

ATTACHMENT A

AMENDED AND RESTATED PROPERTY MANAGEMENT AGREEMENT

This Property Management Agreement (“Agreement”), dated as of _____, 2022 (Effective Date”), by and between Apex Property Management, Inc., a Wisconsin close corporation (“Manager”), and the City of Madison, a Wisconsin municipal corporation (“City”; and together with Manager, “Parties”), is for the provision of certain property management and maintenance services at the City-owned land banked commercial and office properties located at 1810 South Park Street (“Address One”), 1901-1915 South Park Street (“Address Two”), and 814 and 826 North Avenue (“Address Three”) in the City of Madison (together, “Property”).

W I T N E S S E T H

WHEREAS, the City and Manager are parties to a certain shorter term Property Management Agreement dated January 27, 2022 (“Old Agreement”), wherein the Manager is contracted to provide property management services for a portion of the Property; and

WHEREAS, the Parties desire to terminate the Old Agreement, which is set to expire December 31, 2022, and replace it with this longer term Agreement in support of the City’s ongoing land banking efforts in the South Park Street area of Madison; and

WHEREAS, the Manager was selected through a Request for Proposals process, City RFP #11028-0-2022, completed by the City to find a property manager for its current and any future land banked properties in the South Park Street area.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged by the parties hereto, the parties agree as follows:

1. **TERMINATION OF OLD AGREEMENT, APPOINTMENT AND ACCEPTANCE.** The Old Agreement is hereby terminated and the City appoints the Manager as the sole and exclusive managing agent for the Property. The Manager hereby accepts such appointment subject to the terms and conditions set forth in this Agreement.
2. **TERM OF AGREEMENT.** Subject to the termination rights set forth in Section 6 herein, the term of this Agreement shall commence on the Effective Date, and expire on December 31, 2024 (“Term”).
3. **RENEWAL.** This Agreement may be renewed upon the same terms for three (3) subsequent one (1) year terms upon the written agreement of the parties. If the parties renew this Agreement, then said time period will become part of the Term.

4. DUTIES OF MANAGER. The Manager shall on behalf of the City perform all services required in connection with the operation of the Property subject at all times to the City's general supervision and control.

It shall be the duty and responsibility of the Manager to perform the following:

- a. Operation. To thoroughly familiarize itself with the Property, including its existing warranties, manufacturing instructions, construction, layout, plan, operation, and electrical, heating, plumbing, air conditioning, ventilating and all other mechanical systems. The Manager shall then recommend a preventive maintenance schedule in accordance with the manufacturer's instructions and include with the proposed operating and capital improvement budget.
- b. Budget. Within 30 days of the date first listed above, and thereafter on or before each October 31st during the Term, the Manager shall submit to the City for the City's approval, a proposed operating budget and, if needed, a capital improvement budget, in such form as the City may require for each Address included in the Property ("Approved Budget"). The operating budget shall set forth estimated receipts and expenses for the ensuing calendar year. The capital improvement budget shall set forth estimated capital expenses for the ensuing year.
- c. Authority to Lease. As directed by the City on a case-by-case basis, negotiate all renewal leases of existing tenants at the Property, on behalf of the City, only when there are no fixed renewal options remaining in a lease.

In addition, if an existing tenant does not have a fixed expansion option in its lease, then the Manager can help negotiate an expansion of a tenant's existing space if requested by the City.

Manager shall assist in obtaining tenant's signatures for any lease documentation relating to the above-referenced duties on forms provided by the City that are reviewed by the Office of the City Attorney. All leases and agreements shall require a certificate of insurance.

- d. Property Bank Accounts. To work with the City to establish, maintain, and operate bank accounts as follows:

The City Finance Department ("City Finance") will help the Manager establish the Property's banking accounts at US Bank, and will be a signatory thereon along with the Manager. Once the bank accounts are established the Manager shall operate and maintain the Property's balance sheet.

