

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made by and between Kittitas County (hereinafter “the County” or “Owner”) and Accolade Property Management Group (hereinafter “Contractor” or “Broker”). The County and Contractor agree as follows:

General Conditions; Exhibit A (Scope of Work); Exhibit B (Proof of Insurance).

copies of which are attached hereto and incorporated herein by this reference as fully as if set forth herein.

The term of this Agreement shall commence on September 9, 2016, and continue until completion of the project. Any party may terminate this Agreement by giving thirty (30) days’ notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph.

Contractor acknowledges and by signing this Agreement agrees that the Indemnification provisions set forth in Paragraphs 7 (Independent Contractor), 9 (Taxes), 15 (Defense and Indemnity Agreement), 21 (Patent/Copyright Infringement) and 24 (Confidentiality), are totally and fully part of this Agreement and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2016.

APPROVED:

ACCOLADE PROPERTY
MANAGEMENT GROUP

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

Signature of Signatory
(Date _____)

Obie O'Brien, Chairman

Print Name of Signatory

Paul Jewell, Vice-Chairman

_____, Commissioner

Attest:

Clerk of the Board

Approved as to Form:

By: _____
Deputy Prosecuting Attorney

Contractor Address:

407 N. Pine St.
Ellensburg, WA 98926

County's Address:

Kittitas County
205 West 5th Avenue, Suite 108
Ellensburg, WA 98926

Project Contact:

Project Contact:

GENERAL CONDITIONS

1. Scope of Contractor's Services:

Contractor agrees to provide to the County services and any materials set forth in the project narrative identified in Exhibit "A" during the Agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

2. Performance of Work:

Contractor shall perform work in accordance with, and shall comply with, all of the provisions of this Agreement. All work shall comply with applicable codes and ordinances.

3. Schedule of Performance:

Unless directed otherwise by the County, Contractor shall perform the work in accordance with any schedules made a part of this Agreement.

4. Definitions:

- 4.1 "Additional Insured's" means the County, its successors and assigns, and the respective directors, officers, employees, agents and representatives of the County and its successors and assigns.
- 4.2 "Support" means the following: Contractor's directors, officers, employees, agents and representatives; and sub-Contractors of any tier; the respective directors, officers, employees, agents and representatives of these sub-Contractors of any tier; and any other person or entity acting under the direction or control of, or on behalf of, Contractor or any Contractor's sub-Contractors of any tier in connection with or incident to the performance of the Work or this Agreement.
- 4.3 The "Work" means all of the duties listed in Exhibit A and the performance of all other obligations, under this Agreement by Contractor or its Support.

5. Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "A". Where Exhibit "A" requires payments by the County, payment shall be based upon billings, supported unless otherwise provided in Exhibit "A", by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested. Unless specifically stated in Exhibit "A" or approved in writing in advance by the Kittitas County Board of Commissioners, the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in performance of this Agreement.

Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, through the County voucher system, for the Contractor's service pursuant to the fee schedule set forth in Exhibit "A".

6. Assignment and Subcontracting:

No portion of this Agreement may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

7. Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent Contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent Contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any County benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Kittitas County employees.

Contractor will defend, indemnify and hold harmless the County, its Additional Insured's, officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

8. No Guarantee of Employment:

The performance of all or part of this Agreement by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any sub-Contractor or any employee of any sub-Contractor by the County at the present time or in the future.

9. Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to make withholding for any taxes other than income taxes (i.e. Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net

income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

10. Regulations and Requirement:

This Agreement shall be subject to all laws, rules and regulations of the United States of America, and State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth herein or in the attached exhibits.

11. Right to Review:

This contract is subject to review by any Federal or State auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the County. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluation by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 6 years after contract termination, and shall make them available for such review, within Kittitas County, State of Washington, upon request.

