

**CONSTRUCTION CONTRACT FOR CONSTRUCTION OF
CULLIMORE COTTAGES PROJECT
(A Fixed Price/Lump Sum Contract)**

THIS CONTRACT (“this Contract” or “this Agreement”) is made and entered into this _____ day of _____, 2020, by and between **John Hansman Construction, LLC**, a Missouri limited liability company (“Contractor”), and **Columbia Community Land Trust**, a Missouri not-for-profit corporation. Contractor and Owner may hereinafter be collectively referred to as “the Parties” and individually as a “Party”.

WITNESSETH:

1. The Project. Contractor agrees to build, construct and complete for Owner a series of single-family residential dwellings (“the Buildings”) and related improvements generally known as the Cullimore Cottages project, upon real estate located in Columbia, Missouri, and owned by Owner, which are commonly described by an address of:

The construction and completion of such Building and improvements, and all The Work required for such construction and completion, shall be referred to herein as “The Project.” Such real estate may be referred to as “the Site of The Project.”

2. Contract Documents. The “Contract Documents” consist of this Construction Contract and any attachments (if any) hereto, Contractor’s bid proposal which is attached hereto as **Exhibit 1**, those Plans and Specifications (“the Plans and Specifications”) for The Project, which have been prepared by Peckham Architecture (“Consultant”) and which are attached hereto as **Exhibit 2**; and those Special Agreements identified on **Exhibit 3**.

Owner and Contractor have reviewed and approved the Plans and Specifications. The Contract Documents shall be read collectively.

3. The Work. In exchange for payment of The Contract Sum described in paragraph 4 below, Contractor shall fully complete The Project and The Work hereinafter described, and shall furnish and pay for all labor, materials, tools, equipment, supplies, freight, transportation costs, and other items, and shall perform all work required for completion of the Project, in order to complete the Project in accordance with the Plans and Specifications and the requirements of this Contract. “The Work” shall refer to and include the supplying by Contractor of all labor, materials, tools, supplies, equipment, freight, transportation costs, work, services and other items of every kind, nature and description required to fully construct and complete the Project in accordance with the Contract Documents.

4. Contract Sum. Owner agrees to pay Contractor for The Work a Contract Sum (“the Contract Sum”) in an amount as follows or determined as follows:

Lump Sum/Fixed Price Contract. Owner shall pay Contractor for The Work a Contract Sum (“the Contract Sum”) of _____ Dollars (\$_____), which is broken down and itemized upon Contractor’s Bid Proposal, a copy of which is annexed hereto as

Commented [CC1]: Need to insert price from bid proposal

Exhibit 1 and is hereby incorporated herein by reference. The Contract Sum is intended to be a Guaranteed Maximum Price. Owner shall have no obligation to pay Contractor any amount in excess of the Contract Sum unless such amount was approved by Owner and reflected in a Change Order in the manner described below.

Items Not Included in the Contract Sum or the Work. Contractor shall not be responsible for supplying for the Project those items, if any, which are described on Exhibit 3, which is annexed hereto and which is hereby incorporated herein by reference; the supplying of such Excluded Items is not included in the Contract Sum. Owner shall provide such Excluded Items at Owner's separate cost and expense, and shall do so in a timely manner so as to permit Contractor to go forward with the Work in a timely and efficient manner.

Commented [CC2]: If there were Exclusions in either the bid or the RFP, those should be spelled out on Exhibit 3

5. Changes in The Work/Change Orders. Owner may order changes by written Change Order in Contractor's Work and reserves the right to make changes in labor or materials to be furnished or work to be performed by Contractor under the Contract or Contract Documents, or to make additions thereto or omissions therefrom, upon written order to Contractor. Any additions or reductions to be made to or from the amount of the Contract Sum resulting from changes in the Contract Work or materials furnished shall be agreed upon in writing by Owner and Contractor in the form of a written "Change Order". No such Change Order shall be valid unless signed by Owner's Representative. No alteration, addition, omission or change shall be made in Contractor's Work or in the manner or method of performance except by written Change Order. Any change or adjustment in the Contract Sum must be specifically stated in a written Change Order. Prior to issuance of a Change Order, Owner may require that Contractor furnish Owner a detailed breakdown showing the difference in value of the work, labor, services and materials altered, added, omitted or changed by the proposed Change Order. If agreement as to monetary allowance or other term in any Change Order cannot be reached, Owner may direct Contractor, in writing, to perform the work with the final adjustment reserved until completion of Contractor's Work. **Any extension of time needed as a result of a proposed Change Order shall be requested of Owner by Contractor in writing prior to the issuance of the Change Order and shall be incorporated into the Change Order. Any extension of time not so requested shall be waived.**

6. Discounts, Rebates and Refunds. All cash and Contractor's discounts shall accrue to the benefit of Contractor

7. Consultant. Peckham Architecture, who has prepared or who has assisted in preparing the Plans and Specifications, may be referred to herein as "the Consultant". The Owner may, from time to time, engage the Consultant to inspect the Work and to assist Owner with the performance of Owner's obligations under this Agreement.

Commented [CC3]: Revised to reflect that the architect will be engaged on a case by case basis

8. Contractor's Duties and Status. Contractor accepts the relationship of trust and confidence established between Contractor and Owner. Contractor covenants with Owner to furnish Contractor's best skill and judgment and to seek to further the interests of Owner. Contractor agrees to furnish efficient business administration and superintendence and to use Contractor's best efforts to furnish at all times an adequate supply of workmen and materials, and to perform The Work in the best and soundest way and in the most expeditious and economical manner consistent with good construction practices, safety, and the interests of Owner.

