

## PROPERTY MANAGEMENT AGREEMENT

This Property Management Agreement (the “Agreement”), dated as of May 28, 2019, by and between Founders 3 Real Estate Services (the “Manager”) and the Community Development Authority of the City of Madison, a public body corporate and politic organized and existing under the laws of the State of Wisconsin (the “Owner”);

### WITNESSETH

WHEREAS, the Owner owns 28 residential units and one commercial unit, commonly referred to as Reservoir Apartments, located at 200, 202, 206, 210 North Blount Street and 612, 616, 620, 624, 628, 632 East Dayton Street and the Owner owns two units located at 601 South Baldwin Street in the City of Madison (the “Property”); and

WHEREAS, all of the units in the are to be operating in compliance with the Property’s Loan and Regulatory Agreement as set forth by the Wisconsin Housing and Economic Development Authority (“WHEDA”); and

WHEREAS, the Owner wishes to engage Manager to perform the services described herein.

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

1. DEFINITIONS.

The following definitions reflect the terms as used in this agreement:

- a. **“Lease”** is any rental agreement whereby Owner has agreed to let and Tenant has agreed to accept a Rental Unit in the Property identified in the Lease in accordance with the terms of the Lease.
- b. **“Marketing Plan”** is a comprehensive and detailed written account and timetable of the objectives and methods to be used to achieve the Property’s marketing goals.
- c. **“Property Rules”** are certain rules attached to the Lease that describe applicable property guidelines to the Tenants, i.e., parking rules and playground rules.
- d. **“Rental Unit”** is a dwelling unit at the Property rented and to be rented to residential Tenants.
- e. **“Tenant”** is one or more persons occupying a Rental Unit pursuant to Lease.

- f. **“Tenant Deposit”** is any security deposit, cleaning deposit, prepaid rent deposit, or other sum advanced by a Tenant under terms that may require repayment by Owner or application against a future liability of such Tenant.
  - g. **“Tenant Selection Plan”** is the set of policies and procedures for processing and selecting applicants for Rental Units at the Property. It includes any establishment of preferences and priorities, occupancy standards, rejection standards, reviews and appeals of rejection decisions, and notice requirements.
- 2. **APPOINTMENT AND ACCEPTANCE.** The Owner hereby appoints Manager as the sole and exclusive managing agent for the Property. Manager hereby accepts such appointment, subject to the terms and conditions set forth in this Agreement.
- 3. **TERM OF AGREEMENT.** Subject to the termination rights set forth in Section 9 herein, the term of this Agreement shall be for three (3) years, commencing on July 1, 2019 and expiring on June 30, 2022 (the “Term”).
- 4. **RENEWAL.** This Agreement may be renewed upon the same terms for two (2) 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.
- 5. **SERVICES OF MANAGER.** Manager shall on behalf of the Owner perform all services required in connection with the operation of the Property subject at all times to the Owner’s general supervision and control.

Manager represents:

- i. That it is experienced in professional management of property of the character and nature similar to the Property;
- ii. That it is legally authorized to manage such property in the state of Wisconsin;
- iii. That it will manage the Property in accordance with the highest professional standards for such property;
- iv. That it confers fully and regularly with the owner in the performance of its duties and to continue to remain informed regarding the property.

It shall be the duty and responsibility of Manager:

- a. **Operation.** As soon as practicable, Owner shall furnish Manager with a complete set of general plans and specifications for the Property and copies of all guaranties and warranties pertinent to construction and fixtures and equipment of the Property. Manager shall utilize this information along with inspections from appropriate staff to thoroughly familiarize itself with the character, construction, layout, and plans of the Property, including the electrical, heating, plumbing, and ventilating systems and all other mechanical equipment. Upon receipt of the documents listed in this section, manager shall submit a preventative maintenance schedule in accordance with the manufacturer’s instructions to the Owner within 30 days.

- b. Applicable Laws and Regulations. Review and become familiar with federal, state, county, and local laws and regulations that relate to the Property and its management, maintenance or operation, including but not limited to those related to minimum set-asides, rent restrictions, annual re-certifications, zoning, building construction and operation, fair housing, equal opportunity and nondiscrimination, landlord-tenant relations, energy efficiency, recycling, trash disposal, the Americans and Disabilities Act of 1990 (as it may be amended from time to time), and all others, and manage, maintain and operate the Property in accordance with all of the foregoing.
- c. Project Requirements and WHEDA Compliance. Ensure the Property is operated and managed in compliance with all Property financing, ownership, and acquisition documents, and the Property's Loan and Regulatory Agreement ("Project Requirements"); cooperate with the WHEDA in connection therewith; and inform Owner of any such information that may become available during the term of this Agreement and that may be material to the management, maintenance or operation of the Owner's investment therein.

