

CONTRACT FOR PROPERTY MANAGEMENT SERVICES

This contract is dated, made, and entered into as of the ____ day of _____, 201____, by the City of Durham (“City”), a N. C. municipal corporation (“Owner”), and GWC Properties, a NC General Partnership (“GWC”), hereinafter referred to as “Manager”.

Sec. 1. Background and Purpose. The City is under contract to purchase the following properties located in Durham County, North Carolina from GWC: 616 E. Main Street (Parcel 102890), 101 S. Elizabeth Street (Parcel 102869), 113 S. Elizabeth Street (Parcel 102868), 601 E. Ramseur Street (Parcel 102870), and 605 E. Ramseur Street (Parcel 102871), (the “Property”). GWC is the current owner of the Property and therefore has a relationship and knowledge of the needs and the requirements of the existing tenants. The City and GWC desire to maintain that relationship and for GWC to continue to manage the property subsequent to the contracted conveyance of the Property from GWC to the City. From the date the City obtains title to the Property until December 31, 2015, Manager shall manage the Property on behalf of the City. GWC is not licensed to manage real estate in the state of North Carolina and has therefore engaged the services of Rick Soles Property Management, Inc. (“Soles”), which is a North Carolina licensed real estate property manager. For said management, Manager shall receive fifty percent (50%) of the net operating income, after authorized expenses, received from tenant leases.

Sec. 2. Services and Scope to be Performed. GWC and Soles shall provide property management services in accordance with all provisions of this agreement and shall be collectively referred to as Manager. In this contract, “Work” means the services that the Manager is required to perform pursuant to this contract and all of the Manager’s duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Manager. Manager shall not incur any expenses or make any expenditures except as expressly permitted in or by this contract. Manager shall be responsible for full compliance with all applicable federal, state and municipal laws, ordinances, regulations and orders relating to (i) the discharge of its duties, (ii) the use, operation, repair and maintenance of the Property and (iii) the rules, regulations and orders of all authorities having jurisdiction. Manager’s duties and responsibilities include but are not limited to the following Property Management Services which shall be allocated between GWC and Soles as set forth below:

A. Services to be provided by GWC shall be as follows:

1. Manager shall initiate and supervise all ordinary and extraordinary repairs, if any on or about the Property, including (i) repairs or alterations which Owner is required to make pursuant to the terms of tenant leases and (ii) the administration of a preventive maintenance program for all mechanical, electrical and plumbing systems and equipment for which a tenant is not solely responsible.
2. No single expenditure for any repair shall exceed \$5,000 or \$25,000 in the aggregate in any calendar year without the prior written approval of Owner, with the exception of emergencies relating to life support systems, building

safety or other emergencies threatening damage to persons or to the Property. Manager may make such emergency repairs as is necessary, at the Owner's expense, and shall take all reasonable efforts to immediately notify Owner of an event of an emergency nature, the nature of the remedy implemented by Manager, and to the extent such information is available, the cost of implementing such remedy. Actual and reasonable expenses for materials and labor for such purposes will be paid from the Operating Account or by Owner.

3. Manager shall undertake and supervise all Operational Activities of the Property for which a tenant is not solely responsible such as, but not limited to: janitorial and cleaning work, window washing, metal and storefront maintenance; security; landscaping; operation of HVAC and electrical equipment; preventive maintenance programs; and any other maintenance and repair activity to ensure operation of a quality project for Owner and tenants of the Property.
4. Maintenance of Utilities agreements, as applicable to tenant agreements.
5. Manager shall be responsible for providing and maintaining current levels of property management and administration. Manager shall be responsible for responding to tenants' issues, in accordance with applicable lease terms and conditions and all communications with Tenants, as the sole representative of Owner.
6. Maintain communications with all tenants regarding the City's activities or planned activities on the property. This may include notices or advisory on lease terms and conditions, actions required by either landlord or tenant and plans for property improvements or design and/or construction activities. Manager shall promptly inform City of correspondence that may affect City and its rights under existing leases, as Owner.

B. Services to be rendered by Soles shall be as follows:

1. Collection of all rents and expense reimbursements as required by existing leases, as well as collection of any other income generated by the Property.
2. Payment of all expenses related to the property, including utilities, facilities maintenance and cleaning arising out of existing lease requirements.
3. Provide the City monthly rent and expense reports, due not later than the 15th day of the month following the month of receipt. Rents and expenses shall show actual versus accrued expenses for the reporting period, with a forecast of rents and expenses for the next monthly forecast period.

