

MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE MAYOR AND CITY COUNCIL OF BALTIMORE
AND
BROADVIEW APARTMENTS, LLC

THIS AGREEMENT is entered into this 14 day of OCT 14 2015, 2015 by and between the **MAYOR AND CITY COUNCIL OF BALTIMORE**, a municipal corporation of the State of Maryland, acting through its Department of Transportation ("City") and **BROADVIEW APARTMENTS, LLC** ("Owner").

WHEREAS, the Owner has submitted plans for implementation of landscaping in the right-of-way at 39th Street between University Parkway and Canterbury (Ward 12, Sections 1&2) (Exhibit A), and

WHEREAS, the City has reviewed such plans and approves said implementation; and

WHEREAS, it is in the mutual interest of the parties hereto to enter into this Memorandum of Understanding ("MOU" or "Agreement");

WHEREAS, the parties have agreed to enter into this Agreement to set forth their respective responsibilities and understandings.

NOW THEREFORE THIS AGREEMENT WITNESSETH that, in consideration of the promises, terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. PURPOSE

The purpose of this MOU is to establish a framework for the Owner to maintain landscaping in the right-of-way for Broadview Apartments, LLC at 39th Street between University Parkway and Canterbury, all at its sole cost (the "Project") and subsequently for the Owner to perform ongoing maintenance of all aspects of the Project during the term of the Agreement.

II. OWNER'S OBLIGATIONS

- A. A Declaration of Covenant with the Department of Public Works (DPW) for maintenance of landscaping is required. Owner shall be responsible for obtaining such Declaration of Covenant.
- B. The Owner will be required to provide all maintenance for sidewalk and landscaped areas within the right-of-way according to the approved maintenance plan. (Exhibit-B).

- Sole cost*
- C. The Owner shall be responsible for the maintenance of the Project at its sole cost according to the permitted plan using approved methods of installation in accordance with the drawings and submitted to the City of Baltimore Transportation Engineering and Construction Division. Plans submitted for approval shall include a sequence of installation which shall outline the Project installation timeline and procedures beginning with notification of neighbors and businesses as outlined in the Agreement, road closures, and maintenance of traffic, application, cleanup, and completing of Project; and

- Maintenance*
- D. Plans submitted for approval shall also include a maintenance schedule (Exhibit C) including but not limited to tree care, weeding, grass care, watering, pruning, replacement, replanting, paved areas, benches, trash and debris removal. The maintenance schedule shall cover the expected life cycle of the Project as indicated in the Agreement. The Owner shall be responsible for all on-going maintenance. Street maintenance (such as patching or resurfacing) or repair to City property may also require the Owner to partially repair or reinstall the Project; and

- E. The Owner will obtain all permits required in order to maintain the Project. As part of the permit, the Traffic Engineer must approve a traffic management plan or temporary street closure permit for the Project installation. No street will be blocked for more than 12 hours in any 24-hour period unless specifically allowed by the Traffic Engineer; and
- F. If any nuisance condition is allowed to exist in the area of the Project, the City may summarily abate such nuisance. The existence of a nuisance in the area of the Project may be grounds for revocation of the permit; and
- G. The Owner will work with all affected neighbors to resolve any concerns that may arise regarding the Project. The inability to resolve such concerns may be grounds for revocation of the Agreement by the City of Baltimore; and
- H. Owner shall furnish all labor, equipment, and materials necessary for maintenance activities; and
- I. Owner shall repair damage due to vandalism, breakage and normal wear, unrelated to contractor operations, as an additional service after approval from the City. Any damage caused by the Owner shall be repaired at no cost to the City. The City shall not be liable for any damage resulting from the maintenance activities of the Owner; and
- J. The City is not responsible to reinstall the Project if street repair, street maintenance, street construction, sidewalk repair, repair of existing utility facilities or installation of new utility facilities, or some other emergency in the right-of-way affects the installation of the Project;

23 years
25
2015
20 *40* *until*

III. TERM OF THE AGREEMENT

This Agreement shall commence immediately upon approval by the Baltimore City Board of Estimates and remain in effect for a period of twenty-five (25) years, renewable for an additional twenty-five (25) years unless terminated earlier in accordance with this Agreement.

