

|                              |   |                              |
|------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON         | ) | CIVIL ACTION NO.: _____      |
| COMMUNITY FIRST LAND TRUST,  | ) |                              |
|                              | ) |                              |
| Plaintiff,                   | ) |                              |
|                              | ) | <b>SUMMONS</b>               |
| vs.                          | ) | (Jury Trial Demanded)        |
|                              | ) |                              |
| DWELL IN CHARLESTON, LLC and | ) |                              |
| JOHN DOES 1 – 15,            | ) |                              |
|                              | ) |                              |
| Defendants.                  | ) |                              |
|                              | ) |                              |
|                              | ) |                              |

TO: DEFENDANTS DWELL IN CHARLESTON, LLC AND JOHN DOES 1 – 15 ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint contained herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

Christopher C. Mingledorff  
 South Carolina Bar No. 100390  
 MINGLEDORFF & PATTERSON, LLC  
 245 Seven Farms Drive, Suite 310  
 Charleston, South Carolina 29492  
 (843) 471-1015 – Telephone  
 chris@mptrial.com  
*Attorney for the Plaintiff*

February 20, 2023

Charleston, South Carolina

|                              |   |                              |
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| STATE OF SOUTH CAROLINA      | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON         | ) | CIVIL ACTION NO.: _____      |
| COMMUNITY FIRST LAND TRUST,  | ) |                              |
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| Plaintiff,                   | ) |                              |
|                              | ) | <b>COMPLAINT</b>             |
| vs.                          | ) | (Jury Trial Demanded)        |
|                              | ) |                              |
| DWELL IN CHARLESTON, LLC and | ) |                              |
| JOHN DOES 1 – 15,            | ) |                              |
|                              | ) |                              |
| Defendants.                  | ) |                              |
|                              | ) |                              |
|                              | ) |                              |
|                              | ) |                              |

TO: DEFENDANTS DWELL IN CHARLESTON, LLC AND JOHN DOES 1 – 15 ABOVE-NAMED:

Plaintiff complaining of the Defendants allege as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Community First Land Trust (hereinafter “Plaintiff”) is a domestic non-profit entity organized and existing pursuant to the laws of the State of South Carolina.

2. Defendant Dwell in Charleston, LLC (hereinafter “Defendant Dwell”) is a South Carolina limited liability company with its registered agent located in Charleston County, South Carolina. At all times relevant hereto, Defendant Dwell performed work and otherwise operated its business in Charleston County, South Carolina.

3. Defendants John Doe subcontractors 1 – 15 (sometimes collectively with Defendant Dwell, the “Defendants”) are citizens or entities who supplied materials, labor and/or services for the construction and/or repair of the Properties (as detailed herein), whose identities are not yet known to nor discoverable by Plaintiff but whose identities may be known to one or more of the defendants.

4. Jurisdiction and venue are proper in this Court.

**FACTS RELEVANT TO ALL COUNTS**

5. Plaintiff realleges and incorporates herein by reference all allegations set forth above.

6. Plaintiff is the owner of a parcel of real property commonly known as 2020 Hugo Avenue, North Charleston, South Carolina 29405 (the “Hugo Property”).

7. Plaintiff is the owner of a parcel of real property commonly known as 2040 Arbutus Avenue, North Charleston, South Carolina 29405 (the “Arbutus Property” and sometimes collectively with the Hugo Property, the “Properties”).

8. On or about December 8, 2020, Plaintiff and the Defendants entered into a “Construction Contract” wherein the Defendants agreed to construct single-family residences on each of the Properties (the “Agreement”). A copy of the Agreement is attached hereto as Exhibit “A.”

9. At all times, Plaintiff has complied with the Agreement.

10. The Defendants failed to comply with the Agreement, including, but not limited to, timely completion of the work, improper accounting, failure to have the work properly inspected, failing to have a certificate of occupancy issued, failure to complete the work to code, failure to complete the work to reasonable industry standards, and to otherwise comply with the terms of the Agreement.

11. The Defendants, by undertaking the work and actually performing work on the Properties, owed a duty to Plaintiff to construct, renovate and repair the Properties free from defects, in a good and workmanlike manner and in accordance with all applicable building codes and industry standards.

12. The work which was completed by the Defendants includes a number of construction defects, latent and otherwise. The Defendants should have known about these construction defects at the time the work was completed.

13. Plaintiff, due to recent investigations, has determined that the Properties are extensively damaged, which damage was proximately caused by the Defendants, their agents, servants, employees and/or subcontractors. As a direct and proximate result of the Defendants' actions, Plaintiff has spent and will continue to expend substantial sums of money in order to restore the Properties to make it safe and habitable and ensure the construction of the Properties complies with applicable buildings codes and industry standards. In addition, the Properties have suffered a loss in value and depreciation by virtue of the defects and damages. In addition, Plaintiff will be required to expend substantial sums and will suffer damages which include, but are not limited to, the cost of the investigation, the design of the repair, the repair itself, loss of use of the Properties during the repair, loss of value of the Properties, and other actual, incidental, consequential, special, direct and indirect damages, in an amount to be determined. As a result of the conduct referenced herein, Plaintiff is entitled to punitive damages in an amount to be determined.

14. Plaintiff is informed and believes the damage to Arbutus Property is a direct and proximate result of defects and deficiencies in the renovation, repair and construction.

15. Plaintiff is informed and believes the damage to the Hugo Property is a direct and proximate result of defects and deficiencies in the renovation, repair and construction, specifically including, but not limited to, the following:

- a) failure to properly install structural framing;
- b) failure to properly install roofing;

- c) failure to properly install exterior components and claddings;
- d) failure to properly install interior finishes; and
- e) other and further defects and deficiencies as may be found during ongoing investigations.

16. Notwithstanding that Plaintiff has properly maintained the Properties, the construction defects set forth herein have caused occurrences at the Properties.

17. The latent construction defects have resulted in repeated exposure to the same generally harmful conditions over time and have resulted in consequential damages. Such repeated exposure to the same generally harmful conditions constitutes “occurrences” and compensable damage. Further, the negligence of each Defendant herein has resulted in damage to the work of other contractors and trades, damage to non-defective components of the work, and damage to the Residence.

18. At all times relevant hereto, the Defendants made representations to Plaintiff, upon which Plaintiff reasonably relied. Those representations included, but are not limited to, the Defendants’ ability to exercise due care in the work performed at the Properties and to complete all work at the Properties free from all defects; in conformity with all applicable building codes, using good and acceptable construction practices; in conformity with approved constructions plans and specifications; in conformity with manufacturer specifications; and in a careful, diligent and workman-like manner.

