

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

THIS ADDENDUM shall amend the American Institute of Architects Document B101 or B108, 2017 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 by shall amend the Agreement to include the following:

Owner holds a fee simple interest in certain real estate described in Exhibit A, attached herto and made 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 he 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, 2017 Edition, AIA Document A201 General Conditions of the Contract for Construction, 2017 Edition, the Pennsylvania Housing Finance Agency Addendum to AIA Documents A101 and A201, the PHFA Supplemental 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 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 the Architect, when the work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so Owner can occupy the 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 the 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 the Architect is responsible for both design services and contract administration of the Development, retainage in the amount of Three Thousand Dollars (\$3,000) will be withheld from the Design Services fee.
- B. The retention will be paid out when construction has been completed, upon receipt by PHFA of complete and acceptable "Record Drawings" (As-Built Drawings) in PDF format on a CD. The architect must invoice PHFA after issuance of the Record Drawings to receive payment.

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.

- A. If the Architect is responsible for both design services and contract administration of the Development, retainage in the amount of Three Thousand Dollars (\$3,000) will be withheld from the Construction Contract Administration fee.
- B. The retention will be paid in three equal installments, after acceptable attendance during construction and at the completion of the 4, 8 and 11 month inspection meetings during the one (1) year Guarantee Period as required by Article IV, Section 10 herein. The architect must invoice PHFA after each guarantee meeting to receive payment.

### **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 determinations made pursuant to the Agreement of 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 the 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. Two (2) hard copies of final working drawings and specifications.
  - B. One (1) electronic copy (PDF on CD) of final working drawings and specifications.
  - C. Upon actual completion of construction, one (1) electronic copy (PDF on CD) of Record Drawings, ("As Built Drawings") indicating any changes in the buildings or plans shall be provided to PHFA.
  - D. One (1) hard copy of the Record Drawings shall be provided to the Owner.
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 business or industry that manufacturers 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 of Compliance with Design Requirements for Accessible Housing".

### **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

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 actions 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 request 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 observation of the work by Architect or his/her agent. The name of the Architect's representative 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 "punch-list" items or incomplete work awaiting seasonal opportunity such as landscaping and heating system tests (such expected items to specified).
10. During the one (1) year Guarantee Period which begins on the Annual 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 and 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 the 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 *loan* 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 manufacturers 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 terminations.

#### **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 or Architect by any remedy available in law 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 venture 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 address 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 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 the 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.