An interest bearing checking account will be opened at US Bank for the Property ("Operating Account"). A credit card may be set up ("Credit Card") so the Manager can purchase goods for the Property in accordance with the Approved

Budget. The Operating Account and Credit Card are collectively the “Property Bank Accounts”. Interest earned on the Property Bank Accounts shall be added to the respective accounts.

By January 15th following each year this Agreement is in effect, Manager will provide a complete financial statement from the prior calendar year with a detailed general ledger for an audit, to be performed by the City. The City will review the operation of the Property and the Property Bank Accounts. The City shall provide the Manager with written notice of at least twenty (20) days prior to such audit. The Manager shall cooperate with such audit or review by making appropriate personnel of the Manager and all books and records relating to the Property available to the City or its representatives at the Manager’s office during regular business hours.

- e. Collections. To timely bill and collect all rents, charges, assessments, security deposits and other income on behalf of the City as they become payable. The funds of the City shall at all times be maintained in the Property Bank Accounts and be apart from the Manager’s own funds and from the funds of any other entities or persons. Interest from the Property Bank Accounts shall accrue to the benefit of the City, except to the extent it is required to be paid to any tenant per its lease as a return on a security deposit.
- f. Lease Enforcement. When necessary, and when directed by the City, to institute, in the City’s name, legal actions or proceedings for collection of delinquent rents and other income, and for the dispossession of tenants and other persons therefrom, and to engage attorneys in connection with such actions or proceedings if the below listed costs relating thereto are in the Approved Budget. The Manager is authorized to sign and serve such notices, as the Manager deems necessary for lease enforcement, including the collection of rent or other income. Reasonable attorneys’ fees, filing fees, court costs, and other necessary expenses incurred in connection with such actions and not recovered from tenants shall be paid out of the Operating Account or reimbursed directly to the Manager by the City. The Manager may select the attorney of its choice to handle such litigation, subject to the approval of the Office of the City Attorney.
- g. Meetings. The Manager agrees to meet with City staff on a quarterly basis or such other schedule as may be determined by the parties, to report and discuss property management related issues. Manager will send out an agenda before the meeting and provide written notes after each meeting.
- h. Repairs and Maintenance. At the expense of the City and per the Approved Budget, to make or cause to be made all maintenance duties listed in attached Exhibit A, including necessary or prudent repairs, to purchase all necessary supplies and materials to facilitate the repair, operation, or management, and to do all other things reasonably necessary to maintain the entire Property in a clean, safe, and orderly condition and to ensure compliance with all federal, state, and local statutes, ordinances, rules, regulations, and policies applicable to the management and operation of the Property.

The Manager shall systematically and promptly receive and investigate all service requests from tenants, take such action thereon as may be justified, and keep written records of such requests during the Term. The Manager shall, on a monthly basis, provide a detailed listing to the City of all maintenance work performed. The Manager shall report complaints of a serious nature to the City after investigation. The Manager shall ensure that maintenance and repairs are performed by skilled laborers or trained technicians and that maintenance and repair shall not interfere with the operations of the Property's normal operating hours, if possible. The City shall receive the benefit of any rebate or discount, which the Manager may obtain on supplies purchased for the Property or from contractors performing work on the Property.

Manager shall coordinate emergency services, as needed on a twenty-four (24) hour, seven (7) days a week basis. The Manager agrees to provide an emergency telephone service on a twenty-four (24) hour, seven (7) days a week basis and provide this phone number to all tenants.

- i. Purchase of Goods and Services. To use its best efforts to make all repairs and to obtain all materials, supplies, and services at the best economic price available, and to obtain a minimum of three estimates where expenditures exceed ten thousand dollars (\$10,000); Manager shall notify the City of and a contract is required for all expenditures over said amount.
- j. Contract for Services. To contract in the City's name for electricity, gas, water, security, sewer, snow and ice removal, grass mowing, window cleaning, pest control, trash and recycling collection, elevator inspection and maintenance and such other utilities and services as shall be necessary and advisable for the proper operation of the Property. The Manager shall not contract for any services where the estimated cost of which would exceed the cost specified in the Approved Budget without the City's prior written consent thereto.