Manager will perform all Project Requirements for the Owner, including the certification and recertification of low-income residents, consisting but not limited to: (i) verification of resident income sources and resident assets; (ii) the effect of filling vacancies in market-rate units or low-income units; (iii) permissible forms of discrimination under the applicable HUD handbook; (iv) utility allowances; (v) certain categories of residents that are not permitted to occupy units; and (vii) maintain originals of all records described herein. Manager shall cooperate with the Owner and their representatives to ensure satisfaction by such parties of manager's management plan and rental criteria.

- d. Rental of Units. Manager shall offer for rent and shall rent the Rental Units in the Property in accordance with all Project Requirements, the Management Plan (Exhibit A), the Property Rules, the Lease, and a rent schedule, including required deposit amounts and conditions, approved in writing by Owner. Pursuant to its rental responsibilities, Manager shall:
  - i. Carry out marketing in accordance with the approved Tenant Selection and Marketing Plans.
  - ii. Maintain a current list of acceptable prospective tenants and undertake all arrangements necessary and incidental to the acceptance of rental applications and the signing of leases. Manager shall market the rental units in accordance with the Marketing Plan, if any, and maintain records of the marketing activity for compliance review purposes. Manager shall exercise its best efforts (including, but not limited to, placement of advertising, interview of prospective Tenants, assistance and counseling in completion of rental applications and signing of leases, processing of documents and credit and employment verifications, and explanation of the program and operations of Owner) to effect the leasing of rental units and the renewal of leases in

accordance with the terms of each lease and the Project Requirements so that the Property is occupied as fully as possible.

- iii. Show rental units at the Property to all prospective tenants.
- iv. Take and process applications and application fees, if any, for rentals, including interviewing and screening prospective tenants to determine if they meet the Leasing Guidelines and Tenant Selection Criteria.

Applicants shall be selected from the waiting list in chronological order. If an application is rejected, the applicant shall be advised in writing of the reasons for rejection. If the rejection is based on information from a credit bureau, the source of the report must be revealed to the applicant pursuant to the Fair Credit Reporting Act, under 15 USC § 1681, et seq. The rejected applicant, together with the written notice of the rejection and any other related correspondence, shall be kept on file for seven years following the rejection.

- v. Comply with the Leasing Guidelines and use a lease form that complies in all respects with State and local residential tenant/landlord laws, which lease shall be subject to the approval of the Owner and shall be consistent with Project Requirements.
  - vi. Certify or re-certify Tenants as required by the Project Requirements, by obtaining tenant certifications and third party verification(s) of tenant income and assets.
  - vii. Sign all leases in Manager's name, identified as agent for Owner, subject to prior written approval by Owner of any deviation from Owner's approved rent schedule, lease forms and Leasing Guidelines.
  - viii. Collect, deposit, and disburse tenant deposits, if required, in accordance with the terms of the Lease and Section 6 hereof.
- e. Rent Collection. Manager shall collect, when due, all rents, charges and other amounts receivable on Owner's account in connection with the management and operation of the Property. Such receipts shall not be commingled with other funds and shall be deposited and held in the Operating Account in accordance with the provisions of Section 6.
  - f. Lease Enforcement. Manager is authorized to sign and serve such notices, as Manager deems necessary for lease enforcement, including the collection of rent or other income. Subject to the approval of the City Attorney's Office, and, to institute, in the Owner'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. 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 Manager by the Owner. Manager may select the attorney of its choice to handle such litigation, which may be subject to the approval of the Office of the City Attorney.

