

[Date]
Project Name: _____

NJHMFA # _____

**ADDENDUM TO CONSTRUCTION CONTRACT
FOR NJHMFA CONSTRUCTION FINANCING**

This Addendum is made this ____ day of _____, 201_ by and between _____ (the "Contractor") and _____ (the "Owner").

This Addendum shall be used in conjunction with an AIA standard form of Construction Contract that shall include AIA Document A201 - 2007 – *General Conditions of the Contract for Construction*.

BACKGROUND

A. Contractor and Owner have entered into a construction contract dated _____, ("the Construction Contract") whereby Contractor is to complete certain improvements (the "Work") to property owned by Owner and located at _____, Municipality of _____, _____ County, New Jersey (the "Property").

B. The Contractor understands and agrees that the Work contracted for by Contractor and by Owner are anticipated to be financed by a mortgage between the Owner, as Borrower and the New Jersey Housing and Mortgage Finance Agency ("Agency") as Lender ("Lender"). The improvements to be performed by the Contractor shall at all times be subject to the approval of the Agency through its duly authorized representatives before such improvements will be considered a mortgageable expense. Compliance with Agency requirements and with any documents required by the Agency, including but not limited to the requirements noted on the Agency's document checklist for financing and consistent with the Agency's underwriting guidelines, regulations at N.J.A.C. 5:80, et seq. and statutory requirements at N.J.S.A. 55:14K-1, et seq., shall therefore be a condition precedent to the right to receive payment from the mortgage funds. This Addendum shall become part of the Construction Contract.

C. The terms of this Addendum, including any requirements noted on the Agency's document checklist for financing and consistent with the Agency's underwriting guidelines, regulations at N.J.A.C. 5:80, et seq. and statutory requirements at N.J.S.A. 55:14K-1, et seq., shall supersede the terms of the AIA standard construction contract forms (form A101 or form A102) and the AIA form of *General Conditions of the Contract for Construction* (form A201) and any other agreements between the Contractor and the Owner concerning the property or the improvements to be constructed or work undertaken therein.

D. Capitalized terms used herein, but not defined shall have the meaning set forth in AIA form A201 - *General Conditions of the Contract for Construction*.

NOW, THEREFORE, Owner and Contractor for and in consideration of the Construction Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, each agree that the Construction Contract shall be amended to include the following provisions and that these provisions shall supersede and control with respect to their rights and obligations to each other and with respect to the rights of the Agency,

notwithstanding the terms of any agreements to the contrary. Owner and Contractor further agree that the terms of any agreements inconsistent with this Addendum shall be invalid.

1. Agency Project Representative: The Agency as Lender may designate a project representative (“Project Representative”) to maintain contact with the contractor at the site and observe the Work in progress. The Contractor agrees that said Project Representative and all other duly authorized representatives of the Agency shall have access to the Project premises at all times. Representatives of the Agency shall have the right to inspect the Project at any and all reasonable times during construction and to attend job meetings. The parties hereto understand and agree that said Project Representative is employed solely for the purpose of safeguarding the interests of the Agency in its role as Lender. In its role as Lender, the Agency has a right but not a duty to observe construction activities. Any inspection, approval, review of the Improvements, direction or supervision by the Agency or its representatives exercised pursuant to the Contract and this Addendum is performed in accordance with the Agency’s rights and responsibility as Lender and as an instrumentality of the State of New Jersey and shall not make the Agency a party to the Construction Contract between the Owner and Contractor, and in no way is intended to relieve the Owner of its obligations pursuant to the Contract or its loan with the Agency. Any and all requisitions for payment from the Lender’s loan proceeds must receive the approval of the Agency’s project representative before payment will be made to the Contractor or any vendor associated with the construction of the Improvements. Any recommendation or directive from the Project Representative is subject to final approval by the Agency’s Director of Technical Services or his designee.

2. Payment of Prevailing Wages: Prevailing wages must be paid pursuant to N.J.S.A. 55:14K-42, or The Davis-Bacon Act, 40 U.S.C. §3141 et seq., as amended, as may be applicable.

