

## **PROPERTY MANAGEMENT AGREEMENT**

This Property Management Agreement (this “Agreement”) is made this 22<sup>nd</sup> day of September, 2014, between the City of Pueblo, a Colorado municipal corporation organized under the laws of the State of Colorado, having its principal office at 200 S. Main Street, Pueblo, CO 81003 (“Owner”), and Barclay Clark, having his principal office at 511 W. 29<sup>th</sup> Street, Pueblo, CO 81003 (“Manager”).

In consideration of the mutual benefits and obligations set forth in this Agreement, the parties agree as follows:

### **SECTION ONE. APPOINTMENT AND TERM**

#### **Appointment.**

**1.1. Appointment.** Owner appoints Manager to manage the office building (and related land and other improvements) located at 310 Court Street, 220 W. 4<sup>th</sup> Street and 301 and 317 N. Main Street, Pueblo, CO 81003 (Parcel No. 536126001) commonly referred to as the “Pope Block Building” (the “Property”).

#### **Term.**

**1.2 Term.** This Agreement is for a term (the “Term”) of one (1) year commencing on October 1, 2014 and ending on September 30, 2015. This Agreement shall then automatically renew and continue in full force and effect for successive periods of one (1) year, unless sooner terminated pursuant to the following paragraph 1.3.

#### **Termination.**

**1.3. Termination.** Both Owner and Manager agree that this Agreement shall terminate upon the earlier of (a) the closing of a sale, transfer or exchange by Owner of Owner’s entire interest in the Property or its right to collect the income from the Property or (b) sixty (60) days’ prior written notice of such termination from either party.

#### **Independent Contractor.**

**1.4. Independent Contractor.** Owner retains Manager as an independent contractor to manage the Property. Manager shall be responsible for hiring contractors and determining methodology for management in accordance with this Agreement. Except in emergency situations, Manager’s authority to act on behalf of Owner is limited to that which is expressly delegated in this Agreement.

### **SECTION TWO. MANAGEMENT**

#### **Manager’s Duties.**

**2.1. Manager’s Duties.** With regard to management of the Property, Manager agrees, at the cost and expense of Owner, to:

- 2.1.1.** Manage and operate the Property in a commercially reasonable manner consistent with local industry practices;
- 2.1.2.** Enforce all leases with tenants of the Property in accordance with their terms (provided that Owner shall execute all leases);

- 2.1.3. Execute service and other agreements which Manager deems necessary to provide for the maintenance and operation of the Property subject to the Budgetary Limitations (as defined below in this Agreement) and Major Decisions (as defined below in this Agreement), it being understood and agreed that all such service agreements shall be executed by Manager;
- 2.1.4. Notify Owner of any matter which in the opinion of Manager is material to the operation of the Property;
- 2.1.5. Supervise the repair and maintenance of the Property subject to the Budgetary Limitations and Major Decisions; and
- 2.1.6. Provide for the normal maintenance and repair as provided in the then current Budget.

#### **Budgetary Process.**

**2.2. Budgetary Process.** With regard to budgetary matters and Property expenditures, Manager agrees, for Owner's account, to:

- 2.2.1. Prepare and submit a budget and operating plan to Owner for approval for each calendar year during the term of this Agreement ("Budget and Operating Plan"); and
- 2.2.2. Implement and incur the obligations and expenditures provided for in the Budget and Operating Plan. Manager shall not incur any obligation or expend any sum which would exceed that provided for in any approved Operating Budget except to the extent approved by the Owner ("Budgetary Limitations").

#### **Accounting and Reporting.**

**2.3. Accounting and Reporting.** Manager agrees to:

- 2.3.1. Keep and maintain books of accounts and records with regard to management of the Property (such records and accounts shall be Owner's property); and
- 2.3.2. Provide monthly financial reports in the manner and format requested by the Owner.

#### **Collection and Disbursements.**

**2.4. Collection and Disbursements.** Manager agrees to:

- 2.4.1. Collect all rents, security deposits, late fees and other revenues from the Property and deposit all such collections in an operating account (the "Operating Account") with a bank approved by Owner (Manager shall not commingle funds from the Property with other funds of Manager); and
- 2.4.2. Disburse funds from the Operating Account to pay expenditures incurred in accordance with the terms of this Agreement. If funds on hand are insufficient to pay expenses, Manager shall notify Owner and Owner will deposit the required funds in the Operating Account promptly.

#### **General Standards.**

- 2.5.1.** Manager shall perform its duties under this Agreement in a commercially reasonable manner consistent with local industry practices. With regard to handling of funds, Manager shall account to Owner for all funds received and disbursed in accordance with this Agreement.
- 2.5.2.** Owner shall have the right to inspect and make copies of all books and records pertaining to the Property upon twenty-four (24) hours' prior written notice to Manager during the normal business hours of Manager.

### **Major Decisions**

- 2.6.** "Major Decisions" are defined to be a response, resolution or settlement of circumstances which arise other than in the ordinary course of business. Examples include, but are not limited to, damage to the Property, evictions, renovations to the Property, construction activities on the Property, rent abatement or other concessions given to new or existing tenants. Manager agrees that all Major Decisions shall be made by the Owner.