12. Modifications:

- 12.1 Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.
- 12.2 The County may, at any time, by written notice thereof to Contractor ("Change Notice") makes changes in the Work within the general scope of this Agreement, including, but not limited to: (a) changes in, revisions to, substitutions for, additions to or deletions of any Work; (b) changes in schedule; and (c) acceleration, deceleration or suspension of performance of any Work.
- 12.3 If any change in the Work causes an increase or decrease on Contractor's cost of, or the time required for, performance of the Work, an equitable adjustment in the compensation to Contractor and in the schedule for the performance of the Work shall be made to reflect such an increase or decrease.
- 12.4 Notwithstanding any dispute or delay in arriving at a mutually acceptable equitable adjustment, Contractor shall proceed in accordance with all Change Notices. Contractor must, within thirty (30) days after receipt of any Change Notice that does not set forth any acceptable adjustment, submit to the County a written statement setting forth any adjustment claimed.

- 12.5 If any change results in a decrease in the Work performed, Contractor shall be entitled to compensation associated with changing the Work, such as revising design already completed, revising calculations already performed, and revising documents.

13. Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the County's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

14. Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the best interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. In the event of such termination, an equitable adjustment shall be made in the compensation payable to Contractor.

An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.

15. Defense & Indemnity Agreement:

The Contractor agrees to and shall defend, indemnify and hold harmless the County, its Additional Insured's, appointed and elective officers, agents and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the County, its Additional Insured's, its elected or appointed officials, agents, or employees for damages because of personal or bodily injury, including death at any time resulting therefrom,

sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its sub-Contractors, its elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its Additional Insured's, appointed or elected officials, agents, or employees. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

16. Industrial Insurance Waiver:

With respect to the performance of this Agreement and as to claims against the County, its Additional Insured's, officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. **This waiver is mutually negotiated by the parties to this Agreement.**

17. Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Kittitas. This Agreement shall be governed by the law of the State of Washington.

18. Withholding Payment:

In the event the Contractor has failed to perform any obligation to be performed by the Contractor under this Agreement within the time set forth in this Agreement, then the County may, upon written notice, withhold all monies due and payable to Contractor, without penalty, until such failure to perform is cured or otherwise adjudicated.

19. Future Non-Allocation of Funds:

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the County in the event this provision applies.

20. Contractor Commitments, Warranties and Representations:

The Contractor represents and warrants to the County as follows:

- 20.1 The Contractor is duly incorporated, validly existing and in good standing under the laws of the State of Washington, and has all requisite corporate power and authority to enter into and to perform its obligations under this Agreement.
- 20.2 The Contractor has the authority to execute this Agreement, to make the representations and warranties set forth in it and to perform the

obligations of the Contractor under this Agreement in accordance with its terms.

- 20.3 This Agreement has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.
- 20.4 The Contractor has or will obtain prior to the commencement date such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Agreement.
- 20.5 The Contractor is not in violation of any applicable law, ordinance or regulation the consequence of which will or may materially affect Contractor's ability to perform its obligations under this Agreement. The Contractor is not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects its operations or assets in the State of Washington, or its ability to perform its obligations under this Agreement.
- 20.6 None of the representations or warranties in this Agreement, and none of the documents, statements, certificates or schedules furnished or to be furnished by Contractor pursuant hereto or in connection with the performance of the obligations contemplated under this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.

21. Patent/Copyright Infringement:

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County; to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

- 21.1 Contractor shall be notified promptly in writing by County of any notice of such claim.
- 21.2 Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement is made, provided no reduction in performance or loss results to the County.

22. Disputes:

22.1 General

Differences between the Contractor and the County, arising under and by virtue of the Agreement Documents shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are

made of record in the manner hereinafter specified and within the time limits stated, the records, orders, instructions, and decisions of the Kittitas County Commissioners shall be final and conclusive.

22.2 Notice of Potential Claims

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

22.3. Detailed Claim

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the completion of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or extension of time claimed to be due.

23. Ownership of Items Produced:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or sub-Contractors, in connection with performance of this Agreement shall be the sole and absolute property of the County.