19. On February 23, 2022, Plaintiff provided adequate notice to Defendant Dwell regarding the Hugo Property pursuant to South Carolina Code Ann. §40-59-810, *et. seq.*

20. On May 23, 2022, Plaintiff provided adequate notice to Defendant Dwell regarding the Arbutus Property pursuant to South Carolina Code Ann. §40-59-810, *et. seq.*

**FOR A FIRST CAUSE OF ACTION AS TO ALL DEFENDANTS**  
**(Negligence/Gross Negligence)**

21. Plaintiff realleges and incorporates herein by reference all allegations set forth above.

22. The Defendants each provided labor, services and materials for the construction of the Properties. As such, the Defendants owed a duty to Plaintiff to exercise due care in the work performed at the Properties and to complete all work at the Properties free from all defects; in conformity with all applicable building codes, using good and acceptable construction practices; in conformity with approved constructions plans and specifications; in conformity with manufacturer specifications; and in a careful, diligent and workman-like manner.

23. The Defendants were negligent, careless, reckless, willful and wanton in failing to exercise due care in the work performed at Arbutus and to complete all work free from all defects; in conformity with all applicable building codes, using good and acceptable construction practices; in conformity with approved constructions plans and specifications; in conformity with manufacturer specifications; and in a careful, diligent and workman-like manner, thereby breaching the duty owed to Plaintiff by, but in no way limited to, the following:

- a. In failing to adequately supervise the work of subcontractors;
- b. In failing to discover defects in the work performed by the subcontractors;
- c. In failing to correct defective work;
- d. In constructing the House in a defective manner;
- e. In failing to construct the House in accordance with applicable building code and industry standards;
- f. In failing to construct the House in accordance with manufacturer and product specifications;
- g. In failing to construct the House in accordance with plans and specifications;

- h. In failing to use the degree of care and caution that a reasonably prudent person in would have used in constructing the House, and;
- i. Such other failures that shall be shown in discovery of this case and at trial.

24. The Defendants were negligent, careless, reckless, willful and wanton in failing to exercise due care in the work performed at the Hugo Property and to complete all work free from all defects; in conformity with all applicable building codes, using good and acceptable construction practices; in conformity with approved constructions plans and specifications; in conformity with manufacturer specifications; and in a careful, diligent and workman-like manner, thereby breaching the duty owed to Plaintiff by, but in no way limited to, the following:

- a. failure to properly install structural framing;
- b. failure to properly install roofing;
- c. failure to properly install exterior components and claddings;
- d. failure to properly install interior finishes;;
- e. In failing to install appropriate flashings;
- f. In failing to adequately supervise the work of subcontractors;
- g. In failing to discover defects in the work performed by the subcontractors;
- h. In failing to correct defective work;
- i. In constructing the House in a defective manner;
- j. In failing to construct the House in accordance with applicable building code and industry standards;
- k. In failing to construct the House in accordance with manufacturer and product specifications;
- l. In failing to construct the House in accordance with plans and specifications;

m. In failing to use the degree of care and caution that a reasonably prudent person in would have used in constructing the House, and;

n. Such other failures that shall be shown in discovery of this case and at trial.

25. As a direct, foreseeable and proximate result of the negligence and gross negligence of the Defendants, Plaintiff has suffered significant damage.

26. Plaintiff has been further damaged in that it has spent and continues to spend large sums of money in order to investigate the issues at the Properties.

27. The negligence and gross negligence of the Defendants as outlined herein entitles Plaintiff to an award of all actual, consequential and punitive damages as provided by law.

**FOR A SECOND CAUSE OF ACTION AS TO ALL DEFENDANTS**  
**(Breach of Implied Warranty of Workmanlike Service, Breach of Implied Warranty against Latent Defects, Breach of Implied Warranty of Fitness for a Particular Purpose, Breach of Implied Warranty of Habitability, and Breach of Implied Warranty of Merchantability and Service)**

28. Plaintiff realleges and incorporates herein by reference all allegations set forth above.

29. By undertaking and performing construction and renovation work at the Residence, Defendants impliedly warranted that their work would be performed in a careful, diligent and workmanlike manner and would be free from all defects, and the Residence would be designed, developed, and constructed in a fit, habitable, serviceable, good and workmanlike fashion in accordance with all applicable building codes and construction industry standards, and the Residence would be merchantable, free from latent defects and fit for the particular purpose for which it was built.

30. Defendants and their agents, servants, employees and subcontractors breached said warranties by constructing the Residence with defects and deficiencies, and in a manner that fails



to meet the requirements of the applicable building codes, construction industry standards and manufacturers' installation instructions.

31. Plaintiffs have been proximately damaged by Defendants' breach of said implied warranties in that Plaintiffs have spent, and will continue to spend, large sums of money in order to determine the extent of the damage and the proper and necessary scope of repair and to repair the damages. In addition, the Residence has suffered significant physical damage, including water and moisture intrusion, and the Plaintiff has suffered other damages in the form of loss of use and diminution in value.

32. As a direct and proximate result of Defendant's breach of implied warranties, Plaintiffs have suffered damages and are entitled to judgment against Defendants for all actual, direct, indirect, resulting, and consequential damages in an amount to be proven at the trial of this case.

**FOR A THIRD CAUSE OF ACTION AS TO DEFENDANT DWELL**  
**(Breach of Contract)**

33. Plaintiff realleges and incorporates herein by reference all allegations set forth above.

34. Defendant Dwell entered into the Agreement with Plaintiff to provide certain labor, services and materials related to construction of the Properties. Defendant Dwell has breached the Agreement, as outlined in detail herein.

35. As a direct and proximate result of the breach of the Agreement by Defendant Dwell, Plaintiff has been damaged in an amount to be proven at trial and are entitled to an award of all actual, consequential and punitive damages.

WHEREFORE, Plaintiff prays upon this Court for the following judgment:

- a. That this Court enter judgement in an amount to be proven at trial pursuant to Count 1;
- b. That this Court enter judgement in an amount to be proven at trial pursuant to Count 2;
- c. That this Court enter judgement in an amount to be proven at trial pursuant to Count 3;
- d. That this Court award Plaintiff attorneys' fees;
- e. That this Court award Plaintiff costs and expenses related to bringing this action;
- f. That this Court award other damages as provided by law, including punitive damages; and
- g. For such other and further relief which this Court may deem just and proper.



