

PENNSYLVANIA HOUSING FINANCE AGENCY

**ADDENDUM TO OWNER-ARCHITECT AGREEMENT
FOR CONSTRUCTION CONTRACT ADMINISTRATION**

THIS ADDENDUM shall amend the American Institute of Architects Document B141 or B181, Standard Form of Agreement between Owner and Architect, 1987 or 1997 Edition, (the "Agreement") between the parties named herein and shall be binding unto the parties as part of the whole. This Addendum does not limit in any way the terms and conditions set forth in the Agreement but shall amend the Agreement to include the following:

Owner holds a fee simple interest in certain real estate situate in _____ County, Pennsylvania, described in Exhibit A, attached hereto and made a part hereof; and

Owner plans to rehabilitate and/or construct residential rental units on said real estate (the "Development"); and

The Pennsylvania Housing Finance Agency ("PHFA") will make a loan to Owner to rehabilitate and/or construct the Development.

The Architect and Owner agree that the provisions of this Addendum and the Agreement and the rights and obligations of the parties hereunder shall at all times be subject to and in conformity with the provisions of the Housing Finance Agency Law ("Act") and the rules and regulations of PHFA.

The provisions of this Addendum supersede and void all inconsistent provisions in the Agreement and in any prior contract between the parties for the services to be performed hereunder.

ARTICLE I - DEFINITIONS

Actual Construction Completion Date - The date upon which PHFA certifies in writing that the entire Development is completed (except for minor incomplete items) in accordance with the Contract Documents, and all units are ready for occupancy.

Contract Documents - The Construction Contract, the Pennsylvania Housing Finance Agency Addendum to the AIA Documents A101 and A201, 1997 Editions, Standard Forms of Agreement Between Owner and Contractor, the AIA Document A201 General Conditions of the Contract for Construction 1997 Edition, PHFA Supplementary General Conditions, the drawings, the specifications, and all Addenda issued prior to and all modifications issued after execution of the Construction Contract; and any other items that may be specifically stipulated as being included in the Contract Documents. Contract Documents shall also include the PHFA Documents: "The Pre-construction Meeting Guide", and "The General Payout Procedure for Mortgagors and Contractors". Unless specifically set forth in the Contract Documents, any other agreement or understanding between the parties shall not be considered part of the Contract Documents, will not be included in the Contract Price and will not eligible for project funds.

Guarantee Period - The period described in Article VI of the Pennsylvania Housing Finance Agency Addendum to the AIA Documents A101 and A201, 1997 Editions, Standard Forms of Agreement Between Owner and Contractor, during which contractor covenants to correct latent defects which appear after construction and/or rehabilitation is completed.

Identity of Interest - Any relationship (generally based on family ties or financial interest) between Architect and contractor and subcontractor, material supplier or equipment lessor, which would reasonably give rise to a presumption that the parties to the transaction may operate in collusion in establishing the purchase price of the property or the cost of the work. Examples of identity of interest relationships follow:

a. When Architect has any financial interest whatsoever in contractor or is subject to a common control, or any family relationship by virtue of blood, marriage or adoption exists between contractor and Architect.

b. Any relationship between Architect, contractor, and subcontractor exists which would give the Architect or contractor control or influence over the cost of the contract or the price paid to the subcontractor.

Substantial Completion - The date, certified by Architect, when the work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so Owner can occupy the work or a designated portion thereof for the use for which it is intended.

ARTICLE II - PAYMENT/RETENTION

Owner agrees to pay the Architect a total fee of _____ Dollars (\$ _____) for the work required by the Agreement. The fee will be paid in accordance with the progress payment schedule set forth in the Contract Documents. However, at PHFA's discretion two and one-half percent (2.5%) of the administration fee or One Thousand Six Hundred Dollars (\$1,600) (whichever is smaller) will be retained from the fee. The amount retained will be paid in equal installments after each inspection made during the one year Guarantee Period as required by Article IV, Section 9.