- g. Maintenance. The Manager will ensure that the Property is maintained and repaired in accordance with the owner's specifications and applicable state and local health and building codes. The Manager shall, at Owner's expense, maintain the Property in a decent, safe, and sanitary condition. The Manager will ensure that the site will be kept in a condition acceptable to the Owner, including but not limited to cleaning, painting, decorating, plumbing, carpentry, grounds care, and such other maintenance and repair work as may be necessary. The following provisions apply:
  - i. Special attention shall be given to preventative maintenance.
  - ii. Subject to Owner's prior written approval, Manager shall contract with qualified independent contractors for the maintenance and repair of major mechanical systems, and for the performance of extraordinary repairs beyond the capability of regular maintenance personnel. Prior to commencement of any work Manager shall obtain appropriate written evidence of such contractor's liability and worker's compensation insurance.
  - iii. Manager shall systematically and promptly receive and investigate all service requests from Tenants, take such action thereon as may be justified, and keep records of the same. 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 services on a twenty-four (24) hour, seven (7) days a week basis and provide this phone number to all tenants. Complaints of a nature that pose an immediate safety risk to tenants, or a significant financial risk to the Owner shall be reported to Owner after investigation. At Owner's request, Owner shall receive all service requests and the reports of action thereon.
  - iv. Manager shall take such action as may be necessary to comply with any and all orders and requirements of federal, state, county, and municipal authorities and of any board of fire underwriters, insurance companies, and other similar bodies pertaining to the Property.
  - v. Except as otherwise provided in this Section, Manager is authorized to purchase, at Owner's expense, all materials, equipment, tools, appliances, supplies and services necessary for proper maintenance and repair of the Property. Manager shall obtain bids for all contracts, materials, equipment, and supplies exceeding \$25,000 per item for those items that can be obtained from more than one source.

- vi. Notwithstanding the foregoing, the prior written approval of the Owner will be required for any contract that exceeds one year in duration, or expenditure that exceeds \$25,000 in any one instance for labor, materials, or otherwise in connection with the maintenance and repair of the Property, except for emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary service to the Property.
- vii. In the event of emergency repairs, Manager shall notify Owner promptly, and in no event later than 72 hours from the occurrence of the event.
- viii. If Manager uses its own employees to perform maintenance, the charge for such employees shall be the payroll salary identified in the budget including all fringe benefits and payroll taxes.
- ix. Manager shall use its best efforts to re-rent vacant units within 20 business days.
- x. Contract for electricity, gas, water, sewer, oil, telephone, window cleaning, pest control, trash removal, repairs, maintenance and such other utilities and services as shall be necessary and advisable for the property management, maintenance and operations of the Property; provided, however, that Manager shall not contract for any services the estimated cost of which would exceed the cost specified therefor in the Approved Budget, defined below, without the Owner's prior written consent thereto.
- xi. Furthermore, notwithstanding anything to the contrary, unless Owner otherwise agrees in writing, all contracts entered into by Manager for the Property (including, without limitation, any contracts for maintenance, repair, utilities, 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. Manager shall disclose to Owner any affiliate relationship or other identity of interest between Manager and any other service provider, and such contracts shall be subject to Owner's prior written approval and must be subject to immediate termination in the event that this Agreement is terminated.

Manager will contract in Owner's name for all goods and services necessary and advisable for the proper operation of the Property and in accordance with the Owner's Procurement Policy. Manager shall not contract for any goods or services the estimated cost of which would exceed the cost specified therefor in the Approved Budget without the Owner's prior written consent.

#### h. Operating and Capital Improvement Budget.

- i. Manager shall prepare an annual operating budget and projected rental rates for the Property each fiscal year during the term of this Agreement (the "Annual Operating Budget"). The Property fiscal year begins on January 1 and ends on

December 31 (the “Fiscal Year”). Manager shall submit the Annual Operating Budget and capital improvement budget to the Owner at least 60 days before the beginning of such Fiscal Year. The proposed budget shall be subject to approval by Owner. Owner shall inform Manager of any changes incorporated in the approved Annual Operating Budget within 30 days after receipt from Manager.

- ii. The Annual Operating Budget shall include a schedule of recommended rents to be charged for each rental unit, including recommended Rent increases with respect to Lease renewals and new Leases. The recommended rents shall be in compliance with the Project Requirements, including consideration of changes in median family income and utility allowances.
  - iii. In preparing each proposed Annual Operating Budget, Manager shall use its best efforts to take into account anticipated increases in utility charges and other operating costs. To the extent feasible, Manager shall support anticipated increases with written evidence or documentation.
  - iv. At the same time Manager prepares the Annual Operating Budget, Manager shall prepare for Owner’s approval an assessment of the capital needs of the Property for the coming year and for the two years following the coming year, the capital improvement budget.
  - v. Except as otherwise provided in the Agreement or as may be approved in writing and in advance by the Owner, Manager shall incur no expenses in connection with the Property that are not provided for in the Annual Operating Budget, except as permitted for emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary services to the Property.
- i. Escrow Payments, Replacement Reserves, and Payments in Lieu of Taxes.
- i. Manager shall make monthly escrow payments required under the mortgage loan to the mortgage note holder from funds collected in accordance with Project Requirements.
  - ii. Manager shall fund a property replacement reserve in accordance with Project Requirements beginning on July 1, 2019 (the “Replacement Reserve”). The Manager shall utilize amounts in the Replacement Reserve to fund repairs, capital expenditures and other costs approved by WHEDA. The Replacement Reserve shall be deposited into an interest-bearing account held by WHEDA. Interest earned on the Replacement Reserve shall be added to the Replacement Reserve. No Replacement Reserve funds shall be expended without WHEDA’s written approval.