All contracts entered into by the Manager for the Property (including, without limitation, any contracts for maintenance, repair, services, materials, or supplies) (i) must have a term not to exceed one (1) year; and (ii) must be subject to termination upon no more than thirty (30) days prior notice to the contracting third party. The Manager shall disclose to City any affiliate relationship or other identity of interest between the Manager and any other service provider, and such contracts shall be subject to the City's prior written approval and must be subject to immediate termination in the event that this Agreement is terminated.

- k. Payment of Bills. To review all bills, invoices, and statements received for services, supplies, materials and other expenditures incurred in connection with the maintenance, operation and ownership of the Property, and, on behalf of the City, to pay or cause to be paid in a timely fashion all appropriate and reasonable expenses that are in the Approved Budget from the Operating Account. Any amounts owed by the City to the

Manager under this Agreement shall also be paid from the Operating Account at any time without prior notice to the City.

The Manager shall send the City of Madison Finance Department (“City Finance”) notice of any capital expenditures over \$1,000 made at the Property so an asset ID number can be assigned, and when disposing of a capital asset.

City Finance will bill the Manager for the following that should be paid from the Operating Account:

- 1) Annual Property and liability insurance premiums.
- 2) The annual audit.
- 3) The administrative allocation as established in the annual Approved Budget.

The Manager shall make sure there is adequate cash in the Operating Account to pay the above bills to City Finance within thirty (30) days of receipt.

1. Records. To establish and maintain complete and orderly files containing correspondence, rent records, payroll records, leases, tenant files, receipts, unpaid bills, tenant maintenance requests, Books of Account, Financial Reports, contracts, certificate of insurance forms for tenants and contractors and all other documents and papers pertaining to the development, management and operation of the Property thereof or otherwise required by the City to be maintained (collectively the “Records”), all of which shall be and remain the property of the City and shall be available to the City and any of its authorized representatives for inspection upon reasonable notice at any reasonable time during regular business hours. Manager shall follow the record retention guidelines detailed in attached Exhibit B.

All open records requests, whether verbal or written, shall be referred to the Director of the City’s Economic Development Division (“EDD Director”). The EDD Director shall respond to the open records requests in accordance with applicable statutes, policies, and compliance guidelines. The Manager shall not respond to any open records request beyond referring the request to the EDD Director.

At the end of the Term, Manager shall provide the City with all copies of the Records within thirty (30) days thereof.

- m. Books of Account. To establish and maintain in accordance with generally accepted accounting principles, consistently applied, accurate, and complete books of account with proper entries of all receipts, income, and disbursements, itemized by Address, pertaining to the Property (“Books of Account”). The Books of Account shall be and remain the property of the City and shall be available to the City and any of its

authorized representatives for inspection upon reasonable notice at any reasonable time during regular business hours.

- n. Financial Reports. To prepare and furnish to the City monthly and annual income statements, by the 20th day of each month for the preceding month, which shall include a summary for each Address included in the Property on: delinquencies and description; monthly income/expense variances greater than \$1000 or 5% of the Approved Budget line item; maintenance & operational issues; status of lease expirations.

The monthly financial report shall include: balance sheet; income statement-period to date ("PTD") and year to date ("YTD"); Approved Budget comparison for PTD and YTD with variances; 12 month actual to budget; general ledger; rent roll; receivable detail; aging detail; payables aging report; reconciliation report and statements for the Operating Account (together the "Financial Reports"). All such statements and reports shall be prepared in accordance with generally accepted accounting principles. The Financial Reports are considered part of the Property's Records.

- o. Compliance with Applicable Laws. Manager shall become familiar with, and shall at all times comply with and observe all federal, state and local laws, ordinances and regulations which in any manner affect the services, duties or conduct of Manager and its agents and employees under this Agreement.
- p. Tenant Relations. To use best reasonable efforts to establish and maintain amicable relationships with the tenants of the Property.