IV. CONDITIONS PRECEDENT

K. Final Design:

- i. The execution of this Agreement shall be contingent upon the approval of the landscape drawings and maintenance schedule and the approved Declaration of Covenant by DPW. The City has the right to reject any maintenance activity outright without cause and may reject designs for appropriateness within the City, pedestrian and traffic safety concerns, or other concerns based on the actual design submitted.
- ii. The applicant must provide the Engineer with a written description of the maintenance design, materials, and proposed changes to the Project location.

V. REPRESENTATIONS AND WARRANTIES

- A. Owner is a LLC duly organized, validly existing, and in good standing under the laws of Maryland, with full power and authority to conduct its business as it is now being conducted, to own or to use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement.
- B. The undersigned agent, on behalf of the Owner, has the absolute and unrestricted actual authority to execute and deliver this Agreement.

VI. LIABILITY AND INDEMNIFICATION

Owner shall indemnify, defend, and hold harmless the City, its elected/appointed officials, departments, employees, agents and volunteers from any and all claims, demands, suits and actions, including reasonable attorney's fees and court costs connected therewith, brought against the City, its elected/appointed officials, employees, agents, and servants arising as a result of any direct or indirect, willful, or negligent act or omission of Owner, its contractors, employees, agents, or volunteers, EXCEPT for activities caused by the sole negligent act or omission of the City, its elected/appointed officials, employees, agents, and volunteers arising out of this Agreement. This indemnification provision shall survive termination of this Agreement.

VII. INSURANCE REQUIREMENTS

Owner shall procure and maintain during the term of this Agreement the following required insurance coverage and require the same insurance coverage of its contractors or anyone directly or indirectly employed by any of them:

- A. Commercial General Liability Insurance at limits of not less than One Million Dollars (\$1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages. In those policies with aggregate limits, a minimum limit of Three Million Dollars (\$3,000,000) is required. Such insurance shall include contractual liability insurance, umbrella, and excess liability coverage.
- B. Workers' Compensation coverage as required by the State of Maryland, as well as any similar coverage required for this work by applicable Federal or "Other States" State Law.
- C. The Mayor and City Council of Baltimore, its elected/appointed officials, employees, and agents shall be covered, by endorsement, as additional insured on applicable policies as respects to liability arising out of activities performed by or on behalf of the Owner in connection with this AGREEMENT.
- D. Owner's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- E. To the extent of Owner's negligence, the Owner's insurance coverage shall be primary insurance as respects the City, its elected/appointed officials, employees, and agents. Any insurance and/or self-insurance maintained by the City, its elected/appointed officials, employees, or agents shall not contribute with Owner's insurance or benefit Owner in any way.
- F. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the CITY. There will be an exception for non-payment of premium, which is ten (10) days notice of cancellation.
- G. Insurance is to be placed with insurers with a Best's rating of no less than A: VII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VII and must be licensed/approved to do business in the State of Maryland.

- H. Owner shall furnish the City a "Certificate of Insurance" with a copy of the additional insured endorsement as verification that coverage is in force. The City reserves the right to require complete copies of insurance policies at any time.
- I. Failure to obtain insurance coverage as required or failure to furnish Certificate(s) of Insurance as required shall render this AGREEMENT null and void; provided, however, that no act or omission of the CITY shall in any way limit, modify or affect the obligations of Owner under any provision of the AGREEMENT.

VIII. ASSIGNMENT OF AGREEMENT

Owner shall not assign, donate, transfer, convey, or sublet this Agreement, or any part thereof without prior written consent of the CITY.

IX. COMPLIANCE WITH LAWS AND REGULATIONS

Owner at all times shall observe and comply with all federal, state and local laws, regulations, ordinances, orders, and decrees applicable to these services, and shall indemnify, defend and hold harmless the CITY, and all its officers, agents and employees against any and all claims of liability arising from or based on Owner's violation of any such law, regulation, ordinance, order or decree, whether by Owner, its officer agents, employees, successors and assigns and any other person or entity associated with Owner, in the performance of the services provided under the terms of this Agreement. This Agreement shall be governed and construed under the laws of the State of Maryland.

X. TERMINATION FOR CAUSE

- A. If through any cause, Owner fails to fulfill in a timely and proper manner its obligations under this Agreement, or if Owner violates any of the terms and conditions of this Agreement, the City shall thereupon have the right to terminate this Agreement, after giving written notice to Owner, of its intent to terminate the Agreement and specifying the grounds of termination.
- B. Owner shall have thirty (30) days from receipt of notice of termination to cure the said default. If the default is cured within the stated time, the Agreement shall continue, as if no default had occurred. But, if Owner has not cured the default within the said thirty (30) days, the Agreement will terminate without further notice.
- C. Notwithstanding the above, the Owner shall not be relieved of any liability to the City for damages sustained by the City by virtue of any breach of this Agreement.

