

# **Columbia Community Land Trust and Columbia Missouri Community Housing Development Organization Development and Donation Agreement**

This Development and Donation Agreement (this “Agreement”) is made by and between Columbia Community Land Trust (“Agency”) and Columbia Missouri Community Housing Development Organization (COMO CHDO), a Community Housing Development Organization (“CHDO”) (all references to “CHDO” in this Agreement shall be understood to mean and refer to COMO CHDO) and is effective as of the date of signing by both parties.

## **CHDO Responsibilities**

In consideration for Agency’s agreement to engage CHDO and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CHDO agrees to perform the scope of work for the Project as described and defined below and further agrees that the requirements in this agreement apply to ALL work performed by CHDO for Agency regardless of when or where the work is performed and regardless of the specific project on which the work is performed. In addition, CHDO also agrees that the terms of any other prior agreement(s) between the parties do not extinguish or supersede the requirements of this Agreement.

Specifically, CHDO agrees with Agency as follows:

## ***Terms and Conditions of Work***

To perform and oversee all work involving the construction of an affordable home, as set forth in the CHDO’s proposal and specs for 1101 N Eighth Street, which is attached hereto as Exhibit A and incorporated herein by reference. 1103 N. Eighth Street (the “Land”) is legally described as:

Lots 10 and 9 of the Cullimore Cottages Final Plat, a re-plat of Lots 4, 5 & 6 of JC Conley’s addition to the City of Columbia in Boone County, Missouri.

## ***Ownership***

1. CHDO has inspected the site and is familiar with the condition of the Land.
2. CHDO agrees to own the Land during the development process and to manage construction of a single-family residential home on the Land. The Agency and the CHDO agree that upon completion of development of a single family residential home, with “completion” defined as receiving a Certificate of Occupancy through the City of Columbia, Community Development Department, Division of Building and Site Development, the Land shall be donated to the Agency and title shall be conveyed by warranty deed, subject to CHDO maintaining ownership of the improvements located on the Land.
3. The CHDO shall maintain ownership of only the improvements located on the Land and shall be solely responsible for selling only the improvements to a qualified buyer, with the Agency having the sole authority, responsibility and discretion to determine whether a proposed buyer meets the Agency’s qualifications and requirements of a “qualified buyer” according to its Homebuyer Selection policy. Sale of the home on the Land shall be in accordance with U.S. Department of Housing and Urban Development (HUD) eligible activities as defined by HOME regulations at 24 CFR Part 92.206. Title to the improvements on the Land shall be conveyed using the Agency’s standard Limited Corporate Warranty Deed for Improvements Only.

4. The improvements shall be sold subject to the Agency's Ground Lease (attached as Exhibit B) and Homebuyer Selection Policy (attached as Exhibit C).
5. The sale by CHDO is subject to all requirements, conditions, limitations, and restrictions established by the Trust for the sale of property. Such requirements, conditions, limitations and restrictions have been provided to CHDO. That CHDO acknowledges that those requirements, conditions, limitations and restrictions may limit the marketability and limit the pool of prospective buyers. CHDO acknowledges it is familiar with all such requirements, conditions, limitations, and restrictions and accepts and agrees to abide by same.
6. Should the CHDO not sell the home within 9 months from the date of receiving a Certificate of Occupancy from the City of Columbia Division of Building and Site Development, the CHDO shall be required to market the home as a rental property to a HOME eligible household at 60% or below the HUD defined area median income level. Rental occupant income verification shall be completed according to HUD's Part 5 definition of income and with source documentation in accordance with 24 CFR 92.203(a)(1)(i). In the event the home is offered as rental property under this section CHDO shall continue to market the property for sale upon completion of any rental term.

## ***Safety***

7. CHDO agrees that the Land and any related staging areas for construction are under its exclusive control and supervision. CHDO further agrees that the safety of all workers, contractors and laborers and vendors engaged in the work under this Agreement is solely its responsibility. CHDO specifically agrees to take appropriate precautions to ensure the safety of all persons, including, but not limited to, its own employees and other contractors and CHDOs and their employees, whose safety might otherwise be jeopardized by any risk of harm relating to or arising out of the work.
8. CHDO must comply with all applicable federal, state and local laws, rules, regulations, statutes, ordinances and directives ("laws") that are in force or that may come into force during the work as they relate to the Land, as well as CHDO's operations, materials and personnel. This includes all safety and workplace-related laws.
9. CHDO will apply to obtain all necessary permits and conform strictly to laws and ordinances in force in the locality where its work must be performed.
10. At all times, CHDO will provide sufficient, safe and proper facilities to allow Agency, or an authorized representative, to inspect CHDO's work and performance. Upon request, CHDO will also produce all the documents necessary to evaluate the quality of the materials used in its work.
11. CHDO must submit copies of all accidents or injury reports to Agency, or an authorized representative as soon as practicable or prescribed by law.