3. Assignment of Contract: The Contractor shall not assign this Construction Contract nor permit the assignment of any subcontracts or any amount payable in connection therewith, nor delegate its responsibilities without the prior written consent of the Owner and the Agency. No consent to any assignment or transfer of this Contract or any subcontract shall under any circumstances operate to relieve the Contractor of any of its obligations under this Contract; and for all purposes hereunder, all assignees, subcontractors and other transferees shall be deemed to be agents of the Contractor.

The Contractor hereby agrees that the Owner may assign the Construction Contract or any rights arising hereunder including any guarantees or warranties of workmanship or material with the approval of the Agency.

4. Changes: Owner lacks the authority to approve changes to any plans related to the contract documents, including but not limited to drawings and specifications, the Construction Contract and scope of Work unless such changes have been approved by the Agency. Contractor shall confirm all proposed changes with the Agency prior to undertaking any Work thereunder.

5. Completion of Project: The Agency shall have the right, but not the obligation to complete the Project on the same terms and under the same conditions as set forth in the Construction Contract as if it were the Owner if the Agency deems such action to be necessary to protect the financial security of either the Project or the Agency and/or the health, safety and welfare of the Project’s prospective occupants.

If at any time it shall be impracticable or contrary to the interests of Owner or Agency, in the judgment of the Owner and Agency, to proceed with or continue the performance of the Work or any part thereof, whether or not for reasons for which either of the parties is responsible, Owner and Agency may

order the contractor to suspend performance until such time as Owner and Agency may deem it practicable to proceed.

If Contractor is delayed at any time during the completion of the Project by any means beyond its Contract responsibility, and if said delay affects Project Completion beyond the time set forth herein and could not be reasonably anticipated by the parties taking into particular account the scope of the Work set forth in the Construction Contract and the warranties of the Contractor set forth in the Construction Contract, then the Contract time may be extended upon written approval of Owner and Agency. However, neither Owner nor Agency shall be liable or responsible or answerable in any way for damages caused by delay and no compensation shall be paid to Contractor because of any suspension of the Work or disruption in performance or loss of productivity.

Extensions of time, which may be granted as hereinafter provided, shall be in lieu of any claims against Owner or Agency for any damages to the Contractor because of any delay. However, no extensions of time will be granted for Work commenced prior to the date of the Notice to Proceed. As a condition precedent to the granting of an extension of time, the Contractor shall give the Owner, Architect and Agency written notice within fifteen (15) days after the first day of a delay, and shall include in such notice the causes of delay and a request for an extension of time for such delay providing an estimate of the probable effect of such delay on the progress of the Work. In the event Contractor fails to give the written notice within fifteen days or fails to submit additional documentation within fifteen days from the date of being notified of the need for such additional documentation, Contractor shall not be entitled to any extension of the time fixed in the Contract for the completion of the Work and shall not be entitled to any benefits of the provisions of this Article. If Contractor has provided Owner, Architect and Agency with the required notice requesting an extension of time and all reasonably necessary supporting documentation, the Owner, Architect and Agency shall then ascertain the facts and extent of delay and shall extend the time for completing the Work if, in their mutual agreement and judgment, the facts and circumstances justify such an extension or the length of time requested. In the event that mutual agreement cannot be reached, the determination of the Agency shall be binding.

Delays as referred to in this paragraph shall mean any disruption in the progress of the Work, including but not limited to, any act or neglect of Owner, Architect or Agency, or by any separate contractor employed by the Owner, or due to changes ordered in the Work, or by labor disputes, unavailability of adequate manpower, fire, unusual, adverse and abnormal weather conditions or by any other significant, but unanticipated cause.

6. Accounting: Contractor shall maintain separate bank accounts, books of account and records for all its activities in connection with this Contract. All disbursements under this Contract shall be made by check or wire transfer from the separate bank account or accounts established by the contractor. No deposits therein or withdrawals therefrom shall be made by the Contractor with respect to any other construction job, nor any other of Contractor's activities except those directly related to the Project.

7. Construction Lien Claims: In the event a construction lien is filed by any claimant pursuant to N.J.S.A.2A:44A-1, *et seq.*, or any similar law, Contractor shall immediately cause any such construction lien to be discharged by either (1) paying the claimant, or (2) filing a surety bond or making a deposit of funds as provided for at N.J.S.A. 2A:44A-31 or similar applicable provision. If Contractor does not cause such construction lien to be immediately discharged, Owner or Agency shall have the right to pay all sums necessary to obtain such discharge and to charge the costs it incurs in doing so against funds due the Contractor or Owner, as applicable. Contractor shall indemnify and hold the Owner and Agency harmless from all claims, losses, demands, reasonable counsel fees, causes of action or suits of whatever nature arising out of any such construction lien.

