

# SUBMISSION GUIDE FOR ARCHITECTS

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**SECTION 3.01**  
**PENNSYLVANIA HOUSING FINANCE AGENCY**

**ADDENDUM TO OWNER-ARCHITECT AGREEMENT FOR DESIGN SERVICES AND CONSTRUCTION CONTRACT ADMINISTRATION**

THIS ADDENDUM shall amend the American Institute of Architects Document B141, B151, or B181, 1997 Edition, or B101, 2007 Edition, Standard Form of Agreement between Owner and Architect, (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 described in Exhibit A, attached hereto and made a part hereof; and

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

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

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, as of this date.

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.

Construction Loan Closing - The date mutually approved by PHFA and Owner upon which the parties execute the Contract Documents.

Contract Documents -, AIA Document A101 Standard Form of Agreement Between Owner and Contractor, 1997 or 2007 Edition, AIA Document A201 General Conditions of the Contract for Construction, 1997 or 2007 Edition, the Pennsylvania Housing Finance Agency Addendum to AIA Documents A101 and A201, the, 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 be eligible for project funds.

Guarantee Period - The period described in Article V of the Pennsylvania Housing Finance Agency Addendum to the AIA Documents A101 and A201, 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 and this Addendum provided that the work, including but not limited to the drawings and specifications for the Development, is approved by Owner and PHFA. Said amount shall include the fee for Design Service in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), payable from the initial draw as set forth in the Building Loan Agreement subject to the following retention:

(a) If Architect is responsible for both design services and contract administration of the Development, two and one half percent (2.5%) of the design fee, (but not less than \$1,600) will be retained.

(b) The retention will be paid out when construction has been completed, providing that the "Record Drawings" (As-Built Drawings) have been submitted to and approved by PHFA.

The total fee shall also include a fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for construction contract administration. The fee will be paid on monthly requisitions 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 greater) will be retained from the fee. The amount retained will be paid in equal installments after each inspection made during the one (1) year Guarantee Period as required by Article IV, Section 10 herein.

## ARTICLE III - DESIGN SERVICE REQUIREMENTS

1. Drawings and specifications 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 the drawings and specifications are executed 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 fee or other costs.

2. Architect and Owner recognize the interests of PHFA and any action, inaction, or determination made pursuant to the Agreement or this Addendum 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.

3. The Architect agrees that, when requested by Owner or PHFA, he/she will provide needed clarification or interpretation of any feature of the drawings and specifications without further charge.

4. The Architect shall provide, in addition to such other drawings and specifications as the contractor shall require, the following documents to Owner and PHFA under the provisions of this Addendum:

(a) Five (5) copies of final working drawings and specifications.

(b) Upon actual completion of construction, two (2) sets of Record Drawings, ("As Built Drawings") indicating any changes in the buildings or plans.

5. In connection with the performance of work hereunder, Architect agrees not to discriminate against any employee or applicant for employment because of race, creed, religion, color, age, sex, disability or national origin.

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

7. The Architect shall submit to PHFA completed copies of "Architect's Certification" and "Architect's Certification - Compliance with Accessible Housing Design Requirements".

#### **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 and 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 assure Owner and PHFA that tests required by specifications are performed properly; evaluate the results of these tests and make recommendations of actions required in the event of unsatisfactory test results.

5. Architect is required to advise Owner and PHFA, 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.

6. 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.

7. Architect shall attend conferences held at or away from the Development. When requested by Owner or PHFA, Architect shall obtain the attendance of others whose services have been or will be incorporated in the work.

8. 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.

9. 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 "punchlist" items or incomplete work awaiting seasonal opportunity such as landscaping and heating system tests (such expected items to be specified).

10. During the one (1) year Guarantee Period which begins on the Actual Construction Completion Date of the Development, Architect shall make three inspections for each phased occupancy section 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 and this Addendum.

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 the Agreement, 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 submitted by the Architect, the Architect shall submit a certificate to Owner and PHFA stating any interest, direct or indirect, which he/she or his/her 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 - MODIFICATION AND TERMINATION OF AGREEMENT**

1. The Agreement shall not be modified except by a written statement signed by Owner and PHFA.

2. Any failure to fulfill the requirements of this Addendum 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.

3. 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 this Addendum, and may enforce all the duties, obligations and responsibilities of Owner and Architect by any remedy available in law or equity.

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.

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 PHFA relation, by reason of PHFA's responsibility toward housing, shall be considered "coupled with interest".