24. Confidentiality:

The Contractor, its employees, sub-Contractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the Kittitas County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceedings seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its Additional Insured's, officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

25. Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the department head of the department for whom services are rendered, and to the Kittitas County Commissioners, 205 W 5th Ave, Suite 108, Ellensburg, WA 98926. Notice to the Contractor for all purposes under this Agreement shall be given to the address reflected on the signature page. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

26. Severability:

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

27. Miscellaneous:

27.1 The County's failure or delay to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions, rights or remedies in that or any other instance; rather the same shall be and remain in full force and effect.

27.2 This Agreement embodies the entire Agreement between the County and Contractor, and supersedes any and all prior agreements, regarding the Work. No change, amendment or modification of any provisions of this Agreement shall be valid unless set forth in a written instrument signed by the party to be bound thereby.

27.3 The rights and remedies of the County set forth in any provision of this Agreement are in addition to and do not in any way limit any other rights of remedies afforded to the County by any other provisions of this Agreement, by any of Contractor's Support or by law.

27.4 The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

28. Waiver:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

29. Survival:

The provisions of paragraphs 7, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 30, and 31, 32 shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

30. Nondiscrimination:

30.1 The County is an equal opportunity employer.

30.2 Nondiscrimination in Employment

In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Contractor shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The Contractor shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

30.3 Nondiscrimination in Services

The Contractor will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.

30.4 If any assignment and/or subcontracting has been authorized by the County, said assignment or subcontract shall include appropriate safeguards against discrimination. The Contractor shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

31. Prevailing Wage:

Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12

and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wages rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate. It is understood that the Contractor is responsible for obtaining and completing all required government forms and submitting same to the proper authorities.

Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.

32. Debarment Certification:

The Contractor certifies that it:

- 32.1 Is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
- 32.2 Has not within a three-year period preceding the execution of this contract with Kittitas County, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice.
- 32.3 Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 32.2 of this section.
- 32.4 Has not within a three-year period preceding the preceding the execution of this contract with Kittitas County had one or more public transactions (Federal, State, or local) terminated for cause of default.

EXHIBIT "A"

SCOPE OF WORK

In addition to providing all material and labor, the Contractor shall perform the following:

1. **AGENT'S AUTHORITIES AND OBLIGATIONS:** Kittitas County hereby authorizes Broker to both manage and lease the Shady Acres Mobile Home Park at 1200 E University Way, Ellensburg, WA, legally described as:
 - A. Management Authority: Owner hereby confers upon Agent the following authorities and obligations that Broker may exercise when and to the extent Broker determines to be in Owner's interest:
 1. To negotiate and present leases to Owner for execution.
 2. To collect rents, security deposits, and all other receipts, and to deposit such monies in a trust account with a qualified banking institution. Agent shall retain interest paid on Security Deposit and/or General Trust accounts. Agent shall charge prospective tenants any application fee as deemed reasonable to process rental applications.
 3. To serve notice of termination of tenancies, notices to quit or pay rent and such other notices as Agent may deem appropriate or as directed by Owner.
 4. To notify Owner when legal action needs to be instituted against a tenant on behalf of Owner.
 5. To hire, supervise and discharge all employees and independent contractors required in the operation and maintenance of the Property. DISCLOSURE: The Worx is an affiliate company of Accolade that is regularly contracted.
 6. To contract for emergency repairs as deemed necessary to ensure tenant and building safety/security in the event Owner is not available for consultation, to contract for such repairs and expenditures as deemed necessary for the protection of the Property from damage.
 7. To execute service contracts for utilities and services for the operation, maintenance and safety of the Property as Agent deems necessary or advisable.
 8. To pay from gross receipts operating expenses and other such expenses.
 9. To maintain accurate records of monies received and disburse in connection with the management of the Property. A monthly statement of

income and expenses shall be sent to the Owner on or before the 20th of each month. A 1099 MISC FORM and Year End Financial Statement will be sent annually by January 31 for the preceding year.