- iii. Manager shall make an annual Payment in Lieu of Taxes (“PILOT”) payment to the City of Madison Finance Office in accordance with the PILOT agreement for the Property. Manager shall fund the property tax reserve in the amount of the annual PILOT payment.
- j. Permits and Licenses. Manager shall acquire and keep in force at Owner’s expense any and all licenses and permits required for the operation of the Property as rental housing.
- k. Reports. Manager shall prepare all reports required by the Project Requirements.
  - i. Reports will be prepared, distributed and maintained in a manner satisfactory to Owner. Manager shall provide Owner with a copy of all such reports.
  - ii. Manager shall establish and maintain a system of records, books, and accounts in a manner satisfactory to Owner and in accordance with generally accepted accounting principals, which is consistent with and for the durations mandated by the Project Requirements. Said books and records, together with supporting documents, including correspondence, shall be deemed to be the property of the Owner and shall be available to the Owner and any of its authorized representatives for inspection upon reasonable notice at any reasonable time during regular business hours.
  - iii. On or before the 20<sup>th</sup> day of each month during the term of this Agreement, Manager shall prepare and provide to Owner monthly report in a form satisfactory to Owner, including at least the following:
    - 1) A statement of income and expenses for the preceding month and year-to-date, including a comparison with the approved budget for the same periods; the income portion of the statement shall include, a statement of gross potential rental income (i.e., rental income if the Property were at 100% occupancy for the months), vacancy loss, actual rental income collected and an itemized statement of other income received.
    - 2) An itemized list of all delinquent rents as of the 10<sup>th</sup> day of such month, as well as a report of action taken thereon by Manager; a rent roll/cash receipts form for the previous month, including the number of occupied and vacant units and the physical vacancy rate;
    - 3) A summary of disbursements and adjusting journal entries for the previous month;
    - 4) A balance sheet for the preceding month, including accounts receivable and payable, and cash balances in bank accounts (including separate security account balance), and a report on aged receivables and action taken thereon by Manager; and



- 5) A narrative addressing:
  - a) Any unusual actions taken or emergencies responded to, and any accidents, claims, and potential claims for the previous month, and any outstanding maintenance requests,
  - b) Turnovers during the month,
  - c) An explanation for any expense items varying by more than 10% from the budget,
  - d) A statement of the number of leases expiring in the upcoming month and whether Tenant has given or been given notice to vacate or has been recertified for lease renewal; and
  - e) Any other information required by the Project Requirements.
- iv. Manager shall prepare, sign, and file all forms, reports, and returns required by law in connection with Manager's employment of personnel, unemployment insurance, workers' compensation insurance, disability benefits, social security, and other similar insurance and all other benefits or taxes now in effect or hereafter imposed.
- v. Unless otherwise agreed and delineated in Section 7, all bookkeeping, data processing services, report preparation and management overhead expense shall be paid for by Manager from the Management Fee.
- vi. Manager shall promptly furnish such additional information (including monthly occupancy reports, Property's balance sheets, monthly budgeted and actual income and expense reports, and tenant eligibility reports) as may be requested from time to time by the Owner or the WHEDA with respect to the leasing, financial, physical, or operational condition of the Property.
- vii. Manager shall establish tenant files containing copies of leases, certification forms, notices, and other documentation required by Owner as necessary to conform to the Project Requirements.
- viii. As additional support to the monthly financial statement, Manager shall provide, upon Owner's request and as an expense to the Property, copies of the following:
  - 1) All bank statements, bank deposit slips, and bank reconciliations;
  - 2) Detailed cash receipts and disbursement records;
  - 3) Detailed trial balance;
  - 4) Paid invoices; and
  - 5) Tenant eligibility reports.
1. Meetings. Manager shall be available for communication with Owner and shall keep Owner advised of items materially affecting the Property. Manager and Owner shall establish a planned schedule for communications. However, Manager also agrees to

cause a representative of Manager to attend meetings with Owner at any times reasonably requested by Owner.