- 5. COMPENSATION. The Manager will be compensated out of the Operating Account for its services performed under this Agreement as follows:

- a. Direct Costs. The City will pay Manager one hundred percent (100%) of all costs directly associated with the management of the Property. This shall include but not be limited to costs associated with credit checks, online payments, maintenance, remodeling, supplies, materials, advertising, postings and other costs incurred on behalf of the Property (collectively "Direct Costs"). The City expressly authorizes Manager to pay Direct Costs from collections received on behalf of the City, as detailed in the Approved Budget. At the end of each calendar year, the Manager will provide a detailed accounting to the City of these Direct Costs.
- b. Management Fee. The management fee for the Property, which includes all accounting services and any off-site time/benefits of Manager's employees and Manager's expenses shall be as follows:
 - 1) Seven Percent (7.0%) of rent, or One Hundred Dollars (\$100.00) per month, whichever is greater, for each Address included in the Property.
 - 2) As of the Effective Date there are three Addresses included in the Property.

- 3) The City, at the City's sole discretion, may adjust the number of Addresses included in the Property as it acquires or disposes of property, with any such adjustments evidenced by written amendment to this Agreement. In the event of a Lease amendment for the purpose detailed in this subsection, the City's Economic Development Division Director shall have the authority to execute such amendment(s).
 - 4) The management fee for any future Addresses added to the Property shall be as defined in Subsection 5.b.1).
- c. Maintenance Services. The Manager will perform the duties outlined in attached Exhibit A at the following rates:
- 1) On-site labor: Fifty-Five Dollars (\$55.00) per hour
 - 2) Work not performed by the Manager shall be bid out by the Manager following the guidelines found in Subsection 4.i.

Should tenants of the Property request Manager to perform work that is their responsibility per their lease, then tenants will be billed direct by Manager at the rates detailed this Subsection 5.c. and paid to the City as additional rent. All such work shall be approved in writing in advance by the City.

- d. Lease Negotiation/Signing Fee: Two Hundred Fifty Dollars (\$250.00) per lease. City will authorize this service on a case by case basis per Subsection 4.c.

6. TERMINATION.

- a. By the City. At any time during the Term, the City may terminate this Agreement upon thirty (30) days written notice.
- b. By the Manager. At any time during the Term, the Manager may terminate this Agreement upon one hundred twenty (120) days written notice.
- c. Transition. In the event this Agreement is terminated, whether with or without cause, the Manager shall promptly turn over to the City all keys, personal property and Records so as to facilitate a smooth transition of property management. If requested by the City, the Manager will participate in a walk-through tour of the Property with the City and/or the new property manager. During said tour the Manager will convey their knowledge of any specific issues and operations essential to managing the Property. The Manager shall be compensated for time spent during the transition to a new property manager under the terms of this Agreement.

7. INTEREST OF MANAGER. The Manager covenants that it has no personal interest, direct or indirect, in any property or business of any kind, and shall not acquire any such interest, which would conflict in any manner or degree with the performance of services under this Agreement.

8. INDEMNIFICATION AND INSURANCE.

- a. Indemnification. The Manager shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to Property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Manager's and/or Subcontractor's acts or omissions in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or its employees. This paragraph will survive termination, assignment or transfer of the Agreement.
- b. Hazardous Substances; Indemnification. Manager represents and warrants that its use of the Property will not generate any hazardous substance, and it will not store or dispose on the Property nor transport to or over the Property any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. Manager further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.
- c. Insurance.
 - 1) Required Insurance. The Manager will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated below. The Manager shall not commence work under this Agreement, nor shall the Manager allow any Subcontractor to commence work on its Subcontract, until the insurance required below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.
 - i. Commercial General Liability. During the life of this Agreement, the Manager shall procure and maintain, at the Manager's expense, Commercial General Liability insurance including, but not limited to, bodily injury,

property damage, personal injury, products and completed operations in an amount not less than one million dollars (\$1,000,000) per occurrence. This policy shall also provide contractual liability in the same amount. Manager's coverage shall be primary and noncontributory, and list the City of Madison, its officers, officials, agents and employees as additional insureds. Manager shall require all subcontractors under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary and noncontributory basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

