect such amendment; or (B) Contractor and Owner are unable to agree that there are Draw Request Exceptions or are unable to agree upon the amount thereof, then such matter shall be submitted to arbitration as provided in Paragraph 3(e)(3) hereof; provided, however, that, in the event that a Draw Request Exception is not resolved within 20 days after the date submitted to arbitration, the amount of the Draw Request Exception in dispute shall be deducted from the Application for Payment submitted to the Owner subject to later adjustment, if necessary, when the dispute is resolved.

(3) In the event Contractor and Owner are unable to resolve any Inspection Exceptions or Draw Request Exceptions to their satisfaction pursuant to subparagraphs (e)(1) or (e)(2) above, as applicable, within 20 days after submission by Owner to Contractor, the same shall be submitted to arbitration in accordance with the following terms and conditions:

(A) Contractor shall name one arbitrator and Owner shall name one arbitrator, each one of which shall have not less than five (5) years' experience in the construction of apartment complexes in Tennessee, and Contractor shall send to both arbitrators and Owner a copy of the Inspection Exceptions or a copy of the Application for Payment and Draw Request Exceptions, as the case may be.

(B) Within two (2) business days after an Inspection Exception is received by the arbitrators and within three (3) business days after a Draw Request Exception is received by the arbitrators, they shall render a decision in writing specifying in detail any course of action to be taken by Contractor to correct any Inspection Exceptions and/or the manner of resolving any Draw Request Exceptions. In the event the two arbitrators are unable to agree, they shall select a third arbitrator, and the decision in which any two arbitrators concur shall in all cases be binding on both Contractor and Owner. The arbitrators shall notify both Contractor and Owner of their decision by sending the complete text thereof to each party by facsimile transmission on the date rendered.

(C) In the case of an Inspection Exception, it is agreed that if the arbitrators rule: (i) that any matter excepted to by Owner is not a valid exception, such exception shall be considered waived; or (ii) that any matter excepted to by Owner is a valid exception, such exception shall be corrected forthwith by Contractor at Contractor's expense to the extent that the cost thereof would cause the Cost of the Work to exceed the Guaranteed Maximum Price.

(D) In the case of a Draw Request Exception, it is agreed that if the arbitrators rule: (i) that the Application for Payment, as submitted, is correct, the Draw Request Exception shall be considered waived; and, if previously deducted from an Application for Payment, the deducted amount shall be added to the next Application for Payment; or (ii) that any of the items and amounts excepted to are proper exceptions, Contractor's objections to said Draw Request Exceptions shall be considered waived and unless theretofore deducted from an Application for Payment, the amount excepted to as determined shall be deducted from the next Application for Payment submitted by Contractor to Owner.

(E) Each party shall pay the fees and expenses of the arbitrator appointed by such party. The fees and expenses of the third arbitrator, if any, in connection with each arbitration shall be paid by Contractor in the event the arbitrators uphold all of the Inspection Exceptions or all of the Draw Request Exceptions, and by Owner if the arbitrators waive all of the Inspection Exceptions or all of the Draw Request Exceptions, as the case may be. In the event the exceptions are upheld in part and disallowed in part by the arbitrators, said fees and expenses of the third arbitrator shall be paid by Contractor and Owner in inverse proportion to the allocations made by the arbitrators with respect to the exceptions.

(F) Pending the arbitrators' decisions of any Inspection Exceptions, construction of the Project shall be halted to the extent that the parties agree that continuation of such construction might adversely affect the correction of the Inspection Exceptions or materially increase the cost of such correction. If the parties disagree as to such matter, then any party electing to proceed with construction under such circumstances shall be responsible for any additional costs incurred in order to correct such matter that are caused by such decision to proceed with the Work before such Inspection Exception is resolved.

(f) Contractor acknowledges that amounts advanced to Contractor by Owner under this Contract will be trust funds under the applicable provisions of Tennessee law and agrees to comply with applicable law in handling and disbursing such funds.

4. Sales Taxes. The parties agree that this Contract shall be subject to the following provisions, any other provisions hereof to the contrary notwithstanding:

(a) The parties hereby agree that Contractor and the subcontractors shall be liable and responsible for all sales taxes incurred in connection with the purchase of materials physically incorporated into the Work pursuant to the terms and provisions of this Contract and, where appropriate, any subcontract or sub-subcontract entered into by Contractor or its subcontractors pursuant hereto. Such sales taxes shall be part of the Cost of the Work for which Contractor is entitled to be reimbursed under Paragraph 3 hereof.

(b) The term "sales taxes", as used in this Paragraph 4, shall mean all state sales, excise or use taxes, any applicable city sales, excise or use taxes and any applicable metropolitan transit authority taxes and regional transportation authority taxes.

5. Contractor's Warranties. Owner and Contractor hereby agree that the following provisions shall be applicable with respect to warranties concerning the Work:

(a) Contractor shall, before requesting final payment of the General Contractor's Fee, deliver to Owner all manufacturers' and suppliers' equipment warranties required by the Plans and Specifications and assign to Owner all warranties provided by Contractor's subcontractors. Any such warranties shall be assigned to Owner by Contractor without recourse to Contractor for performance of such warranties by such subcontractors and subject to Contractor's retention of the right to have access to such warranties with respect to any matters which are also covered by Contractor's warranty to Owner.