B. Leasing Authority: Owner grants to Broker the following authority, which Broker may exercise when and to the extent Broker determines to be in Owner's interest:

1. To exclusively advertise the Property for lease by means and methods that Broker determines are reasonably competitive, including but not limited to creating and placing advertisements with interior and exterior photographic and audio-visual images of the property and related information in any media, including the internet;
2. Place "For Lease" signs, "For Information" signs, or other signs on the Property in accordance with applicable laws, regulations, ordinances, restrictions, and owners' association rules;
3. Remove all other signs offering the Property for sale or lease;
4. Submit the Property as a listing with one or more listing services at any time the Property is marketed for lease and to change or terminate such listings;
5. Authorize other brokers, their associates, and their clients to access the Property at reasonable times and to lend keys and disclose security codes to such persons to enter the Property;
6. Duplicate keys and access devices to facilitate convenient and efficient showings of the Property and to lease the Property;
7. To screen and use diligence in the selection of prospective tenants and to abide by all **Fair Housing Laws**;
8. Offer to pay another broker, from the compensation Broker receives under this agreement, a portion of the compensation received by Broker;
9. Negotiate leases on Owner's behalf for the Property at market rates and on competitively reasonable terms for initial terms of not less than _____ months and not more than _____ months and in accordance with any instructions, and present to Owner to execution;
10. Negotiate any amendments, extensions, or renewals to any leases for the Property on Owner's behalf, and present to Owner for execution;
11. Collect application fees from prospective tenants; and
12. Perform other necessary services related to the leasing of the Property.

C. Recordkeeping: Broker will:

1. Maintain accurate records related to the Property and retain such records for not less than six (6) years;
2. File reports with the Internal Revenue Service which Broker may be required to file concerning funds received on behalf of Owner under this agreement (for example, Form 1099);
3. Send to Owner each month a statement of receipts, disbursements, and charges; and

4. Remit to Owner the funds collected by Broker that have been fully processed and cleared for Owner under this agreement, less authorized deductions, by the 20th of each month.

*Note: Owner is responsible to determine the treatment of expense payments in regards to their financial reports and taxes.

D. Security Deposits:

1. Broker will:
 - a. Maintain security deposits received from tenants in the trust account described under Paragraph 1A; and
 - b. in accordance with applicable law and the leases for the Property, account to the tenants for the security deposit, make lawful deductions from the security deposit, and return the security deposit balance to the tenants from the trust account.
2. After this agreement ends, Broker will deliver to Owner or the Owner's designee the security deposits held by Broker under the leases of the Property, less deductions authorized by this agreement, and will send written notices to the tenants that state:
 - a. That this agreement has ended;
 - b. The contact information for the Owner or the Owner's designee; and
 - c. That Owner is responsible for accounting for and returning the tenant's security deposit.
3. If Broker complies with this Paragraph 1D, Owner will indemnify Broker from any claim or loss from a tenant for the return of a security deposit. This Paragraph 1D survives termination of this agreement.

E. Performance Standard: Broker will:

1. Use reasonable care when exercising Broker's authority and performing under this agreement; and
2. Exercise discretion when performing under this agreement in a manner that Broker believes to be in Owner's interest, provided that Broker will treat any tenant honestly and fairly.

F. Deductions and Offset: Broker may disburse from any funds Broker holds in trust for Owner:

1. Any compensation due Broker under this agreement;
2. Any funds Broker is authorized to expend under this agreement; and
3. Any reimbursement Broker is entitled to receive under this agreement.

G. Insurance and Attorneys:

1. Broker may not file a claim for a casualty loss with the carrier insuring the Property. Broker may communicate with the carrier to facilitate the processing of any claim Owner may file or perform other matters that Owner instructs Broker to communicate to the carrier.