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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Architect represents and covenants that (a) he/she has not nor shall he/she administer the construction of the Development or any portion thereof, (b) he/she is not a "contractor" within the meaning of the Mechanics' Lien Law of 1963, that it shall not file a mechanics' claim against the Development, and that in the event, however, a lien is filed by or on behalf of the Architect, counsel for PHFA is nominated, designated and appointed its attorney-in-fact by virtue hereof to enter a satisfaction thereof paid from appropriate accounts in the loan proceeds.

This Addendum shall bind, and the benefits inure to, the respective parties hereto, their legal representatives, executors, administrators, successors and assigns.

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

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WITNESS (ATTEST)

Architect:

\_\_\_\_\_,  
a \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS (ATTEST)

Borrower/Owner:

\_\_\_\_\_,  
a Pennsylvania Limited Partnership

By: \_\_\_\_\_,  
General Partner

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS (ATTEST)

By: \_\_\_\_\_,  
\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

ATTACH Exhibit "A", Legal description of property.

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**SECTION 3.02**  
**PENNSYLVANIA HOUSING FINANCE AGENCY**

**ADDENDUM TO OWNER/ARCHITECT**  
**AGREEMENT FOR DESIGN SERVICES**

THIS ADDENDUM shall amend the American Institute of Architects Document B141, B151, or B181, 1997 Edition, or B101, 2007 Edition, Standard Form of Agreement Between Owner and Architect (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 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 (hereinafter called "Development"); and

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

The Design 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, as of this date.

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.

1. Owner agrees to pay the Architect a total fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for the work required by the Agreement and this Addendum provided that the work, including but not limited to the drawings and specifications for the Development, are approved by Owner and PHFA. Said fee shall be payable in full from the initial draw as set forth in the Building Loan Agreement subject to the following retention:

(a) If there is a separate Construction Contract Administration Architect on the Development, two and one half percent (2.5%) of the design fee (but not less than \$1,600) will be retained.

(b) The retention will be paid out at construction completion provided "Record Drawings" ("As-Built Drawings" have been submitted to and approved by PHFA).

2. Drawings and specifications as instruments of service are the property of the Design 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 the drawings and specifications are executed 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 fee or other costs.

3. The Design Architect and Owner recognize the interest of PHFA in the Development being designed pursuant to the Agreement and this Addendum, and any action, inaction, or determination made pursuant to the Agreement and this Addendum by either the Design Architect or Owner is subject to

acceptance or rejection by PHFA. The Design Architect is required to act and serve in a professional capacity without bias or partiality.

4. The Design Architect agrees that, when requested by Owner or PHFA, he/she will provide needed clarification or interpretation of any feature of the drawings and specifications without further change.

5. The Design Architect shall provide, in addition to such other drawings and specifications as the Contractor shall require, the following documents to Owner and PHFA under the provisions of the Agreement:

(a) Five (5) copies of final working drawings and specifications.

(b) Upon actual completion of construction, two (2) sets of "Record Drawings" (prints) indicating any changes in the buildings or plans.

6. Architect shall remain available to answer questions that arise and make available any information requested by the Construction Contract Administration Architect during construction.

7. 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 of owner to obtain required coverage upon default by Architect will result in PHFA action. In such event, PHFA shall, based on sound business judgement, and at its sole discretion, take either or both of the following action:

(a) Obtain said insurance (deducting the related cost from any funds held by PHFA for Architect or Owner;

(b) 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.

8. In connection with the performance of work hereunder, Design Architect agrees not to discriminate against any employee or applicant for employment because of race, creed, religion, color, age, sex, disability or national origin.

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

10. The Agreement and this Addendum shall not be modified except by a written statement signed by Owner, the Design Architect and PHFA.

11. No portion of the Design Architect's work or responsibility hereunder may be assigned, sublet or delegated to any person or entity without PHFA's written consent.

12. 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.

13. The Design Architect represents and covenants that (a) he/she has not nor shall he/she administer the construction of the Development or any portion thereof, (b) he/she is not a "contractor" within the meaning of the Mechanics' lien Law of 1963, that it shall not file a mechanics' claim against the Development, and that in the event, however, a lien is filed by or on behalf of the Design Architect, counsel for PHFA is nominated, designated and appointed its attorney-in-fact by virtue hereof to enter a satisfaction thereof paid from appropriate accounts in the loan proceeds.

14. The Design Architect shall submit to PHFA a completed copy of "Architect's Certification".

15. This Addendum shall bind, and the benefits inure to, the respective parties hereto, their legal representatives, executors, administrators, successors and assigns.