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(843) 471-1015 – Telephone  
chris@mptrial.com  
*Attorney for the Plaintiff*

February 20, 2023

Charleston, South Carolina

## **CONSTRUCTION CONTRACT**

THIS Construction Contract (this "**Contract**") is the final written integration of the agreement between Community First Land Trust, P. O. Box 71815, North Charleston, SC. (the "**Owner**") and Dwell in Charleston, 16 Boyer Court, Charleston, SC 29403 (the "**Contractor**") executed on the date written next to their names signed below, the latter of which shall become the effective date of this Contract.

### **1. Recitals:**

The Owner desires to avail itself of the services of the Contractor in connection with **the construction of two single family houses located at 2020 Hugo Avenue and 2040 Arbutus Avenue, North Charleston, SC 29405** (the "**Project**"), and the Contractor desires to provide such services.

In consideration of the premises set forth above, the parties hereto agree as follows:

### **A. SCOPE OF WORK; PAYMENTS TO OTHERS**

### **2. Scope of Work:**

2.1 "**Work**" includes all labor, services, supervisions, materials, equipment, facilities, skills, instrumentalities and costs required or reasonably inferable from the Scope of Work and Contractor Bid Sheets attached hereto as **Exhibit A** for the completion of the Project.

2.2 Contractor has made its own independent investigation and evaluation regarding the Project and the Work and is entering into this Contract on the basis of such investigation independent of any information or estimates provided by Owner.

2.3 The Contractor agrees to furnish all labor, services, supervision, materials, equipment, facilities, skill, and instrumentalities used in, or in connection with, the full performance of all Work in accordance with the terms of this Contract; agrees to prosecute the Work diligently and continuously; and agrees to turn over the Project with the Work complete no later than after the one hundred and twenty (120) days from executed date of contract, and to meet any and all Project deadlines set forth in Exhibit N/A ("**Contract Time**"). TIME IS OF THE ESSENCE WITH RESPECT TO CONTRACTOR'S PERFORMANCE CONCERNING TO EACH AND EVERY TIME LIMIT ESTABLISHED BY THIS CONTRACT.

2.4 Contractor shall be required to show the updated status of the Work on a monthly Construction Progress Schedule which shall be prepared in a form reasonably acceptable to Owner.

2.5 Contractor shall take sole and exclusive responsibility for initiating, maintaining and supervising all necessary safety precautions and programs in connection with all of the Work under this Contract. The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules, regulations, orders, and other legal requirements of public authorities related to the Work or the safety of persons or properties for protection of such persons or properties (collectively "Law").

2.6 Contractor shall erect and maintain all necessary safeguards, warning signs, hazardous material notices, safety regulations in connection with the Project.

2.7 Contractor shall erect, maintain and repair any and all necessary or temporary shoring measures in connection with the Work.

### 3. Payments to Others:

3.1 The Contractor agrees to:

3.1.1 Pay for all expense, including, but not limited to, materials, skills, labor, services, supervisions, facilities, equipment and instrumentalities used in, or in connection with, the performance of this Contract and any other claims arising out of the Work, when and as bills or claims therefor become due, and to save and protect the property and the Owner from all manner of claims, including without limitation, mechanics' liens that arise out of or result from the Work, and to furnish satisfactory evidence to the Owner, when and if required, that it has complied with the above requirements;

3.1.2 Satisfy and discharge any claims, or transfer to bond with good and sufficient surety acceptable to Owner, any liens filed by its subcontractors, suppliers, sub-subcontractors, or their material men of within ten (10) days of such claim having been made or lien filed or recorded. If within such ten (10) day period, Contractor shall not have removed, satisfied, or discharged any lien claim, or with respect to any other claim, have satisfied the same or have given Owner such further assurances as Owner may request, then the Owner may, at its option, pay such claims or remove such lien at Contractor's expense and then and there set off and deduct from any payments due or to become due to Contractor all costs and expenses of removing or satisfying such liens or other claims, and

3.1.3 Indemnify, defend, and hold harmless the Owner and any related entities from any costs, including attorneys' fees, incurred as a result of liens or claims against Owner or the Project filed by its subcontractors, suppliers, sub-subcontractors, or their material men.

## B. PAYMENTS

### 4. Partial Payments - Final Payment - Release:

4.1 The price to be paid to Contractor by Owner for full performance of the Work in accordance with this Contract is **Three Hundred and Seventeen Thousand, One Hundred and Seven** and 00/100 dollars (\$317,102), subject to additions and deletions as provided by the terms of this Contract (the "**Contract Sum**"). The Contract Sum includes allowances for certain items to be selected by Owner. Contractor will bill only for the cost of allowance items and represents to Owner that each allowance is a reasonable estimate for materials necessary to complete those line items to the Owners expectation, and the Owner recognizes that final expense for this line item may increase or decrease due to the finish item selections.

4.2 Payments shall be made to the Contractor based on applications for payment that shall be submitted on a monthly basis to Owner for review and based upon Owner's approval of such pay applications. Until such time as the Work is more than fifty percent (50%) complete as determined by Owner in accordance with the terms of this Contract, Owner shall be

entitled to withhold ten percent (10%) of the total amount due pursuant to each pay application (including, without limitation, any costs of general conditions). Thereafter, Contractor may request in writing that the amount of retainage withheld from subsequent pay applications be reduced, and Owner may approve such requested reduction in its sole discretion (which approval shall only be effective if in writing). Owner shall release such retainage when (a) Contractor has fully performed all of its obligations herein (save and except future extended warranty obligations), (b) Contractor has provided final lien releases and waivers (conditioned only upon receipt of the retainage) from itself and all Subcontractors as well as any other documentation reasonably requested by Owner. This provision does not alter or limit Owner's right to withhold payment as otherwise provided in this Contract or at law.

**4.3 As further conditions precedent to Contractor's right to receive any payment:**

4.3.1 Contractor shall submit an application for such payment on the form reasonably required by Owner.

4.3.2 Together with the application for payment, Contractor shall deliver to Owner fully executed lien releases and certify that all wages, materials, equipment and other costs corresponding with the Work for which payment is sought and in the amount of the payment sought, have been paid.

4.3.3 All necessary approvals of the completed portion of the Work for which payment is sought shall have been received from the Owner, all approvals and requirements for any private or governmental funding partners for the Project as set forth in Exhibit (B) have been met, all approvals required as a condition of payment under this Contract or applicable Laws have been obtained.