Sec. 3. Financial Reporting, Accounting, and Bank Account Soles shall maintain separate books and records for the Property, which shall be supported by proper documentation. Such accounting shall be in accordance with cash basis accounting principles, consistently applied. Soles shall implement appropriate controls over accounting and financial transactions as is reasonably required to protect Owner's assets from theft, error or fraudulent activity.

- A. Soles shall provide a standard chart of accounts from its property management system for all income and expense categories generated by operation of the Property.

- B. Soles shall furnish Owner monthly financial reports in compliance with standardized and generally accepted accounting principles or such other basis of accounting as required by Owner. These reports are to be mailed or delivered to Owner no later than fifteen (15) days after the end of the previous month.
- C. Soles shall be responsible for preparing, billing, and collecting tenant rents and reimbursements in accordance with the leases in effect for the Property.
- D. Soles shall provide special "customized" reports which Owner may reasonably request in writing from Soles.
- E. Owner or its representatives may conduct examinations, during business hours and upon reasonable prior notice, of the books and records maintained for Owner by Soles. Owner also may perform any and all additional audit tests relating to Soles' activities, either at the Property or at the office of Soles; provided such audit tests are directly related to those activities performed by Soles for Owner. Should Owner discover either weaknesses in internal controls or errors in record keeping, Soles shall correct such discrepancies either upon discovery or within a prudent and reasonable period of time.
- F. Soles shall maintain a bank account for Owner's funds in Soles' Client Trust Account (the "Operating Account"). At all times the funds deposited shall be the sole and exclusive property of Owner.

a. Operating Account Requirements:

(i) Soles shall deposit into this account all rents and any other funds collected from Operational Activities of the Property. Out of this Operating Account, Soles shall pay the operating expenses of the Property and all other payments relative to the Property as required or permitted pursuant to the terms of this contract. All security deposits shall be deposited to this account.

(ii) Soles shall maintain records of all security deposits. Should it become necessary to refund all, or part, of a security deposit to a tenant, Soles shall advise Owner, in writing, that such amount is to be withdrawn.

(iii) Soles is authorized to pay from the Operating Account all expenses properly incurred by Soles in the performance of its duties hereunder and/or pursuant to this contract including, but not limited to, the following expenses:

1. Cost to correct any violation of federal, state and municipal laws, ordinances, regulations and orders relative to the leasing, use, operating, repair and maintenance of the Property, or relative to the rules, regulations or orders of authorities having jurisdiction.

2. Actual and reasonable cost of maintenance and repairs properly incurred by Soles pursuant to this contract.

3. Costs incurred by Soles in connection with all service agreements properly entered into pursuant to this contract.

4. Cost of collection of delinquent rentals collected through a collection agency.

5. Cost of printed checks for each bank account required by Owner and cost of printed forms and supplies required for use at the property.

6. All compensation payable to Soles pursuant to this contract.

7. Utility costs.

8. All reasonable direct and indirect costs associated with on-site office of the building provided that such costs are exclusively for the Property.

b. Change of Banks. Owner may direct Soles, in writing, to change a depository bank or the depository arrangements.

c. Monthly Cash Reconciliation.

(i) Soles shall not be obligated to make any advance to or for the account of Owner or to pay any sums except out of funds in the Operating Account, nor shall Soles be obliged to incur any liability or undertake any obligation for the account of Owner without written assurance that the necessary funds for the discharge thereof will be provided.

(ii) If at any time the available cash in the Operating Account shall not be sufficient to pay the bills and charges incurred with respect to the Property, Soles shall notify Owner promptly upon first awareness of the cash shortage.

(iii) After Soles has paid, to the extent of available cash in the Operating Account, those charges and invoices that cash available allows to be paid, Soles shall submit to Owner a statement of all remaining unpaid bills. Owner shall immediately and without delay provide sufficient monies to pay any unpaid expenses before they become delinquent.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, GWC and/or Soles shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Manager's Statements to City. Costs and Compensation. Soles shall send statements to Owner on a monthly basis. Each statement shall document, to the reasonable satisfaction of Owner: such information as may be reasonably requested by Owner. Soles shall pay to Owner on a monthly basis 50% of net rents received by the 15th of each month. Soles shall pay to GWC 50% of the net rents received by the 15th of each month, LESS the agreed upon fee to be paid to Soles. Net rents shall be computed by calculating the difference between the property's gross rental income and all operating expenses of the property.

Sec. 6. Insurance. Manager agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following applicable coverage's and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Manager is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Manager under this Contract.

Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

Additional Insured – Manager agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read 'City of Durham as its interest may appear'.