16. 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 \_\_\_\_\_, \_\_\_\_\_.

Owner:

WITNESS (ATTEST)

\_\_\_\_\_,  
a Pennsylvania Limited Partnership

By: \_\_\_\_\_,  
General Partner

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

WITNESS (ATTEST)

By: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Architect:

WITNESS (ATTEST)

\_\_\_\_\_,  
a \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Attach EXHIBIT "A" Legal Description of the Property

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## **SECTION 3.03**

### **PENNSYLVANIA HOUSING FINANCE AGENCY**

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

THIS ADDENDUM shall amend the American Institute of Architects Document B141, B151, or B181, 1997 Edition, or B101, 2007 Edition, Standard Form of Agreement between Owner and Architect, (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 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 - AIA Document A101 Standard Form of Agreement Between Owner and Contractor, 1997 or 2007 Edition, AIA Document A201 General Conditions of the Contract for Construction, 1997 or 2007 Edition, the Pennsylvania Housing Finance Agency Addendum to AIA Documents A101 and A201, the 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 be 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, 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 three inspections for each phased occupancy section 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 submitted by 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.

*Intentionally Left Blank*

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: \_\_\_\_\_

## **SECTION 3.04**

### **PENNSYLVANIA HOUSING FINANCE AGENCY**

#### **ADDENDUM TO AIA DOCUMENTS A101 AND A201, 1997 AND 2007 EDITIONS**

*This Addendum shall amend the American Institute of Architects Document A101, Standard Form of Agreement Between Owner and Contractor, 1997 or 2007 Edition ("the Agreement") and the American Institute of Architects Document A201, General Conditions of the Contract for Construction, 1997 or 2007 Edition,, 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 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; and

Contractor 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 (the "Act") and the rules, regulations and guidelines of PHFA, as of this date.

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

#### **ARTICLE I - DEFINITIONS**

1. **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.

2. **Contract Documents** - AIA Document A101 Standard Form of Agreement Between Owner and Contractor, 1997 or 2007 Edition, AIA Document A201 General Conditions of the Contract for Construction, 1997 or 2007 Edition, the Pennsylvania Housing Finance Agency Addendum to AIA Documents A101 and A201, the 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 be eligible for project funds.

3. **Latent Defects** - Defects in materials, equipment or completed work which reasonably careful observation could not have discovered.

#### **ARTICLE II - PAYMENTS**

1. Subject to the provisions hereinafter set out, Owner shall pay to Contractor for the performance of the Agreement an amount which is the Contract Price; however, notwithstanding any term or provision of any other agreement or Contract Documents, such amount shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) ("Contract Price").

2. Based upon Applications for Payments submitted to Architect by Contractor and Certificates for Payment issued by Architect, subject to the approval of PHFA, Owner shall make progress payments on account of the Contract Price to Contractor as provided below and elsewhere in the Contract Documents. In the event Contractor fails to comply with all federal, state and local laws, ordinances, rules or regulations, with all PHFA requirements or guidelines or with all terms and conditions of the Contract Documents, progress payments shall be withheld until Contractor has fully complied with the aforementioned, subject to the approval of PHFA.

3. The period covered by each Application for Payment shall be one month ending on the last day of the month unless otherwise agreed upon by all parties.

4. Subject to the provisions of the Contract Documents, the amount of each progress payment shall be based on:

A. the total schedule of values of the work acceptably completed as approved by PHFA, Architect, Owner and any other necessary contract parties; plus

B. the value of materials and equipment delivered and suitably stored at the site that shall become part of the permanent structure within thirty (30) days after delivery; less

C. ten percent (10%) of each payment request for a construction item made by Contractor will be retained by either PHFA or other related lenders. Upon issuance of PHFA's Certificate of Substantial Completion, this amount may be reduced to five percent (5%). In the event of multiple Certificates of Substantial Completion being issued for phased projects, reduction to five percent (5%) will be considered only after the final phase of the whole is accepted. The balance due Contractor hereunder shall be payable at final loan closing provided the work is fully completed and Contractor has complied with all provisions of the Agreement and this Addendum to Owner's and PHFA's satisfaction, including, but not limited to, submission and approval of the Contractor's Certificate of Actual Cost to PHFA and receipt of all certificates of occupancy for all units.

5. Owner may, and agrees that PHFA may, make any advance to persons other than Contractor, when Owner or PHFA, in the sole discretion of either, determines that such person shall be entitled to such advance in accordance with the terms of the Building Loan Agreement. Such advance shall be deemed to be made in pursuance of the Building Loan Agreement and not in contravention or modification of it.