## ***Indemnity***

12. The work performed by CHDO shall be at its exclusive risk. To the fullest extent permitted by law, CHDO will defend, indemnify and hold harmless all indemnified parties from any and all claims for bodily injury and property damage (other than damage to the work itself), which arise or are in any way connected with the work performed, materials furnished or services provided by CHDO, CHDO's subcontractors or anyone employed directly or indirectly by any of them under this agreement.

Indemnified parties include the Agency, Agency representatives, designees, officers, directors, employees, agents, successors and their assigns.

Claims include any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs

and expenses (including but not limited to investigative and repair costs, attorneys' fees and consultants' fees).

13. CHDO is not obligated to indemnify and defend Agency for claims due to the sole negligence or willful misconduct of indemnified parties. Any obligations assumed pursuant to this Agreement will not be construed to negate, abridge or reduce other statutory or common law rights or obligations of indemnity, which otherwise exist as to a party or person described in this agreement.
14. CHDO's indemnification and defense obligations under this contract extend to claims made after this Agreement is terminated as well as while it is in force and continue until such claims are finally adjudicated or until such time that any and all actions against the indemnified parties for such matters which are indemnified hereunder are fully and finally barred by applicable laws.
15. CHDO shall, within sixty (60) days of filing, cause the discharge of record of any mechanics' lien filed against the Land or improvements located on the Land by payment, deposit, bond or court order. CHDO shall indemnify and hold Agency harmless from any liability arising from the imposition of any mechanics' lien or other lien on the Land or improvements located on the Land.

## ***Insurance***

16. Prior to the beginning of the work, CHDO must provide to Agency certificates of insurance showing that CHDO has coverage for itself and its employees, agents and CHDOs as set forth in the insurance requirements section. The certificate of insurance shall provide that the insurer will give the Agency 30 days' prior written notice of cancellation and termination of the CHDOs coverage thereunder. If any of these policies is terminated, CHDO must provide to Agency certificates of insurance showing replacement coverage with an effective date no later than the day coverage under the policy being replaced is cancelled or terminate.
17. All coverage must be placed with insurance companies duly admitted in the state of Missouri and must be approved by the Agency.
18. All CHDO insurance carriers must maintain an A.M. Best rating of "A-" or better.  
  
CHDO's general liability policy must name Agency representatives, designees, officers, directors, employees, agents, successors and their assigns as an additional insured (This should be on a standard ISO form or equivalent General Liability form with no modifications limiting coverage.) Coverage must include coverage for completed operations. Additional insured coverage must apply as primary and non-contributory with respect to any other insurance afforded to the Agency and Contractor.
19. Each insurer must give to Agency written notice of cancellation and termination of Contractor's coverage at least 30 days before the effective date of such cancellation or termination. This shall be verified in writing on the certificate of insurance.
20. At least two weeks prior to the expiration, cancellation or termination of any insurance policy required by this agreement, CHDO must provide Agency with a new and replacement certificates of insurance and additional insured endorsements.
21. CHDO must provide Agency with a waiver of subrogation from each of CHDO's insurers on commercial general liability in favor of Agency with respect to losses arising out of or in connection with the work.
22. The insurance coverage required must be of sufficient type, scope and duration to ensure Agency is covered for the liability related to any manifestation date within the applicable statutes of limitation and/or response to any work performed by or on behalf of Agency in relation to the project. CHDO agrees to maintain the above insurance for the benefit of Contractor for a period of three (3) years or the expiration of any statute of limitation as may be applicable, whichever is later.