9. Time of Commencement and Completion. Contractor shall begin The Work as soon as reasonably practicable following the execution of this Contract, and shall, in any event, begin The Work by [REDACTED]. Contractor shall, after commencing The Work, prosecute The Work, with due diligence, so as to complete The Work and The Project as soon as is reasonably practicable, but, in any event, The Work shall be "Substantially Completed" by [REDACTED] ("the Completion Date"); provided, however, that such date for "Substantial Completion" shall be extended for causes, conditions or circumstances, not subject to Contractor's reasonable control, which reasonably prevent or hinder Contractor's performance, including, by way of example only but not by way of limitation, the following: labor troubles not within Contractor's control; fire, damage to or destruction, in whole or in part, of the Building or The Project; reasonable lack of or inability to obtain supplies, labor, materials, appliances, equipment or other necessary items despite Contractor's best efforts; natural disaster; adverse weather conditions which are not considered as "normal" in the area of The Project for the time of year in which The Work is being conducted; failure by Owner, Consultant, or any other contractor retained by Owner to complete in a timely fashion any increments of work on The Project not included within The Work or required for performance of The Work; and any other causes for delay not within Contractor's reasonable control. If The Work is not Substantially Completed by the date for Substantial Completion described above, extended for delays caused by any causes or circumstances beyond Contractor's reasonable control, then the date for Substantial Completion may nevertheless be extended by Contractor for a period not to exceed 30 days by Contractor's giving to Owner written notice of such extension before the date for Substantial Completion, extended for periods of delay beyond Contractor's reasonable control. If The Work is not Substantially Completed by the date for Substantial Completion, extended (if applicable) for periods of delay not within Contractor's reasonable control and by Contractor's written notice of extension, if applicable, then Owner shall be entitled to recover from Contractor (and the Contract Sum shall be reduced by) any reasonable out-of-pocket costs and expenses incurred and paid by Owner as the direct result of delay in Substantial Completion, but Owner shall have no other rights or remedies. Contractor shall have no liability for lost income or profits or other incidental or consequential damages. Contractor shall continue to prosecute The Work with all due diligence so that The Work may be completed as soon as reasonably practicable. The term "Substantial Completion", shall mean that The Work is essentially completed, in order that Owner may have the use and enjoyment of the Building; provided, however, that certain minor items of The Work may remain to be completed and certain adjustments in portions of The Work which have been completed may remain to be made. If The Work includes the planting of grass or installation of landscaping then same may be delayed until suitable weather exists.

10. Subcontracts. All portions of The Work which Contractor's organization has not been accustomed to performing shall be performed under subcontracts. Contractor shall have the responsibility of selecting only competent subcontractors, and shall be responsible for the performance by all such subcontractors. All principal subcontractors furnishing substantial increments to The Work shall be required by Contractor to enter into written subcontracts with Contractor for such increments of The Work, which such subcontracts shall impose upon such subcontractors the obligations to assume Contractor's obligations under this Contract for such portions or increments of The Work.

Commented [CC4]: Need to add commencement date; or we can specify that work begins once we issue a notice to proceed

Commented [CC5]: Are the homes meant to be built in phases? i.e. are there milestone dates for completing individual homes or is there one final target date for completing the project?

Commented [CC6]: This may need to be clarified depending on whether the project is per-house

11. Payment of Contract Sum. Owner shall make payments of the Contract Sum by paying Progress Payments and a Final Payment to Contractor as follows:

Progress Payments.

A. Contractor shall submit to Owner its Application for Payment (“Payment Application”) by the fifth (5th) day of each month upon a form approved by Owner. Payment Applications shall be requests for payment for those portions of the Contractor’s Work completed during the preceding calendar month. Payment Applications must be accompanied by lien waivers, including lien waivers from all subcontractors and suppliers providing labor or materials included in the Payment Application. Payment Applications received after the fifth (5th) day of a month will be held until the following month. Progress payments will be made on the basis of approved Payment Applications. Contractor’s Bid Proposal attached as **Exhibit 1** shall be used as a basis for submitting, reviewing and approving Payment Applications. Upon receipt of a Payment Application, Owner shall have five (5) business days to review such Payment Application. Owner may approve or reject, in whole or in part, any portion of the Payment Application which Owner believes to be inaccurate, incomplete or inconsistent with the Plans and Specifications. Owner shall make Progress Payments within no more than five (5) business days of approval of the Payment Application.

The sum of each Progress Payment to Contractor shall be equal to the percentage of completion of Contractor’s Work, less the aggregate of previous payments made by Owner to Contractor and less the percentage to be retained as provided in this paragraph.

B. All Progress Payments, other than the Final Payment, shall be subject to a retainage of ten percent (10%) of the sum of the Progress Payment provided for by subparagraph A above.

C. Final Payment. The balance of the Contract Sum, including any retainages, shall be paid to Contractor when the Contractor’s Work has been fully completed and has been accepted by Owner, and those conditions for Final Payment specified below.

When Contractor has fully completed The Work in accordance with the Contract Documents, Contractor shall notify Owner, in writing, that The Work is completed and is ready for final inspection and acceptance. Owner and Consultant (if applicable) shall, in the company of Contractor or Contractor’s representative, make a Final Inspection of The Work. Such Final Inspection shall be made within seven (7) days of the date of Contractor’s notice of final completion. At the time of the making of such Final Inspection, Owner shall be required to make a reasonably diligent inspection of The Work, and of all parts and components thereof. Any items which are reasonably found during the Final Inspection to have not been completed in accordance with the Contract Documents, or the Standards of Workmanship and Completion provided for by the Contract Documents, or which are reasonably found to be incomplete, shall be listed on the “Final Checklist”, which shall be made at the time of the making of the Final Inspection. Owner and Contractor shall diligently seek to agree upon the Final Checklist, but if they are reasonably unable to agree upon any such items to be placed on the Final Checklist, then such dispute shall be resolved by the Consultant. The parties agree to be bound by the determinations made by such Consultant (provided that same are reasonable and are not arbitrary and capricious), and agree to share, equally, the sums paid to such Consultant for such Consultant’s services in resolving the

dispute. Contractor shall, at Contractor's expense, diligently proceed to correct or complete any items listed upon the Final Checklist, and, in any event, shall complete all such corrections within thirty (30) days after receipt of such Checklist, and shall not be entitled to Final Payment until all items set forth on the Checklist have been completed. Within ten (10) days following the last to occur of the following dates or events:

i. The date of completion of the Final Inspection, or

ii. The date when all defects and incomplete items noted on the Final Checklist have been completed or remedies so as to bring all of The Work into conformity with the Contract Documents and so as to finally complete the Project and The Work in accordance with the Contract Documents,

Contractor shall be entitled to Final Payment from Owner of the entire unpaid balance of the Contract Sum due Contractor (less the Downpayment, if any); provided that Contractor shall provide to Owner Contractor's Final Lien Waiver and Affidavit of Payment [by which Contractor releases the Site of the Project and the Project from all mechanic's liens and warrants and represents to Owner that all subcontractors and others furnishing labor, materials and other items for The Work have been fully paid and agrees to indemnify Owner against any mechanic's lien claims from such persons], together with final lien waivers from all of Contractor's principal subcontractors, suppliers and materialmen who have furnished labor or materials for The Project having a cost in excess of Two Hundred Dollars (\$200.00), excluding labor in Contractor's direct employ. Owner and the Consultant, if any, shall have seven (7) days to complete final inspection after notification by Contractor that The Work has been completed. The acceptance of The Work by Owner and Consultant shall not be unreasonably withheld.