(b) Contractor, in signing this Contract, hereby agrees that if, within one year after the date upon which Substantial Completion shall have been achieved with respect to each building comprising a portion of the Project or within one year after the date upon which any other discrete portion of the Work shall have reached Substantial Completion, any of the materials or workmanship in connection with the construction of such building or other discrete portion of the Work are found to be defective or not in substantial compliance with the Plans and Specifications, Contractor shall, at its own expense (except as hereinafter set forth), promptly correct the same. In addition, Contractor shall, at its own expense (except as hereinafter set forth), accomplish any repair or replacement of adjacent materials or construction which may be damaged due to the failure of Contractor's material or construction and/or damaged as a result of the replacement or repair thereof. The foregoing provisions to the contrary notwithstanding, it is understood and agreed by the parties that an amount equal to the Warranty Reserve (as hereinafter defined) shall be reserved for reimbursement to Contractor as and when required for the purpose of defraying warranty costs to the extent incurred pursuant to the foregoing provisions. Any costs for such warranty work in excess of the Warranty Reserve (to the extent there is a Warranty Reserve) or resulting from the gross negligence, recklessness or willful misconduct of Contractor or its employees shall be borne by Contractor. For purposes of the foregoing provisions, the term "Warranty Reserve" shall mean an amount equal to the amount by which the Guaranteed Maximum Price exceeds the Actual Hard Costs incurred by the Owner through Substantial Completion of the Work; provided, however, the parties acknowledge that the Warranty Reserve shall not exceed Five Hundred Thousand and No/100 Dollars (\$500,000). Disbursements for which Contractor is entitled to reimbursement from the Warranty Reserve will be funded from draws under the Construction Loan to the extent permitted by the Construction Lender. Any such reimbursement amounts for which funding is not available under the Construction Loan shall be deemed to be non-interest bearing loans from Contractor to Owner that will be paid out of the first funds available therefor from the operation, sale or refinancing of the Project.

(c) The foregoing warranties by Contractor shall be in addition to of any and all other warranties, express or implied, by Contractor in connection with the Work described in this Contract; provided, however, such warranties shall be limited to that period of time when Owner and/or its affiliates are the fee simple owners of the Project.

6. Investigation. Contractor shall become thoroughly familiar with the provisions of this Contract and the Plans and Specifications, as well as the building site and conditions affecting the Work and all applicable building codes, rules, regulations and ordinances relating to building or site specifications. Except for the use of the contingency amount which is included in the Contract Sum, no allowance will subsequently be made on behalf of Contractor for errors due to Contractor's negligence in failing to become acquainted with this Contract, the Plans and Specifications, the site conditions or any applicable building codes, rules, regulations and ordinances relating to building or site specifications before starting Work; provided, however, the contingency amount shall not be used for errors resulting from the gross negligence, recklessness or willful misconduct of Contractor or its employees and such costs shall be at their sole cost and expense.

7. Indemnities and Insurance. The Contractor hereby agrees to provide indemnities and insurance in connection with the Work in accordance with the following provisions:

(a) Contractor shall agree and shall cause all of Contractor's subcontractors to agree, in writing, to protect, indemnify and hold Owner, its partners, officers, agents, employees, successors and assigns free and harmless from and against any and all claims, demands and causes of action of every kind and character (including the amounts of judgments, penalties, interest, court costs and legal fees incurred by Owner in defense of same) arising in favor of governmental agencies or any and all other third parties whomsoever (including employees of Contractor or any subcontractor or anyone directly or indirectly employed by either of them) on account of taxes, claims, debts, bodily injuries, death, damage to property or Environmental Condition (as hereinafter defined), occurring in or in any way incident to, in connection with, or arising out of the performance of this Contract or the Work to be performed hereunder or under any subcontract, or on account of or incident to any defective, faulty or nonconforming equipment or material, or on account of or incident to any defective, faulty or nonconforming construction or workmanship, excluding only liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of an indemnified party or the indemnified party's agents or employees. Equipment, material, construction and workmanship which are substantially in accordance with the Plans and Specifications shall not be considered to be defective, faulty or nonconforming. "Environmental Condition" shall mean any condition caused by the act or failure to act of any officer, employee or owner of the Contractor or any subcontractor which results in the contamination of the soil or water on, in or under the Property or the existence of which on the Property constitutes a violation of applicable law or regulation.

(b) Contractor (i) shall assume, and shall cause all of Contractor's subcontractors to assume, all risks incident to the performance of this Contract arising on

account of death, bodily injury or property damage suffered by Contractor and/or subcontractors or any of their agents or employees occurring, or in any way incident to, in connection with or arising out of the Work to be performed by Contractor and/or any subcontractor under this Contract or any subcontract; (ii) shall indemnify, and shall cause all of Contractor's subcontractors to indemnify, Owner, its partners, officers, agents, employees, successors and assigns against all claims arising therefrom; and (iii) shall release, waive and relinquish, and cause all of Contractor's subcontractors to release, waive and relinquish, any claim against Owner by reason of any such occurrence. CONTRACTOR'S AGREEMENT TO INDEMNIFY AND HOLD OWNER HARMLESS FROM LIABILITY ARISING OUT OF CONTRACTOR'S PERFORMANCE OR FAILURE TO PERFORM HEREUNDER BY REASON OF BODILY INJURY TO ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF CONTRACTOR SHALL INCLUDE, BUT NOT BE LIMITED TO, LIABILITY ARISING OUT OF ANY NEGLIGENT ACT OR OMISSION OR FAULT OF OWNER, EXCLUDING ONLY LIABILITY FOR DAMAGES ARISING OUT OF BODILY INJURY TO PERSONS OR DAMAGE TO PROPERTY CAUSED BY OR RESULTING FROM THE SOLE NEGLIGENCE OF AN INDEMNIFIED PARTY OR AN INDEMNIFIED PARTY'S AGENTS OR EMPLOYEES.