- m. Contracts. Manager shall review existing Property-related service contracts and make recommendations to the Owner on necessary improvements, when such contracts should be bid, and develop and implement bid specifications in compliance with the Owner's procurement policy.
- n. Notification of Owner of Material Events. Promptly notify Owner of any material events, occurrences, damage, or destruction to or of the Property, and notify Owner immediately by telephone, with prompt confirmation by mail and/or telecopy (including any document received by Manager) of the service upon Manager of any summons subpoena or similar document including, without limitation, any notices, letters or other communications setting forth or claiming any actual or alleged potential liability of Owner or any of its affiliates, or the Property, or of the receipt by Manager of any material notice, demand, request, or other communication from any resident, any part to a contract or agreement related to the Property, any insurer, or notice of any code violation.
- o. Staff. Manager is authorized to hire and supervise employees (resident managers, housing counselor, maintenance employees, etc.) to perform required maintenance, rental, repair, and other services for said premises. All such persons shall be employed by Manager and shall not be deemed employees of the Owner or the Property. However, Manager and Owner agree that charges for such employees during the term of this Agreement shall be an operating expense against the Property based upon the actual time employees are engaged in such work at the premises, or for work performed on behalf of the Owner. The cost of transportation for the business of the property shall be an operating expense of the property.
- p. Records. Establish and maintain in Manager's office, in a manner satisfactory to Owner, complete and orderly files containing correspondence, rent records, a complete record of the occupancy history of each unit to be taken into consideration by Owner (including, but not limited to names, income questionnaires, leases and dates of occupancy of all residents, and efforts to fill vacancies), payroll records, insurance policies, leases, receipts, unpaid bills, and all other documents and papers pertaining to the Property and the management, maintenance and operation thereof, all of which shall be and remain the property of the Owner and shall be available to Owner and its representatives for inspection at any reasonable time during regular business hours.
- q. Management Plan.
  - i. If not attached hereto, then within 30 days from the date of this Agreement, Manager shall provide Owner with a copy of the Management Plan for the Property. The Management Plan provides a comprehensive and detailed description of the policies and procedures to be followed in the management of

the Property. Owner shall review and approve the Management Plan within 45 days after Owner receives the Plan from Manager.

- ii. The Manager shall conduct its management activities in accordance with the policies and procedures set forth in the Management Plan. In addition, the Manager will carry out the tasks and responsibilities set forth in Section 4 of this agreement. The Management Plan will be reviewed annually at the time the annual budget is being created to assure owner's objectives for the Property are clear and being achieved.
  - iii. An identification of duties and supervisor relationship for Property site-assigned staff and Manager's office staff are described in the Management Plan as is the pro rata division of singularly incurred operating expenses common to the Manger and Owner.
- r. General. Perform all other services reasonably necessary or convenient for the care, protection, management, maintenance, and operation of the Property, particularly in compliance with all applicable environmental protection laws, and the prevention of waste, damage or injury there to, and take all action necessary, convenient or advisable to operate the Property in compliance with Project Requirements, historic rehabilitation credits, if applicable, passive loss and depreciation deductions, cash flow, and appreciation of the Property on sale as my be reasonably possible.

6. MANAGEMENT AUTHORITY

- a. Manager's authority is expressly limited to the provisions contained herein, as they may be amended in writing from time to time in accordance with the provisions of this Agreement. Owner expressly withholds from Manager any power or authority to make any structural change in the Property or to make any other major alterations or additions in or to the Property or fixtures or equipment therein, or to incur any expense chargeable to Owner other than expenses related to exercising the express powers granted to Manager by the terms of this Agreement, without the prior written consent of Owner.
- b. Manager shall have the right to engage independent contractors for performance of such of its duties hereunder as Manager deems necessary, but Manager shall have the responsibility for supervision of the performance of such duties. All contracts with independent contractors in excess of \$25,000 shall be subject to the prior written consent of Owner. Expenses associated with such delegation of Manager's duties shall be solely the responsibility of Manager and payable solely out of the management fee set forth in Section 7.
- c. Manager shall comply fully with all federal, state, county, municipal and special district laws, ordinances, rules, regulations, and orders relative to the leasing, use, operation, repair, and maintenance of the Property. Manager shall promptly remedy and violation of any such law, ordinance, rule, or regulation which comes to its attention and shall notify Owner by the end of the next business day after Manager becomes aware of any

violation for which Owner may be subject to penalty. Manager shall take no action so long as Owner is contesting or has affirmed its intention to contest any such order or requirement.

- d. In the performance of its obligations under this agreement, the Manager will comply with the provisions of any Federal, State, or local Fair Housing law prohibiting discrimination in housing or employment on the grounds of race, color, religion, sex, familial status, National origin, or handicap, and other nondiscrimination laws such as Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and the Americans with Disabilities Act, as applicable.

