

PROPERTY MANAGEMENT SERVICES AGREEMENT

This Services Agreement (the "Agreement") is entered into between the City of Flagstaff, a municipal corporation of the State of Arizona (the "City"), and Core Realty Professionals, LLC, an Arizona Limited Liability Corporation (the "Broker").

RECITALS

Whereas the City is in need of property-management services for its property known as Hunter House; and

Whereas the City desires to enter into this Agreement for Broker to provide property-management services and other such related duties upon the terms and conditions set forth herein (the "Services"); and

Whereas Broker desires to provide the Services upon the terms and conditions set forth herein;

AGREEMENT

Now, therefore, in consideration of the foregoing recitals, which are incorporated herein by reference, the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Services. The Broker will manage the property described as Hunter House, located at 311 W. Cherry Avenue, Flagstaff, Arizona (the "Property"), upon the terms hereinafter set forth herein.
2. Term. This Agreement shall commence on June 18, 2013, and end on June 30, 2018. Either party may terminate this Agreement by giving the other party thirty-days written notice of termination. Neither party will incur any penalties for exercising this termination provision. If the City terminates this Agreement and continues leasing to the tenants found by the Broker, a management fee is due to the Broker for either: 1) the management fee due for the period of the current tenants' occupancy under Section 3 of this Agreement, payable monthly until the tenants vacate the Property; or 2) the management fee due under Section 3 of this Agreement for one year from the date of termination, payable monthly; whichever occurs first.
3. Fees and Payment. In consideration of the Services to be rendered by Broker, the City shall pay to Broker the following fees:
 - 3.1. A management fee of 10% (ten percent) of the gross income received from the lease of the Property, to be deducted from the amount collected as rent in any rental period. No management fee is due if the Broker does not collect income from the lease of the Property.
4. Provision of Services. The Broker will perform the services as follows:

- 4.1. The Broker will act with due diligence and in accordance with the usual and customary standards of Realtors in good standing in the community.
 - 4.2. The Broker will collect all monies due to the City under any lease or holdover tenancy of the Property.
 - 4.3. The Broker will render a statement to the City not less often than once a month of all receipts, revenues, expenses, disbursements, and charges in connection with the management of said property, and to remit promptly to the City or pay to such person or corporation designated by the City all monies due not less than once a month.
 - 4.4. The Broker will deposit and safeguard all monies collected for the City as security deposits in a non-interest-bearing trust account, separate from Broker's personal or business account; provided however, that Broker shall not be liable for loss due to bankruptcy or failure of a depository.
5. Authority of Broker. The City hereby gives and grants to the Broker the following authority:
- 5.1. Leasing, Notice and Advertising. As agent for City, to negotiate with prospective tenants for rental of the Property or a space therein, for lease of such Property or space therein, and to execute leases and renew leases for periods of one year or less, or for longer terms when so authorized by City, at rates and on such terms as may be approved by the City. The City will provide a standard form of lease to the Broker that will be used for the lease of the Property. Any changes to the terms of the standard form of lease must be negotiated between the Broker and the City before the publication of the notice. Each lease must contain the following provision: "government property that is leased for commercial purposes is subject to the commercial-general-property-lease excise tax. Failure of the City to pay the tax after notice and opportunity to cure is a default that could result in divesting the lessee of any interest in or right of occupancy of the government property improvement." The City Council delegates authority to the Assistant to the City Manager for Real Estate the authority to negotiate terms of leases of the Property as provided for in this subsection.

Broker shall follow the requirements of the City Charter for leasing City-owned property when performing these duties. Before leasing the Property, the Broker shall publish notice of the opportunity to lease the Property at least one time per week for two weeks in the Arizona Daily Sun. The City shall pay for this required notice. The notice must state the terms of the lease and the lowest acceptable offer. After publication is complete, the Broker will accept bids. The lease will be awarded to the highest responsible bidder. The City hereby delegates its authority to lease the Property and reject all bids for the Property to the Broker. The Broker will provide a copy of the fully executed lease to the City.

In addition to the notice specified above, the Broker will advertise the availability for rental of the Property and display signs thereon or elsewhere for the purpose of such advertisement. The City and Broker agree that the City will pay for any newspaper advertising up to one hundred fifty-five dollars (\$155.00) for a one-month advertisement in the Arizona Daily Sun or elsewhere if approved by the City. The City Council delegates authority to the Assistant to the City Manager for Real Estate the authority to approve additional advertising or advertising by a method other than the newspaper advertising specified above.