12. Standards of Completion and Workmanship. Contractor covenants and agrees with Owner to perform The Work and each and every increment thereof, in accordance with the Contract Documents, and so as to fully complete and construct the Project and to complete The Work:

A. In substantial accordance with the Plans and Specifications; and

B. In a good, first-class, workmanlike manner, using materials and workmanship which are of good quality and which are new unless otherwise specified, and which comport with the requirements of the Plans and Specifications, and which are free from faults and defects; and

C. In accordance with the applicable requirements any Building Codes applicable to the Project, and according to sound engineering and construction standards;

so that the Building and other improvements constituting the Project shall as of completion of The Work be:

i. Free from defective materials or workmanship; and

ii. Completed in substantial accordance with the applicable requirements of such Building Codes, and in accordance with the Contract Documents and according to sound engineering and construction standards, and in a good, first-class, workmanlike manner.

Those standards of workmanship and completion and quality hereinabove set forth in this paragraph 12 are herein referred to as "the Standards of Completion and Workmanship." Where the term "Building" or "Buildings" is used in this Contract, such term shall be deemed to including the Dwelling or Building or part of the Building which constitutes The Project and any driveway or other improvements, water lines, sewer lines or other utility connections which are, pursuant to this Contract, to be installed by Contractor as a part of The Work.

All of The Work, at all stages of completion, shall be available to Owner and Consultant for inspection in order that they might verify that The Work is being prosecuted and completed in accordance with this Contract and in accordance with these Standards of Completion and Workmanship described in this paragraph 12. If there is any dispute between Owner and Contractor as to whether any portion of The Work has been completed in accordance with the Standards of Completion and Workmanship or in accordance with the terms of the Contract Documents, then all such disputes shall be resolved by the Consultant, and the determinations of such person shall be binding upon Owner and Contractor, provided only that such determinations are reasonable and are not arbitrary or capricious. If it is reasonably determined that any portion of The Work for which Contractor seeks payment by an Application for Payment has not been properly performed in accordance with the Contract Documents or the Standards of Completion and Workmanship, then Owner shall not be obligated to make payment for same until such portion of The Work has been properly remedied and completed in accordance with the Contract Documents and the Standards of Completion and Workmanship. If it is reasonably found at any time prior to Final Payment that any portion of The Work has not been completed in accordance with the Contract Documents or the Standards of Completion and Workmanship, then Contractor shall remedy the defective portions of The Work at Contractor's expense as soon as reasonably practicable.

13. **Repair and Replacements - LIMITED GUARANTEE AND WARRANTY.** Contractor covenants and agrees that, following completion of The Work Contractor will repair or replace any defect of condition resulting from a failure to supply materials, equipment, installations or workmanship which satisfy the Standards of Completion and Workmanship set forth above, and shall make such repairs or replacements at Contractor's expense, promptly and in a good workmanlike manner. With the exception of items of repair of an emergency nature, such as roof leakage or any leakages, or a failure of the plumbing, heating, cooling or electrical or mechanical systems or components (which such emergency items shall be corrected by Contractor as quickly as reasonably practicable after notice from Owner), any defects or conditions shall be listed by Owner and shall be corrected by Contractor as follows:

A. **Checklists.** Owner shall give to Contractor a "90 day" and "1 year" checklist. Such period of 90 days, and such period of 1 year, shall begin to run from the date of Final Payment.

B. 90 Day Checklist. Within thirty (30) days following the conclusion of the period of 90 days, hereinabove described in subparagraph A, Owner shall prepare and deliver to Contractor a "90 day checklist", which contains an itemized list and description of those then known items which would reasonably be considered as being defects or conditions resulting from a failure to supply materials, equipment, installations or workmanship which comply with the Standards of Completion and Workmanship.

C. One Year Checklist. Within thirty (30) days following the conclusion of the period of 1 year hereinabove described upon Owner's request for such inspection, Owner and Contractor shall make an inspection of The Project, and shall prepare a "1 year" checklist, itemizing and describing those items which would reasonably be considered as being defects or conditions resulting from a failure to supply materials, equipment, installations or workmanship which comply with the Contract Documents, and which satisfy the Standards of Completion and Workmanship provided for by this Contract. Any disputes as to items to appear on such checklist shall be resolved by the Consultant identified herein.

D. Correction. Contractor shall have thirty (30) days after receipt of each such checklist to make corrections, and shall diligently make such corrections, at Contractor's expense of each of those items reasonably shown on each such checklist.

E. Emergency. As indicated above, Owner shall not be required to wait until the next date for delivering a checklist in the case of emergency items, such as but not limited to, leaks in the plumbing, roof leaks and similar items of an emergency nature. Owner shall promptly notify Contractor of any items of repair or replacement of an emergency nature, and Contractor shall promptly remedy same, if same result from a failure to comply with the Contract Documents or the standards of workmanship provided for by this Contract. Otherwise, items shall be listed on a checklist.

F. **WAIVER IF NOT ON ONE YEAR CHECKLIST. SUBJECT TO SUBPARAGRAPH G BELOW, ANY DEFECTS OR CONDITIONS WHICH ARE NOT LISTED ON THE 1 YEAR CHECKLIST ARE WAIVED, AND CONTRACTOR SHALL HAVE NO SUBSEQUENT OBLIGATION TO REPAIR OR REMEDY ANY ITEMS NOT LISTED ON SUCH CHECKLIST. CONTRACTOR'S OBLIGATIONS TO REPAIR OR REMEDY DEFECTS OR CONDITIONS SHALL BE IN EFFECT ONLY FOR THE PERIOD ALLOWED FOR GIVING THE 1 YEAR CHECK LIST, AND FOR REPAIRING THE ITEMS LISTED THEREON. ALTHOUGH CONTRACTOR'S OBLIGATION TO EFFECT REPAIRS SHALL BE IN EFFECT ONLY FOR SUCH PERIOD, SUCH OBLIGATIONS SHALL CONTINUE AS TO ITEMS SHOWN ON THE 90 DAY AND 1 YEAR CHECKLIST UNTIL SAME ARE CORRECTED, EVEN THOUGH THE REPAIRS OR REMEDIES SHALL NOT BE COMPLETED OR EFFECTED UNTIL SUBSEQUENT TO THE CONCLUSION OF THE PERIOD OF 1 YEAR.**

G. Structural Defects. In addition to Contractor's duty and obligation to effect repairs of the items on the 90-day and one-year checklist, as described in this paragraph, Contractor shall, for a period of two (2) years following the date of Final Payment, have an additional and further obligation to make such repairs or replacements at Contractor's expense, as are required to remedy any "Structural Defects" which are discovered within such period of two (2) years and of which Contractor is given written notice within such period of two years. "Structural Defects" shall mean defects in the footings, foundation, load bearing walls, the roof (including the water-

tight nature of the roof), the roof structure, and other load bearing members and structural components of the Building, which arise from a failure by Contractor to perform The Work in accordance with the Standards of Completion and Workmanship referred to in paragraph 13 above.