8. Waiver of Claims Against the Agency: The parties acknowledge and agree that the Agency is not a party to the Contract and therefore no claims may be made against the Agency. However, if a claim in contract is asserted against the Agency, such claim shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. (except for N.J.S.A. 59:13-9 thereof). While this statute may not be applicable by its terms to claims arising under contracts with the Agency, the parties agree that it shall be applicable to any claims asserted in connection with the Project, the Contract, this Addendum and to any Work contemplated by or associated with the same. It is acknowledged by the parties that the Agency is a public entity covered by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq.

9. AIA A101 and A201 preambles: Add to “the Owner”: “, duly organized and existing under the Laws of the State of New Jersey, and constituting a qualified housing sponsor as that term is defined by the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq. (hereinafter "Agency Law").”

10. AIA A101, Article 1 The Contract Documents: Add “Project Manual” to the list of documents in the first sentence after “Specifications.”

11. AIA A101, Article 4: Add following section:

“§ 4.5: “Trade Payment Breakdowns”: The Contractor is required to submit two (2) different "Trade Payment Breakdowns" to the Owner, Architect and Agency: the "Summary Trade Payment Breakdown," constituting a list of all trade payments required to complete the terms of this Contract; and the "Detailed Trade Payment Breakdown," required herein. The Summary Trade Payment Breakdown and the Detailed Trade Payment Breakdown for General Conditions are required to be submitted and approved by the Agency prior to the mortgage closing. The Detailed Trade Payment Breakdown (for all trades other than General Conditions) is required before any partial payment can be made.

“Except for the Detailed Trade Payment Breakdown for General Conditions (which is required prior to the mortgage closing), prior to the submission of its first requisition for a partial payment, the Contractor shall present to the Owner, Architect and Agency for approval a Detailed Trade Payment Breakdown showing the breakdown of the Contract Sum, as hereinabove set forth, which must contain the amount estimated for each part of the Work and in addition a quantity survey for each such part of the Work, as required in a form deemed acceptable by the Agency. Owner and Agency approval will be required for any estimate in the Detailed Trade Payment Breakdown in excess of the estimate for the same work found in the Summary Trade Payment Breakdown. A request by the Contractor for a future revision of an estimate set forth in the Detailed Trade Payment Breakdown will be granted only if the Owner and Agency determine that such a change was unforeseeable when the original Detailed Trade Payment Breakdown was submitted. The values employed in making the Detailed Trade Payment Breakdown will be used only for determining the size of the partial payments, and will not be considered as fixing a basis for additions to or deductions from the Contract Sum. The Detailed Trade Payment Breakdown so approved shall thereupon become a part of the Contract as if it had been fully set forth herein at the time of the execution of the Contract.

“It is understood and agreed between the Owner and the Contractor that the Contract Sum shall not include New Jersey State Sales and Use Tax if the Owner is a nonprofit sponsor or the Project qualifies for sales tax exemption pursuant to N.J.S.A. 54:32B-8.22.”

12. AIA A101, Section 5.1.8: Add “The amount stated herein shall not be less than ten percent (10.0%) of the Contract sum.”

13. **AIA A201, Section, 1.1.1:** Add “Project Manual” to the Contract Documents.

14. **AIA A201, Section 1.1.4:** Add “The Project shall be further known as _____, HMFA# _____, is to be constructed pursuant to the provisions of the Agency Law, and is to be aided by a mortgage loan or loans from the Agency.”

15. **AIA A201, Section 1.1.5:** Add “such additional plans, drawings, profiles, typical cross-sections, general cross-sections, working drawings and supplemental drawings concerning the Work as may hereafter be issued by the Architect and accepted by the Owner and the Agency and such amendments to any of the foregoing documents as may be issued by the Architect and accepted by the Owner and the Agency.”