5.2. Rents. To collect all rents due or that become due under such rental or lease agreements and give receipts therefore; to terminate tenancies and to sign and cause to be sent or served in the name of the City such notices as shall be required; to do any and all lawful acts and things necessary to enforce and collect rents or damages due to the City, except for the institution and prosecution of actions to evict tenants and for recovery of rents and other sums due including employment of attorneys for such purposes or for the preparation of any legal instruments, including lease or rental contracts; to settle, compromise and release any actions or controversies in connection with the management of the Property, which shall remain obligations of the City.

5.3. Repairs and Maintenance. To make or cause to be made to the Property or any part thereof any and all necessary and reasonable non-structural repairs or alterations, including but not limited to unclogging plumbing, repair to appliances, repairing or replacing locks, changing fuses, repairing cracked windows, and simple redecorating and landscape maintenance for purposes of marketing the property; provided, however, that Broker shall not incur any obligation in excess of two hundred fifty dollars (\$250.00) per month or one thousand dollars (\$1000.00) annually; nor undertake structural repairs, alterations, or improvements without obtaining City's specific approval. The City Council delegates authority to the Assistant to the City Manager for Real Estate the authority to approve obligations requiring City approval under this subsection. The Broker may make such emergency repairs as he reasonably deems necessary to protect the Property, whatever amount where such emergency results in sudden and unexpected events.

Major renovations/remodels/extreme water damage or mold remediation will be the responsibility of the City. Broker will not be responsible for the scheduling, payment, etc., of these renovations without a separate written agreement between Broker and the City for the payment of these additional services.

5.4. Agents and Employees of Broker. To hire, discharge, and supervise all labor and employees required for the operation and maintenance of the Property; all such employees shall be deemed employees of Broker; Broker may perform any duties and exercise any authority under this agreement through his attorney, agents or employees, and shall exercise due diligence and reasonable care in their appointment.

6. Responsibilities of the City. The City will:

- 6.1. Pay or cause to be paid all taxes, insurance premiums, mortgage payments or special assessments due or to become due in relation to the Property during the term of this Agreement. The City will record a memorandum of lease with the Coconino County Recorder and submit the lease to the Coconino County Treasurer and the Department of Revenue. Failure of the City to pay taxes after notice and opportunity to cure is a default that could result in divesting the lessee of any interest in or right of occupancy of the government property.
 - 6.2. Broker is authorized and directed to deduct from any rents or revenues received from the Property all expenses incurred or funds disbursed by Broker for Services provided in accordance with the authority given Broker herein; Broker shall deduct from such receipts all commissions or fees authorized hereunder. If such expenses, disbursements, commissions or fees exceed the rents and revenues collected, City agrees to promptly pay authorized fees in excess to Broker upon demand.
7. Compliance with Law. Broker agrees to comply with the provisions of Federal law, State statutes, City Code, and any and all other applicable laws or City policies.
8. Insurance.
 - 8.1. Broker agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following coverages:
 - 8.1.1. Commercial General or Business Liability Insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate.
 - 8.1.2. Professional Liability coverage with minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) each claim and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate. If approved by the City, evidence of qualified self-insured status may be substituted for one or more of the foregoing insurance coverages.
 - 8.2. Broker shall procure and maintain the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to the City, acceptable of which shall not be unreasonably withheld. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Broker pursuant this Agreement. In the case of any claims made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The certificate will name the City, its officers, agents, employees, and volunteers as additional insured, except for workers compensation and professional liability insurance, and will specify that the insurance provided by Broker is primary insurance and any City insurance is excess coverage and not contributory insurance to that provided by Broker. The policy must contain a severability of

interest provision. The City reserves the right to continue payment of the premium for which reimbursement will be deducted from amounts due or subsequently due Broker.

- 8.3. A Certificate of Insurance shall be completed by Broker's insurance agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The Certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or limits reduced until at least thirty (30) days prior written notice has been given to the City. The completed Certificate of Insurance shall be sent or emailed to:

City of Flagstaff
Attn: Risk Manager
211 West Aspen Ave
Flagstaff, AZ 86001

9. Applicable Law; Venue. This Agreement shall be governed by the laws of Arizona and any suit pertaining to this Agreement may be brought only in courts in Coconino County, State of Arizona.