### ARTICLE III - SCOPE OF AGREEMENT

1. The scope of contract between the parties is set forth in the "Contract Documents" which constitute the entire agreement between the parties. No changes, additions, amendments or modifications shall be made to the Agreement except by an agreement signed by the parties to the Agreement and approved by PHFA, its successors or assigns.

2. The drawings and specifications are numbered and identified in accordance with Exhibit B, incorporated herein and made a part hereof, and have been prepared by \_\_\_\_\_ ("Architect"). The architect supervising the Contract Documents ("Architect") is \_\_\_\_\_. Exhibit B, attached hereto, shall supersede and void any and all other lists of drawings and specifications in the Contract Documents.

3. Changes in the drawings and specifications or any terms of the Contract Documents, orders for extra work, alterations or additions to the work or any other changes which materially alter the obligations of Owner or alter the design or materially reduce the quality or amenities of the Development shall be submitted to Owner and PHFA for written approval. Contractor makes such covenant with full knowledge that if such changes are made without prior Owner and PHFA approval, Owner and PHFA may suffer monetary losses. Contractor covenants to fully indemnify Owner and PHFA against such losses.

#### ARTICLE IV - TIME

1. Construction of the Development shall commence no earlier than the date of receipt of a notice to proceed from PHFA, and no later than three (3) days after receipt of said notice. The work shall be completed within the time period specified in the Construction Contract ("Required Completion Date", also known as "Time for Completion of Development"). The time by which the work shall be completed may be extended with Owner's and PHFA's prior written consent.

2. It is hereby understood and agreed that Owner will suffer damages if the work is not substantially completed in accordance with the drawings and specifications, including any authorized changes, by the Required Completion Date. Due to the difficulty in establishing the exact amount of such damages, Owner, PHFA and Contractor hereby agree in advance to liquidated damages of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) per calendar day where the delay is for reasons other than those stated in Article 8.3.1 of the AIA Document A201, General Conditions of the Contract for Construction, 1997 Edition. The liquidated damages agreed to are the result of a good faith effort by Owner, PHFA and Contractor to estimate the amount of damages Owner will suffer and in no event are to be viewed as a penalty. Contractor shall be obligated to promptly pay PHFA upon demand by Owner or PHFA, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for each day of delay until the Actual Construction Completion Date. Liquidated damages shall be held by PHFA in escrow to be used to the benefit of the Development as PHFA solely determines. In addition to their rights in law and equity, Owner or PHFA shall have the right, by set-off, to an amount equal to the liquidated damages against any amount due on the Contract Price provided under Article II (A) above, by an amount equal to the liquidated damages accumulated to the date of said demand by Owner or PHFA. Owner must obtain PHFA's written approval prior to application of any set-off as set forth above.

#### ARTICLE V - REPRESENTATIONS AND WARRANTIES

1. Contractor represents and warrants to Owner and PHFA that: (a) Contractor is financially solvent, able to pay his/her debts as they mature, and possesses sufficient working capital to complete the Agreement; that he/she is able to furnish the plant, tools, materials, supplies, equipment, and labor, and is experienced in and competent to perform the work; and that he/she is qualified to do the work and is authorized to do business in the Commonwealth of Pennsylvania; (b) Contractor holds a license, permit or other special license, to perform the services included in the Agreement, as required by applicable law, or lawfully employs or works under the general supervision of the holder of such license, permit or special license; and (c) Contractor has inspected the development site within thirty (30) days of signing this Addendum and represents and warrants that the site conditions have not changed so as to result in an increase in the scope of work or in the Contract Price. The warranties in the Agreement shall not limit or exclude any other warranties, express or implied, which arise by operation of law.

2. Contractor understands that the Development under the Agreement is to be financed by loans from PHFA to Owner and the loans will be secured by mortgages, and that the terms of the loans are set forth in a Building Loan Agreement of even date herewith, between Owner as Borrower and PHFA as Lender. Contractor further understands that the Building Loan Agreement provides that in the event of the failure of

Owner to perform its obligations to PHFA thereunder, PHFA may as attorney-in-fact for Owner undertake the completion of the Development in accordance with the Contract Documents. In the event PHFA elects not to undertake such completion, Contractor's obligations under the Agreement shall terminate and PHFA shall promptly pay to Contractor the total of the value of the work installed and all materials furnished for the Development. Values are to be determined on the basis of progress payment requests of Contractor submitted and approved.