16. **AIA A201, Article 1:** Add following sections:

“§ 1.1.9 **Project Manual** - shall mean and refer to the following documents: Invitation to Bid, Instructions to Bidders, Bids, Payment and Performance Bonds, together with the Contract, General Conditions, Supplementary Conditions, and Specifications, and any addendum to such documents as may be agreed upon by the Parties.”

“§ 1.1.10 **Trade Payment Breakdowns:** The Contractor is required to submit two (2) different "Trade Payment Breakdowns" to the Owner, Architect and Agency: the "Summary Trade Payment Breakdown," constituting a list of all trade payments required to complete the terms of this Contract; and the "Detailed Trade Payment Breakdown," herein. The Summary Trade Payment Breakdown and the Detailed Trade Payment Breakdown for General Conditions are required to be submitted and approved by the Agency prior to the mortgage closing. The Detailed Trade Payment Breakdown (for all trades other than General Conditions) is required before any partial payment can be made.”

“§ 1.1.11 **Notice to Proceed** - shall mean a written directive served upon the Contractor by the Architect authorizing the commencement of the Work, pursuant to Article 4.”

17. **AIA A201, Section 3.2.4:** Add “Agency” to third sentence, which begins “If the Contractor performs those obligations....”

18. **AIA A201, Section 4.2.9:** Add following paragraphs at end of section:

“Upon the completion of the Work, including all landscape requirements except as noted below, the Contractor shall notify the Owner, Agency and Architect, in writing that it is ready to commence the process of final inspection. Work under this Contract shall not be considered complete for purpose of final inspection unless and until all portions of the Work requiring inspection by municipal or other governmental entities having jurisdiction have been duly inspected and approved by such authorities and by the applicable Board of Fire Underwriters and all requisite Certificates of Occupancy and other approvals have been duly issued.

“If the landscape improvements required under the Contract cannot be completed because of seasonal conditions, the Contractor may stipulate that the Owner and Agency may retain from the final payment hereunder such amounts as the Owner and Agency may deem necessary to protect the interests of the Owner and the Agency in respect to the satisfactory completion of such landscape improvements. In this event, the amount retained shall be held in escrow by the Agency, without interest, until the completion of the landscape improvements required under this Contract in a manner satisfactory to the Owner and the Architect with the concurrence of the Agency. Until such completion, the Contractor shall retain full responsibility for the maintenance of the landscaping. Upon completion of the landscape improvements and

the furnishing by the Contractor of such further instruments and assurances as the Owner and Architect with the concurrence of the Agency may require, the Agency shall pay over the amount so held in escrow to the Contractor.

“Final inspection of the Work by the Architect shall be commenced within eight (8) calendar days after receipt of the Contractor's written request therefor. When the Architect determines that the Work is substantially complete, the Architect shall so advise the Agency and the Agency shall make an observation of the Work. If inspection reveals items of Work still to be performed, the Architect with the concurrence of the Owner and the Agency shall provide written notice in the form of a written list to the Contractor specifying the items of Work remaining and any defects which are then known to it. Said notice and any subsequent notices following reinspection shall be given to the Contractor no more than eight (8) calendar days after the date of such inspection or reinspection. The omission of any item or items from such notices shall not be deemed to relieve the Contractor from performing its obligations with regard to such items or items as required by the Contract. Upon receipt of any notice specifying items of Work remaining or any defects then known to it, the Contractor shall immediately perform or correct the indicated items and upon completion of all such items, request a reinspection of the Work.

“In the event the Contractor shall neglect, refuse or otherwise fail to fully complete or resolve, in a manner satisfactory to the Owner and Agency, the remaining items and known deficiencies set forth in all said notices excepting landscape improvements if so excluded pursuant to the provisions of this Article, the Contractor agrees to pay, not as a penalty but as liquidated damages, the amounts set forth in Article 8.3.4 hereinafter of this Contract.”

19. AIA A201, Article 7: Add following section:

“§ 7.5: The provisions of this Article 7 notwithstanding, Owner lacks the authority to approve changes to any plans related to the contract documents, including but not limited to drawings and specifications and the scope of the Work, unless such changes have been approved in advance by the Agency. Contractor shall confirm all proposed changes with the Agency prior to undertaking and work thereunder.”

20. AIA A201, 8.1.2: Add to end of sentence: “but not later than the day specified in a Notice to Proceed issued by the Architect.”