(c) In addition to, and not in lieu of or satisfaction of, the foregoing, Contractor agrees to procure and keep in force for the duration of any Work hereunder the following insurance with companies acceptable to Owner:

(1) Workers' Compensation and Employer's Liability Insurance providing statutory benefits and with minimum liability limits of \$100,000.00 for Employer's Liability Coverage.

(2) Comprehensive General Public Liability Insurance, including insurance for bodily injury and property damage and product liability (including personal injury), completed operations extending at least two (2) years beyond the date of Final Completion and automobile liability (including non-owned automobiles), employer's liability, blanket contractual liability and independent contractor's liability, including the perils of explosion, collapse and underground hazards for not less than \$1,000,000 arising out of any one occurrence.

(3) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired vehicles with minimum combined liability limits of \$500,000 each occurrence for bodily injury, including death, at any time resulting therefrom, and \$100,000 for each accident for property damage.

(4) From and after commencement of vertical construction, Contractor's Builder's Risk Insurance providing coverage of the improvements, independent contractor coverage, elevator and hoist coverage, contractual coverage and completed operations coverage with minimum limits equal to the Cost of the Work, excluding the cost of site work.

(d) Contractor agrees to furnish Owner with Certificates of Insurance indicating compliance with the above requirements and specifically evidencing Contractual Coverage for assumed liability as set forth in subparagraphs (a), (b) and (c), above. Each such Certificate of Insurance shall contain a provision that the applicable insurance coverages will not be canceled without thirty (30) days' prior written notice to Owner. All insurance coverages shall name Owner as an additional insured, as its interest may appear. Each such insurance coverage must be with an insurance company licensed to do business in Tennessee and with an A.M. Best rating of A or better.

(e) Contractor agrees to require all subcontractors to obtain and maintain insurance which meets the standards specified in the foregoing provisions, except that the minimum coverage of general comprehensive liability insurance shall be not less than \$1,000,000, and to cause all subcontractors to provide Contractor with certificates of insurance confirming the existence of such insurance and otherwise complying with the requirements of this Paragraph 7.

8. Changes and Extras. Should Owner or Contractor, at any time during the progress of the Work, request any alterations or deviations ("Change Order") in the scope of the Work described in this Contract, Contractor shall, within a period of five (5) business days, submit an itemized estimate of any cost changes Contractor foresees to make the alterations or revisions, setting forth in connection with such itemized estimate the amount of materials necessary, if any, to make such change, the sales taxes on such materials, the labor, job overhead, and adjustments to the General Contractor's Fee, together with the total cost for the change and the effect of such change upon progress of the Work. It is understood and agreed that no alterations or deviations in the scope of the Work are to be made except by a Change Order issued by Owner, specified in writing to Contractor, or by Contractor in writing to Owner, and then only in the event such order sets forth the amount of any addition to or deduction from the Contract Sum and the Guaranteed Maximum Price and is signed by both parties hereto. Contractor shall not be obligated to accept any such Change Order which would extend the time required to complete the Work unless Owner agrees to a commensurate extension of the Scheduled Completion Date. Contractor shall not perform Work pursuant to any Change Order unless the Contractor shall have received Investor Member's written approval of such Change Order or such Change Order does not require Investor Member's prior written approval pursuant to the Company Agreement. The foregoing provisions to the contrary notwithstanding, it is understood and agreed that Contractor may make field changes without Owner's consent which are reasonably necessary or appropriate in order to accomplish the Work in accordance with the intent of the Plans and Specifications as long as such changes are not material in scope or cost and are within the Guaranteed Maximum Price; provided, however, such field changes shall not include the substitution of materials where the original materials were specified by Owner, or adversely impact the Scheduled Completion Date. Execution of Change Orders will also be subject to satisfaction of the applicable conditions imposed by Owner's Construction Lender. To the extent that any material documentation is otherwise prepared and readily available in connection with any significant field change orders effected without the consent of the Owner under the foregoing provisions, Contractor agrees to provide Owner not less often than monthly with copies of such documentation.

9. Defective Work and Claims. Subject to the provisions of Paragraph 3 hereof, payments otherwise due may be withheld by Owner on account of defective Work not remedied, claims filed, reasonable evidence indicating probability of filing of claims or failure of Contractor to make payments properly to its subcontractors or for material or labor. If such circumstances are not cured or removed, on not less than ten (10) days' prior written notice, Owner may rectify the same at Contractor's expense.

10. Liens. Contractor will save and keep the Project and the Property free from all mechanics' liens and all other liens arising by reason of Contractor's Work or the Work of any subcontractor or of any materials or other things used by Contractor or any subcontractor therein. If Contractor fails to remove any lien by bonding it, or otherwise, Owner may retain sufficient funds out of any money due or thereafter to become due by Owner to Contractor to pay the same and all costs incurred by reason thereof, and may pay said lien or liens and costs out of any funds at any time in the hands of Owner owing to Contractor or from funds provided to Owner by Contractor to make permitted payments on such claims; provided, however, that, unless otherwise required by the Construction Lender, nothing herein shall be deemed to require Contractor, or to permit Owner, to pay any such lien or claim which Contractor is contesting in good faith for as long as such contest is being diligently prosecuted and the claimant does not commence legal proceedings against the Owner or the Property to establish or foreclose its claimed lien. Notwithstanding the foregoing, liens or claims being contested by Contractor must be removed by bonding and/or other means by Contractor, within ten (10) days after receipt of notice from Owner. Unless otherwise instructed by Owner, Contractor will provide Owner with each Application for Payment lien waivers in the form provided by Owner for each of Contractor's subcontractors and their suppliers for labor or material included in prior progress payments, excluding lien claims that are being contested as provided above.