- ii. Automobile Liability. During the life of this Agreement, the Manager shall procure and maintain Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. Manager shall require all subcontractors under this Agreement (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria.
 - iii. Worker's Compensation. During the life of this Agreement, the Manager shall procure and maintain statutory Workers' Compensation insurance as required by the State of Wisconsin. The Manager shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease - Each Employee, and \$500,000 Disease - Policy Limit. Manager shall require all subcontractors under this Agreement (if any) to procure and maintain such insurance.
 - iv. Umbrella Liability. During the life of this Agreement, the Manager shall procure and maintain Umbrella Liability coverage at least as broad as the underlying Commercial General Liability, Automobile Liability, and Employers Liability with minimum limits of \$2,000,000 per occurrence and aggregate.
 - v. Property Insurance. Manager shall be solely responsible for carrying personal property insurance sufficient to cover loss of all personal property on the Property. The City shall not be liable for any damage to or loss of property of Manager or others located on the Property except to the extent such damage or loss was caused by the City's sole negligence or willful act.
 - vi. Fidelity Insurance. The Manager shall maintain Fidelity coverage against dishonest acts by any person, responsible for handling the Operating Account belonging to the City. The amount of such coverage shall not be less than the estimated maximum amount of funds, in the Operating Account, in the custody of the Manager at any time.
- 2) Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A~ (A minus) and a Financial Category rating of no less than VII.

- 3) Proof of Insurance, Approval. The Manager shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies during the Term of the this Agreement. Manager shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Risk Manager. The Manager shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.
- 4) Notice of Change in Policy. The Manager and/or Insurer shall give the City thirty (30)-calendar days advance written notice of cancellation, non- renewal or material changes to any of the above-required policies during the term of this Agreement.
- 5) Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

City of Madison
Attention: Risk Manager, Room 406
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

- 6) Other. Manager shall maintain all certificate of insurance forms for the tenants and contractors performing work at the Property, and monitor the terms so they comply with the leases/contracts.
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9. PROPERTY OF THE CITY. All written materials, tables, charts, computer printouts, personal property etc., prepared or assembled by the Manager under this Agreement are the property of the City. On the date this Agreement terminates or expires, Manager shall turn over to the City all books and Records relating to the Property (copies of which may be made and retained by Manager at Manager's cost and expense) and all funds of the City then remaining in Manager's possession, together with such authorizations and letters of direction addressed to tenants, occupants, suppliers, employees, financial institutions and other parties as the City may reasonably require; and Manager shall cooperate with the City in the transfer of management responsibilities beyond the date Manager actually performs management services hereunder. A final accounting of unpaid management fees (if any) then remaining due to Manager hereunder shall be made within fifteen (15) days after the effective date of termination or expiration.
 10. AFFIRMATIVE ACTION. The Manager shall comply with the below provisions. For the purposes of this Section 10, the term "contractor", whether singular or plural, shall mean Manager, and "contract" shall mean this Agreement.

- a. The following language applies to all contractors employing fifteen (15) or more employees (MGO 39.02(9)(c):

The Manager agrees that, within thirty (30) days after the effective date of this Agreement, Manager will provide to the City of Madison Department of Civil Rights (the “Department”), certain workforce utilization statistics, using a form provided by the City.

If the Agreement is still in effect, or if the City enters into a new agreement with the Manager, within one year after the date on which the form was required to be provided, the Manager will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

The Manager further agrees that, for at least twelve (12) months after the effective date of this Agreement, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Manager are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines, shall be provided to the City by the opening date of advertisement and with sufficient time for the City to notify candidates and make a timely referral. The Manager agrees to interview and consider candidates referred by the Department, or an organization designated by the Department, if the candidate meets the minimum qualification standards established by the Manager, and if the referral is timely. A referral is timely if it is received by the Manager on or before the date stated in the notice.