21. AIA A201, Article 8: Add following section:

“§ 8.3.4: The Contractor does hereby further agree, as part of the consideration for the awarding of this Contract, to pay to the Agency, as mortgagee in interest, for the benefit of the Project, as a reasonable forecast and not as a penalty but as liquidated damages, the amounts as hereinafter set forth, if the Contractor shall have neglected, refused or otherwise failed to complete the Work within the time herein specified or any proper extension thereof authorized by the Architect and Agency in accordance with the provisions of this Contract.

“It is agreed that the Contractor shall be liable for the following sums as liquidated damages which are a reasonable forecast and not as a penalty:

“1. A sum equal to 1/20 of one percent (.05%) of the Contract Sum of this Contract, per day, for each and every day, or part thereof, that the Work remains incomplete after the time specified in the Contract or any extension thereof until the Date of Substantial Completion or if applicable, the Average Date of Substantial Completion of this Contract so long as any such day or days is in excess of the date specified for all completion of the Work or any authorized extension thereof.

“2. A sum equal to 1/200 of one percent (.005%) of the Contract Sum of this Contract, per day, for each and every day, or part thereof, that any portion of the Work remains incomplete until the date of actual completion.

“The Contractor and Owner agree that it would be difficult to calculate actual damages and therefore the liquidated damages set forth in this Article are intended as a substitute therefore, and a reasonable forecast of loss to the Owner, recognizing that losses will accrue to the Owner due to delayed Substantial or Actual Completion of the Project for administrative, inspection, interest and other costs added or increased as a result of any such delay and for the loss to the Owner of the use of the Project premises in a completed state of construction.”

22. AIA A201, Section 9.3.1: Add (submit to) “the Agency’s Director of Technical Services.”

23. AIA A201, Article 9: Add following sections:

“§ 9.1.1: The Contractor understands that the Work is to be financed by a mortgage loan secured by a first lien mortgage between the Owner as Borrower and the Agency as Lender. The Work to be done by the Contractor shall at all times be subject to the approval of the Agency through its duly authorized representatives before such Work will be considered a mortgageable expense. Such representatives shall consist only of the Agency’s Director of Technical Services and such employees or other employees or other persons as the Director of Technical Services may specifically designate and authorize in writing. The approval of the Agency may be exercised by said representatives only to the extent permitted by such written authorization. Whenever any statements, documents or data of any sort, nature or description are required under this Contract to be submitted to the Architect or Owner, or both, duplicates of such statements, documents or data shall be likewise submitted to the Agency. The approval of the Agency shall be a condition precedent to the right to receive payment from the above referenced mortgage loan funds.”

“§ 9.3.4: In no event shall the Contractor be entitled to be paid on more than one Application for Payment per month. The Architect and the Owner agree to expeditiously review the Contractor's Application for Payment, if it is acceptable, the Owner shall submit a copy to the Agency along with an application for payment (the "Sponsor's Requisition"). The Sponsor's Requisition, together with a check made payable to the Contractor, shall be executed by duly authorized signatories and submitted to the Agency within ten (10) days following the Contractor's submittal of the Contractor's requisition.

“Upon receipt and approval of the necessary Contractor's requisition and approved Sponsor's Requisition, and upon receipt by the Agency of a satisfactory title rundown search from the Owner’s title company, the Owner or the Agency (by check signed by the Owner and Agency and issued in the name of the Contractor) will make payment to the Contractor. The Contractor shall only be entitled to payment in the amount recommended by the Architect and Owner and approved by the Director of Technical Services with respect to said application.

“Any inspection, approval, review of the Work, direction or supervision by the Agency or its representatives exercised pursuant to the Contract is performed in accordance with its responsibility as Lender and as an instrumentality of the State of New Jersey pursuant to the Agency Law and shall not make the Agency a party to this Contract and in no way is intended to relieve the Owner of its obligations pursuant to the Contract or its loan with the Agency.

“Any provision in this Contract which calls for the Owner's or Architect's order, direction, approval, consent or has similar language, is hereby deemed to mean that such order, direction, approval, consent or similar language shall not be effective without the written approval of the Agency.”

“§ 9.10.6: Audit and Determination of Total Cost.