11. Approval of Supplemental Materials. Contractor shall carefully examine the requirements of the Plans and Specifications for approval of material to be submitted such as shop drawings, data, schedules, samples, etc. Contractor shall submit such material to Owner in such form and in sufficient time as is required in order to prevent any delay in the delivery of such materials and the installation thereof.

12. Inspections. Contractor agrees that Owner's Construction Lender, if any, through its officers, agents, or employees, shall have the right at all reasonable times and at reasonable intervals at Owner's expense:

(a) To enter upon the Property and inspect the construction to determine that it is in conformity with the Plans and all of the Construction Lender's requirements, and

(b) To examine, copy and make extracts of the books, records, accounting data and other documents of Contractor that relate in any way to the Property, including without limiting the generality of the foregoing, all permits, licenses, consents and approvals of all governmental authorities having jurisdiction over Owner or the Property and all the relevant books and records of the Contractor. All such books, records and documents shall be made available to any Construction Lender at Contractor's principal place of business promptly upon written demand therefor; and at the request of any

Construction Lender, Contractor shall furnish the Construction Lender with convenient facilities at Contractor's principal place of business for the foregoing purpose.

13. As-Built Survey. Upon Substantial Completion of construction of the Project, Contractor shall furnish to Owner an "as-built" survey of the Project. The cost of such survey shall be part of the Cost of the Work.

14. Certificate of Completion. Upon Final Completion of construction of the Project, Contractor shall execute and deliver to Owner a certificate of completion in favor of Owner in which the Contractor certifies as follows:

(a) That the Project has been completed substantially in accordance with the Plans and Specifications, as changed by approved Change Orders;

(b) That all subcontractors performing work and all suppliers providing materials and supplies have been paid in full except for any bills then being contested and identified to Owner in writing and to be paid from funds reserved by Contractor therefor;

(c) That no liens exist or can arise against the Project by reason of any materials supplied to or services performed in connection with the construction of the Project except for liens, if any, which (1) are covered by one or more bonds acceptable to Owner and filed in compliance with the applicable provisions of Tennessee law and, because of the filing of such bonds, do not entitle the lien claimants to file suit against the Owner or the Project to satisfy the claims covered by the liens; and (2) secure claims that in the aggregate do not exceed the lesser of \$100,000 or other limit imposed by Owner's Construction Lender;

(d) That there is no unsatisfied requirement of Owner's Construction Lender pertaining to the Work which is known to Contractor;

(e) Contractor has completed the correction of all "punch list" items identified by the Inspector more than sixty (60) days prior to the date of the certificate; and

(f) Contractor has received all necessary permits and approvals from the appropriate governmental authorities, including, but not limited to temporary certificates of occupancy and/or certificates of occupancy.

15. Cleanup. Contractor acknowledges that the execution of the Work will result in an indeterminate amount of debris. Contractor agrees to retrieve, pick up and remove from the job site all such debris during the course of the Work and on Final Completion of the Work. Disposal of debris shall be done on a day-to-day basis as is reasonably possible, taking into account the presence of incoming tenants to the extent practicable and appropriate. If, after twenty four (24) hours' notice by Owner's representative to Contractor's representative at the job site, Contractor has not diligently proceeded with the cleanup as outlined in this paragraph, then Owner has the right to proceed with the cleanup work with its own labor or that of a third-party contractor at Contractor's cost and expense

16. Failure to Perform. As used herein, "*Contractor Default*" shall mean (a) Contractor at any time shall refuse or neglect to supply adequate and competent supervision, or a reasonable sufficiency of properly skilled workers or subcontractors, or material of the proper quality or quantity, or fails in any respect to prosecute the Work with reasonable promptness and diligence in accordance with the progress schedule, or fails to complete any Work in substantial compliance with the Contract Documents, or fails in the performance of any agreement on Contractor's part herein contained, and fails within thirty (30) days after delivery of written notice of any such default from Owner to cure such default or neglect, or, if such matter can be cured but cannot reasonably be cured within thirty (30) days and the nature of the default is such that there is not a likelihood of material loss, liability or prejudice to Owner, fails to commence to cure such matter promptly or fails to diligently pursue the curing thereof to a successful conclusion within a reasonable period thereafter, not exceeding an additional ninety (90) days; provided, however, Contractor shall bear any loss and indemnify Owner against any loss incurred during any aforesaid thirty (30) day period, or any extension as applicable, during which the Contractor is effectuating or attempting to effectuate a cure for such default; (b) Contractor files any type of voluntary petition in bankruptcy; (c) there is filed against Contractor by any person other than Owner any type of involuntary petition in bankruptcy which is not dismissed within ninety (90) days after filing; (d) Contractor makes a general assignment for the benefit of creditors; or (e) a receiver is appointed for all or substantially all of Contractor's assets and such receivership is not dissolved within ninety (90) days thereafter. Upon the occurrence of a Contractor Default, Owner may (without prejudice to any other remedy, but subject to the limitations of this Contract), either (i) terminate the rights (but not the obligations) of Contractor pursuant to this Contract or (ii) enter upon the premises and take possession of all materials or appliances, of any kind whatsoever thereon (it being understood that Owner shall own all of such materials at the time of their purchase), and employ any other person or persons to finish the Work and to provide the materials therefor. In the event that Owner fails to exercise its termination rights or other remedies within twenty-five (25) days after the expiration of the applicable cure period, Investor Member may, subject to the limitations of this Contract, exercise any termination rights or other remedies which may be available to Owner pursuant to this Paragraph 16 as a result of any breach or default by Contractor which is not cured within any grace or cure period specified in this Contract. Contractor and Owner hereby agree and acknowledge that Investor Member shall have the right, concurrently with Owner, to give any notices of non-performance or default which are permitted under this Contract. In the event Owner terminates this Contract pursuant to this Paragraph 16, Owner shall be entitled to recover from Contractor (in addition to any other remedies, but subject to the limitations of this Contract) the costs incurred by Owner less the unpaid amounts which Contractor would have been entitled to receive pursuant to Paragraph 3 if Contractor had completed the Work.

