



Party Wall Management Agreement – Virginia Village

This Party Wall Management Agreement (the “Agreement”) is made and entered this 17th day of June 2019, between the owner(s) of 4400-4450 E. Bails Pl. & 4401-4441 E Jewell Ave Denver, CO 80222 (the “Owner”) and Royal Oak Property Management (the “Manager”).

The HOA hereby employs the services of Manager to manage:

Utilities Snow Removal Trash Service Landscaping Other: Backflow Testing, Retention Pond at the following properties:

4400, 4410, 4420, 4430, 4440, 4444 & 4450 E. Bails Pl. & 4401, 4411, 4421, 4431 & 4441 E Jewell Ave Denver, CO 80222.

(the “Properties”)

Upon sale of any individual unit or units comprising the above referenced Properties to any new owner or owners (the “Owners”), all responsibilities and legal obligations of the Developer under this Agreement shall be transferred to and become binding upon the individual unit Owners and shall remain in full force and effect. In this regard, Developer shall ensure that any Party Wall Agreement recorded with respect to the Properties permits the Developer or Owners to enter into this Agreement and provides that the obligations of Developer/Owners under the terms of this Agreement are binding upon the Owners as well as any subsequent Owners of any of the Properties.

Responsibilities of Manager

The HOA hereby appoints Manager as his lawful agent with full authority to do any and all lawful things necessary for the fulfillment of this Agreement as per the terms and conditions of the Party Wall Agreement that governs the property, including the following:

1. *To collect all payments for utilities, and services rendered by monthly or quarterly billing, giving receipts therefore and to render to the HOA a monthly or quarterly accounting of payment received, and expenses paid out.*
2. *To cancel, renew, or enter into new contracts for the provision of landscaping, snow removal, and trash services for the purposes of improving service, replacing discontinued service, lowering costs while maintaining like services, or for any other purpose serving the best interests of the HOA*
3. *To send out delinquency notices to past due HOA managers (prior to filing a lien) and will either commence a collection action or foreclosure proceedings (or hire a 3rd party to do so) per the terms of the Party Wall Agreement governing the properties.*

During the Term of this Agreement as defined below, Manager shall comply with all of the following requirements:

1. *Manager shall carry proper amounts of liability insurance.*
2. *Manager shall verify that all subcontractors retained shall carry sufficient liability insurance and workers compensation insurance and get certificates of insurance indicating the same from all subcontractors.*
3. *Manager shall indemnify and defend the HOA for the negligent and willful acts of its employees.*
4. *In addition to billing statements to HOA, Manager shall provide a yearly summary of expenditures at the end of the year.*
5. *Upon notice of termination of this contract, Manager shall make a final accounting of all funds within 30 days of notice of receipt or delivery of such notice to terminate. In addition, all records related to the management of the property (financial records, any past or present contracts, warranties, certificates of insurance, etc.) shall be delivered to a representative decided upon by the HOA.*



Compensation of Manager

HOA agrees to compensate Manager as follows:

1. *A monthly management fee of \$30.00 (thirty) per unit, or \$360.00 (two hundred and ten) total, shall be due and collected from the HOA along with monthly expenses. After the first year, the management fee will increase on a 3% per year escalation.*
2. *Manager shall have the right to charge HOA a 10% fee for all management services beyond normal monthly maintenance and billing including, but not limited to, coordinating emergency sprinkler or landscaping repairs.*

Snow Removal Disclaimer

Commencements of plowing, shoveling and de-icing operations are at the sole subjective discretion of the Manager, based upon weather forecasts and snow accumulations reported and observed in the Denver metro area. Owner understands that plowing or ice control of a particular location may not clear the area to "bare pavement" and that slippery conditions may continue to prevail even after plowing or ice control services have occurred. Owner understands that the Manager and Manager's subcontractors assume no liability for this naturally occurring condition. Owner is aware that weather conditions may change rapidly and without notice and that Manager assumes no liability for such changes in conditions.

During operations and after completion of operations, Owner agrees to indemnify and save harmless the Manager, and its employees, against any and all claims by the Owner, its employees or third parties, their heirs, executors, administrators, successors, surrogates, or assignees, arising on account of death or injuries to persons or damage to property, arising out of use of, or traveling at, or onto, the Property, whether or not such claim, damage, injury or death results from the negligence of Owner, Manager, Manager's subcontractors or others. Owner shall defend all suits and claims arising from or incidental to the work under the Agreement, without expense or annoyance to the Manager or its employees.

It is understood that the Manager and Manager's subcontractors are not responsible for incidental damages from plowing or deicing materials to ground cover, shrubbery, landscape lighting, parking curbs, paver bricks, hardscapes, blacktop surfaces, concrete, movement of gravel, moving of vehicles, and snow piling around parked vehicles.

INDEMNITY: To the fullest extent permitted by law, Owner shall defend, indemnify and hold harmless Manager, it's owners, agents, consultants, employees, and subcontractors, from all claims for bodily injury and property damage that may arise from Owner's premises including any acts or omissions by Owner or Owner's subcontractors whether employed directly or indirectly, which occur while Manager and/or Manager's subcontractors are not physically on premises.