“1. Within twenty (20) Days after the issuance of the final Certificate for Payment, the Contractor shall have prepared and delivered to the Owner and to the Agency an independent audit of the total costs, charges and expenses theretofore paid and incurred by the Contractor and thereafter to be paid to the Contractor in the performance of this Contract. The audit shall not include any amounts paid to the Contractor as the Contractor's Fee or paid as a fee to the Contractor from the Owner's Development Fee.

“The said accountant must be "independent" as so defined by the American Institute of CPAs and cannot have provided any record keeping or other services to the Contractor in connection with the Work pursuant to the Contract. In addition, the selection and scope of services of any accountant may only be made with the Agency's prior written approval, and the cost of said audit shall be paid by the Contractor. If the Contractor fails to make the submissions required by this Article within fifty (50) Days, the Owner and Agency shall determine total cost.

“2. The total costs as determined in the aforementioned audit shall be hereinafter referred to as the "Direct Construction Cost." The sum of the Direct Construction Cost, Contractor's Fee and the amount calculated in accordance with provisions herein (Adjustments for Changes and Extra Work), as applicable, shall be the Contractor's Submission Cost.

“3. The Agency and the Owner may, at their own expense, make an independent review and audit of the Contractor's Direct Construction Costs upon the completion of the Work. The Agency and Owner may make similar reviews and audits progressively during the course of the Contract. Based upon the Agency's final audit and review, the Agency shall determine the total cost of the Work. Said determination shall be binding and conclusive upon the Owner and Contractor unless either party shall notify the Agency within twenty (20) Days of the issuance of said determination of any objections thereto. Upon receipt of any such notification of objection, the Agency shall review its findings and issue a final determination of the total cost of the Work and such final determination of total construction costs shall also state the amount remaining to be paid under the Contract.

“4. The Contractor agrees that representatives of the Agency shall have full and free access to all books of account and records of the Contractor relating to the Work under this Contract, including the right to make photostatic copies of or excerpts or transcripts from such books of accounts and records and related and supporting documents and statements, including but not limited to bank statements, checks paid by banks and checkbook stubs.

“5. Separate bank accounts and books in account and records shall be maintained by the Contractor in connection with this Contract. Entries shall not be made therein with respect to any other job of the Contractor. The separate books of account shall include, but need not be limited to: General Ledger, Cash Receipts Book, Cash Disbursements, Voucher Register, Payroll Register, Insurance Register and Contractors Ledger. All purchases should be supported by an invoice, purchase order and a signed receiving report. Also, these documents should specifically reference the Project. All labor charges should be supported by a time card. These time cards should be signed by the individual performing the Work and the individual's supervisor. These time cards should specifically reference the Project. Also, the specific construction phase being performed should also be indicated on the time card.

“All disbursements under this Contract shall be made by check from the separate bank account or accounts established by the Contractor. No deposits therein or withdrawals therefrom shall be made

by the Contractor with respect to any other construction job. The Contractor shall use a Uniform System of Accounts prescribed by the Agency in the accounting required for this Contract.

“6. With regard to determining the Direct Construction Cost, the rental value of plant and equipment of the types permitted by the Agency shall be calculated in accordance with current equipment rental rates established by the Rental Rate Bluebook published by the Equipment Guidebook Company subject to review and approval by the Agency.”

“§ 9.10.7: Conditions Precedent to Final Payment. The Contractor shall, as conditions precedent to Final Payment, furnish to the Owner, Architect and the Agency the following:

“1. A detailed, sworn statement of all liens, claims, and demands, just and unjust, of subcontractors, materialmen, laborers, other employees and third persons then outstanding or which it has reason to believe may thereafter be made on account of or in any way connected with or arising out of this Contract or the Work or performance thereof, setting forth with respect to each such claim, the total amount thereof, the various items of labor and materials included therein, and the alleged value of each item, and if the alleged claim be one from any employee or third person, the details of each claim, setting forth the nature of such claim, the manner in which such claim arose, the date or dates when the incident or incidents which form the basis of such claim occurred and the amount of each such claim.

“2. A bond satisfactory to the Owner and the Agency indemnifying the Owner and its successors and assigns against all claims as set forth in the aforementioned statement, or in lieu thereof, the written consent of the existing Surety or Sureties to have the Payment Bond modified so as to cover such claims and the written consent of its Surety to such payment.