17. Company Agreement Default. Contractor and Owner hereby agree and acknowledge, notwithstanding anything in this Contract to the contrary, during the existence of a Removal Event (as defined in Section 5.4 of the Company Agreement), Investor Member shall have the sole right, on behalf of Owner: (a) to exercise in a commercially reasonable manner all review, inspection, waiver, and approval rights that may be available to Owner under this Contract; (b) to take such commercially reasonable action as the Investor Member may at any time determine to be necessary or advisable to cure any default under this Contract or to protect the rights of Owner thereunder; (c) to enforce all rights of Contractor under any subcontracts

with the same subcontractor with a contract amount in excess of \$500,000.00 in the aggregate ("Material Subcontract"); and (d) to exercise any renewal and/or extension rights which may be available from time to time under this Contract.

18. Investor Member Termination Rights.

(a) Contractor hereby agrees and acknowledges that, notwithstanding anything contained in this Contract to the contrary, Investor Member has the right to terminate this Contract if (i) a Removal Event has occurred; and (ii) Investor Member notifies Contractor in writing that (A) a Removal Notice has been given under the Company Agreement and has not been rescinded; and (B) Investor Member has not received written notice from Managing Member that Managing Member has a good faith belief that Investor Member has breached any material obligation under the Company Agreement prior to Managing Member's receipt of the Removal Notice.

(b) However, Contractor shall, at Investor Member's request, continue performance on Owner's behalf under this Contract in accordance with the terms thereof, provided that Investor Member agrees in writing that (i) Investor Member will (A) continue funding amounts to Owner that Investor Member is obligated to fund under the Company Agreement and (B) use commercially reasonable efforts to cause Construction Lender to continue funding of the Construction Loan in accordance with the Construction Loan Documents and (ii) subject to Construction Lender's continued funding of the Construction Loan, Contractor shall be paid in accordance with this Contract for the following: (A) all work, labor and materials rendered by Contractor on Owner's behalf prior to Investor Member's request and for which funds have not been advanced to Contractor by Owner (excluding reimbursement amounts previously advanced to Owner by Investor Member or Construction Lender, if any, which shall have not been advanced to Contractor but are no longer available to Company and/or Investor Member); and (B) all work, labor and materials rendered by Contractor on Owner's behalf following Investor Member's request. Nothing in this Section 18(b) shall impair or prejudice in any manner the right of Contractor to cease performing under this Contract if Owner defaults in funding amounts due Contractor as provided herein.

19. Assignment. Contractor agrees that Contractor will not assign, transfer, convey, or otherwise dispose of this Contract or any part hereof, or Contractor's right, title or interest herein, or Contractor's power to execute the same without the consent in writing of Owner and Nationwide Mutual Insurance Company ("Nationwide"), which consent shall be at their sole discretion. If Contractor does, with such consent, assign, convey or otherwise dispose of this contract or any part hereof, Contractor shall require that its assignee be bound to Contractor and assume toward Contractor all of the obligations and responsibilities that Contractor has assumed toward Owner.

20. Material Subcontractors. Contractor shall enter into Material Subcontracts only with subcontractors which have been approved by Owner, which approval shall not be unreasonably withheld, conditioned or delayed and shall be deemed to have been granted as to a

subcontractor unless Owner gives Contractor written notice of disapproval within five (5) business days after Contractor requests Owner's approval of such subcontractor.

21. Materials and Equipment. Unless otherwise specified in the Plans and Specifications, all materials and equipment used to complete the Work shall be new and of the best quality of their respective kinds. Materials or equipment shall be delivered to the site in the manufacturer's original, unopened, labeled containers and shall be adequately protected against moisture, tampering or damage. Proposed substitutions of materials or equipment specified in the Plans and Specifications by manufacturer's name or trade name shall be equal or superior to the original in all respects and must be approved by Owner in writing. At Owner's option, detailed specifications, performance data, or samples may be required to be submitted in addition to that data required in the Plans and Specifications. In instances where the manufacturers of materials or fixtures used on this job provide installation or maintenance directions not covered in the Plans and Specifications, or detailed on the drawings provided by the Architect, Contractor shall follow such directions of the manufacturer in furnishing or installing such item as though specifically mentioned in the Plans and Specifications. Contractor will not knowingly incorporate into the Work any materials or equipment that do not comply with applicable law. Except for the leased model apartment furniture and leased office equipment, title to all materials and equipment incorporated into the Work by Contractor will pass unconditionally to Owner free and clear of all liens and claims upon payment therefor by Owner.

22. Protection of Work. Contractor shall take every reasonable precaution to protect the Work from loss or damage. If Contractor or its employees fails to take such reasonable precautions, Contractor shall be solely responsible for any loss or damage to the Work which is not a loss which is covered by insurance provided hereunder, Contractor shall be charged with same, and any monies necessary to replace such loss or repair such damage shall be deducted from monies due Contractor; provided, however, if such loss is covered by insurance Contractor shall be responsible only for the cost of any deductible under such policy. The foregoing provisions to the contrary notwithstanding, it is specifically understood and agreed that any loss which occurs as a result of good faith actions or omissions on the part of Contractor or its subcontractors, and/or not as the result of gross negligence, recklessness or willful misconduct, shall be deemed to be part of the Cost of the Work (including, without limitation, the deductible amount under any insurance policy.)