## 7. REMITTANCE OF FUNDS

- a. Manager shall deposit immediately upon receipt all rents, gross rents, gross collections and other funds collected from the operation of the Property, including any and all advance funds, in a bank account in the name of the Owner. Any monies held by Manager for Owner's account shall in no event be commingled with Manager's own funds or with funds held by Manager for the account of other parties, all such funds so held for Owner's account shall be trust funds in the hands of Manager, and Manager shall have no right of set-off against any such funds. All accounts shall remain FDIC insured accounts. The Owner will name at least two (2) representatives from the Manager as the authorized signers for all Property accounts.
- b. Manager shall deposit immediately upon receipt all Tenant Deposits in a separate bank account. Such account shall be in the name of the Owner for the benefit of the Owner and designated of record as "Security Deposit Account." The amount of each Tenant Deposit shall be held in an account, separate from all other accounts and funds. Interest on Tenant Deposits shall be paid according to State law and Manager shall maintain detailed records of all Tenant Deposits and such records shall be open for inspection by Owner's employees or appointees.
- c. Any disbursements made by Manager pursuant to this Agreement shall be made out of the Operating Account, except as otherwise designated as expenses of the Manager. If at any time the gross income from the Property shall not be sufficient to pay the bills and charges which may not have been incurred by Manager, as authorized by the terms of this Agreement, Manager shall submit to Owner a statement of such unpaid bills and Owner shall disburse promptly to, or as directed to, Manager sufficient monies to pay such unpaid bills. Manager shall not advance its own funds to pay Property expenses, except in case of emergency, in which case Manager shall notify Owner within five (5) business days after doing so.
- d. Notwithstanding any of the foregoing provisions or any similar provisions that follow, the prior written approval of the Owner will be required for any expenditure which exceeds \$25,000 in any one instance for labor, materials, or otherwise in connection with the maintenance and repair of the Property. This limitation is not applicable for

recurring expenses within the limits of the operating budget or emergency repairs involving manifest danger to persons or property, or that are required to avoid suspension of any necessary service to the property. In the latter event, the Manager will inform the Owner of the facts as promptly as possible.

- e. Manager will secure and credit to Owner all discounts, rebates and commissions obtainable with respect to purchases, services, contracts and all other transactions on Owner's behalf.

8. COMPENSATION.

- a. Start-Up Fee. Owner shall pay a one-time start-up management fee in the amount of \$2,500 on or before July 1, 2019.
- b. Advance Deposit. Upon execution of this Agreement, Owner shall pay \$3,500 to the Manager to cover one month's payment of projected Employee Related Expenses. All advanced funds deposited under this section will be reimbursed to the Owner upon termination of this agreement after all payments due the Manager are paid.
- c. Monthly Management Fee. In return for Manager's services to be provided hereunder, Manager shall be paid a management fee in the amount of the greater of a fixed fee of \$1,000 or four percent (4%) of Gross Rental Income from the Property collected in such month, which shall be due and payable as of the first day of each month for services rendered during the prior month. "Gross Rental Income" shall include all rental and other incidental income received (on a cash basis) by Owner including, without limitation, any rent subsidies, to the extent available, forfeited deposits, rental loss insurance proceeds, application fees, late payments and proceeds from laundry facilities, but shall in no event include proceeds from the sale of property, interest income, or security deposits. Owner shall reimburse Manager for its reasonable out-of-pocket expenses incurred in connection with fulfilling its duties hereunder, excluding Manager's general overhead expenses. Copies, postage, resident manager training, personnel costs in the absence of a resident manager and supplies used, for and at the property are expenses of the property. Manager and its Affiliates shall not solicit or receive, directly or indirectly, any commission, bonus, gratuity, fee or any other payment, other than those described herein, from any person with respect to their duties described herein and business related thereto.
- d. Maintenance Service Fees. If the Maintenance Technician is out on approved leave time the Manager will supply another staff member to perform the duties of the Maintenance Technician. General maintenance services shall be paid at the rate of \$60 per hour. Heating, Ventilation, and Air Conditions ("HVAC") services will be paid at a rate of \$120 per hour.

9. INSPECTIONS. Manager shall permit Owner and any of its invitees or representatives to have reasonable access to the Property and any Property records, including those required to be maintained under terms of this Agreement. Manager shall cooperate with respect to any on-site evaluations of the Property and its management, maintenance, operation and administration. Manager shall further provide Property residents with at least 24 hours notice prior to any inspections or repairs of resident occupied units. Manager shall correct within 30 days any failure to fulfill its obligations regarding management, maintenance, operation, or administration of the Property identified to Manager by Owner, and shall report the Owner in writing any such deficiencies and the results of Manager's remedial actions.