4.3.4 The truthful and complete preparation of interim Lien Waiver duly executed and notarized by Contractor in the form acceptable to Owner shall be an express condition precedent to Owner's duty to make any payments to Contractor under this Contract. Contractor agrees that Owner has the right to disclosure of the information requested in the Lien Waiver and that Owner has the right to withhold payments to the extent the Owner reasonably determines it is necessary to protect the interests of Owner if Contractor fails to submit the Lien Waiver or if any information contained in any Lien Waiver is determined to be false.

4.3.5 In addition to the foregoing, once Contractor has completed all Work in accordance with the terms of this Contract, Contractor shall certify completion of the Work to Owner and shall submit a Final Application for Payment to Owner for the outstanding balance of the Contract Sum and approved Change Orders. Final Payment shall not be due and owing until: (i) Contractor furnishes to Owner a complete and final release of all liens and claims from all persons, firms and corporations who have performed work or supplied materials in connection with this Contract; (ii) Owner has accepted the Work; (iii) all approvals and requirements for any private or governmental funding partners for the Project as set forth in Exhibit (B) have been met; and (iv) Contractor obtains approval of all applicable governmental authorities and submit an affidavit to Owner stating that all of the work requiring inspection by governmental authorities has been appropriately and fully approved and accepted by such governmental authorities. Upon meeting the requirements for Final Payment and approval by Owner and/or Owner's Project Representative of Contractor's Final Application for Payment, Owner will remit payment to Contractor within forty-five (45) days of that time.

**5. Change Orders:**

5.1 Contractor shall not make any change in the Work or deviate from the plans and specifications set forth in the Scope of Work unless Contractor receives a written Change Order signed by the Owner prior to making such a change or performing such Work.

5.2 In the event that the Owner issues a Change Order to Contractor as provided above, Contractor shall perform such additional work, which shall be deemed to be part of the Work. If the Change Order is issued or is to be issued on a basis other than an agreed upon lump sum or unit price for the Work to be performed, Contractor shall only be entitled to receive payment for the cost of such changed Work plus ten percent (10%) total for overhead and profit. Contractor shall provide the Owner with any information reasonably requested by the Owner to substantiate the cost of such changed Work. Contractor shall not be entitled to request or receive any payment for overhead and profit for such changed Work except as specifically set forth above.

## **6. Deductions in General:**

In addition to the rights enumerated elsewhere herein, the Owner may withhold from any amounts due or to become due to Contractor sums equal to indebtedness owed by Contractor to Owner, or others for labor or material or equipment, or any other obligations of Contractor on this Project or for any other Project or cause, or regarding matters for which Owner has received notice and for which Owner is or may possibly become liable or on account of which Owner has incurred any indebtedness. In the event of any breach by Contractor of any provision or obligation of this Contract, Owner shall have the right to retain out of and deduct from any payments due or to become due to Contractor an amount sufficient to completely protect Owner from any and all loss, damage, or expenses therefrom until the breach, cause, or claim which prompted the withholding has been satisfactorily remedied or adjusted by Contractor. The rights of the Owner under this Section shall not be exclusive of any other rights of the Owner herein or provided by Laws.

## **C. PERFORMANCE**

### **7. Prosecution of Work:**

7.1 Contractor shall comply with written instructions given by Owner, including to suspend, delay or accelerate the Work. In the event that Contractor believes that Owner's instructions entitle Contractor to a Change Order or to a claim for additional compensation or time, Contractor shall seek such a Change Order or assert such a Claim as otherwise provided in the Contract.

7.2 The Contractor shall cooperate with the Owner and other contractors whose work may interfere with the Work and shall participate in the preparation of coordinated drawings and work schedules as required by Owner, specifically noting and advising the Owner of any interference or potential interference with the Work of others.

7.3 Contractor shall keep the construction area reasonably clear of debris resulting from the performance of the Work and shall regularly remove from the construction area and lawfully dispose of all debris generated by the execution of the Work. If the Contractor fails to comply with this paragraph within forty-eight (48) hours after receipt of notice of noncompliance from the Owner, Owner may perform such necessary clean up and deduct the cost from any amounts due to the Contractor.

7.4 Contractor shall give adequate notices pertaining to the Work to the proper authorities, and shall secure and pay for all necessary licenses and permits to carry on the Work, a copy to be provided to Owner by Contractor prior to the start of the Work under this Contract.

7.5 Contractor shall review the scope of Work and construction documents before commencement of the Work and shall inform Owner in writing of any material or design it considers unsuitable for the Project. Notwithstanding the foregoing, Contractor is not a licensed design professional and shall not be obligated to identify any deficiencies, omissions, or defects in any design documents beyond what is reasonable for a general contractor. The Contractor shall review for compliance with the Scope of Work and shall approve and submit to Owner for review and approval (i) shop drawings, (ii) product data, (iii) samples, and (iv) other such submittals with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or of separate contractors. By submitting shop drawings, product data, samples or other similar submittals, Contractor represents to the Owner that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work.

7.6 Should the Contractor fall behind in its progress of the Work (taking into account extensions of the Contract Time approved in accordance with the Contract) or otherwise fail to timely progress the Work to meet Owner's reasonable expectations, Contractor shall, without being entitled to any additional compensation or extension of the Contract Time, work overtime, increase its forces, or take other such action as may be necessary or appropriate to complete the activity within the Contract Time, provided that such lack of progress is caused by Contractor or its subcontractors or material suppliers and such lack of progress is not caused by Owner, its employees or agents.

7.7 Contractor shall be responsible to Owner for the acts and omissions of Contractor's subcontractors and suppliers, regardless of tier.

7.8 Contractor represents and warrants to Owner that terms of this Contract govern any Work that may have been performed by Contractor prior to the date of this Contract.

7.9 It is agreed that the Contractor occupies and shall occupy the status of an "independent contractor," and that Contractor and Contractor's employees are not employees of Owner.

## **8. Coordination with Others:**

Contractor agrees to perform and coordinate its Work with that of the Owner and other contractors, if any, in the best interests of the Project as a whole.

## **9. Protection of Work:**

9.1 The Contractor shall adequately and properly protect the Work and adjacent areas by lights, barriers, supports, and guards, or any other necessary devices or means, so as to avoid injury or damage to persons or property. Contractor shall be directly responsible for damages to persons and property occasioned by failure to do so, and for any negligence in the performance of the Work. Contractor also agrees that it shall be responsible for the repair costs of others' work, which Contractor fails to protect, or damages.

9.2 Contractor shall take all necessary precautions to protect in place from damage all overhead, underground and surface improvements, including but not limited to, pole lines,



pipe lines, conduits, cabling, subsurface facilities, sewer lines, water lines, service and meters, valves, hydrants, irrigation facilities and any other improvements located within or adjacent to the Project that may be affected by the Work.