23. Temporary Facilities. Contractor shall provide and maintain at the Work site a commercially reasonable number of sanitary toilet facilities throughout the construction period, and such facilities shall be used exclusively in lieu of toilet facilities in buildings under construction or completed. Contractor shall obtain and have installed a temporary power service line to a point convenient for all trades. Contractor shall provide temporary water for all trades. Contractor and its subcontractors shall provide such storage as may be needed on the site, and there will be no storage allowed in unfinished or finished buildings unless specifically authorized in writing by the Owner or its duly authorized agent.

24. Tests and Inspections. If the Plans and Specifications or any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the costs of such inspections, tests or approvals shall

be reimbursed under Paragraph 3 hereof as part of the Guaranteed Maximum Price and not in addition thereto; provided, however, Contractor shall, at its sole cost and expense, be responsible for the cost of any additional inspections, tests or approvals required due to a previously failed inspection, test or approval resulting from the gross negligence, recklessness or willful misconduct of Contractor or its employees. Contractor shall give Owner timely notice of its readiness and of the date arranged therefor so Owner or its agent may observe such inspections, tests or approvals.

25. Permits, Licenses, and Codes. All permits, licenses and easements necessary for the prosecution of the Work shall be procured by Contractor and the costs thereof shall be reimbursed pursuant to Paragraph 3 hereof as part of the Guaranteed Maximum Price and not in addition thereto. Contractor shall not knowingly or negligently perform any of the Work requiring any governmental permit or approval without first obtaining such permit or approval. Contractor shall give all notices and comply with all laws, building codes, ordinances, rules and regulations bearing on the conduct of the Work as drawn and specified in the Plans and Specifications. Subject to terms of Section 6 hereof, it is not the responsibility of Contractor, however, to make certain that the Plans and Specifications are in accordance with all laws, building codes, ordinances, rules and regulations. If Contractor observes that the Plans and Specifications are at variance therewith, Owner shall be promptly notified in writing, and any necessary changes shall be accomplished by a Change Order. If Contractor or its employees is grossly negligent or acts with willful misconduct in performing any Work contrary to such laws, building codes, ordinances, rules and regulations without such notice to Owner, Contractor shall bear all costs arising therefrom.

26. Taxes. Contractor shall pay all social security and other taxes imposed upon Contractor as an employer in connection with the performance of this Contract and shall furnish evidence, when required by Owner, showing that all such payments required to be made have been paid. Contractor shall pay all local, state and federal taxes in connection with the Work. The foregoing amounts shall be reimbursed under Paragraph 3 as part of the Guaranteed Maximum Price and not in addition thereto.

27. Patents. Contractor agrees to forever indemnify and hold Owner harmless from and against any claims, demands, or damages of any nature on account of the use of any patented invention, article or process in connection with the Work under this Contract, either in the course of construction or after Final Completion of the Work, and Contractor further agrees to defend, at its own expense, any suits for infringements.

28. Equal Employment. Contractor agrees to abide by and comply with all procedures, rules and regulations with regard to nondiscrimination issued or to be issued by Equal Employment Opportunity Commission or Executive Order, insofar as they may apply to the Work covered by this Contract.

29. Legal Qualification. Contractor hereby represents that it is legally qualified to transact business and to execute the Work as embodied in this Contract in the State of Tennessee.

30. Use of Equipment. In the event Contractor shall use any of Owner's equipment or facilities in connection with the Work, Contractor shall reimburse Owner at a predetermined rate

unless otherwise stated herein. Further, in so doing, Contractor assumes all responsibility for, and shall hold Owner harmless from and against, any claims, actions, damages, liabilities or expenses, including attorney's fees and expenses, resulting from the use of such equipment or facilities by Contractor or Contractor's agents, employees or permittees.

31. Safety. Contractor shall be responsible to Owner for the compliance with all safety rules and regulations, including specifically, but not by way of limitation, the Occupational Safety and Health Act of 1970, and any amendments thereto or acts in place thereof, during the conduct of Contractor's performance of, and in connection with, the Work. Contractor shall be responsible separately and not as part of the Cost of the Work for any and all liabilities, losses, costs, expenses, claims, damages, costs of corrective measures, and fines and penalties incurred by Owner that result from acts of commission or omission constituting gross negligence or willful misconduct by the Contractor, or Contractor's subcontractors, agents, employees, and assigns in failing to comply with such safety rules and regulations. Contractor shall indemnify Owner for any and all liabilities, losses, costs, expenses, claims, damages, costs of corrective measures, fines and penalties incurred by Owner that result from acts of commission or omission not constituting gross negligence or willful misconduct by the Contractor, or Contractor's subcontractors, agents, employees, and assigns, in failing to comply with such safety rules and regulations to the extent, and only to the extent, that payment of such amounts by Owner would cause the Cost of the Work paid or incurred by Owner to exceed the Guaranteed Maximum Price; otherwise, such costs shall be borne by Owner as part of the Cost of the Work.

32. Commencement of Work. Contractor agrees that, except for site work, it will not commence the Work, nor allow any of its subcontractors to commence the Work, until the satisfaction of the conditions specified in Paragraph 2(a)(i) of this Contract.