- b. Articles of Agreement, Request for Exemption, and Release of Payment: The “Articles of Agreement” beginning on the following page, apply to all contractors, unless determined to be exempt under the following table and procedures:

NUMBER OF EMPLOYEES	LESS THAN \$50,000	\$50,000 OR MORE
	Aggregate Annual Business with the City*	Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

*As determined by the City Finance Director

**As determined by the Department of Civil Rights

Request for Exemption – Fewer Than 15 Employees: (MGO 39.02(9)(a)2.) If the Manager believes they are exempt based on number of employees, the Manager shall submit a Request for Exemption on a form provided by the Department within thirty (30) days of the effective date of this Agreement. The Department shall make the final determination as to whether the Manager is exempt from the Articles of Agreement. In the event the Manager is not exempt, the Articles of Agreement shall apply. CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO THE ARTICLES OF AGREEMENT UPON REACHING \$50,000 OR MORE ANNUAL

AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR.

Release of Payment: (MGO 39.02(9)(e)1.b.) Within thirty (30) days of the effective date of this Agreement, and prior to release of payment by the City, all non-exempt contractors are required to on file with the Department, an approved Affirmative Action plan meeting the requirements of Article IV below. Additionally, contractors that are exempt from the Articles of Agreement must have a Request for Exemption form on file with the Department prior to release of payment by the City.

Articles of Agreement:

ARTICLE I

The Contractor shall take affirmative action in accordance with the provisions of this Contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. 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 pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this Contract.

ARTICLE II

The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin.

ARTICLE III

The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining Agreement or other Contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

(This Article applies to non-public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison (MGO 39.02) including the Contract compliance requirements. The Contractor warrants and certifies that one of the following paragraphs is true **(check one)**:

- ☐ A. Contractor has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- ☐ B. Within thirty (30) days after the effective date of this Contract, Contractor will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this Contract, it will complete a model affirmative action plan approved by the Madison Common Council.
- ☐ C. Contractor believes it is exempt from filing an affirmative action plan because it has fewer than fifteen (15) employees and has filed, or will file within thirty (30) days after the effective date of this Contract, a form required by the City to confirm exempt status based on number of employees. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.
- ☐ D. Contractor believes it is exempt from filing an affirmative action plan because its annual aggregate business with the City for the calendar year in which the contract is in effect is less than fifty thousand dollars (\$50,000), or for another reason listed in MGO 39.02(9)(a)2. If the City determines that Contractor is not exempt, the Articles of Agreement will apply.

ARTICLE V

(This Article applies only to public works contracts.)

The Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison, including the Contract compliance requirements. The Contractor agrees to submit the model affirmative action plan for public works Contractors in a form approved by the Director of Affirmative Action.

ARTICLE VI

The Contractor will maintain records as required by Section **39.02(9)(f)** of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section **39.02(9)(f)**. The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of the Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this Contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this Contract in whole or in part.
- B. Declare the Contractor ineligible for further City contracts until the Affirmative Action requirements are met.
- C. Recover on behalf of the City from the prime Contractor 0.5 percent of the Contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the Contract price, or ten thousand dollars (\$10,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

The Contractor shall include the above provisions of this Contract in every subcontract so that such provisions will be binding upon each subcontractor. The Contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance.

ARTICLE IX

The Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this Contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