## **10. Claims:**

10.1 The Contractor agrees to provide prompt written notice to Owner of any claims including claims for additional time and for compensation, for which the Owner is or may be liable so Owner may timely address such claims. Provided that the proceeding sentence does not require earlier action, written notice of such claims shall be given by the Contractor to the Owner within five (5) days after beginning the Work under this Contract or within the earlier of five (5) days after of the event or Contractor's first knowledge of the event. Failure to strictly comply with the notice requirements set forth herein shall constitute a waiver of any and all claims for additional time or compensation related to such notice requirements.

10.2 Contractor waives any and all claims for consequential damages against the Owner, including damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except profit on the Work performed.

10.3 If the Contractor is materially delayed in the progress of the Work solely by an act or neglect of the Owner, or of an employee or agent of Owner, then the Contract Time shall be reasonably extended by Change Order to the extent such delay extended the critical path of the Project, and the Contract Sum shall be adjusted by Change Order for any additional costs actually incurred and directly resulting from the delay; provided that adequate supporting documentation is provided by the Contractor. If the Contractor is delayed at any time in the commencement or progress of the Work, for any other reason beyond its reasonable control, including, but not limited to, labor disputes beyond Contractor's control, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, casualties requiring reconstruction or repair to the Work or Project or any parts thereof, sabotage, vandalism, concealed conditions, hazardous materials, or shortage/unavailability of materials, supplies, labor, equipment and systems, then the Contract Time shall be extended by Change Order for each day of resulting delay to the critical path of the Project. However, the Contract Sum shall not be adjusted by Change Order for additional costs or expenses due to delay, and Contractor waives its right to pursue or recover all such costs and expenses and other delay-related damages from Owner. Notwithstanding the foregoing, in no event shall the Contractor be entitled to receive an extension of the Contract Time or a positive adjustment to the Contract Sum to the extent any event or condition was caused by the negligence or other fault of, or could have been reasonably avoided by, Contractor or any subcontractor or supplier of any tier under Contractor.

10.4 Nothing contained in this Article 10 shall be deemed to preclude an award of direct damages to Owner, when applicable, in accordance with the express terms of this Contract.

## **11. Testing and Inspection:**

Testing required for the Work shall be provided for by the Contractor, although Owner shall be permitted to have additional testing done at its discretion. Costs associated with Owner-initiated testing will be the Owner's responsibility unless testing reveals sub-standard performance of the Work. In this case Contractor shall be responsible for reimbursement of all Owners costs and all associated costs related to the correction of the sub-standard work.



**12. Warranty:**

12.1 Neither the final payment nor any provision or modification of this Contract, nor any review or approval of Work by Owner or its consultants shall relieve Contractor of responsibility for faulty materials or workmanship. Contractor is solely responsible for the accuracy, completeness and sufficiency of all Work. In addition to the specific guarantees required by the Scope of Work and any plans and specifications, Contractor warrants to the Owner that materials and equipment furnished under this Contract will be of good quality and new, unless otherwise required or permitted in writing by Owner; that the Work of this Contract will be free from defects; and that the Work will conform with the requirements of this Contract, as well as all applicable laws, codes standards and regulations. In addition, Contractor further warrants that it will repair or replace any Work performed or materials furnished under this Contract against defects in material or workmanship, at its own expense and without cost to Owner, for a period beginning at substantial completion of the Project, and continuing until one (1) year after Substantial Completion of the Work. Such one (1) year repair warranty shall not reduce the duration of any other warranties herein or any applicable common law, state or federal statutory warranties or statutes of limitation. Accordingly, Contractor shall complete all correction items within five (5) working days from receipt of the original notice. In the event of an emergency, Contractor agrees to respond and repair or replace any defective work or materials within twenty-four (24) hours from receipt of such notice.

12.2 In the event Contractor fails to repair or replace any Work or materials after receiving reasonable notice of Owner's request to repair or replace the same, Owner may, at its sole option and discretion, elect to repair or replace such Work or materials and hold Contractor liable for such repair or replacement (including any administrative costs incurred by Owner), and may back charge or withhold the cost of such repair or replacement from any account then payable by Contractor. Nothing in the foregoing provision shall, in any manner, diminish or defeat any legal right Owner may have to proceed against Contractor, including, but not limited to the right to recover for latent defects.

**12.3 TERMINATION BY THE OWNER FOR CAUSE**

The owner may terminate the contract if the Contractor

1. Repeatedly refuses or fails to supply enough properly skilled workers or proper materials
2. Fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the contractor and subcontractors
3. Persistently disregards laws, ordinances, or rules, regulation or orders of a public authority having jurisdiction or
4. Is otherwise guilty or substantial breach of a provision of the Contract Documents

**D. INSURANCE, BONDS AND INDEMNITY****13. Insurance:**

Contractor hereby agrees that as a condition precedent to commencing such Work under this Contract, it will present to the Owner acceptable certificates of insurance and corresponding endorsements, or at Owner's request, copies of the executed policies evidencing the maintenance of the following insurance coverage of the Contractor and demonstrating that Owner is additional insured under all policies, except the workers compensation policy.

Contractor will maintain such insurance in force at all times during the performance of any Work and for a period of one (1) year following completion of its work.

The Contractor (and its consultants and Subcontractors or anyone directly or indirectly employed by any of them unless other insurance requirements are approved in writing, in advance by Owner) will provide and maintain the following types and amounts of insurance:

### 13.1 Commercial General Liability Insurance:

Contractor must provide Commercial General Liability insurance using the 2013 ISO **Occurrence Form** or an equivalent form. The Commercial General Liability insurance must include coverage for "Premises-Operations", "Independent Contractors", "Products-Completed Operations", "Personal Injury" and "Contractual Liability" and must not include an exclusion for "action over" claims. The "Contractual Liability" must include the tort liability of another assumed in a business contract. The Contractor or his agent shall verify that there is no endorsement or modification of the CGL limiting the scope of coverage for liability arising from "explosion", "collapse", or "underground" property damage (known as the "x,c,u" exclusions). This insurance shall be maintained throughout the duration of the Project and for a minimum of one (1) year following completion of the Work. Limits shall be as follows:

|                                               |             |
|-----------------------------------------------|-------------|
| <b>Each Occurrence Limit</b>                  |             |
| Bodily Injury/Property Damage Liability       | \$1,000,000 |
| Personal Injury Liability                     | \$1,000,000 |
| <b>General Aggregate Limit</b>                |             |
| Products/Completed Operations Aggregate Limit | \$2,000,000 |

The policy must include:

The General Aggregate Limit is to be written on a "per Project" basis using contractor's "Per Project" endorsement: **Amendment-Aggregate Limits of Insurance** (CG 2503 or equivalent form). The "**Products/Completed Operations**" **Aggregate Limit** must be at least \$2,000,000, or written confirmation provided that the Commercial Umbrella coverage affirmatively "follows form" and includes liability coverage arising out of the insured's "Completed Operations".