33. Written Notice. At any time that written notice is provided for under the terms of this Contract, such notice shall be deemed to have been given when deposited in a receptacle regularly serviced by the U.S. Postal Service, if mailed by certified mail, postage prepaid, return receipt requested, addressed to the person or persons to whom such notice is to be given at the last business address known to the person giving notice. Written notice may also be given by personal delivery, facsimile transmission, regular mail or other commercially reasonable means, in which event such notice shall be deemed to have been given when received by the party to whom addressed; provided, however, that any notice that is received on a day which is not a business day or is received after 4:00 p.m. Central Time on a business day, shall be deemed to have been received on the next business day. The current addresses of the parties are set forth below. Changes of address for purposes of notice hereunder may be effected from time to time upon not less than ten (10) days' prior written notice as herein required. Subject to the foregoing provisions, the addresses of the parties for purposes of notices hereunder are as follows:

If to Owner: Artessa Franklin, LLC
1020 N.E. Loop 410, Suite 700
San Antonio, Texas 78209
Attention: Brent Goodwin
Telephone: 210-804-5298
Telecopier: 210-798-7111
Email: bgoodwin@embreydc.com

With a copy to: NW-Windcross, LLC
c/o Nationwide Mutual Insurance Company
One Nationwide Plaza, 1-05-703
Columbus, OH 43215
Attention: Brian Schauss
 Real Estate Investments
Telephone: (614) 249-7105
Telecopier: (614) 249-3416
Email: schausb@nationwide.com

If to Contractor: Embrey Builders, LLC
1020 N.E. Loop 410, Suite 700
San Antonio, Texas 78209
Attention: Ted Emrie
Telephone: 210-824-6044
Telecopier: 210-804-2888
Email: TEmrie@embreydc.com

34. Binding Effect. This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective partners, legal representatives, successors and assigns when permitted by this Contract.

35. Entire Agreement. This Contract constitutes the entire agreement between the parties regarding the subject matter herein described and supersedes any prior oral or written understandings regarding such subject matter.

36. Governing Law and Venue. THIS CONTRACT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TENNESSEE. The obligations of the parties hereto are performable in their entirety in Williamson County, Tennessee.

37. Amendment. This Contract may not be amended orally, but may be amended only by the execution of a Change Order or other instrument in writing signed by the party to be charged with such amendment. Contractor hereby agrees and acknowledges that Investor Member's consent is required for all modifications, amendments and revisions to this Contract and Material Subcontracts, excluding change orders which are expressly permitted pursuant to

the Company Agreement, and Contractor shall not amend this Contract or any Material Subcontract without Investor Member's consent.

38. No Third Party Beneficiaries. No person other than Owner, Contractor and Investor Member, Construction Lender and their permitted successors and assigns shall have any right of action under the Contract.

39. Severability. If any term or provision of this Contract or the application thereof to any person or circumstances shall, to any extent, be deemed invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall be valid and enforced to the fullest extent permitted by law.

[SIGNATURES APPEAR ON NEXT PAGE]


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IN WITNESS WHEREOF, the parties have executed this Contract to be effective as of the date first written above.

OWNER:

ARTESSA FRANKLIN, LLC,
a Delaware limited liability company

By: Artessa Windcross, LLC,
a Texas limited liability company,
its managing member

By: 
Brent Goodwin,
Vice President - Accounting

CONTRACTOR:

EMBREY BUILDERS, LLC
a Texas limited liability company,

By:



Ted Emrie, President

EXHIBIT "D"
TO
GUARANTEED MAXIMUM PRICE
CONSTRUCTION CONTRACT
BETWEEN
ARTESSA FRANKLIN, LLC
AND
EMBREY BUILDERS, LLC

SCHEDULE OF VALUES

[see attached]

**Embrey Partners, Ltd.
1020 NE Loop 410, Suite 700
San Antonio, Texas 78209**

**Artessa - Franklin GMAX#2
Franklin, TN**

BGO Architects

**229,948 NRSF
18 Month Duration
2/12/2014
The Artessa PUD
250 Units
229,948 NRSF
250,664 GSF
920 SF Avg Unit
35 Unit Types
6 Apartment Buildings
11.21 Acres
22.3% Density
71% Building Efficiency
415 Parking Spaces
231 Surface Parking Spaces
3 Trash Enclosure
Mail Kiosk
184 Parking Garage Spaces
5,032 SF Club/Leasing Space**

1000	GENERAL CONDITIONS	
1312	PROJECT MGT & COOR	\$744,560
1314	CONSTRUCTION MANAGEMENT	\$389,222
1315	PROJECT MANAGEMENT COST	\$497,157
1320	PROFESSIONAL SERVICES	\$117,925
1450	SAFETY	\$5,000
1500	TEMPORARY FACILITES	\$258,770
1510	TEMPORARY UTILITIES	\$92,287
1520	JOB MOBILIZATION	\$77,915
1530	CONSTRUCTION TOOLS & EQUIP.	\$47,850
2000	SITWORK	
2005	SURVEYING SERVICES	\$102,317
2020	TESTING SERVICES	\$70,725
2302	OFFSITE IMPROVEMENTS	\$47,624
2315	EXCAVATION & FILL	\$551,432
2335	ASPHALT PAVING	\$209,603
2370	EROSION CONTROL	\$84,107
2480	RETAINING WALLS	\$425,045
2505	WATER DISTRIBUTION	\$349,035
2530	SANITARY SEWER	\$93,827
2550	DRY UTILITIES	\$166,379
2577	MISC. SLEEVES & CONDUIT	\$10,000
2580	SITE ELECTRIC STRUCTURES	\$294,058
2630	STORM DRAINAGE	\$309,632
2640	SITE CONCRETE	\$32,200
2735	TEMP.BARRICADES/ENCLOSURES	\$12,300
2750	CONCRETE PAVING	\$16,972
2760	PAVEMENT MARKING	\$19,966
2770	CURBS & GUTTERS	\$61,515
2775	SIDEWALKS	\$94,298
2777	SWIMMING POOL	\$349,847
2780	UNIT PAVERS	\$278,909
2820	FENCES & GATES	\$162,594
2840	TRAFFIC CONTROL	\$15,000
2860	SCREENING DEVICES	\$1,275
2870	SITE FURNISHINGS	\$18,600
2875	SITE SHELTERS	\$141,466
2905	LANDSCAPING	\$266,673