H. Description of Defects. Contractor shall have no duty or obligation to remedy or repair conditions which do not result from a failure by Contractor to perform The Work in accordance with the Standards of Completion and Workmanship described in paragraph 13 above. Contractor's sole obligation shall be to remedy defects or conditions which result from a failure on the part of Contractor to perform The Work in accordance with such Standards of Completion and Workmanship.

14. **SOLE WARRANTIES AND GUARANTEES/EXCLUSION OF WARRANTIES.** CONTRACTOR'S OBLIGATIONS UNDER PARAGRAPH 13 ABOVE TO EFFECT REPAIRS AND REPLACEMENTS OF DEFECTIVE CONDITIONS OR OTHER CONDITIONS RESULTING FROM CONTRACTOR'S FAILURE TO PERFORM THE WORK IN ACCORDANCE WITH THE STANDARDS OF COMPLETION AND WORKMANSHIP REFERRED TO ABOVE ARE THE ONLY GUARANTEES OR WARRANTIES PROVIDED BY CONTRACTOR TO OWNER WITH RESPECT TO THE PROJECT. CONTRACTOR MAKES NO WARRANTIES OR REPRESENTATIONS AS TO THE CONDITION OR QUALITY OF THE COMPLETED WORK, OR THE COMPLETED PROJECT, OR ANY COMPONENT OF THE COMPLETED PROJECT, OR THE COMPLETED WORK, OR ANY APPLIANCE OR EQUIPMENT CONTAINED IN THE PROJECT, OTHER THAN CONTRACTOR'S AGREEMENTS TO EFFECT REPAIRS AND REPLACEMENTS HEREINABOVE SET FORTH IN PARAGRAPH 13 ABOVE. ALL OTHER WARRANTIES AND REPRESENTATIONS AS TO THE CONDITION OR QUALITY OF THE PROJECT, OR THE WORK, AND ALL PARTS, COMPONENTS AND ASPECTS THEREOF, BOTH EXPRESSED AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS, AND OF FITNESS FOR A PARTICULAR PURPOSE, AND OF CONDITION AND OF HABITABILITY, ARE HEREBY WAIVED AND DISCLAIMED, AND SHALL BE OF NO FORCE OR EFFECT WHATSOEVER.

15. No Warranties of Consumer Items. Contractor gives no warranties or guarantees on appliances, fixtures, finishes or other "Consumer Products", which are installed as a part of The Work, other than that same shall be installed in a good, workmanlike and proper manner and in accordance with the requirements of the Plans and Specifications and the Contract Documents. "Consumer Products" include smoke detectors, exhaust fans, thermostats, furnaces and heating and air conditioning appliances and units, garbage disposals, refrigerator/freezers, ranges/ovens, dishwashers, trash compactors, light fixtures, paints, wall coverings and other finishes and related equipment. Owner's rights as to the condition of any of such "Consumer Products" shall be limited solely to the rights against the manufacturers as provided for by the applicable manufacturer's warranties. To the extent Contractor may do so, Contractor shall assign to Owner any and all warranties for Consumer Products which are assignable, and to the extent that such warranties are not assignable, Contractor shall enforce such warranties on Owner's behalf.

16. Other Exclusions From Warranties. Contractor's warranties do not include any of the following items unless same result from a failure of Contractor to perform The Work in compliance with the Standards of Completion and Workmanship set forth in paragraph 12 above: cracks in concrete, discoloration, blemishes or chips in concrete surfaces resulting from the presence of lignite (which is present in sand used in concrete, by concrete suppliers, in the area of Boone County, Missouri), provided only that the concrete conforms with applicable standards of

concrete suppliers in the area in which The Project is located; bumps, chips, deteriorating plaster, sedimentary accumulation or clogs in plumbing elements; blemishes, chips or stains in porcelain finishes; normal and reasonable settlement, expansion, contraction, shrinkage or warpage. Contractor's warranties also do not cover normal maintenance items or conditions resulting from wear and tear and/or misuse or negligence. Owner is hereby advised that normal building conditions in Boone County, Missouri, include the following items which are not, under the terms of this Contract, considered to be defects: (i) the presence of lignite in concrete, which is a normal condition in Boone County, Missouri, and which can result in chipping or discoloration of concrete surfaces; (ii) hairline cracks in concrete surfaces; (iii) conditions caused by expansion and contraction of fire clay in the soil, including settling; (iv) settling of fill dirt, provided, however, that Contractor uses reasonable construction techniques in installing and building on fill dirt, if any.

17. Concealed Conditions/Notice of Circumstances. Contractor warrants and represents that Contractor has fully inspected the Site of The Work, and that Contractor is familiar with the conditions at the Site of The Work, both above and below ground. It is, therefore, understood that there shall be no increase in the Contract Sum for unconcealed or unanticipated conditions.

18. Owner's Right to Stop The Work and to Carry out The Work. If Contractor fails to correct defective work or persistently fails to supply materials or equipment in accordance with the Contract Documents, or repeatedly neglects to supply a sufficient number of properly skilled workers or materials of the proper quality, or fails in any other substantial respect to prosecute The Work with promptness and diligence, or fails in the performance of any substantial agreements contained in the Contract Documents, or is adjudged a bankrupt, or fails to make prompt payment to subcontractors or for materials or labor, which have been paid for by Owner, or is otherwise guilty of any substantial violation of the provisions of this Contract or the Contract Documents, then Owner may, without prejudice to any other right or remedy which Owner may have, after giving seven (7) days written notice to Contractor (during which seven days Contractor shall have the opportunity to correct Contractor's deficiencies), terminate the employment of Contractor and to take possession of the Site of The Project and of all materials and components located upon such Site, which are intended to be incorporated into The Project or expended in The Work, and Contractor shall remove Contractor and Contractor's employees, subcontractors and equipment from the Site of The Work. If Contractor's employment is terminated pursuant to this paragraph, then Owner shall pay to Contractor, at the time of such termination (provided that Owner shall receive credit for all sums previously paid to Contractor) eighty percent (80%) of all sums which would otherwise have been due from Owner to Contractor (less credit for any Downpayment and previous payments), in accordance with the above provisions of this Contract, had Contractor delivered an Application For Payment for all portions of The Work performed to date, as of the date of the termination of Contractor's employment, but no additional amounts shall be included for Contractor's Fee or Contractor's Profit and overhead, whichever is applicable, and any part of the Fee or Profit or overhead previously paid shall be deducted from the sum otherwise due. Contractor shall not be entitled to receive any further payment until The Work is finished. If the Contract Sum is based on a lump sum amount, and, at the time of completion of The Work it is found that the total cost to Owner of The Work to Owner (including sums previously paid to Contractor) is less than the Contract Sum (adjusted by change order as described above), then Owner shall pay to Contractor a sum equal to the difference between the total of the actual costs

incurred by Owner (including the sum of payments paid to Contractor) and the Contract Sum (as adjusted by Change Order); provided, however, that Contractor shall not be entitled to receive payments in excess of the sums which Contractor would otherwise have been entitled to receive under the above provisions of this Contract, had Contractor rendered a final Application For Payment as of the date of the termination of Contractor's employment for those parts of The Work previously completed. If Owner incurs costs in causing The Work to be completed which exceed the Contract Sum or the Guaranteed Maximum Costs, as the case may be, then Contractor shall, upon demand by Owner, pay to Owner the amount by which the costs incurred by Owner in causing the Work to be completed exceed the Contract Sum or Guaranteed Maximum Costs. Any payments made by Owner to Contractor pursuant to this paragraph 19 shall be without prejudice to any other rights or remedies which Owner may have against Contractor. Owner reserves all such other rights and remedies.