#### ARTICLE VI - GUARANTEE PERIOD

Contractor covenants that it shall correct, at its sole expense, any of the work that is found to be not in accordance with the requirements of the Contract Documents as indicated in Article 12.2.2. of the AIA Document A201, General Conditions of the Contract for Construction, 1997 Edition, including any Latent Defects resulting from faulty materials or workmanship which appear within one (1) year from the Actual Construction Completion Date (the "Guarantee Period"). Contractor agrees to provide security in a form and amount acceptable to Owner and PHFA for the Guarantee Period. Upon written notice from Owner or PHFA, its successors or assigns, Contractor shall proceed with due diligence, at his or her expense, to replace any defective material or perform any labor necessary to correct any defect in the work. In case Contractor fails to correct defects within seven (7) days after receipt of written notice to replace defective materials or perform any labor required, Owner or PHFA may furnish whatever material or labor it deems necessary in its sole opinion. If Owner or PHFA determines that the condition poses a threat to the health, safety or welfare of the occupants, Contractor shall correct any defects within forty-eight (48) hours of written notice. Contractor agrees to make prompt reimbursement upon demand. If Contractor fails to promptly and properly perform, to Owner or PHFA's satisfaction, during this Guarantee Period, Owner and PHFA may reduce the Contract Price in an amount equal to the cost of curing any Latent Defects.

#### ARTICLE VII - REQUIREMENTS OF CONTRACTOR

1. Contractor agrees that it will turn over to Owner, for occupancy, each and every building or floor in the Development which has been completed and which has been approved for occupancy by PHFA. Contractor also agrees that it will diligently complete each building in the Development and will not unreasonably delay the completion of any building or buildings so as to prevent early occupancy thereof. Contractor further agrees, upon request by Owner and at the sole expense of Contractor, to secure occupancy permits from any state or local authority necessary to secure from PHFA the required permission for occupancy of the buildings in the Development. Owner agrees to be responsible for the maintenance and utilities for all such dwelling units turned over to and accepted by Owner. Contractor further agrees that it will at its own expense provide safe and adequate approaches and assure uninterrupted access to all dwelling units which have been approved for occupancy by PHFA or turned over to and accepted by the Owner.

2. Upon the Actual Completion Date, Contractor shall furnish to Owner, PHFA and title insurer, a Record Drawing showing all improvements constructed thereon, and showing the location of all water, sewer, gas and electric lines and mains, and of all existing utility easements.

3. Contractor shall obtain and pay for and keep in effect from the inception of construction, or from such time as PHFA may require, insurance in a form and amount acceptable to PHFA. If Contractor fails to provide and maintain such insurance, Owner may, without notice to Contractor, procure such policies and deduct any monies expended from Contractor's payments set forth in Article VI of the Agreement.

4. Contractor further agrees to indemnify and save harmless Owner, the Commonwealth of Pennsylvania and PHFA against loss or expense by reason of the liability imposed by law upon Owner, Contractor, the Commonwealth of Pennsylvania or PHFA, for damages because of bodily injuries, including death at any time resulting therefrom, sustained by any person or persons or on account of damage to property arising out of or in consequence of the performance or non-performance of the Agreement, whether such

injuries to persons or damage to property are due or claimed to be due as a result of negligence or willful misconduct of Contractor, its subcontractors, employees or agents.

5. Contractor agrees to comply with all of the federal and/or state requirements (as applicable) identified in Exhibit C attached hereto and incorporated herein.

6. The Contractor agrees to designate a full time project specific site superintendent of the Development who shall be present when any and all work is performed at the site.

#### ARTICLE VIII - RECEIPTS AND RELEASES OF LIENS

Contractor hereby specifically agrees to pay the expenses of and do what is necessary to promptly remove or bond (to PHFA's and Owner's satisfaction) any mechanic's claim or lien against the Development for or on account of any work or labor done or materials furnished under the Contract Documents or otherwise, for, toward, in or about the erection and construction of the Development. In addition, Contractor shall not, at any time, suffer or permit any claim, lien, attachment, or other encumbrance, under the laws of the Commonwealth of Pennsylvania or pursuant to federal law, by any person or persons whomsoever, to remain on file against any money due or to become due, for any work done or materials furnished under the Agreement and, until such claim, lien, attachment, or other encumbrance, is removed, Owner or PHFA shall have the right to preclude any payment to Contractor.