ARTICLE III – GENERAL PROVISIONS

1. Drawings and specifications, prepared by Architect as instruments of service are the property of the Architect whether the work for which they are made is executed or not, and their use for any other development is not authorized. However, if the work for which any drawings and specifications prepared by the Architect has not been completed, and there is a default or foreclosure under the mortgage, PHFA may use the drawings and specifications to complete construction of the work without additional cost.

2. Architect and Owner recognize the interests of PHFA and any action, inaction, or determination made pursuant to the Agreement by either Architect or Owner is subject to acceptance or rejection by PHFA. Architect is required to act and serve in a professional capacity without bias or partiality. No portion of Architect's work or responsibility may be assigned, sublet or delegated to any person or entity not acceptable to PHFA.

ARTICLE IV – SPECIFIC WORK REQUIREMENTS

1. Architect shall issue certificates for payment, keep accounts, observe the work (during the construction and/or rehabilitation and the Guarantee Period) and prepare drawings, specifications and written opinions in connection with reasonable construction changes required by Owner or PHFA.

2. When authorized by Owner and PHFA, a resident inspector satisfactory to PHFA, Owner and Architect, shall be hired by Owner.

3. As often as the nature of the work requires but not less than once every two weeks, Architect shall visit the site of the Development, conduct a job meeting and shall promptly furnish reports in writing to Owner and PHFA of the progress, problems, omissions, substitutions, defects and deficiencies noted in the work of contractor. Architect shall periodically observe, as often as the nature of the work requires, but not less than once every two weeks, all materials and items of work identified in the Contract Documents and change orders.

4. Architect is required to advise Owner and PHFA and Design Architect in writing, of any special problems or changes necessitated by unforeseen circumstances encountered in the course of construction and/or rehabilitation, and submit appropriate recommendations.

5. Architect shall monitor progress of the construction and/or rehabilitation of the Development against the schedule in the construction contract and recommend action to be taken to achieve compliance with the schedule.

6. Architect's services shall include conducting job meetings and inspections at the job site with PHFA's, contractor's and subcontractor's representatives. Minutes of these meetings and inspections must be forwarded in a timely manner to all those attending and to PHFA.

7. Simultaneously with requests for payments covering construction costs, Architect shall issue certificates, which evidence recent inspection and acceptability of work and certify as to the validity of requested payments. The certificates shall be in the form prescribed by PHFA based upon personal inspection of the work by Architect or his/her agent. The name of the inspector shall be indicated.

8. Upon Substantial Completion of the Development, Architect shall certify to Owner and PHFA that to the best of his/her knowledge, information, and belief and on the basis of his/her observations, the work has been substantially completed in accordance with the terms and conditions of the Contract Documents and that the Development is in good and tenantable condition is ready for occupancy and that there are no defects or deficiencies in the Development other than "punch-list" items or incomplete work awaiting seasonal opportunity such as landscaping and heating system tests (such expected items to be specified).

9. During the one (1) year Guarantee Period which begins on the Actual Construction Completion Date of the Development, Architect shall make quarterly inspections of the Development accompanied by Owner, PHFA's representative and the management agent for the Development. Architect shall provide written reports of any evidence of faulty materials and workmanship. Landscape work, heating and cooling systems shall be inspected during the appropriate season. In addition, Architect shall make such other inspections and perform such other services as may be necessary or incidental to the requirements of the drawings and specifications for the Development.

ARTICLE V - INSURANCE

Architect shall maintain a professional liability policy during the period of construction and/or rehabilitation of the Development and for one (1) year following construction completion if any such policy is written on a "claims made" basis. The policy shall afford coverage for Owner and PHFA for Architect's errors, omissions or negligence in connection with the work. Such policy shall be issued by a company in an amount and form acceptable to PHFA. Said insurance shall not be construed as a waiver of any obligations or liabilities that Architect otherwise has to Owner or PHFA in law or equity.

In the event Architect fails to maintain such insurance for the required period, Owner immediately becomes responsible for providing such coverage. Failure by Owner to obtain required coverage upon default by Architect will result in PHFA action. In such event, PHFA shall, based on sound business judgment, and at its sole discretion, take either or both of the following action:

1. Obtain said insurance (deducting the related cost from any funds held by PHFA for Architect or Owner);
2. Deduct from any funds held by PHFA for such purposes an amount to indemnify PHFA against the possibility of loss resulting from errors, omissions or negligence by Architect in connection with the work or default by the Architect and/or Owner.