### **Related Party Service.**

**2.7 Related Party Service.** If any service provided with respect to the Property is to be provided by a party affiliated with Manager, Manager shall notify Owner of this fact prior to acquiring such service and shall obtain Owner's express approval before proceeding with such service.

## **SECTION THREE. LEASING**

Manager shall have the exclusive engagement for leasing available space to new tenants at the Property. All new leases or extensions of existing leases shall be signed by the Owner. Manager also shall be responsible for administering all existing leases relating to the Property. Manager's specific leasing duties shall be established by Owner from time to time.

## **SECTION FOUR. COMPENSATION**

### **Management Fee.**

**4.1. Management Fee.** For management services under this Agreement, Manager shall be paid a monthly fee of \$1,500.00.

### **Fee for New Leases from New Tenants.**

- 4.2. Fee.** For any new lease from a new tenant at the Property obtained by Manager, Manager shall be paid by Owner a fee equal to six percent (6%) of the gross rent to be paid by a new tenant pursuant to a new lease.

### **Payment.**

- 4.3. Payment.** The Management Fee shall be payable monthly. Any New Lease Fee shall be paid when the new tenant begins occupancy at the Property. All such fees shall be payable out of the Operating Account or to the extent not paid out of the Operating Account, paid by Owner to Manager when due.

## **SECTION FIVE. INSURANCE AND INDEMNIFICATION**

## **Insurance.**

**5.1. Insurance.** Owner shall insure the Property against loss by fire or other casualty. In addition to property insurance, Owner shall also maintain general liability insurance for the Property. It is understood and agreed that such insurance shall not cover the errors or omissions of Manager.

## **Indemnification.**

**5.2. Indemnification.** Owner shall indemnify, defend, and hold Manager harmless from and against all loss, costs, expenses, claims, demands, or legal proceedings (including costs, expenses, and reasonable attorneys' fees) of any kind or nature related to the Property and the management of the Property, except with respect to claims arising out of Manager's gross negligence, or willful or intentional misconduct. Manager shall indemnify, defend and hold Owner harmless from and against all loss, costs, expenses, claims, demands, or legal proceedings (including costs, expenses, and reasonable attorneys' fees) due to the gross negligence or willful or intentional misconduct of Manager. The terms and conditions of this paragraph 5.2 shall survive the termination or expiration of this Agreement.

## **SECTION SIX. DEFAULT; REMEDIES**

If either party defaults in performance of any of its obligations under this Agreement, which default continues for a period of thirty (30) days after receipt of written notice of the default, then the nondefaulting party may immediately terminate this Agreement by written notice to the other party and the nondefaulting party may seek an action against the defaulting party for actual damages only (and not for consequential damages, special damages, punitive damages or lost profits). If within the thirty-day period noted above, the defaulting party diligently pursues a cure of the default, the nondefaulting party will grant a thirty-day extension during which it will not terminate this Agreement, so long as defaulting party continues to diligently pursue a cure.

## **SECTION SEVEN. DUTIES UPON TERMINATION OR EXPIRATION**

### **Manager's Duties.**

**7.1. Manager's Duties.** Upon termination or expiration of this Agreement, Manager shall promptly deliver to Owner complete copies of all books and records maintained by Manager for the Property and all funds in possession of Manager belonging to Owner or received by Manager with regard to the Property. Any unpaid obligations incurred by Manager during the term of this Agreement and related to the operation of the Property shall become the obligation of and be payable by Owner.

### **Owner's Duties.**

**7.2. Owner's Duties.** Owner shall compensate Manager for all fees earned under this Agreement through the date of termination.

## **SECTION EIGHT. STATE-IMPOSED MANDATES PROHIBITING ILLEGAL ALIENS FROM PERFORMING WORK**

**8.1.** At or prior to the time this Agreement is executed, Manager shall submit to the Owner its certification that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that the Manager will participate in either the "E-Verify Program" created in Public Law 208, 104<sup>th</sup> Congress, as amended and expanded in Public Law 156, 108<sup>th</sup> Congress, as amended, that is administered by the United States Department of Homeland Security or the "Department Program" established pursuant to §8-17.5-102(5)(c) C.R.S. that is administered by the Colorado

Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

**8.2.** Manager shall not:

**8.2.1.** Knowingly employ or contract with an illegal alien to perform work under this Agreement;

**8.2.2.** Enter into an Agreement with a contractor that fails to certify to Manager that the contractor and subcontractors, if any, does not knowingly employ an illegal alien to perform work under this Agreement.

**8.3.** The following state-imposed requirements apply to this Agreement:

**8.3.1.** The Manager shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or Department Program.

**8.3.2.** The Manager is prohibited from using either the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

**8.3.3.** If the Manager obtains actual knowledge that a contractor or subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Manager shall:

**A.** Notify the contractor or subcontractor and the Owner within three (3) days that the Manager has actual knowledge that the contractor or subcontractor is employing or contracting with an illegal alien; and

**B.** Terminate the contract or subcontract if within three (3) days of receiving the notice required above the contractor or subcontractor does not stop employing or contracting with the illegal alien; except that the Manager shall not terminate the contract or subcontract with the contractor or subcontractor if, during such three (3) days, the contractor or subcontractor provides information to establish that the contractor subcontractor has not knowingly employed or contracted with an illegal alien.