#### ARTICLE IX - ASSURANCE OF COMPLETION

Contractor shall furnish to Owner and PHFA assurance of completion of the work in the form of a One Hundred Percent Performance Bond and a One Hundred Percent Payment Bond, each in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) or a twenty-five percent (25%) unconditional and irrevocable letter of credit in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). Such assurance of completion shall run to Owner and PHFA as dual obligees and shall extend one (1) year from the day on which final payment under the Agreement falls due.

#### ARTICLE X - RIGHT OF ENTRY

1. PHFA and Owner or their agents or assigns, shall, at all times during construction have the right of entry and free access to the Development and the right to inspect all work done and materials, equipment and fixtures furnished, installed or stored in and about the Development. For such purpose, Contractor shall furnish such enclosed working space as PHFA and Owner may require and find acceptable as to location, size, accommodations and furnishings.

2. Pending any dispute, controversy or claim arising out of or relating to the performance of the Agreement, work shall continue, and any cessation, slow down, interruption or delay shall constitute a breach of the Agreement and PHFA may, at its option, collect additional "liquidated damages" in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for each day of delay, from either Owner or Contractor, as PHFA elects, notwithstanding the fact that the "Required Completion Date" may not have been reached.

#### ARTICLE XI - ASSIGNMENTS AND SUBCONTRACTORS

1. The Agreement shall not be assignable by either party, except that Owner may assign the Agreement, or any rights hereunder, to PHFA, subject to the rights of PHFA, and shall be deemed to have made such assignment of the Agreement to PHFA upon PHFA sending written notice to Owner invoking said assignment and setting forth the breach by Owner of the Building Loan Agreement.

2. Contractor shall not employ any subcontractors that Owner or PHFA within a reasonable amount of time, object to as incompetent, unfit or objectionable for any other reason.

3. Contractor agrees that it is fully responsible to Owner for the acts and omissions of its subcontractors, suppliers and persons directly or indirectly employed by it. Nothing contained in the Contract Documents shall create privity of contract between any subcontractor and Owner or PHFA.

4. All work performed for Contractor by a subcontractor shall be pursuant to an appropriate agreement between Contractor and subcontractor (and where appropriate, between subcontractor and subcontractor). PHFA reserves the right to review and approve any such agreement.

#### ARTICLE XII - COST CERTIFICATION

1. Contractor shall keep accurate records of account of the said Actual Cost of Construction and shall, upon demand, make such records and invoices, receipts, subcontracts and other information pertaining to the construction of the Development available for inspection by Owner, PHFA, and the Secretary of Labor of the Commonwealth of Pennsylvania.

2. Upon completion of the Development, Contractor shall furnish to Owner and PHFA a completed "Contractor's Certificate of Actual Cost" which shall be in form acceptable to PHFA.

Contractor shall include in all subcontracts, equipment leases and purchase orders a provision requiring the subcontractor, equipment lessor or supplier to certify its costs incurred in connection with the Development, in the event PHFA determines there is an identity of interest between either the Owner or Contractor and any such subcontractor, equipment lessor or supplier.

#### ARTICLE XIII - 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 Contractor 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 XIV - PARTIAL INVALIDITY

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

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IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Addendum on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WITNESS (ATTEST)

Contractor\*

\_\_\_\_\_,  
a \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS (ATTEST)

Owner:

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_,  
\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS (ATTEST)

By: \_\_\_\_\_,  
\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

\* *Attach a Resolution certified to by the Secretary or other authorized officer authorizing the Contractor to enter into the Agreement and authorizing the signatories to bind the Contractor.*

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## **SECTION 3.05**

### **REQUIREMENTS FOR INITIAL LOAN CLOSING BEFORE CONSTRUCTION**

1. See also SECTION 2.03.A, CONTRACT DOCUMENT SUBMISSION FOR FINAL REVIEW.
2. All applicable Federal, State and Local approvals shall be in place. Provide written evidence of all required approvals.
3. After the final complete set of working drawings, specifications and Addenda (that are 100% complete) have been reviewed and approved by PHFA and Loan Commitment has been received from the PHFA Board, one (1) set of each of the following documents is required to be delivered to PHFA five (5) business days prior to closing.
  - A. Drawings and specifications.
  - B. Final Construction Cost Breakdown (see Section 2.03.B).
  - C. Architect's Certification Form (see Section 3.07).
  - D. Architect's Certification of Compliance with Design Requirements for Accessible Housing Form (see Section 3.08).
  - E. Copies of Addenda, if any.
  - F. Owner-Architect Agreement w/ PHFA Addendum.
  - G. Owner-Contractor Agreement w/ PHFA Addendum.