“3. A general release to the Owner and Agency of all claims of the Contractor against the Owner and Agency and of all liability of the Owner and Agency to the Contractor for all things done or furnished in connection with the Work and for every act and neglect of the Owner and Agency and others relating to or arising out of the Work.

“4. Any other documents required pursuant to this Contract including, but not limited to, those set forth below:

- a. Final Certificates of Occupancy, and final inspection approvals by authorities having jurisdiction (temporary and final).
- b. A final summary of all change order claims.
- c. A copy of the General Contractor's guarantee in accordance with the General Conditions, and a copy of the Subcontractors' guarantees.
- d. A copy of roofing warranty and special guarantees as per the Specifications.
- e. A copy of all maintenance manuals and operating instructions in accordance with the General Conditions in digital media and one copy in paper form.
- f. As-built drawings in accordance with the General Conditions.
- g. A copy of the final survey in accordance with the General Conditions.

- h. A copy of all permit approvals, including but not limited to, electrical certificates, plumbing approval, elevator, Fire Department, NJ Department of Environmental Protection, fuel burning equipment permit.
- i. A copy of the Architect's Certificate of Final Acceptance.
- j. Agency-approved audits conducted under § 9.10.6(3)."

“§ 9.10.8: Within thirty (30) Days after the Agency's final cost determination of the total cost of the Work, the Owner, subject to the provisions of this Contract, shall pay to the Contractor the amount due under the Contract, less all prior payments and advances whatsoever to or for the account of the Contractor. All prior estimates and payments, including those relating to Extra Work, shall be subject to correction in this payment, which is throughout this Contract called the "Final Payment."

“The acceptance by the Contractor of the Final Payment or any part thereof shall be and shall operate as a release of the Owner and the Agency from all claims and all liability to the Contractor for all things done or furnished in connection with the Work and for every act, omission, and neglect of the Owner, the Agency and others relating to or arising out of the Work. No payment under this Contract shall operate to release the Contractor or its Surety or Sureties from any obligations under this Contract or any bond. If any lien or claim arises or remains unsatisfied after all payments have been made, the Contractor shall refund to the Owner all monies that the Owner must pay for the purpose of discharging or contesting any liens or claims, including all reasonable fees, cost and expenses.”

24. AIA A201, Article 11: Add following sections:

“§ 11.4.3: Notwithstanding the provisions of this Section 11 to the contrary, the Contractor agrees to furnish to the Owner and the Agency assurance of completion in the form of an executed bond in an amount equal to 100% of the Contract Price (plus any fee paid to the Contractor from the Owner's Development Fee, if the Owner is a for-profit Sponsor) to secure the faithful performance of this Contract, or other security acceptable to the Agency Board of Directors, as security for the payment of all persons performing labor or furnishing materials in connection with this Contract (collectively, the Payment and Performance Bonds) prepared on forms of bonds satisfactory to the Agency and having as Surety thereunder such surety company or surety companies as are approved by the Agency and are authorized to do business and underwrite such Payment and Performance Bonds in the State of New Jersey. The Surety must agree in writing to the provisions of this Contract insofar as they relate to the obligations of the Surety in connection with this Contract.

“The Owner and the Agency will require such Payment and Performance Bonds in the forms acceptable to the Agency from the Contractor prior to the time of the execution of this Contract and during its performance thereof, and the fulfillment of this requirement shall be a condition precedent to the Contractor's right to execute the Contract and to enter into the performance of the Work hereunder and to continue performance of the Work hereunder.”

“§ 11.5: In addition to the provisions of this Section 11, Owner and Contractor shall at all times comply with the current Agency policies with respect to insurance requirements. For projects receiving construction financing from the Agency, the Agency shall be named as first mortgagee, additional insured and lender's loss payable on the Contractor's liability insurance coverage. All such insurance shall be in such form, in such amounts and upon such terms as may be required by the Agency“

25. AIA A201 Section 13.6: Replace entire section with: “The Contractor agrees that no interest shall be due and payable from the Owner or Agency on any sums retained, deducted or withheld from the

partial' payments or the Final Payment, or for failure to make any partial payments or the Final Payment on the date when any such payments may be due; nor shall the Contractor entitled to keep any interest on monies overpaid or erroneously retained by it.”