**8.3.4.** Manager is required to comply with any reasonable request by the Colorado Department of Labor and Employment (hereinafter referred to as "CDLE") made in the course of an investigation that CDLE is undertaking pursuant to its authority under §8-17.5-102(5), C.R.S.

**8.4.** Violation of this Section by the Manager shall constitute a breach of Agreement and grounds for termination.

**8.5.** As used in this Section, the terms "contractor" and "subcontractor" shall mean any contractor or subcontractor of Manager rendering services within the scope of this Agreement.

## **SECTION NINE. PERA LIABILITY.**

Manager shall reimburse the Owner for the full amount of any employer contribution required to be paid by the City of Pueblo to the Public Employees' Retirement Association ("PERA") for salary or other compensation paid to a PERA retiree performing contracted services for the Owner under this Agreement. The completed PERA form shall be attached as part of this signed Agreement.

## **SECTION EIGHT. MISCELLANEOUS PROVISIONS**

### **Notices.**

**10.1. Notices.** All notices given under this Agreement shall be made in writing and given to the addressee at the address specified at the top of this Agreement or such other address specified by notice given pursuant to this paragraph. Notices shall be given by certified mail, return receipt requested, or by hand delivery, and shall be effective upon receipt at the address of the addressee.

### **Assignment.**

**10.2. Assignment.** This Agreement shall not be assigned by Manager without the prior written consent of the Owner, which consent may be granted, denied, or conditioned in Owner's sole and absolute discretion.

### **Governing Law and Venue.**

**10.3. Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in a state court with jurisdiction located in Pueblo County, Colorado. To the maximum extent permitted by law, each party to this Agreement waives its right to a jury trial.

### **Waiver of Subrogation.**

**10.4. Waiver of Subrogation.** To the extent that Owner or Manager are compensated by insurance for damages sustained by them as a result of any damage to the Property, each party waives its right of recovery against the other and agrees that no party shall have any right of recovery against the other by way of subrogation or assignment, and each party shall take steps to provide that the insurance policy provides for same.

### **Entire Agreement; Third-Party Beneficiaries.**

**10.5. Entire Agreement; Third-Party Beneficiaries.** This Agreement represents the entire agreement between Owner and Manager with regard to management of the Property and all prior agreements are superseded by this Agreement. This Agreement is for the sole benefit of Owner and Manager and no other party is benefited by this Agreement.

### **Binding Effect.**

**10.6. Binding Effect.** This Agreement shall bind and inure to the benefit of the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as this Agreement states otherwise.

### **Time of Essence.**

**10.7. Time of Essence.** Time is of the essence with respect to this Agreement.

### **No Waiver.**

**10.8. No Waiver.** No delay or failure to exercise any right under this Agreement, nor a partial or single exercise of a right under this Agreement, will waive that right or any other right under this Agreement.

**Modification.**

**10.9. Modification.** No modification of this Agreement shall be valid unless in writing and signed by both parties.

**Counterparts.**

**10.10. Counterparts.** This Agreement and all other copies of it are considered one agreement. This Agreement may be executed concurrently in one or more counterparts, each of which will be considered an original, but all of which together constitute one instrument.

**Severability.**

**10.11. Severability.** If a court of competent jurisdiction holds any one or more of the provisions of this Agreement to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability will not affect any other provision of this Agreement, which will be construed as if it had never contained the invalid, illegal, or unenforceable provision.

**Attorneys' Fees.**

**10.12. Attorneys' Fees.** If any action at law or in equity, including any action for declaratory relief, is brought to enforce or interpret this Agreement, the prevailing party is entitled to recover reasonable attorneys' fees and costs from the other party in addition to any other relief that may be awarded. The court may award attorneys' fees and costs in a trial of the action or in a separate action brought to litigate the issue of attorneys' fees and costs.

**Relationship of the Parties.**

**10.13. Relationship.** Nothing in this Agreement is intended to, or shall be deemed to constitute, a partnership or joint venture between the parties, or to create any agency or partner relationship between the parties. Neither party shall hold itself out as a partner, joint venture, agent, or representative of the other under this Agreement. This Agreement does not constitute a lease or create any tenancy or possessory interest in Manager. Manager's rights hereunder may be terminated in the manner provided in this Agreement without proceeding as required in the Forcible Entry and Detainer Act.

**TABOR Compliance**

**10.14. No Multi-Fiscal Year Obligation on City.** This Agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Pueblo, contrary to Article X, § 20 Colorado Constitution or any other constitutional, statutory or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the Owner which may arise under this Agreement in any fiscal year after 2014, in the event the budget or other means of appropriations for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure shall not constitute a default or breach of this Agreement by the Owner. The obligations of the Owner under this Agreement are subject to annual appropriations made for that purpose by the City Council of Pueblo.