XI. TERMINATION FOR CONVENIENCE

The City may terminate this Agreement for convenience by giving thirty (30) days prior written notice to the Owner of its intention to terminate. The Owner may terminate this agreement by giving (30) days prior written notice to the City.

XII. NOTICE

All notices required or permitted hereunder to be given by either party to the other shall be in writing and shall be sent via United States certified mail, return receipt requested, or hand delivered to the parties and addresses below:

TO CITY:

Valorie LaCour, Chief, Planning Division
Department of Transportation
417 E. Fayette St., Room 747
Baltimore, Maryland 21202
(443) 984-4092

With a copy to:

Laetitia Griffin, Chief Contract Administration Section
Department of Transportation
417 E. Fayette St., Room 546
Baltimore, Maryland 21202
(410) 396-6818

TO DEVELOPER:

Mr. Thomas R. Knoche, Trustee
Broadview Apartments, LLC
105 W. University Parkway
Baltimore, Maryland 21212
(856) 966-3241

XIII. RECITALS

The Recitals shall be incorporated herein and be made a part hereof.

XIV. MULTIPLE COPIES

This Agreement may be executed in any number of copies and each copy shall be deemed an original.

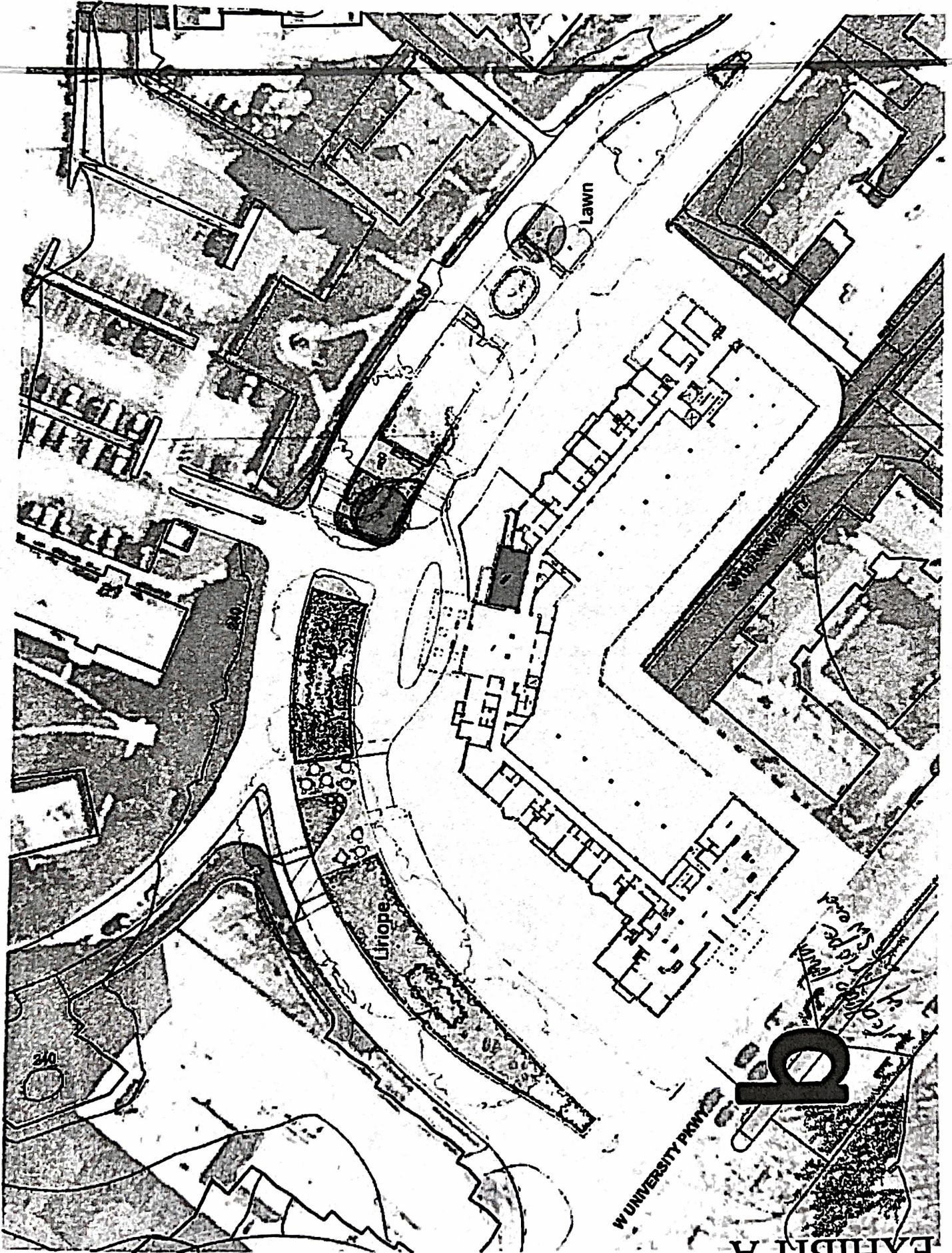


EXHIBIT A

EXHIBIT B & C



Grounds Management Contract

Robert Parker
Bonaventure Realty Group
2700 S. Quincy St.
Suite 500
Arlington, Virginia

Service Address:
The Broadview
Baltimore, Maryland

- I. Service Proposal:** Davey Commercial Grounds Management, a division of The Davey Tree Expert Company ("Davey"), proposes to furnish all necessary labor, materials, equipment and supervision to perform grounds management services at the above noted service address (the "Site"). Our scope of work will be based on the client-approved services under the terms of this Grounds Management Contract (the "Contract").

Uniformed, professionally trained, and properly supervised personnel shall perform all work. Landscape debris generated from Davey's work will be removed from the site at the end of each working day.

Davey will maintain in effect throughout the term of this Contract the necessary insurance and worker's compensation coverage required by law. Certificates of Insurance and references will gladly be provided upon request.

Additional services not included in the original contract must be approved in writing by an authorized representative before Davey can proceed. Program costs do not include applicable sales tax. If the client chooses to cancel or delay normal weekly services, additional costs may be incurred due to additional time required to perform these delayed tasks.

On the contract anniversary date this contract automatically renews from year to year unless cancelled by either party with 60 days written notice received prior to the anniversary date. Upon cancellation, payment is due within 10 days for all services performed and unpaid. If billing option "A- monthly level billing" is chosen, the billed amount is not indicative of actual services performed. Accounts which are 30 days past due will accrue interest at a rate of one and one-half percent (1.5%) per month. Accounts with outstanding balances over 60 days may have services suspended until the account becomes current.