Owner shall have the right, within ten (10) days advance written notice to Manager, to audit all files and accounts pertaining to the Property at Manager's principal office during normal business hours.

10. TERMINATION. This Agreement shall be terminated:
- a. Immediately, without notice, in the event a petition in bankruptcy is filed by or against Manager, or if the Manager makes an assignment for the benefit of creditors or takes advantage of any insolvency act.
  - b. With Cause. The Owner may terminate this Agreement if cause for such termination exists 30 days after Manager receives written notice of such cause. As used herein, "cause" shall include, but not be limited to, any of the following:
    - i. Manager's failure to promptly or competently perform any of its duties hereunder;  
or
    - ii. Manager's material mismanagement of the Property.
  - c. Without Cause. At any time during the Term, either party may terminate this Agreement without cause upon sixty (60) days written notice.

In the event this Agreement is terminated, whether with or without cause, the Manager shall promptly turn over to the Owner all keys, books, contracts, leases, deposit receipts, unpaid bills, deposit account records, and all other records related to the Property, and all funds of the Owner and then remaining in Manager's possession together with such authorizations and letters of direction addressed to residents, occupants, suppliers, employees, financial institutions, governmental entities, and other parties as Owner may reasonably require; and Manager shall cooperate with Owner in the transfer of management responsibilities to Owner or its designee. A final accounting of unpaid fees (if any) due to Manager hereunder for services rendered prior to termination shall be made within sixty (60) days after the effective date of termination, and Owner shall have no obligation to pay Manager for any amounts for invoices received after such date. Such accounting shall be based upon the financial performance of the Property for the period prior to the effective

date of termination and on the number of calendar days elapsing prior to such date adjusted pro rate.

Management Fees Upon Termination. Upon termination, Owner will pay Manager post-termination Management Fees to assist with the ninety (90) day transition period. The post-termination Management fees will be a full month's Management Fee for the first thirty (30) days, (1/2) Management Fee for the next thirty (30) days and (1/4) Management Fee for the final thirty (30) days.

11. 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.

12. INDEMNIFICATION AND INSURANCE.

- a. Indemnification. The Manager shall be liable to and hereby agrees to indemnify, defend and hold harmless the Owner, the City of Madison, and their respective 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 Owner or the City of Madison and their respective 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 Owner or the City of Madison, and their respective officers, officials, agents, or its employees. This paragraph will survive termination, assignment or transfer of the lease.
- 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 Owner harmless from and indemnify the Owner 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 Owner, 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.

- i. 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 of Madison Risk Manager.
  - 1) Commercial General Liability. During the life of this Agreement, the Manager shall procure and maintain 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 \$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 Owner, 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 Owner, its officers, officials, agents and employees as additional insureds.
  - 2) 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.
  - 3) 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.
  - 4) 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 and Employers Liability with minimum limits of \$2,000,000 per occurrence and aggregate.



- 5) Property Insurance. Manager shall be solely responsible for carrying personal property insurance sufficient to cover loss of Manager's personal property on the Property. The Owner 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 Owner's sole negligence or willful act.
- 6) Fidelity Insurance. The Manager shall maintain Fidelity coverage against dishonest acts by any person, responsible for handling funds belonging to or administered by the Owner. The amount of such coverage shall not be less than the estimated maximum amount of funds, including reserves, in the custody of the Manager at any time.
- ii. 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.
- iii. Proof of Insurance, Approval. The Manager shall provide the Owner with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Lease. Manager shall provide the certificate(s) to the Owner's representative upon execution of the Agreement, or sooner, for approval by the City of Madison Risk Manager. The Manager shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.
- iv. Notice of Change in Policy. The Manager and/or Insurer shall give the Owner 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.
- v. Risk Manager. All information required to be provided to the City of Madison Risk Manager should be addressed as follows:

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

- d. 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.

13. AFFIRMATIVE ACTION.

- A. The following language applies to all contractors employing fifteen (15) or more employees (MGO 39.02(9)(c). In this section, the term "Contractor" shall mean "Manager":

The Contractor agrees that, within thirty (30) days after the effective date of this Contract, Contractor 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 Contract is still in effect, or if the City enters into a new Agreement with the Contractor, within one year after the date on which the form was required to be provided, the Contractor 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 Contractor further agrees that, for at least twelve (12) months after the effective date of this Contract, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of the Contractor 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 Contractor 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 Contractor, and if the referral is timely. A referral is timely if it is received by the Contractor on or before the date stated in the notice.