19. Labor and Materials. Unless otherwise specifically noted in this Contract or the Contract Documents, Contractor shall provide and pay for all labor, materials, appliances, equipment, tools, transportation, freight charges and other facilities and services necessary for the proper execution and completion of The Work.

20. Protection of Work and Property. Contractor shall use reasonable care to protect the Building and The Project, and The Work, from damage, and shall protect The Project and the Owner's property from injury or loss arising in connection with The Work. Contractor shall make good any damage, injury or loss to the Dwelling or property, except such as may be directly due to errors caused by Owner or Owner's agents or employees or other contractors employed by Owner, or due to causes beyond the reasonable control of Contractor.

21. Superintendence. John Hansman shall personally oversee and provide general supervision in connection with the progress of The Work. Such superintendent shall represent Contractor in all respects, and all communications given to such superintendent and documents signed by such superintendent, shall be binding upon Contractor.

22. Cleaning Up. Contractor shall at all times keep the Site of The Project free from accumulations of Contractor's waste materials or rubbish, and at the completion of The Work shall remove all of Contractor's rubbish from and about the Site of The Project, and all tools, scaffolding and surplus materials belonging to Contractor, and shall leave the Site of The Project clean and ready for use insofar as Contractor's work is concerned.

23. Termination of Work by Contractor. If Contractor is not paid any sums due Contractor under this Construction Contract within ten (10) days of the due date therefor, then Contractor may stop work upon The Project and may stop The Work, without necessity for further notice to Owner, until Contractor receives payment of the sum due.

24. Termination of Contract by Contractor. If The Work is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction, or as a result of a national emergency making materials unavailable through no fault to Contractor, or if The Work should be stopped for a period of fifteen (15) days by Contractor for Owner's failure to make payment when due, or if Owner shall engage in any other substantial breach of Owner's obligations under this Contract, then Contractor may, upon seven (7) days written notice to Owner

(during which seven days Owner shall have the opportunity to correct any deficiencies), terminate this Contract, and recover from Owner payment for all portions of The Work previously executed, and for all materials supplied, including those stored at the Site of The Project or elsewhere, and for any loss sustained upon any materials, equipment, tools, construction equipment and machinery, and for Contractor's entire fee or profit. Payment shall be made in accordance with the above provisions of this Contract.

25. Permits. Contractor will secure and pay for all permits, bonds, fees, levies or assessments required by law for construction of The Project.

26. Owner's Occupancy of Building. Owner shall not occupy and shall not permit Owner's Purchaser or anyone else to occupy the Buildings until the following has occurred:

A. An occupancy permit has been issued therefor by any public authority required to issue an occupancy permit; and

B. The Work has been fully completed; and

C. Owner and Contractor have made the Final Inspection and agreed upon a Final Checklist; and

D. All funds due hereunder, including the Final Payment, have been paid to Contractor.

Notwithstanding the foregoing, Owner may occupy and take possession of individual dwellings prior to final completion of the entire Project; provided, however, that such dwellings have been completed by Contractor and Owner has paid Contractor in full for such individual dwelling unit.

27. Other Work at Site of Project. Owner shall not schedule any other operations at the Site of The Project (in the absence of Contractor's written consent, which shall not be unreasonably withheld) in order that The Work may be carried out in a continuous operation and in proper sequence. Owner agrees to indemnify Contractor for any injury or damage or loss or additional expenses caused by anyone working at, or appearing at the Site of The Project, with Contractor's consent, other than Contractor's workers or subcontractors.

28. Interest and Attorney's Fees. Should either party to this Construction Contract become entitled, under any provisions of the Contract Documents, to receive any sums or payments from the other party to the Construction Contract, and should any such sums or payments not be paid within twenty (20) days of the due date thereof, then such sums, or the sums of any such payments, shall bear simple interest at the rate of nine percent (9%) per annum, beginning with the twenty-first (21st) day following the date when such sums or payments become due, and ending when the amount due has been paid. If either party to this Construction Contract shall seek to enforce against the other party to the Construction Contract any of the provisions of the Contract Documents, or shall seek to enforce the Construction Contract or any rights, duties or obligations provided for by the Contract Documents or arising out of the Contract Documents, by legal or equitable proceedings, then the prevailing party in such proceedings (whether a plaintiff or

defendant, and whether such party prevails in whole or substantial part as to the relief sought or opposed by such party) shall receive, in addition to all other rights and remedies to which such prevailing party is entitled, such prevailing party's reasonable costs and expenses incurred in connection with such proceedings, including such prevailing party's reasonable attorney's fees.

29. Public Liability Insurance and Worker's Compensation Insurance. Contractor shall provide the following insurance for The Project and The Work, and all portions thereof, until Final Payment by Owner:

A. Worker's compensation insurance for all of Contractor's employees at the Site of The Project, and in case any of The Work is sublet, Contractor shall require the subcontractor to provide such insurance; and

B. General public liability and property damage insurance including the following:

- i. Comprehensive contractor's liability insurance coverages;
- ii. Completed operations insurance coverages;
- iii. Contractual liability insurance coverages;
- iv. Comprehensive general public liability insurance; and
- v. Products liability insurance coverages,

providing limits of at least \$1,000,000 for injury to or death of any one person, and \$1,000,000 for injuries or deaths arising out of any one occurrence, and \$500,000 for property damage (such coverages shall be provided under a broad form liability policy of the type customarily issued to contractors in the Boone County, Missouri area).

Contractor shall, upon demand by Owner, furnish Owner with satisfactory proof that insurance required by this paragraph 29 is in full force and effect. If Contractor fails to provide insurance coverage required by this paragraph 29, or to keep same in effect, then this Construction Contract and all terms thereof shall be cancelable by Owner at Owner's election.