II. DAVEY BASIC PROGRAM:

A. Turf Maintenance

Mowing – All turf will be maintained at 2 ½ to 3 ½ inches. Mowing height will be adjusted according to weather conditions, turf type, and to permit recycling of grass clippings and present a neat appearance. Papers and other debris will be removed from lawn prior to mowing. String trimming will be performed around all obstacles and along edges of mulch beds and tree rings, sign posts, utility poles, etc. as needed to trim the turf at the same level as the mowing height.

Power edging – Mechanical edgers will be used (at least once per month) to maintain a crisp, tailored appearance along hard surfaces such as concrete curbs, walks and driveways.

Fertilization and Weed Control – We customize our applications to meet the specific requirements of your turf type and the season. A brief description of each application is listed below:

Spring Application: Custom blend of fertilizer with pre-emergent crabgrass control and broadleaf weed control as needed.

Summer Application: Custom blend of fertilizer with broadleaf weed control.

Early Fall Application: Custom blend of fertilizer with broadleaf weed control.

B. SHRUB AND BED MAINTENANCE

Weed Control – Pre and post-emergent herbicides will be utilized to control weed and grass growth in mulch beds, cracks of curbs, parking areas and other visible non-turf areas. Hand weeding will be performed when needed to remove larger weeds.

Tree Pruning – Deciduous and ornamental trees will be pruned up to a height of 12' above ground level in accordance with industry standards to remove low hanging limbs and branches will be cleared from the buildings, walks, lighting and parking areas. Recommendations for pruning needs beyond 12' above ground level will be provided upon request for this additional service.

Shrub Pruning – Shrubs and groundcover will be pruned at least three times per season according to industry standards, plant type, and design intent to shape new growth and remove dead branches.

ADDITIONAL INCLUDED SERVICES:

- A. **Spring Clean Up**– Includes removal of leaves and winter debris that has collected in plant beds, cutback of dormant perennials and ornamental grass growth, and light corrective pruning of shrubs where needed.
- B. **Bed Edging and Mulching**– Deep edge all existing plant beds and tree rings. Install double shredded hardwood mulch one time in spring on all existing mulch beds to create a 1 1/2" to 2" coverage. If additional mulch, re-edging or another type of mulch is preferred, or if old mulch removal is needed prior to new installation, prices will be provided upon request.