After these items have been reviewed by Technical Services, with no discrepancies found, the Legal Department will be notified; and a closing date will be scheduled.

4. **ADDENDUM**: It is anticipated that the final documents are 100% complete. If, however, they are not, the required changes will be made by Addendum and will become part of the Closing Documents.
5. **DOCUMENTS REQUIRED FOR CLOSING**
  - A. Five (5) complete sets of contract drawings and specifications and Addenda are required for Initial Closing. The one (1) set in Item 3 above delivered five (5) business days prior to closing counts as one of these five sets. The Architectural drawings shall be sealed by the Architect. The Engineering drawings must be sealed by the Architect and/or the Engineer. All sets shall be signed by the Architect, Owner, Contractor and PHFA in the designated signatory area on the title page. Two (2) sets of the five (5) sets of drawings shall be initialed on each page by the Owner, Architect, Contractor and PHFA and retained by the Contractor and PHFA. The remaining sets shall be distributed to the Owner, Architect and PHFA. If any Addenda have been issued, a copy of each must be attached to the specifications with the front page of each Addendum initialed by all parties.

- B.** One (1) set of bound, reduced size final working drawings. Reduced size sheets shall be 11" x 17" or 15" x 21".
- C.** Five (5) copies of the Final Construction Cost Breakdown. The cost breakdown shall be signed and dated by the Contractor, Owner and PHFA at closing. The date must be the same or later than the latest date on the drawings and specifications.
- D.** Five (5) copies of the Architect's Certification (Section 3.07). The list of Contract Documents on the certification form must match the list on the Final Construction Cost Breakdown and in the Owner/Contractor Agreement.
- E.** Five (5) copies of the Architect's Certification of Compliance with Design Requirements for Accessible Housing (Section 3.08).
- F.** Three (3) executed copies of the Owner/Architect Agreement along with executed copies of the PHFA Addendum to this agreement, and **any exhibits or attachments**. If there are separate contracts for design and construction contract administration, copies of both must be submitted. One copy must have original signatures.
- G.** Three (3) executed copies of the Owner/Contractor Agreement along with executed copies of the PHFA Addendum to this contract **and any exhibits or attachments** (these agreements may be executed at closing). The description of the contract documents in the agreement must match the Final Construction Cost Breakdown and the Architect's Certification. One copy must have original signatures.
- H.** Three (3) copies of any permits or approvals required by any local, state, or federal agencies that are required for construction to begin.

## **SECTION 3.06**

### **REQUIREMENTS FOR FINAL CLOSING AFTER CONSTRUCTION**

#### **3.06.1. REQUIREMENTS FOR “RECORD” (AS-BUILT) DRAWINGS**

During construction, the Contractor must maintain a field set of drawings that graphically indicates all revisions from the original drawings that were made due to field conditions and/or change orders. Upon completion of construction, the Contractor must submit a set of Record Drawings including, but not limited to, site, architectural, structural, plumbing, mechanical and electrical plans to the Architect for review and approval.

The Record Drawings site plan must indicate the location of all structures and other physical improvements (driveways, sidewalks, inlets, parking lots, easements, drainage fields, etc.), in the area of the property and building lot lines. The Record Drawings for architectural, structural, plumbing, mechanical and electrical work must indicate any changes to the original planned work. Also, see Section 3.04, PHFA Addendum to the AIA Documents A101 AND A201, 1997 Editions, Standard Forms of Agreement Between Owner and Contractor, Article VII, B.

Upon completion of the development, the Design Architect must prepare a complete set of Record Drawings including a site plan. One copy of the complete set must be submitted to the PHFA Technical Services Division for review. Upon completion of the review, the Architect must make revisions to the drawings as necessary and submit two final sets of copies to PHFA. Also, see Section 3.03, PHFA Addendum to the Owner-Architect Agreement for Design Services and Construction Contract Administration, Article III, 4(b).

#### **3.06.2 WARRANTIES, GUARANTEES AND MATERIAL TAKE-OFFS BY GENERAL CONTRACTOR AND OPERATING AND MAINTENANCE MANUAL REQUIREMENTS**

Prior to the issuance of PHFA’s final Certificate of Occupancy, the General Contractor shall submit copies of all specified warranties and guarantees as well as requested material take-off quantities to PHFA. In addition, copies of all bonds, and operating and maintenance manuals for all materials, equipment, fixtures and appliances shall be furnished to the Owner. Also, see Section 1.24, Warranty, Guarantee and Manual Requirements and Section 5.01.9 Warranties/Guarantees & Material Take-Offs.