11. SPECIAL PROVISIONS

- a. Wisconsin Law. This Agreement shall be deemed to have been made in the State of Wisconsin and its validity, construction, performance, breach and operation shall be governed by the laws of the State of Wisconsin. No provision of this Agreement shall be construed to require the City or Manager to take any action in violation of law.
- b. Remedies Not Exclusive. No right or remedy conferred hereunder is exclusive of any other right or remedy, but each such right or remedy is cumulative and, in addition, to any other right or remedy under or by law provided, and may be exercised without exhausting and without regard to any other such right or remedy.
- c. Waivers. No waiver by the City of any defect shall affect any subsequent default or breach of duty or contract or shall impair the exercise or any right or remedy accruing upon any default or the exercise thereof, nor shall it be construed as a waiver of any such default or breach of duty or contract or acquiescence therein. Failure of the City to insist upon the strict performance of any of the terms, covenants or conditions here to be performed by the Manager shall not be deemed a waiver of any rights or remedies which the City shall have and shall not be deemed a waiver of any subsequent default of any such terms, conditions and covenants to be performed by the Manager. Every right or remedy conferred herein upon the Manager or the City may be enforced and exercised as often as the Manager or the City may deem expedient.
- d. Severability. If any term or provision of this Agreement, or any exhibit thereto, or the application thereto to any person or circumstance, shall, to any extent, be invalid, unlawful or otherwise unenforceable, the remainder of this Agreement and exhibits, or the application of such term or provisions to the persons or circumstances other than those as to which it is invalid, unlawful or otherwise unenforceable shall not be affected thereby and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- e. Approvals. Whenever under this Agreement approvals, authorizations, determinations, satisfactions, or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, by the officers of the City authorized by law to give such approval and delivered to the party to whom it is directed at the address specified hereunder. While this Agreement is in effect, the City's Economic Development Division Director may execute any amendment to this Agreement for the purpose of changing the number of Addresses included in the Property.
- f. Notices. All notices to be given under the terms of this Agreements shall be signed by the person sending the same, and shall be sent by electronic mail or certified mail, return receipt requested and postage prepaid, to the email address or address of the parties specified below. If electing to use electronic mail, said emails shall be sent to the email addresses provided below with an active read receipt and shall include a statement that the electronic mail constitutes notice under the terms of this Agreement.

In the case of Manager, to:

Apex Property Management, Inc
Attn: Bruce Bosben
1741 Commercial Avenue
Madison, WI 53704
Email: BBosben@apexrents.com

In the case of the City, to:

City of Madison
Office of Real Estate Services
Attn: Real Estate Supervisor
215 Martin Luther King, Jr. Boulevard, Suite 300
PO Box 2983
Madison, WI 53703
Email: ores@cityofmadison.com and acmiller@cityofmadison.com

With a copy to:

City Attorney
210 Martin Luther King, Jr. Boulevard
Room 401, City-County Building
Madison, WI 53703
Email: attorney@cityofmadison.com

- g. Counterparts, Electronic Signature and Delivery. This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.
- h. Amendments, Supplements. This Agreement may be supplemented or amended only by written instrument executed by the parties hereto.
- i. Benefit, Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto.

- j. No Private Right or Cause of Action. Nothing contained herein shall be interpreted or construed to create any Private Right or any Private Cause of Action by or on behalf of any person not a party hereto, except as provided in the Agreement.
- k. Assignment. This Agreement is personal to Manager. Manager shall not assign this Agreement or subcontract the performance of its duties hereunder without the City's prior written consent. Any assignment or subcontracting without such consent shall be void.
- l. Non-Discrimination. In the performance of work under this Agreement, the Manager agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. Manager further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
- m. Weapons Prohibition. Manager shall prohibit, and shall require its subcontractors to prohibit, its employees from carrying weapons, including concealed weapons, in the course of performance of work under this Agreement, other than while at the Manager's or subcontractor's own business premises. This requirement shall apply to vehicles used at any City work site and vehicles used to perform any work under this Agreement, except vehicles that are an employee's "own motor vehicle" pursuant to Wis. Stat. sec. 175.60(15m).
- n. Authority. Manager represents that it has the authority to enter into this Agreement. If the Manager is not an individual, the person signing on behalf of the Manager represents and warrants that he or she has been duly authorized to bind the Manager and sign this Agreement on the Manager's behalf.

Signatures on following page.

IN WITNESS WHEREOF, the parties hereto have entered into this Property Management Agreement as of the first date set forth above.

APEX PROPERTY MANAGEMENT, INC.