The Owner and its subsidiaries, partners, partnerships, affiliated companies, successors and assigns, are to be named as an additional insured in the Contractor's policies with respect to this Project using the **Additional Insured-Owners, ...Contractor** endorsements (CG 20 10 10 01 & 20 37 10 01), or a substitute providing equivalent coverage. Verification of additional insured status shall be furnished to Owner by mailing a copy of the endorsement AND Certificate of Insurance.

This insurance will apply as primary insurance with respect to any other insurance or self-insurance the Owner may have or elect to carry with respect to this Project.

Broad Form Property Damage coverage, including completed operations, or its equivalent.

The work "performed on your behalf by a subcontractor" exception to the "Damage to Your Work" exclusion (Exclusion "I" in Section I of the ISO form CG 00 01 10 01 and earlier versions.) No limitation or restriction of this exception is allowed.

If the Work to be performed is on an attached community, there shall be no exclusion for attached or condominium Projects.

There shall be no exclusions for continuing or progressive losses not known by Contractor to exist prior to policy inception.

### 13.3 Workers Compensation:

Contractor shall ensure all subcontractor with appropriate employees and maintain Workers Compensation and Employers Liability insurance providing coverage in the state (or states) in which the Project is performed. Limits and coverage shall be as follows:

|                                |                                                                                    |
|--------------------------------|------------------------------------------------------------------------------------|
| Workers Compensation Insurance | Statutory Benefits                                                                 |
| Employers Liability Insurance  | \$1,000,000 each accident<br>\$1,000,000 policy limit<br>\$1,000,000 each employee |

Contractor waives all rights against Owner, its officers, agents, employees and representatives for any and all claims and injuries covered by Workers Compensation benefits. Contractor shall require its subcontractors to execute such a waiver in favor of Owner. Verification of such waiver of subrogation shall be furnished to Owner by mailing a copy of the endorsement AND Certificate of Insurance.

### 13.4 Umbrella Excess Liability:

Contractor shall provide umbrella and/or excess liability insurance on an "occurrence" basis providing "following form" coverage for the underlying coverages outlined above with the following minimum limits:

|                       |              |
|-----------------------|--------------|
| Each Occurrence Limit | \$10,000,000 |
| Aggregate Limit       | \$10,000,000 |

The Owner and its subsidiaries, partners, partnerships, affiliated companies, successors and assigns, as well as Owner's Landlord are to be named as an additional insured on the Umbrella/Excess Liability policy. Verification of additional insured status shall be furnished to Owner by mailing a copy of the endorsement and Certificate of Insurance.

### 13.5 Property Insurance:

13.5.1 Contractor shall maintain "Special Form" property insurance (commonly referred to as "all risk" or "special perils" coverage) in an amount equal to the full replacement cost of all Contractor's real and personal property (for which it has title and/or risk of loss), as well as real and personal property which becomes a final part of the Project, during its off-Project status, in transit and while stored or worked upon away from, or on, the Project site. All policy proceeds shall be used for the repair or replacement of the property damaged or destroyed.

13.5.2 Contractor hereby waives all rights of recovery against Owner, including its subsidiaries, partners, partnerships, affiliated companies, successors and assigns, with respect to any loss or damage, including consequential loss or damage, to the Contractor's property caused or occasioned by any peril or perils covered under any policy or policies of property insurance carried by the Contractor. Contractor shall cause its insurance carriers to consent to such waiver of subrogation.

**13.6 Waiver of Subrogation:**

Contractor waives all right of recovery of damages against Owner (and Owner's agents, officers, directors, and employees), including its subsidiaries, partners, partnerships, affiliated companies, successors and assigns to the extent these damages are covered by the Commercial General Liability, Comprehensive Auto Liability, or Umbrella and/or Excess Liability insurance as required above.

**13.7 Evidence of Insurance:**

Contractor shall furnish Certificates of Insurance and required endorsements to Owner prior to commencement of the Work. The certificate holder (and additional insured) should read as follows:

Community First Land Trust  
P O Box 71815  
North Charleston, SC 29415  
[hjw@cflandtrust.org](mailto:hjw@cflandtrust.org) 843-437-5956

The Certificate(s) of Insurance and corresponding endorsements shall be signed by a duly authorized representative of each insurance company, showing compliance with the insurance requirements set forth herein. The certificate should expressly state that if there is any material change in coverage (cancellation, expiration, or exclusion of a specifically required coverage such as completed operations) that the Contractor or his agent will make every reasonable effort to notify Owner at least thirty (30) days prior to such change by written notice.

13.8 The insurance companies providing coverage must be rated "A-" VII or better by A. M. Best's and be licensed in the state where the Project is located. Any exceptions to the requirement of (1) being licensed by the state, or (2) having a Best's "A-" VII rating or better, must be referred to Owner for prior approval.

13.9 If Contractor fails to maintain the required insurance as outlined above, the Owner shall have the right, but not the obligation, to purchase such insurance at the Contractor's sole expense. Contractor's failure to maintain insurance as required may result in termination of this contract at the Owner's option. However, the failure of the Owner to demand Certificates of Insurance or evidence of full compliance with these insurance requirements shall not constitute a waiver of the Contractor's obligation to maintain such insurance.

**14. Hold Harmless - Indemnity:**

14.1 Contractor agrees to indemnify, defend, hold, and save harmless Owner from and against any and all losses, claims, damages, costs, lawsuits, judgments, settlements and expenses, including attorneys' fees and paraprofessionals' fees arising out of or alleged to have arisen out of any of the following:

14.1.1 Breach of contract, negligence, alleged breach of contract or negligence by Contractor. If any third party shall make any claim against Owner arising out of or relating to the Work of Contractor, in whole or in part, then Contractor shall similarly defend and hold Owner harmless against such claims, even if they be false or fraudulent;

14.1.2 Bodily injury to any persons, including death, or damage to any property, whether owned, leased, or used by the Owner, Contractor, or others, including, without limitation, loss of use or services, occurring in or arising out of or in connection with the Work. Provided, however, this provision shall not be construed so as to have the effect of indemnifying and holding harmless Owner from and against such losses, damages, costs, claims, lawsuits, judgments, settlements, and expenses which shall arise solely out of the negligent acts or omissions of the Owner in connection with Work herein contemplated;

14.1.3 Property damage alleged to have been caused by the Contractor or occurring on account of or arising out of Contractor's Work and/or activities;

14.1.4 Contractor's violation or alleged violation of any federal, state or local laws, rules, regulations, requirements or common law.