26. AIA A201, Article 13: Add following sections:

“§ 13.1.1: Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise such provision is not inserted, or is not correctly inserted, then upon the application of either Party, with the concurrence of the Agency, the Contract forthwith shall be physically amended to make such insertion.”

“§ 13.2.3: The Contractor agrees not to assign this Contract or agree to the assignment of any subcontracts or any amount payable hereunder or thereunder, or delegate its responsibilities without the prior written consent of the Owner and the Agency. No consent to any assignment or transfer of this Contract or any subcontract shall under any circumstances operate to relieve the Contractor of any of its obligations under this Contract; and for all purposes hereunder, all assignees, subcontractors, and other transferees shall be deemed to be agents of the Contractor. The Contractor hereby agrees that the Owner may assign this Contract or any rights arising hereunder, including any guarantees or warranties of workmanship or material.”

“§ 13.8: In the event the Contractor asserts a contractual claim against the Agency, notwithstanding the express provisions herein that the Agency is not a party to this Contract, the Contractor agrees to comply with the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., and the Contractor agrees that the Agency shall be entitled to all rights set forth therein.”

“§ 13.10: The foregoing provisions notwithstanding, the Contractor agrees that performance of this Contract by the parties is contingent upon the closing of all mortgage loans, grants and other sources of financing required by the Owner to fund development of the Project. The Contractor further agrees that the failure of the Owner to secure financing for the Project will cause this Contract to terminate and the Contractor will have no claim in contract or tort for damages, including but not limited to, expectation damages.”

27. AIA A201, Article 15: Add following sections:

“§ 15.5: **Monies Retained Against Claims.** The provisions of the Section 15 notwithstanding, if in the judgment of either the Owner or Agency, the Work is not performed in strict accordance with the Contract and if, in the judgment of the Owner with the concurrence of the Agency, such failure of the Contractor to perform in strict accordance with the Contract has resulted in a construction defect which must be immediately addressed, then funds retained from the Contractor can be used to investigate the construction defect and effectuate a cure thereof. The Contractor agrees that its legal recourse with respect to such use of retainage is solely against the Owner.

“If any claim shall be made by any person, firm or corporation (including, but not limited to, subcontractors of the Contractor on this Project) against the Contractor, Owner or Agency, then the amount of such claim or so much thereof as the Owner and the Agency may deem necessary, may be withheld from retainage as security against such claim for any money due hereunder: (1) for an alleged loss, damage or injury of the kind referred to in the General conditions of this Contract which, in the opinion of the Owner and the Agency, may not be covered by the contingent liability, public liability or property damage insurance policy unless the insurer acknowledges coverage in writing to the Owner and the Agency, or which, together with

previously filed claims, is in excess of the amount payable under such policies; or (2) for an infringement of patents or use of patented articles, tools, and like items as referred to in the General Conditions of the Contract Documents; or (3) for damage claimed to have been caused directly or indirectly by the failure of the Contractor to perform the Work in strict accordance with this Contract.”

“§ 15.6: Construction Liens. In the event a construction lien is filed by any claimant pursuant to N.J.S.A. 2A:44A-1 et seq. the contractor shall immediately cause any such construction lien to be discharged by either (1) paying the claimant or (2) filing a surety bond or making a deposit of funds as provided for at N.J.S.A. 2A:44A-31. If the Contractor does not cause such construction lien to be immediately discharged, the Owner shall have the right to pay all sums necessary to obtain such discharge and to charge the costs it incurs in doing so against funds due the Contractor. The Contractor shall indemnify and hold the Owner and Agency harmless from all claims, losses, demands, causes of action or suits of whatever nature arising out of any such construction lien.”

The terms of this Addendum shall not be modified except with the express written consent of the Agency.

The terms, conditions and covenants contained in the Construction Contract that are not inconsistent with the provisions of this Addendum shall, unless specifically amended hereby, remain in full force and effect.

IN WITNESS WHEREOF, Owner and Contractor have executed this Addendum as of the day and year first above stated.

OWNER:

CONTRACTOR:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED:

New Jersey Housing and Mortgage Finance Agency

Director of Technical Services or

Designee