By: _____
Print Name

Title: _____

CITY OF MADISON

By: _____
Satya Rhodes-Conway, Mayor

By: _____
Maribeth Witzel-Behl, Clerk

Execution of this document by the City of Madison is authorized by Resolution Enactment No. RES-22-_____, File ID No. _____, and adopted by the Common Council of the City of Madison on _____, 2022.

Drafted by the City of Madison Office of Real Estate Services
Real Estate Project No. 12274

EXHIBIT A

MAINTENANCE DUTIES

- Regularly clean common areas, including restrooms and check lighting and operation of plumbing fixtures, etc.
- Inspect and monitor all HVAC equipment throughout property for proper operation; adjust room temperatures as-needed; adjust and maintain HVAC equipment as needed; service or schedule service as needed.
- Replace any/all air filters in April, July, and September. Clean or change exterior filters / metal mesh filters as needed.
- Check and change belts in all HVAC units as needed during filter changes.
- Regularly check roof drains, gutters and downspouts for proper drainage; divert as necessary.
- When it rains, check common areas, gutters, downspouts, diversions, and drains for any issues.
- Check parking lots and entire property for trash and any needed maintenance or repairs.
- Check and empty any exterior garbage cans as needed.
- General building checks, maintenance and repairs throughout as needed or requested by tenants.
- Email follow up and correspondence with tenants (tenant relations) and City.
- Project management /coordination of vendors and suppliers for project work, inspections, service, etc.
- Blow leaves/debris/salt off sidewalks and entryways, weekly or as needed.
- Keep needed supplies on the Property, order if necessary.
- Inspect parking lot signage, repair as necessary.

- Regularly check vacant building areas.
- Monitor for and address pest control issues.
- If applicable, conduct elevator fire service test.
- Check fire alarms, extinguishers, emergency lighting, emergency exit signage for functionality.
- Check all parking lot lighting / exterior lighting for functionality.

SEASONAL / SPECIAL (as applicable)

- Update any clocks/timers/controls with the start/end of Daylight Savings Time.
- April, July, October – clean common space windows.
- Winter – check that any vacant spaces are heated minimally though adequately heated.
- Door schedule changes (holidays etc.).
- Facilitate Fire Department inspections on a semi-annual basis.

*The above-referenced duties may be changed or augmented by the City at any time.

EXHIBIT B

RECORD RETENTION GUIDELINES

RECORD RETENTION PERIODS

Event is defined as when company is no longer managing property, then records transferred to City.

Fiscal is defined as fiscal year from when record was created.

RECORD

RETENTION PERIOD

Accident reports	Event + 6 months
Accounts receivable ledgers and related trial balances	Fiscal+7 years
Appropriate general ledger and related end of year trial balances	Event + 6 months
Audits	Fiscal+7 years
Bank reconciliations	Fiscal+7 years
Bank statements (also Deposit Slips relating thereto)	Fiscal+7 years
Canceled checks	Fiscal+7 years
Cash/Accrual books (receipts and disbursement journals)	Fiscal+7 years
Contracts-service/operating	Contract expiration + 10 years
Financial statements - Year end	Event + 6 months
Financial statements - Monthly	Fiscal + 7 years
General and private ledgers, and related end of year trial balances	Event + 6 months
General correspondence and correspondence of unimportant nature with tenants/vendors	Fiscal + 7 years

Manager's Liability Insurance policies	Event + 6 months
Insurance records (existing)	Event + 6 months
Inventory summaries of product, materials and supplies	Fiscal + 7 years
Invoices to customers and from vendors	Fiscal+7 years
Inspections by governmental agencies	Fiscal+7 years
Journal vouchers	Fiscal+7 years
Payroll records and summaries-Maintenance Technician	Fiscal+7 years
Petty cash vouchers	Fiscal+7 years
Property ledgers - including costs, depreciation reserves and end of year trial balances	Event + 6 months
Purchase orders	Fiscal + 7 years
Tenant Files and Rejected Application Files-Prospective tenants	Fiscal + 3 years