## **E. DISPUTES**

### **15. Disputes Clause:**

15.1 The Owner and the Contractor agree to negotiate claims, disputes and other matters in question arising out of or relating to this Contract ("**Claims**") in good faith.

15.2 In the event a Claim is not wholly resolved through negotiation by the parties, the Owner and the Contractor, unless they agree otherwise, shall endeavor to resolve the Claim through mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Unless otherwise agreed to by the parties, such mediation shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association in effect at the time of the dispute. The request for mediation shall be filed in writing with the other party and with the American Arbitration Association. The parties shall share the mediator's fee and any filing fees equally. If mediation is not successful, any disputes may be resolved in a court of competent jurisdiction. Notwithstanding the foregoing, mediation shall not be a condition precedent to a lien or legal or equitable proceedings if: (a) the legal or equitable proceedings concern a temporary restraining order, preliminary injunction, or other emergency relief; or (b) despite good faith efforts, the mediation cannot be completed before the expiration of an applicable lien filing or notice deadline, or before the expiration of an applicable statute of limitations, repose, or other legal time limit.

## **F. MISCELLANEOUS**

### **16. Compliance With Laws and Other Requirements:**

16.1 The Contractor represents and warrants that it is in compliance and shall continue to comply with all federal, state and local Laws effective where the Work is to be performed under this Contract, and agrees to pay all fees, permits, taxes, including sales and use taxes, and expenses connected with such compliance, and also to pay all taxes imposed by any federal, state or local Laws for any employment insurance, pensions, old age retirement funds, or any similar purpose. Contractor also represents that it is appropriately licensed and trained and shall maintain all qualifications and professional certifications necessary or appropriate to perform the Work, and shall ensure that each of its employees, Subcontractors and any other person on the premises of Owner at the direction of Contractor are appropriately licensed and trained and shall maintain all qualifications and professional certifications necessary or appropriate to perform the Work

16.2 If any of the provisions under this Contract are in conflict with any of the above Laws, then such Laws shall control over this Contract. In such case, the Contractor is obligated to inform the Owner in writing of such non-compliance with such Law(s) within three (3) days of the discovery of such non-compliance.

16.3 To the extent that any term or provision of this Contract may be deemed void or not in compliance with any applicable Laws, that term or provision will be void, and where possible, void language shall be modified to the minimum extent necessary to conform to such Law(s). All other terms and provisions of this Contract remain in full force and effect.

16.4 Contractor shall comply, and shall cause each of its employees, Subcontractors and any other person on the premises of Owner at the direction of Contractor, to comply with all policies, standards, rules, regulations and procedures relating to the operation of Owner's facilities that presently exist or as may from time to time be established by Owner and communicated to Contractor.

## **17. Safety:**

As to safety on the Project, Contractor:

17.1 Shall familiarize itself and comply with all prevailing safety Laws; and

17.2 Agrees that it is solely responsible for compliance with all applicable Laws applying to safety, including, but not limited to, the Occupational Safety & Health Act ("OSHA"). Without limiting the foregoing, Contractor shall perform the Work using only those employees and/or Subcontractors, if any, who are fully trained and certified pursuant to 29 C.F.R. § 1910.120. It shall further assure itself that any tools, equipment, scaffolding, or other items which may be loaned or rented to it by the Owner or others are in good order and in compliance with OSHA standards and any other Laws designed to protect the safety of persons at the job site. To the fullest extent permitted by law, Contractor agrees to indemnify and hold Owner harmless with respect to any penalties or fines for violations thereof or for injuries or death resulting from non-compliance with the foregoing requirements.

## **18. Termination of Contract:**

18.1 The Owner may terminate this Contract or any portion thereof, if Contractor at any time shall breach the Contract by one or more of the following:

18.1.1 Refusing or neglecting to supply sufficient, properly skilled workmen or materials or equipment of the proper quality and quantity;

18.1.2 Failing to prosecute the Work with promptness and diligence;

18.1.3 Causing the stoppage or interference with the work of Owner or others unless such action is approved in advance by Owner in writing;

18.1.4 Failing to properly remedy defective work; and

18.1.5 Failing in the performance of any of the other material covenants or conditions in this Contract, including the Contractor's obligation to meet its debts as they mature and to pay its subcontractors.

18.2 Upon the occurrence of any event outlined in Section 18.1, Owner may, at its option, terminate this Contract by delivering written notice of termination to



Contractor. Upon the failure of Contractor within three (3) business days to cure the breach or commence and diligently pursue such cure to the reasonable satisfaction of the Owner, Owner may take possession of the Work, and through itself or others provide labor, equipment, and materials to prosecute Contractor's Work on such terms and conditions as shall be deemed necessary, and shall deduct the cost thereof, including all charges, expenses, losses, costs, damages, and attorney's fees, incurred as a result of Contractor's failure to perform or other breach, from any money then due or thereafter to become due to Contractor.

18.3 If Owner terminates this Contract for one of the reasons stated in Section 18.1, Contractor shall not be entitled to any further payments under this Contract until the Work has been completed and accepted by Owner. In the event that the unpaid balance due to Contractor exceeds Owner's cost of completion, the difference shall be paid to Contractor; but if Owner's cost of completion exceeds the balance due to Contractor, Contractor agrees to pay the difference to Owner within ten (10) days of written notice from Owner. Termination of this Contract, or portion thereof, shall not relieve the Contractor of its responsibilities for the completed Work, nor shall it relieve its surety and indemnity obligation for and concerning any claim arising out of the Work performed.

18.4 By written notice, without Contractor being at fault and for the Owner's convenience, Owner may require Contractor to immediately stop work and/or terminate this Contract. In such event, Contractor's sole and exclusive remedy for termination, shall be payment by Owner for that portion of the Work actually performed in compliance with this Contract in an amount proportionate to the fixed price set forth in or calculated pursuant to Section 4.1, along with reasonable demobilization and cancellation charges. Owner shall not be liable to Contractor for any other costs, expenses or damages, including any lost or prospective profits and Contractor waives its right to seek or recover such costs or damages from Owner .