30. Builder's Risk Insurance. Contractor shall apply for, maintain and keep in full force and effect, at Contractor's expense, during the entire progress of The Work, fire and casualty insurance upon The Project, including standard builder's risk insurance coverage, indemnifying Contractor and Owner and Owner's Lender, as their interests may appear, against loss by fire, lightning, vandalism and malicious mischief, and all other extended coverage perils customarily insured against in this area. Such insurance shall provide insurance upon the Building and The Work and The Project for the full insurable value thereof. Such insurance shall also cover the following items: materials in place or to be used as a part of the permanent construction, including surplus materials, temporary structures, scaffolding and staging, protective fences, bridging, forms and miscellaneous materials and supplies necessary to The Work. Both Contractor and Owner (and, at its request, Owner's lender) shall be named as insureds as to such coverage, as their

respective interests shall appear. The party which is to provide the Builder's Risk Insurance shall provide the other party and such other party's lender, if applicable, with full proof that the insurance coverages required of Contractor by this paragraph 30 is in full force and effect and has been paid for by the party obligated to pay for same and cannot be cancelled without ten (10) days written notice to Owner and Contract and Owner's lender, if applicable. All proceeds payable by reason of any event covered by such insurance shall be used for purposes of repairing and restoring the Building and the Project and The Work and for no other purposes.

31. Relationship Between Contractor and Contractor's Responsibility to Third Persons. Contractor shall be in the relation of independent contractor to Owner, and is to have the entire charge, control and supervision of The Work, and Owner shall not, in any manner, be answerable or accountable for any violation of city or state ordinance or laws by Contractor, or for any injury, loss or damage arising from negligence or carelessness of Contractor or of any one in Contractor's employ, or of any subcontractor employed by Contractor. Contractor hereby covenants and agrees to indemnify and defend Owner against any loss, damage or expense, together with reasonable attorney's fees, incurred by Owner as a result of any injury, loss or damage arising from negligence or carelessness of Contractor, Contractor's employees, or any of Contractor's subcontractors or their employees.

32. Title Passes. Title to all materials, equipment, services and other items, which are to be incorporated into The Work, shall pass to Owner, immediately when incorporated into The Work, or when stored at the Site of The Project. Title to all work, labor and operations performed in connection with The Work, at the Site of The Project, shall pass to Owner when performed. All risks of loss to work, labor, materials, equipment and other items in connection with The Work shall pass to, and remain with Owner from and after the passing of title to Owner; provided, however, that Contractor shall be required to take reasonable steps for the protection and storage of The Work and of all materials and other equipment incorporated into The Work, and that the Liability insurance and Builder's risk insurance required by the Contract Documents must be provided, and that Contractor shall remain responsible for performance of all of Contractor's duties under this Construction Contract and the Contract Documents, and shall be liable for nonperformance of any of such duties.

33. Assignability. This Construction Contract shall not be assignable by either party without the written consent of the other; provided that Owner may assign to Owner's Purchaser any warranties of workmanship or quality made by Contractor pursuant to this Contract in order that same may be directly performed by Owner's Purchaser.

34. Amendment. The Contract Documents may not be amended except by a written document, signed by Owner and Contractor. Changes in the scope of The Work shall be made only by a written Change Order, as provided for by this Contract.

35. Responsibility for Those Performing Work. Contractor shall be responsible to Owner for the acts and omissions of all of Contractor's employees and subcontractors, their agents and employees, and all other persons performing any of The Work under a contract or agreement with Contractor.

36. Cutting, Patching, Digging and Refinishing. Contractor shall do all cutting, fitting or patching of Contractor's work which may be required to make several parts come together properly and fit properly.

37. Binding Effect. Owner and Contractor each binds themselves or itself, or his, her, its or their partners, successors, assigns, and legal representatives and heirs to the other party and to the successors, assigns, heirs and legal representatives of the other party in respect to all covenants, agreements and obligations contained in the Contract Documents.

38. Written Notice. Written notice to Owner, or any individual identified as "Owner", shall be deemed to be the giving of notice to Owner. Written notice to Contractor, or Contractor's superintendent at the Site of The Project, shall be deemed to be written notice to Contractor. Written notice shall be deemed to have been duly served if delivered in person to Owner or such superintendent, and shall also be deemed to have duly given if sent by registered or certified mail [with or without return receipt requested] to the last known address of the party to be served with the notice. If notice is mailed by certified or registered mail, then such notice shall be deemed to have been given as of the date of mailing. Notices shall be mailed as follows:

The Contractor: John Hansman Construction, LLC, Attn: John Hansman, Manager, 9900 North Creekland Drive, Columbia, MO 65202, Telephone Number: 573-573-8135

Owner:

Columbia Community Land Trust
Attn: Randy Cole
500 E. Walnut St.
Suite 108
Columbia, MO 65201

39. Inspection. The Site of The Project, and The Project and The Work shall be available to Owner and Consultant, at all reasonable times, so that Owner and such Consultant or their designees or consultants can inspect The Work; provided that Owner and Consultant or such designees and consultants shall make such inspections at reasonable times, and in such manner as not to unreasonably interfere with the progress of The Work. The above provisions notwithstanding, Owner and Consultant shall give to Contractor as much notice of each inspection as is reasonably practicable in order that Contractor or Contractor's designee can be present at the time of the intended inspection.

40. Owner's Representative. Owner shall be represented in all matters dealing with this Contract by Randy Cole ("Owner's Representative"), who must make all decisions on behalf of Owner. All determinations made by Owner's Representative shall be binding upon Owner.

41. Withholding of Payments. If, at the time when any payment is due from Owner to Contractor, a portion of The Work previously performed does not conform with the Contract Documents or with the Standards of Workmanship and Completion provided for by the Contract Documents, or is not completed, Owner shall be permitted to withhold making the payment until

The Work has been made by Contractor, at Contractor's expense, to conform to the Contract Documents.

42. Workers and Materials. Contractor agrees to have ample workers and materials on the job at all times to perform The Work in the most expedient manner.

43. Mechanics Liens. Contractor shall keep The Work, The Project and the Site of The Project free from any mechanics liens filed by persons furnishing labor, materials or other items for The Work. In the event any mechanic's lien is filed against The Project or the Site of The Project (other than by reason of failure by Owner to make timely payment to Contractor) by any person furnishing labor or materials to or through Contractor for The Project, Contractor agrees to take all reasonable steps necessary for the release and discharge of such lien, and to reimburse Owner and Owner's Purchaser and any applicable lender for all monies paid by them or any of them in obtaining the release of the lien, including costs, expenses and attorney's fees.