The Department will determine if a contractor is exempt from the above requirements (Sec. 13.A.) at the time the Request for Exemption in 13.B.(2) is made.

**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 Finance Director

\*\*As determined by the Department of Civil Rights

(1) Exempt Status: In this section, “Exempt” means the Contractor is exempt from the Articles of Agreement in section 13.B.(5) of this Contract and from filing an Affirmative Action plan as required by Section IV of the Articles of Agreement. The Department of Civil Rights (“Department”) makes the final determination as to whether a contractor is exempt. If the Contractor is not exempt, sec. 13.B.(5) shall apply and Contractor shall select option A. or B. under Article IV therein and file an Affirmative Action Plan.

(2) Request for Exemption – Fewer Than 15 Employees: (MGO 39.02(9)(a)2.) Contractors who believe they are exempt based on number of employees shall submit a Request for Exemption on a form provided by the Department within thirty (30) days of the effective date of this Contract.

(3) Exemption – Annual Aggregate Business: (MGO 39.02(9)(a)c.): The Department will determine, at the time this Contract is presented for signature, if the Contractor is exempt because it will have less than \$50,000 in annual aggregate business with the City for the calendar year in which the contract is in effect. CONTRACTORS WITH 15 OR MORE EMPLOYEES WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO SEC. 13.B.(5) UPON REACHING \$50,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR, BEGINNING IN 2019.

(4) Release of Payment: (MGO 39.02(9)(e)1.b.) All non-exempt contractors must have an approved Affirmative Action plan meeting the requirements of Article IV below on file with the Department within thirty (30) days of the effective date of this Contract and prior to release of payment by the City. Contractors that are exempt based on number of employees agree to file a Request for Exemption with the Department within thirty (30) days of the effective date and prior to release of payment by the City.

(5) 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.)

14. AUDIT. The Owner may, at the Owner's expense, conduct or cause to be conducted an audit or review of the operation of the Property and the Manager's compliance with this Agreement. Such audit shall be conducted upon not less than twenty (20) days prior written request. 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 Owner or its representatives at Manager's office during regular business hours. Should Owner's employees or appointees discover either weaknesses in internal control or errors in record keeping, Manager shall correct such discrepancies either upon discover or within a reasonable period of time. Manager shall inform Owner in writing of the action taken to correct such audit discrepancies.

15. NOTICES. All notices, consents, request, authorizations and approvals (collectively "Notices") permitted or required under this Agreement shall make specific reference to the fact that the Notice is made pursuant to the Agreement, and shall be in writing, signed, and personally delivered, or sent by confirmed facsimile copy, or registered or certified mail, return receipt requested. The date of personal delivery or telecopy, or date of mailing by United States Postal Service registered or certified mail shall be considered the date of the Notice.

If to Owner:                      Community Development Authority of the City of Madison  
215 Martin Luther King Jr Boulevard  
Room 161  
Madison, Wisconsin 53703  
Facsimile: (608) 264-9291

If to Manager:                      Founders 3 Real Estate Services  
252 East Highland Ave  
Milwaukee, WI 53202  
Facsimile: (414) 988-1368  
Attention: David Behnke

16. 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 Owner 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 Owner of any defect shall affect any subsequent default or breach of duty or contract or shall impair the exercise of 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 Owner 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 Owner 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 Owner may be enforced and exercised as often as the Manager or the Owner 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 Owner authorized by law to give such approval and delivered to the party to whom it is directed at the address specified hereunder.
- f. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original.
- g. Amendments, Supplements. This Agreement may be supplemented or amended only by written instrument executed by the parties hereto.
- h. Benefit, Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto.
- i. No Private Right or Cause of Action. Nothing contained herein shall be interpreted or construed to create any right or any cause of action by or on behalf of any person not a party hereto, except as provided in the Agreement.
- j. Assignment. This Agreement is personal to Manager. Manager shall not assign this Agreement or subcontract the performance of its duties hereunder without the Owner's prior written consent. Any assignment or subcontracting without such consent shall be void.
- k. 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.

1. 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 THE FOLLOWING PAGE

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

**FOUNDERS 3 REAL ESTATE SERVICES**

By: \_\_\_\_\_  
David L. Behnke, Principal

**COMMUNITY DEVELOPMENT AUTHORITY  
OF THE CITY OF MADISON**

By: \_\_\_\_\_  
Daniel G. Guerra, Jr., Chair

By: \_\_\_\_\_  
Tom Conrad, Deputy Director



**EXHIBIT A**  
**MANAGEMENT PLAN**