Certificate of Insurance – Manager agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage's, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Manager's insurer. If Manager receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Manager agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham
Attn: General Services Department, Real Estate Division
101 City Hall Plaza
Durham, NC 27701

Umbrella or Excess Liability – Manager may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Manager agrees to endorse City of Durham as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.

All insurance companies must be authorized to do business in North Carolina and be acceptable to the City of Durham's Risk Manager.

Sec. 7. Performance of Work by City. If the Manager fails to perform the Work in accordance with the terms and conditions of this contract, the City may, in its discretion, may perform some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Manager notice of its intention. The Manager shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 8. Exhibits. The following exhibits are made a part of this contract:

Exhibit A - List of tenants and rents containing 1 page.

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 9. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, UPS, Federal Express, or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Director, Department of General Services or

Manager, Real Estate Division

City of Durham

2011 Fay Street

Durham, North Carolina 27704

The fax number is (919) 560-4196

Emails: joel.reitzer@durhamnc.gov or david.fleischer@durhamnc.gov

To GWC Properties, a North Carolina General Partnership

P.O. Box 728

Durham, North Carolina 27702

Phone: (919) 604-6857

The fax number is (____) ____ - _____

Email: mcarpenter652@gmail.com

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given and sent at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 10. Indemnification. (a) To the maximum extent allowed by law, the Manager shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Manager or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Manager shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means

claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Manager. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Manager under this contract. (e) Limitations of the Manager's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Manager to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 11. Miscellaneous.

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Manager is not a natural person (for instance, the Manager is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Manager to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Manager agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Manager will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Manager. This subsection (ii) does not apply while the Manager maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or

performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Manager shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Manager and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Manager's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Manager the right to assign, it is agreed that the duties of the Manager that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Manager shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS MANAGERS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBMANAGERS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Manager agrees as follows: (1) The Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Manager shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Manager shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Manager shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Manager shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Manager's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Manager ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Manager shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Manager shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Manager to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Manager. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the

Manager has failed to comply with the provisions of the Contract, the City Manager shall notify the Manager in writing of the deficiencies. The Manager shall have 14 days, or such time as specified in the Manager, to cure the deficiencies or establish that there are no deficiencies.” It is stipulated and agreed that those two quoted sentences apply only to the Manager’s alleged violations of its obligations under Article III of Chapter 18 and not to the Manager’s alleged violations of other obligations.

(j) No Third Party Rights Created. This contract is intended for the benefit of the City and the Manager and not any other person.

(k) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (2) References to a “Section” or “section” shall mean a section of this contract. (3) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (4) “Duties” includes obligations. (5) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word “shall” is mandatory. (7) The word “day” means calendar day. (8) The word “Work” is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(l) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(m) City’s Manager’s Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor’s services under this contract, at the recommendation from the Director of the Department of General Services, such power may be exercised by City Manager, Deputy City Manager or designee (Director, Department of General Services) without City Council action.

Sec. 12. Termination for Convenience (“TFC”). (a) *Procedure.* Without limiting any party’s right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Manager written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Manager shall give the City all Work, including partly completed Work. In case of TFC, the Manager shall follow the City’s instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Manager an equitable amount for the costs and charges that accrue because of the City’s decisions with

respect to the subcontracts, but excluding profit for the Manager. Within 20 days after TFC, the City shall pay the Manager one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Manager shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 13. Trade Secrets; Confidentiality. “Trade Secrets and Confidentiality” shall apply to any Trade Secrets disclosed to the City during the process leading to the parties’ entering into this Contract. This section (titled “Trade Secrets; Confidentiality”) shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Manager under this contract.

IN WITNESS WHEREOF, the City and the Manager have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

GWC PROPERTIES, a North Carolina
General Partnership

By: _____ (SEAL)
Marcus G. Carpenter III, General Partner

CITY OF DURHAM

ATTEST:

City Clerk

By: _____ (SEAL)

City Manager

State of North Carolina

ACKNOWLEDGMENT BY PARTNERSHIP

County of _____

I, a notary public in and for said county and state, certify that

_____ personally (1) appeared before me this day, (2) stated that he or she is a general partner in GWC Properties, a partnership, (3) acknowledged that the foregoing contract or agreement with the City of Durham carries on the partnership's business in the usual way, and (4) acknowledged the due execution, under seal, of the contract or agreement on behalf of the partnership. This the _____ day of _____, 20_____.

My commission expires: _____

_____ Notary Public