23. CHDO must secure a workers' compensation insurance policy. The workers' compensation policy must cover all of CHDO's work and performance and provide coverage for all employees, executive officers, sole proprietors, partners and members of a limited liability company, in the amounts required by all applicable laws and must include employers liability coverage to cover the damages that become due in case of bodily injury, occupational sickness or disease or death of CHDOs employees. This policy must be written with limits of (\$500,000) for each accident, (\$500,000) for each disease and (\$500,000) per disease, per each employee
24. CHDO shall require its design professional(s) to maintain professional liability insurance coverage with a company acceptable to the Agency with limits no less than \$1,000,000 per claim and \$1,000,000 general aggregate. Such insurance shall have a maximum deductible of \$25,000 per claim.
25. CHDO must secure a commercial general liability insurance policy to cover the damages that become due in case of bodily injury, property damage and personal or advertising injury arising out of or related to:
  - All CHDO's operations and premises;
  - All CHDO's products and completed operations;
  - All liability or responsibility assumed by the CHDO in the Indemnity section of this agreement;
  - All liability assumed in a business contract;
  - Agency as an additional insured; and
  - Defense expenses paid in addition to the policy limits.

In addition, CHDO must provide Contractor proof of insurance with a Certificate of Insurance and Additional Insured Endorsement on ISO form CG 2010 and CG 2037 (or substitute forms providing equivalent coverage). CHDO is responsible for maintaining this insurance policy.

The coverage available to Agency, as additional insured, in the types of insurance policies mentioned above must be at least:

- \$1,000,000 for each occurrence;
  - \$2,000,000 for general aggregate
  - \$2,000,000 for products/completed operations aggregate; and
  - \$1,000,000 for personal and advertising injury limits.
26. CHDO must secure an umbrella liability insurance policy with limits of at least \$1,000,000 to cover the damages that become due in case of bodily injury, property damage and personal and advertising injury with, at least, the same terms and conditions as the policies mentioned above. Certificate of insurance must indicate the umbrella policy is follow form for additional insured and waiver of subrogation.
  27. CHDO must secure an automobile liability insurance policy to cover the damages that become due in case of bodily injury, death of a person or property damage arising out of Agencyship, maintenance or use of any motor vehicle or trailer owned, hired, leased, used on behalf of or borrowed by CHDO. The policy must also include coverage for any equipment subject to motor vehicle laws. Business auto liability insurance must be written in the amount of not less than \$1,000,000 for each accident. CHDO's automobile liability policy must name Agency as an additional insured.

## Agency Responsibilities

Agency, in consideration of the provisions and mutual promises and agreements contained in this Agreement, agrees with CHDO as follows:

28. Agency will provide homebuyer orientation and education to prospective homebuyers regarding its ground lease.
29. Agency will determine buyer eligibility according to its Homebuyer Selection Policy.
30. Agency will accept the donation of the Land and will be responsible for performance of all obligations of CLT under the Ground Lease for the Land.

## Additional provisions:

31. The time requirements of this contract may be extended by agreement of the parties in the event that CHDO is delayed by acts of the Agency's required alterations or damage occurring from fire or other casualty.
32. No verbal order, objection, claim or notice of either party to the other will be of effect or binding and no evidence of such order, objection, claim or notice will be admissible in any lawsuit. Both parties, Agency and CHDO, agree to execute and deliver in writing all communications that affect and bind the other. Any verbal communication between the parties will be considered as immaterial and nonbinding.
33. No provision of this contract can be waived or interpreted by reason or any other act. A waiver from this contract or any of its provisions is valid only if it is an express waiver, definitely agreed to and entered into by the parties in writing.
34. Upon signing by all parties, this document shall be recorded by the Boone County, Missouri Recorder of Deeds.
35. Agency will receive \$1,000 from the sales proceeds of the sale of the improvements located on the Land at closing. All remaining proceeds shall be retained by the CHDO.
36. CHDO shall be responsible for covering all closing and Realtor costs associated with selling the home on the Land to a qualified buyer. The Agency shall be responsible the cost of recording any notices associated with its Ground Lease.
37. The term of this Agreement shall expire upon closing to a program eligible homeowner.
38. This Agreement may not be assigned by a party without the express, written consent of the other party to this Agreement.
39. By signing below, the undersigned each warrant and represent that they have been duly authorized to execute this Agreement on behalf of such party.

## Project Information

Project # and /or Address:

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## Signatures

This agreement is entered into by the parties listed below, effective as of the date specified above.

Columbia Community Land Trust  
500 E. Walnut, Suite 108  
Columbia, MO 65201

*BY:*

COMO CHDO  
400 Wilkes Blvd.  
Columbia, MO 65203

*BY:*

**Print  
Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

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

**Print Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

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