44. Resolution of Disputes. If a dispute shall arise between Owner and Contractor as to whether any part of The Work has been properly performed by Contractor, or as to whether any item of material or work supplied in performance of The Work by Contractor is in conformity with the Plans and Specifications, or the requirements of this Contract, or the Standards of Completion and Workmanship as required by paragraph 13 of this Contract, then such dispute shall be resolved by that Consultant identified in paragraph 7 of this Contract. Should any dispute arise concerning the completeness or proper performance of The Work or conformity with the Standards of Completion and Workmanship, then such dispute shall be resolved by such Consultant. The Parties shall be bound by all reasonable determinations made by such Consultant. The sole requirement for such Consultant's determinations and resolutions of disputes shall be that the Consultant's determinations and resolutions shall be reasonable, and shall be based on facts reasonably believed to be true by the Architect, and shall not be arbitrary or capricious. If either party disagrees with such Consultant's determination or if the Consultant fails to make a determination within a reasonable time following submission of a dispute to Consultant, then such party may initiate litigation in the Boone County Circuit Court. The Parties agree to share, equally, all reasonable fees paid to such Consultant for services rendered in resolving disputes.

45. Decisions and Determinations. Should Contractor reasonably require a decision or determination from Owner, in order to proceed forward with the orderly progress of The Work, and should Contractor notify Owner, in writing, of the need for such decision or determination, then Owner shall provide such decision or determination to Contractor within five (5) working days (Monday through Friday), of Owner's decision or determination.

Owner shall be required to diligently cooperate with Contractor in making all decisions and determinations, in order that The Work may proceed forward, in an orderly and expeditious manner.

46. Notice to Owner. Contractor and Owner acknowledge that no payment, in any form, was paid by Owner to Contractor prior to the execution of this Construction Contract. Contractor hereby provides the following notice to Owner as required by Section 429.012 of the statutes of the State of Missouri, relating to mechanics liens, which requires a specific notice at (1)

the time of the execution of the contract, or (b) when materials are delivered, or (c) when The Work is commenced, or (d) when the first invoice is delivered:

"NOTICE TO OWNER

FAILURE OF THIS CONTRACT TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMo. TO AVOID THIS RESULT, YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIALS TWICE."

47. Indemnification. Contractor shall indemnify, defend, save and hold harmless Owner of and from all suits, demands, actions, causes of action, claims, expenses (including but not limited to reasonable attorney's fees), liabilities and responsibilities which may hereafter arise out of any:

- A. Breach by Contractor of any of Contractor's duties or obligations under this Contract;
- B. Actions or failures to act of any of Contractor, Contractor's employees, Contractor's subcontractors or their employees, while engaged in the performance of The Work;
- C. The performance of The Work itself, or any action taken in connection with the performance of The Work.

48. Warranties by Owner. In order to induce Contractor to enter into and to perform this Contract, Owner hereby warrants and represents to Contractor and covenants and agrees with Contractor that Owner is now and will at all times during the progress of The Work be (and until Final Payment of the Contract Sum to Contractor be) the lawful owner of Site and the lawful and only owner of marketable fee simple absolute title to the Site of The Project, free and clear of all liens, interests, easements, judgments and encumbrances of every kind, nature and description whatsoever, with the exception of normal and usual and customary subdivision restrictions and utility easements, general real estate taxes not now due and payable, and any existing first mortgage deed of trust; provided, however, that if such deed of trust is a construction money deed of trust then it is understood that the mechanic's lien rights of Contractor and Contractor's subcontractors shall take priority over such deed of trust.

49. Items to be Provided by Owner. Before Contractor shall be required to commence The Work [and the start of The Work shall be delayed and the time for completion shall be extended, if reasonably necessary] until Owner has supplied to Contractor the following items [here check off the items to be provided by Owner]:

_____ - A Survey of the Site of the Project;

_____ - A Survey locating the Project on the Site of the Project;

_____ - Insurance or proof of insurance as follows:

;

_____ - A title insurance policy or other reasonable proof of ownership of the Site of the Project, establishing that Owner is the Owner of the Site of the Project;

_____ - Proof of Owner's ability to pay the Contract Sum in the manner required by this Contract, such proof being generally described as follows:

;

In addition, Owner shall supply, at Owner's cost, in a timely manner, any other items described on **Exhibit 3** hereto, if any.

50. **Further Agreements.** There _____ [here insert either are or are not as applicable] additional agreements between Owner and Contractor for The Work in addition to those set forth in the above provisions of this Contract. If the first sentence of this paragraph 51 indicates that there are such additional agreements then such additional agreements shall be set forth on **Exhibit 4**, which shall be annexed to the Contract and shall be incorporated into this Contract by reference. If the first sentence of this paragraph 51 indicates that there are no such additional agreements or if no such **Exhibit 4** is attached, then this Contract shall set forth the entire and complete agreement between Owner and Contractor with respect to the Project, The Work and all of the parties' respective duties and obligations to each other. This Contract and any attachments to this Contract, if any, set forth the entire and complete agreement between and among Contractor and Owner with respect to all subjects and matters mentioned in this Contract. Any prior undertakings or understandings between Contractor and Owner, which are not set forth in this Contract, the Contract Documents and any attachments to this Contract are hereby cancelled, terminated and rendered of no further force or effect.

51. **Notice to Buyer of Rights Under Missouri Statutes If the Building is a Personal Residence.** If the building hereinabove described is a personal residence, then the following provisions of this paragraph 53 shall apply, but otherwise shall be of no force or effect:

SECTIONS 436.350 TO 436.365 OF THE MISSOURI STATUTES PROVIDES YOU WITH CERTAIN RIGHTS IF YOU HAVE A DISPUTE WITH A CONTRACTOR REGARDING CONSTRUCTION DEFECTS. EXCEPT FOR CLAIMS FILED IN SMALL CLAIMS COURT, IF YOU HAVE A DISPUTE WITH A CONTRACTOR, YOU MUST DELIVER TO THE CONTRACTOR A WRITTEN CLAIM OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR CONTRACTOR THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR. READ THIS NOTICE CAREFULLY. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER SECTIONS 436.350 TO 436.365 WHICH MUST BE OBEYED IN ORDER TO PRESERVE YOUR ABILITY TO FILE A LAWSUIT. OTHER THAN REPAIRS TO WORK DONE BY THE CONTRACTOR THAT ARE NECESSARY TO PROTECT THE LIFE, HEALTH, OR SAFETY OF PERSONS LIVING IN A RESIDENCE, OR TO AVOID ADDITIONAL SIGNIFICANT AND

MATERIAL DAMAGE TO THE RESIDENCE PURSUANT TO SECTION 431.306.10, YOU MAY NOT INCLUDE IN CLAIMS AGAINST YOUR CONTRACTOR THE COSTS OF OTHER REPAIRS YOU PERFORM BEFORE YOU ARE ENTITLED TO FILE A LAWSUIT UNDER SECTIONS 436.350 TO 436.365.

IN WITNESS WHEREOF, the parties hereto have executed this Construction Contract on the day and year first above written.