- C. **Mulch Cultivation** - Includes mid-season turning of mulch to enhance aesthetics and allow penetration of air, water and nutrients into root zone. Also helps mulch to breakdown, minimizing mulch buildup.
- D. **Seasonal Color** - Flower beds will be prepared for planting by adding soil amendments and fertilizer if needed and rototilling. Flowers will be installed at the proper spacing for each type of flower and given an initial watering. Specific flower types can be requested but may affect installation and maintenance cost.
- E. **Annual Flower Maintenance** - Scheduled visits to perform weeding, dead-heading and fertilizing. Includes removal after frost. Watering service can be provided at an additional cost.
- F. **Fertilization** - Ornamental trees and plants in plant beds will be fertilized with custom blended, balanced granular fertilizer.
- G. **Fall Leaf Removal** - Leaves will be removed to keep the grounds in neat condition. The quoted price is for three (3) visits during the fall season, typically in late October and November or as nature dictates. If additional visits are desired, they can be provided for an additional charge. Cutting back of perennials is included.
- H. **Fountain Maintenance** - Cost includes start-up, winterization of the fountain and irrigation.

PRICING AND PAYMENT OPTIONS

The Broadview	\$4,575.00
Memorial Plaque	\$ 250.00
Fountain Memorial	\$1,550.00
Woodcliffe Manor	\$5,550.00
TOTAL PROGRAM COST:	\$11,925.00

Billing Options:

A. Monthly Billing: Total Program Cost can be invoiced in equal monthly installments over 12 months from March 2015 to February 2016. Cost per month: \$993.75

Yes, please bill me monthly - OK ☒ or:

B. I prefer to be invoiced as services are performed:

Weekly OK _____ or Monthly OK _____

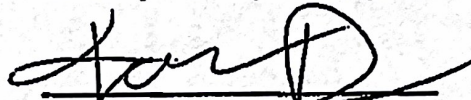
Prices quoted cover the 2015 growing season and are guaranteed if contract is signed March 15, 2015.

Multi-Year Option
2016 - \$12,283.00
2017 - \$12,283.00

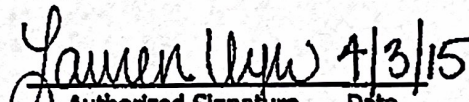
Accepted: ✓
Accepted:

We, the undersigned client, have read and agree to the above grounds management proposal and accept its terms. Davey is authorized to proceed pursuant to this contract.

Proposed by: **The Davey Tree Expert Company**


Authorized Signature Date

Accepted by: **Bonaventure Realty Group**

 4/3/15
Authorized Signature Date

XV. ENTIRE AGREEMENT/MODIFICATIONS

This Agreement contains the entire agreement between the parties, there are no other promises, conditions, or terms than those expressly set forth in this Agreement and any agreement hereafter made shall be ineffective to modify or terminate this Agreement or constitute a waiver of any of the provisions hereof unless such agreement is in writing and signed by the party against whom enforcement of the modification, termination or waiver is sought.

XVI. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, exclusive of its conflicts of laws rules. The City and Owner agree that any action at law or in equity arising out of or relating to this Agreement shall be filed and adjudicated only in the federal or state courts located in Baltimore City, Maryland, and consent to the exclusive jurisdiction and venue of such courts over any suit, action or proceeding arising out of this Agreement.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, intending that it should be under seal the day and year first above written.

ATTEST:

BROADVIEW APARTMENTS, LLC

Elizabeth Wilhelm

By: Mr. Thomas R. Knoche
Mr. Thomas R. Knoche, Trustee

ATTEST:

MAYOR AND CITY COUNCIL OF
BALTIMORE

Alternate

John
Custodian of the City Seal

By: William M. Johnson
William M. Johnson, Director
Department of Transportation

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY THIS
10 DAY OF October, 2015

W. Michael Mullen
Michael Mullen
Chief Solicitor

APPROVED BY THE BOARD OF ESTIMATES:

Benjamin Taylor
Clerk

OCT 14 2015
Date

Being page 8 of an 8 page Agreement by and between the MAYOR AND CITY
COUNCIL OF BALTIMORE and BROADVIEW APARTMENTS, LLC.