2,230,686

3000	CONCRETE	
3250	POST TENSIONING	\$1,157,700
3310	CAST IN PLACE CONCRETE	\$1,429,811
3312	TERMITE TREATMENT	\$15,794
3510	CEMENTITIOUS DECK	\$278,001
3520	CONCRETE TOPPINGS	\$288,500
4000	MASONRY	
4210	BRICK MASONRY	\$1,012,280
4220	CONCRETE MASONRY UNITS	\$179,850
4720	CAST STONE	\$53,750
5000	METALS	
5120	STRUCTURAL STEEL	\$112,386
5510	MISC. METALS	\$50,759
5715	FABRICATED STAIRS	\$149,081
5720	ORNAMENTAL RAILING	\$174,696
5810	EXP.JOINT COVERS	\$4,000
6000	WOOD & PLASTICS	
6105	ROUGH CARPENTRY	\$1,768,987
6106	THIRD PARTY INSPECTIONS	\$19,800
6110	WOOD FRAMING	\$1,965,298
6115	ROUGH HARDWARE	\$129,000
6120	TRUSSES & BEAMS	\$778,000
6200	FINISH CARPENTRY LABOR	\$251,340
6220	MILLWORK	\$213,500
6410	CABINETS	\$433,837
6415	COUNTER TOPS	\$318,531
6470	WOOD SCREENS/SHUTTERS	\$19,500
7000	THERMAL/MOISTURE PROTECT	
7120	WATERPROOFING	\$35,233
7210	BUILDING INSULATION	\$192,274
7310	SHINGLES	\$254,153
7410	METAL ROOF/WALL PANELS	\$9,559
7540	THERMO-PLASTIC ROOFING	\$91,426
7620	SHEET METAL FLASHING/TRIM	\$22,995
7702	GUTTERS & DOWNSPOUTS	\$32,683
7920	JOINT SEALANTS	\$172,920

8000	DOORS & WINDOWS	
8005	DOOR BID	\$562,620
8252	SHOWER DOORS	\$36,712
8310	ACCESS DOORS	\$2,117
8360	OVERHEAD DOORS	\$37,035
8410	METAL FRAMED STOREFRONTS	\$62,921
8510	VINYL WINDOWS	\$129,683
8710	DOOR HARDWARE	\$147,727
8810	GLASS & GLAZING	\$6,250
8830	MIRRORS	\$45,212
9000	FINISHES	
9250	GYPSUM WALL BOARD	\$1,329,840
9310	CERAMIC TILE	\$144,038
9650	RESILIENT FLOORING	\$289,616
9680	CARPET	\$112,976
9735	ROUGH CLEANING	\$212,500
9740	PROJECT FINAL CLEANING	\$48,289
9910	PAINTING	\$528,109
10000	SPECIALTIES	
10060	ALLOWANCES	\$325,000
10103	EXERCISE EQUIPMENT	\$50,000
10305	FIREPLACES	\$5,500
10430	EXTERIOR SIGNAGE	
10520	FIRE PROTECTION	\$13,295
10550	POSTAL SPECIALTIES	\$27,606
10820	BATH ACCESSORIES	\$18,238
10900	CLOSET SPECIALTIES	
11000	EQUIPMENT	
11460	UNIT KITCHENS	\$590,746
11902	LAUNDRY EQUIPMENT	\$198,830
12000	FURNISHINGS	
12490	WINDOW TREATMENTS	\$65,539
13000	SPECIAL CONSTRUCTION	
13710	SECURITY & SURVEILLANCE	\$72,042
14000	CONVEYING SYSTEMS	
14240	TRACTION ELEVATORS	\$342,850

15000	MECHANICAL	
15100	PLUMBING	\$1,345,823
15110	INDIVIDUAL WATER METERS	\$33,375
15300	FIRE PROTECTION	\$709,000
15510	HVAC	\$879,995
16000	ELECTRICAL	
16010	ELECTRICAL	\$1,140,296
16510	LIGHT FIXTURES	\$282,939
16520	EXTERIOR LIGHT FIXTURES	\$34,410
16705	FIRE ALARM SYSTEM	\$176,185
16720	TELEPHONE SYSTEM	
16740	DATA COMMUNICATION SYSTEM	
Totals		\$28,039,043

Subcontract		\$28,039,043
Builders Risk	\$138,513	
General Liability	\$121,445	
Contingency	\$848,970	\$28,299,000
Fee	\$1,457,398	\$29,147,970
Total		\$30,605,368

→ General Conditions = \$2,230,686
 This is 7.65% total contract. They
 are requesting 7.5% of cost of work

→ Overhead Fee (5% of cost of work)

$$\$1,457,398 / 29,147,970 = .05 \approx 5\%$$

$$5\% \text{ of } 269,353.20 = \underline{\underline{\$13,467.66}}$$