18.5 If the Owner fails to make payment for a period of thirty (30) days after such payment is due and owing in accordance with this Contract through no fault of the Contractor, or if the Work is stopped for thirty (30) consecutive days through no fault of Contractor, the Contractor may, upon ten days' written notice to the Owner and Owners failure to cure or commence and diligently pursue a cure, as Contractor's sole and exclusive remedy for termination, terminate the Contract and recover from the Owner payment for Work executed and for proven direct, out-of-pocket loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit on the completed portion of the Work, and reasonable cancellation and demobilization costs.

## **19. Entire Agreement:**

It is agreed that all of the terms and conditions of this Contract are fully covered herein and that any verbal statements made by either party, or agents claiming to represent either party, are to be considered of no effect whatsoever. The failure of the Owner or Contractor to enforce at any time or for any period of time, any one or more of the provisions of this Contract shall not be construed to be and shall not be a waiver of such provision or provisions or of its right thereafter to enforce each and every such provision.

## **20. Severability:**

If any provision contained in this Contract is held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. The Court shall instead reform or replace any void or unenforceable provision with a valid and enforceable provision that gives meaning to the intention of the provision or shall strike the provision from the Contract.

**21. Applicable Law:**

This Contract shall be construed and enforced in accordance with the Laws of the state where the Project is located, excluding only its conflicts of law principles.

**22. Construction of this Contract:**

It is agreed that the terms and conditions of the Contract shall not be construed in favor of or against either party and that both parties have legal counsel available to review this Contract in connection with this arm's length transaction.

**23. Notices:**

23.1 Except as otherwise provided in this Contract, all communications required or permitted hereunder must be in writing and will be effective only when actually received by the parties. All notices shall be sent to the following individuals as set forth below:

**Owner:**

Name: Community First Land Trust  
Attn: Henrietta J. Woodward

Address: P.O. Box 71815  
North Charleston, SC 29415

Telephone: 843-437-5956

Facsimile: \_\_\_\_\_

e-mail: hjlw@cflandtrust.org

**Contractor:**

Name: Dwell in Charleston

Attn: Lawrence Green

Address: 16 Boyer Court  
Charleston, SC 29403

Telephone: 843-817-4838

Facsimile: \_\_\_\_\_

e-mail: lawrence@dwellingincharleston.com

**24. Confidentiality:**

Contractor shall use reasonable efforts to prevent disclosure or unauthorized use in any way by any person of any confidential records or reports without Owner's prior written consent. Contractor and Owner agree that the terms of this Contract shall be confidential and shall not be disclosed unless the parties mutually agree in writing to any such disclosure. The provisions of this paragraph shall survive the expiration or termination of this Contract.

**25. Hazardous Materials:**

If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor and which were not introduced by or known to Contractor, the Contractor shall, upon recognizing the condition,



immediately stop Work in the affected area and report the condition to the Owner and Owner's Project Representative in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. If permitted hereunder, the Contract Time shall be extended appropriately and the Contract Sum shall be increased as otherwise provided in this Contract.

**26. Equal Employment Opportunity & Non-discrimination & Section 3 Compliance:**

Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, religion, gender, sex, disability, familial status, marital status, height, weight, age, sexual orientation, national origin or other protected characteristics. Contractor will take affirmative action to insure that applicants and employees are treated without regard to their race, creed, color, religion, gender, sex, disability, familial status, marital status, height, weight, age, sexual orientation, national origin or other protected characteristics. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising layoff or termination; rates of any pay or other forms of compensation; and selections for training, including apprenticeship. Contractor agrees to post in conspicuous places, which are available to employees and applicants for employment, notices to be provided by the Owner, setting forth the provisions of this nondiscrimination clause.

**27. HUD Compliance.**

27.1 Contractor shall comply with Section 3 of the HUD Act of 1968. Section 3 requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with Projects and activities in their neighborhoods and that contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the Project area. Contractor agrees to comply with the Federal Regulations governing training, employment and business opportunities as follows: The Work is being performed pursuant to a program providing direct Federal financial assistance from the U.S. Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701(u), as well as any and all applicable amendments thereto. Contractor shall comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 C.F.R 135 and all applicable rules and orders of the Department of Housing and Urban Development issued thereunder as well as any and all applicable amendments thereto prior to the execution of this contract as well as during the term of this contract. The Contractor certifies and agrees that it is under no contractual or other disability, which would prevent it from complying with these requirements as well as any and all applicable amendments thereto.

27.2 Contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with these requirements as well as with any and all applicable amendments thereto. In addition, Contractor will include this Section 27 in every subcontract for work in connection with the Project and will take appropriate action upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development pursuant to 24 C.F.R 135.

27.3 Compliance with the provisions this Section 27, the regulations set forth in 24 C.F.R 135 and all applicable rules and orders of the Department of Housing and Urban Development issued thereunder prior to the execution of the contract is continuing condition, binding upon the applicant or recipient for such assistance, its successors, and assigns, and failure to comply may threaten federal financial assistance to the Project.

**28. Assignment:**

Neither party to the Contract shall assign the Contract without the prior, written consent of the other.

**29. Reservation Fee:**

Owner acknowledges that the Contractor will receive an initial deposit of Twelve Thousand Dollars (\$12,000) upon the execution of this contract and when the building permit applications for the project have been approved by the local jurisdiction. The purpose of the initial deposit to the contractor is for the contractor to obtain permitting and site prep in order to begin construction. The initial deposit will be subtracted from the total of the first draw to the Owner.

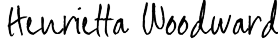
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[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Owner and Contractor have hereunto set their hands and seals in duplicate the day and year written below.

**OWNER**

**Community First Land Trust**

Date: 12/8/2020

By: DocuSigned by:  
  
D25C732C1CEB477...

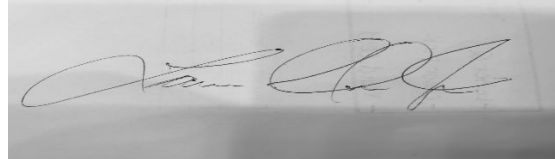
Printed Name: Henrietta J. Woodward

Title: CEO

**CONTRACTOR**

\_\_\_\_\_

Date: 12/8/2020

By: 

GC license # RBB50525

Printed Name: Lawrence Green

Title: CEO

**EXHIBIT A**

**SCOPE OF WORK**

**[to be attached]**

ELECTRONICALLY FILED - 2023 Feb 20 10:50 AM - CHARLESTON - COMMON PLEAS - CASE#2023CP1000854