10. Miscellaneous.

- 10.1. Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and Broker.

- 10.2. Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

- 10.3. Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

- 10.4. Attorneys' Fees and Costs. Should any legal action be necessary to enforce any term or provision of this Agreement or to collect any portion of the amount payable hereunder, then all expenses of such legal action or collection, including

witness fees, costs of the proceedings, and attorneys' fees, shall be awarded to the substantially prevailing party.

- 10.5. Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if: (a) delivered to the party at the address set forth below; (b) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below; or (c) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the CITY:

If to BROKER:

Assistant to the City Manager
for Real Estate
City of Flagstaff
211 West Aspen Ave
Flagstaff, Arizona 86001

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received: (a) when delivered to the party; (b) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage; or (c) the following business day after being given to a recognized overnight delivery service, whichever is earliest, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

- 10.6. Confidentiality of Records. Broker shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Broker's duties under this Agreement. Persons requesting such information should be referred to the City and handled according to Arizona public records law. Broker also agrees that any information pertaining to individual persons shall not be divulged other than to employees, officers, or professional advisors of Broker as needed for the performance of duties under this Agreement and for the management of Broker's business.
- 10.7. Discrimination. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFF Parts 35 and 36. (Non-Discrimination: Broker shall comply with Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age,

national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans with Disabilities Act. Broker shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)

- 10.8. Compliance with Federal and State Laws. Broker understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: Broker must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. § 34-302, as amended, "Residence Requirements for Employees."
- 10.8.1. Under the provisions of A.R.S. § 41-4401, Broker hereby warrants to the City that Broker and each of its subcontractors will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulations that relate to their employees and A.R.S. § 23-214(A) (hereinafter "Contractor Immigration Warranty").
- 10.8.2. A breach of the Contractor Immigration Warranty shall constitute a material breach of this Agreement and shall subject Broker to penalties up to and including termination of this Agreement at the sole discretion of the City.
- 10.8.3. The City retains the legal right to inspect the papers of any contractor or subcontractor employee who works on this Agreement to ensure that the contractor or subcontractor is complying with the Contractor Immigration Warranty. Broker agrees to assist the City in regard to any such inspections.
- 10.8.4. The City may, at its sole discretion, conduct random verification of the employment records of Broker and any subcontractors to ensure compliance with Contractor's Immigration Warranty. Broker agrees to assist the City in regard to any random verification performed.
- 10.8.5. Neither Broker nor any subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if Broker or any subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A.
- 10.8.6. The provisions of this article must be included in any contract that Broker enters into with any and all of its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any

structure, building or transportation facility or improvement to real property.

- 10.9. Scrutinized Business Operations. In signing this Agreement, Broker certifies pursuant to ARS §35-391 that it does not have scrutinized business operations in the Sudan and pursuant to ARS §35-393 that it does not have scrutinized business operations in Iran.
- 10.10. No Kick-back Certification. Broker warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee; and that no member of the City Council or any employee of the City has an interest, financially or otherwise, in Broker's firm. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or at its discretion to deduct from the compensation to be paid Broker hereunder, the full amount of such commission, percentage, brokerage or contingent fee.
- 10.11. Conflict of Interest. From the date of this Agreement through the termination of its service to City, Broker shall not accept, negotiate or enter into any contract or agreements for services with any other party that may create a substantial interest, or the appearance of a substantial interest in conflict with the timely performance of the work or ultimate outcome of this Agreement and/or adversely impact the quality of the work under this Agreement without the express approval of the Manager and the City Attorney. Whether such approval is granted shall be in the sole discretion of the Manager and the City Attorney. The parties acknowledge that this Agreement is subject to cancellation pursuant to the provisions of ARS § 38-511.
- 10.12. Third Party Beneficiaries. Notwithstanding any other language in this Agreement, the parties do not intend for this Agreement to benefit any third parties.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective on this ___ day of _____, 201__.

CITY OF FLAGSTAFF

CORE REALTY PROFESSIONALS, LLC

Gerald W. Nabours, Mayor

James Robinson, Broker

Attest:

City Clerk

Approved as to form:

City Attorney