ARTICLE VI - IDENTITY OF INTEREST CERTIFICATE

1. Architect certifies to Owner and PHFA that he/she has been retained for services hereunder as an independent practitioner having no identity of interest with (a) the contractor or (b) any subcontractor or (c) any supplier furnishing labor or materials to the Development.

2. Architect certifies to Owner and PHFA that he/she has no financial interest in the Development or the real estate upon which it is to be constructed other than the fee provided for by the Agreement.

3. Architect further understands that any change in such relationships which will result in Architect having an identity of interest with the contractor (or any subcontractor, material supplier or equipment lessor, or financial interest in the Development or the real estate, will be grounds for termination of this Owner/Architect Agreement for Construction Supervision, unless the identity of interest resulting from the change has been disclosed to the Owner and PHFA prior to its creation and approved in writing by Owner and PHFA.

4. If there is an identity of interest between Architect and Owner or between Design Architect and Construction Administration Architect for the Development, such fact must be disclosed in writing by Architect to Owner and PHFA prior to the initial closing.

5. At the time the working drawings and specifications are delivered to Architect, the Architect shall submit a certificate to Owner and PHFA stating any interest, direct or indirect, which he or his associates may have in a proprietary system of construction or a patented building design or a business or industry that manufactures materials that are shown as specified for the Development.

ARTICLE VII – TERMINATION OF AGREEMENT

1. Any failure to fulfill the requirements of the Agreement in a manner satisfactory to Owner or PHFA shall constitute a breach of the Agreement. Upon the occurrence of a breach the Owner, with PHFA’s approval, may terminate the Agreement. Architect shall receive notice of the termination at least three (3) days prior to the effective date of the termination. Architect shall be subject to claims arising out of his/her breach.

2. If, under the Contract Documents, PHFA shall have deemed construction and/or rehabilitation of the Development to have been abandoned or delayed indefinitely PHFA or Owner, with PHFA’s approval, may terminate the Agreement in whole or in part. Architect shall receive notice of the termination at least three (3) days prior to the effective date of the termination.

ARTICLE VIII – THIRD PARTY BENEFICIARY

It is understood and agreed that PHFA is a third party beneficiary with respect to the provisions of the Agreement, and may enforce all the duties, obligations and responsibilities of Owner and Architect by any remedy available in law or equity.

It is also agreed that if a court of competent jurisdiction rules that any action or demand by PHFA is the act of an agent for a principal, such agency relation, by reason of PHFA’s responsibility toward housing, shall be considered “coupled with interest”.

ARTICLE IX – MISCELLANEOUS PROVISIONS, ARBITRATION

1. The Agreement shall bind and the benefits inure to the respective parties hereto, their legal representatives, executors, administrators, successors in office or interest, and assigns; provided, however, the rights of Architect under the Agreement shall not be assigned, or transferred without the written consent of the Owner and PHFA.

2. All notices and approvals shall be in writing, sent or confirmed by certified mail, postage prepaid, return receipt requested. PHFA shall receive copies of all notices sent to the Owner or Architect. The following addresses for notices hereunder:

PHFA: PENNSYLVANIA HOUSING FINANCE AGENCY
P. O. Box 8029
Harrisburg, PA 17105-8029
ATTENTION: Chief Counsel

ARCHITECT: _____

OWNER: _____

3. It is expressly agreed and understood that PHFA is not, and nothing contained within this instrument shall be construed to constitute PHFA as the partner of or joint venturer with the Owner or Architect with respect to the Development or any aspect thereof.

4. The invalidity of any clause, part or provision of the Agreement shall not affect the validity of the remaining portions thereof.

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum this ____ day of _____, _____.

WITNESS (ATTEST)

Architect

By: _____

Title: _____

WITNESS (ATTEST)

Owner:

By: _____
General Partner

By: _____

Title: _____

WITNESS (ATTEST)

By: _____

By: _____

Title: _____