CONTRACTOR:
John Hansman Construction, LLC

By: _____
John Hansman, Manager

OWNER:

By: _____
Name Printed: _____

By: _____
Name Printed: _____

- Exhibit 1** - Contractor's Bid Proposal
- Exhibit 2** - Plans and Specifications dated _____
- Exhibit 3** - Exclusions/Items NOT to be supplied by Contractor
- Exhibit 4** - Special Agreements

EXHIBIT 1 – CONTRACTOR’S BID PROPOSAL

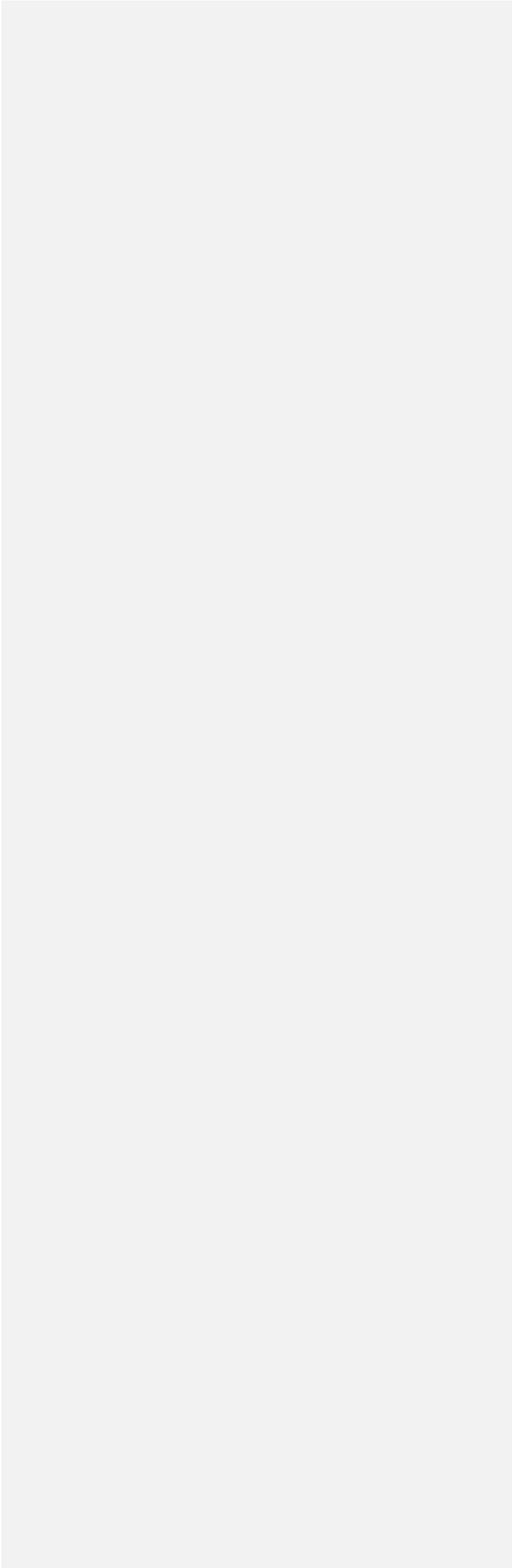


EXHIBIT 2 – PLANS AND SPECIFICATIONS

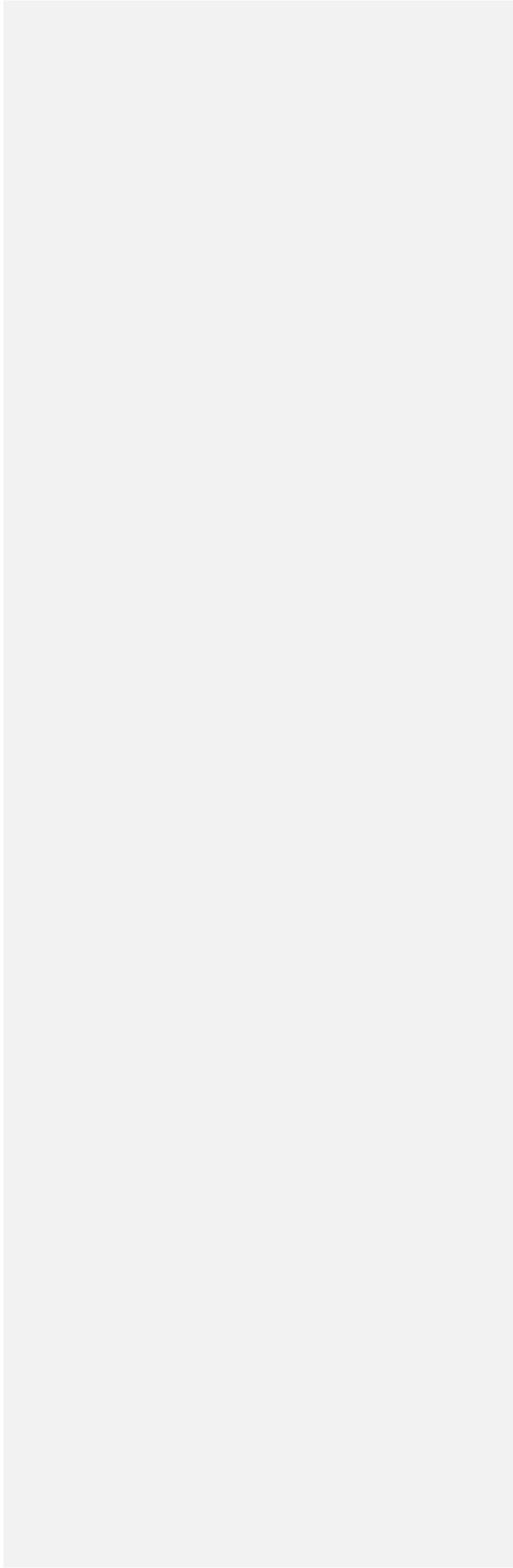


EXHIBIT 3

**EXCLUSIONS - ITEMS NOT TO BE SUPPLIED BY CONTRACTOR - TO BE
SUPPLIED BY OWNER AT OWNER'S COST:**

Dated: _____

John Hansman Construction, LLC

By: _____
John Hansman, President

OWNER:

Name Printed: _____

Name Printed: _____

EXHIBIT 4

SPECIAL AGREEMENTS

This **Exhibit 4** contains additional agreements between as "Owner" and John Hansman Construction, LLC, as "Contractor". These additional agreements are incorporated into a Construction Contract ("the Contract") between such Owner and Contractor, dated the _____ day of _____, 20____. If no additional agreements are hereinafter set forth then all agreements between Owner and Contractor shall be deemed to be those set forth in the Contract. In addition to the agreements set forth in the Contract proper, Owner and Contractor hereby agree as follows:

Dated: _____

John Hansman Construction, LLC

By: _____
John Hansman, Manager

OWNER:

Name Printed: _____

Name Printed: _____