Owner is responsible for any damage to obstacles that protrude from the surface of the pavement. This includes utilities such as water shut offs, electrical boxes, sewer vents & clean outs and any other obstacles on or within 10" of the pavements. Owner understands that snow plowing, by its very nature, involves pushing a steel blade over the surface of the pavement and/or concrete. If your pavement and/or concrete is defective, deteriorated, weakened, frost heaved, or, was installed improperly, the results of this previous damage are more likely to appear after snow plowing. Manager and Manager's subcontractors are not responsible for any damages to pavement, concrete or curbs unless Manager and/or Manager's subcontractors have been negligent. Owner is responsible for all damage caused to and/or by hidden objects.



Manager and Manager's subcontractors are not responsible for snowbanks built up by plows after service has been rendered, or ice that forms caused by melting and refreezing after requested services were originally provided.

Terms of Agreement

This Agreement shall be effective as of the 15th day of July 2019 and shall expire on the 30th day of June 2020.

Upon expiration of the above initial term, this Agreement shall automatically be renewed and extended for a like period of time unless terminated in writing by either party by providing written notice thirty (30) days prior to the date of termination. Upon majority consent per the terms of any Party Wall Agreement, the Management Agreement may also be terminated by the Owners at any time by providing thirty (30) days written notice. Upon termination, Owners shall pay to Manager any fees and expenses due Manager under the terms of this Agreement, which are owing to Manager.

Assignment

Manager shall be entitled to assign this Agreement or any portions thereof to any subcontractors or third-party service providers provided that any assignees agree to be bound to the terms of this Agreement.

Disputes

If a dispute arises relating to this Agreement or Manager's performance hereunder, Developer/Owners must first proceed in good faith to submit the matter to mediation as a condition precedent to filing any demand for arbitration. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree, in writing, before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, will terminate in the event the entire dispute is not resolved within sixty (60) days of the date written notice requesting mediation is delivered by one party to the other at the party's last known address. This section will not alter any date in this Agreement, unless otherwise agreed to in writing by the parties.

Following full compliance with the mediation requirements set forth above, Developer/Owners must submit any remaining dispute, controversy or claim concerning the rights or obligations of the parties under the Agreement to binding arbitration. Developer/Owners agree that such arbitration shall be mandatory and binding and shall be in lieu of any other legal process or remedy. Arbitration may be requested by either party and shall be conducted in Denver, Colorado. If Manager is deemed to be the prevailing party in any arbitration, Manager shall be awarded all attorney's fees and costs incurred as a result of any dispute. The party filing for arbitration shall bear the initial costs and deposits for the arbitration. Should any party fail to pay the arbitration costs by any deadline established by the dispute resolution provider, the other party shall be awarded a default judgment and shall be granted relief in accordance with its claims. Any award of costs shall include those initially paid for arbitration. Manager shall have the sole right to remove, at its sole and absolute discretion, any arbitration action filed by Developer/Owners, as described in this Section, to any court of law with jurisdiction.

Joinder of Claims

Developer/Owners shall not be permitted to join or consolidate any of its claims against Manager with any other owners of adjacent properties or other customers of Manager without the express written consent of Manager.



Limitation of Damages

TO THE EXTENT ALLOWED BY LAW, DAMAGES OF THE DEVELOPER/OWNERS, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY CLAIMS, REGULATORY CLAIMS, ARISING IN EQUITY IN LAW OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE AMOUNT OF COMPENSATION RECEIVED BY MANAGER FOR ITS SERVICES, AND IN NO EVENT SHALL CONSEQUENTIAL, INCIDENTAL, TREBLE DAMAGES (OR DAMAGES BASED UPON ANY OTHER MULTIPLIER), PROBABLE, OR PUNITIVE DAMAGES BE RECOVERABLE. DEVELOPER/OWNER WAIVES, RELEASES, AND COVENANTS NOT TO ASSERT ANY RIGHT OR CLAIM TO CONSEQUENTIAL, INCIDENTAL, TREBLE (OR OTHER MULTIPLIER), PROBABLE, OR PUNITIVE DAMAGES UNDER ANY CIRCUMSTANCE.

Attorney's Fees and Costs

In the event of any dispute hereunder, or any claimed default in the performance of any term or condition hereof, Manager shall be entitled to recover all costs and expenses, including but not limited to all attorneys' fees incurred in defense or prosecution of the same, as applicable, provided the Manager is deemed the prevailing party in the dispute.

Governing Law

This Agreement shall be construed in accordance with the laws of the State of Colorado.

Severability

In the event that any provisions or sections of this Agreement are determined to be unenforceable or void as a matter of law, it is the intent of the parties that the remaining portions of this Agreement be severed from the unenforceable provisions and that the remaining portions of this Agreement be given full legal force and effect.

This document represents the entire Agreement between the parties hereto.

IN WITNESS WHEREOF, the parties hereby execute this Agreement on the date first above written.

DocuSigned by:
Shannon Vanderploeg 7/10/2019
DBFEF763F1034C8... Date
Manager – Royal Oak Property Management
Shannon Vanderploeg
Operations Manager

DocuSigned by:
Beverly Jackson 7/10/2019
9052266E0E26454... Date
HOA
Townhomes at Virginia Village
Homeowners Association, Inc
Beverly Jackson
Treasurer