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Specifications consisting of \_\_\_\_\_ pages, dated \_\_\_\_\_ 20\_\_\_\_,  
Revision Dates: \_\_\_\_\_

Addenda:

No.: \_\_\_\_\_ Date: \_\_\_\_\_ No. of Pages: \_\_\_\_\_

No.: \_\_\_\_\_ Date: \_\_\_\_\_ No. of Pages: \_\_\_\_\_

No.: \_\_\_\_\_ Date: \_\_\_\_\_ No. of Pages: \_\_\_\_\_

No.: \_\_\_\_\_ Date: \_\_\_\_\_ No. of Pages: \_\_\_\_\_

No.: \_\_\_\_\_ Date: \_\_\_\_\_ No. of Pages: \_\_\_\_\_

5. The proposed construction and/or rehabilitation described by these drawings and specifications are, to the best of my knowledge, in compliance with all applicable zoning, building, housing and other Federal, State and Local laws, codes, ordinances and regulations, including, but not limited to, all applicable accessibility standards, all HOME Program requirements, the PHFA Submission Guide for Architects or Local standards, where more restrictive, as modified by waivers obtained from the appropriate officials.

The following waiver(s) of codes, etc., were obtained\*:

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Accepted by PHFA:

License Number: \_\_\_\_\_

By: \_\_\_\_\_

Firm: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\*Include attachments as necessary.

## List of Drawings

Attach a list of the drawings in the following format, listing each drawing sheet:

Development Name: \_\_\_\_\_ PHFA No.: \_\_\_\_\_

Drawing No.      Original Date      Latest Revision Date

Cover Sheet:

Site Plans:

Architectural Drawings:

Structural Drawings:

Mechanical Drawings:

Plumbing Drawings:

Fire Protection Plans:

Electrical Drawings:

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**SECTION 3.08**  
**ARCHITECT'S CERTIFICATION OF COMPLIANCE**  
**WITH DESIGN REQUIREMENTS FOR ACCESSIBLE HOUSING**

**Development:** \_\_\_\_\_, **PHFA No.:** \_\_\_\_\_

**Check Appropriate:**

- |                                  |                                  |                          |
|----------------------------------|----------------------------------|--------------------------|
| _____ New Construction           | _____ Townhouse                  | _____ Elevator Building  |
| _____ Moderate Rehabilitation    | _____ Walk-up Apartments         | _____ Non-Elevator Bldg. |
| _____ Substantial Rehabilitation | _____ Low-rise (1 – 3 Stories)   |                          |
| _____ Preservation               | _____ Mid-Rise (4 – 6 Stories)   |                          |
|                                  | _____ High-Rise (Over 6 Stories) |                          |

To the best of my knowledge and belief, I certify that I have designed the referenced project in conformance with the following rules and regulations as they apply to this development and as amended by Federal, State and Local Authorities.

**CHECK ALL THAT APPLY**

**APPLICABLE**

- |    |  |       |
|----|--|-------|
| 1. | The Fair Housing Act of 1988<br>Fair Housing Design Manual   | _____ |
| 2. | ANSI A117.1 (2003)   | _____ |
| 3. | Pennsylvania Uniform Construction Code   | _____ |
| 4. | Uniform Federal Accessibility Standard (UFAS)<br>of the Architectural Barriers Act of 1968   | _____ |
| 5. | Section 504 of the Rehabilitation Act of 1973  | _____ |
| 6. | Americans with Disabilities Act<br>Accessibility Guidelines (ADAAG)  | _____ |
| 7. | Any other State or Local code or regulation pertaining<br>to design or inclusion of rental housing accessibility features<br><br>(Include name of locality and citation for applicable requirements) | _____ |
|    | _____  |       |
|    | _____  |       |

In reference to the above, I hereby further certify as follows:

The project contains a total of \_\_\_\_\_ rental dwelling units.

Of this total, \_\_\_\_\_ units are accessible (as set forth in 24 CFR Part 8).

Of this total, \_\_\_\_\_ units have been designated to be adaptable as defined in

\_\_\_\_\_.

Of this total, \_\_\_\_\_ units have been designed to include features for individuals with hearing or vision impairment as defined in:

\_\_\_\_\_.

ARCHITECT:

Name *(printed)*: \_\_\_\_\_ Firm: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

*(To be signed by authorized officer of Design Architect firm)*

Acknowledged and accepted by Owner

Name *(printed)*: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_