2. Broker may not directly or indirectly employ or pay a lawyer to represent Owner. Broker may communicate with Owner's attorney in accordance with Owner's instructions.
2. **RELATIONSHIP OF THE PARTIES:** This agreement does not create a partnership or joint venture between the parties. Broker is an independent contractor.
3. **LEGAL COMPLIANCE:** The parties will comply with all obligations, duties, and responsibilities under the fair housing laws and any other statute, administrative rule, ordinance, or restrictive covenant applicable to the use, leasing, management, or care of the Property.
4. **RESERVES:** Upon execution of this agreement, Owner will deposit the following amount with Broker to be held in a trust account as a reserve for Owner: \$ _____ (\$200 if not filled in or \$500 if Accolade is going to pay utilities for the Property). Broker may, at Broker's discretion, use the reserve to pay any expense related to the management of the Property (including but not limited to Broker's fees). If the balance of the reserve becomes less than the amount stated, Broker may: (a) deduct an amount that will bring the balance to the amount stated from any subsequent rent received on behalf of Owner and deposit the amount into the reserve; or (b) notify Owner that Owner must promptly deposit additional funds with Broker to bring the balance to the amount stated.
5. **ADVANCES:** Broker is not obligated to advance any money to Owner or to any other person.
6. **OWNER REPRESENTATIONS:**
 - A. General: Owner represents that:
 1. Owner has fee simple title to and peaceable possession of the Property and all its improvements and fixtures, unless rented, and the legal capacity to lease the Property;
 2. Owner is not bound by another agreement for the management of the Property that is or will be in effect during this agreement;
 3. If Broker has the authority to lease the Property, Owner is not bound by: (a) another agreement with another broker for the lease of the Property that will be in effect during this agreement; or (b) any agreement or covenant that prohibits Owner from leasing the Property;
 4. Owner is not delinquent in the payment of any property taxes, owners' association fees, property insurance, mortgage, or any encumbrance on or affecting the Property;
 5. The Property is not subject to the jurisdiction of any court; and
 6. All information related to the Property that Owner provides to Broker is true and correct to the best of Owner's knowledge.

- B. Property Condition: Except as stated below, in this agreement, or in any addendum, Owner is not aware of any:
1. Condition affecting the Property that materially affects the health or safety of any ordinary tenant;
 2. Environmental hazard on the Property; or
 3. Violation of any ordinance, statute restriction, or law related to the Property.
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7. **OWNERS COOPERATION:** Owner agrees to:
1. Cooperate with Broker to facilitate the management of the Property;
 2. Not deal with or negotiate with any tenant in the Property concerning any matter related to the management of the Property but refer all such dealings to Broker;
 3. Not to enter into a management agreement with another broker for the management of the Property to become effective during this agreement;
 4. Provide Broker with copies of any existing leases or rental agreements related to the Property;
 5. Provide Broker with keys and access devices to the Property;
 6. Provide Broker with copies of all warranties related to the Property or any item in the Property;
 7. Tender to Broker any security deposits paid by existing tenants in the Property;
 8. Complete any disclosures or notices required by law or a lease of the Property;
 9. Amend applicable notices and disclosures if a material change occurs during this agreement;
 10. Notify Broker if Owner becomes delinquent in the payment of: (a) any mortgage or other encumbrance secured by the Property; (b) property taxes; (c) property insurance; or (d) owners' association fees;
 11. Owner will maintain funds in the Agent's trust account equal to a minimum \$200 or as specified in paragraph 4;
 12. If Agent is to make mortgage payments, property tax or insurance payments, the Owner will maintain an additional reserve of \$ _____ in the Agent's trust account; and
 13. Funds under Agent's control, which are requested by Owner to be sent directly to a financial institution for deposit, must be accompanied by a pre-printed deposit slip or coupons.
8. **INSURANCE:** Owner will maintain insurance on the Property, including public liability insurance of not less than \$500,000.

9. **BROKER'S FEES:** This Paragraph 9 survives termination of this agreement with regard to fees earned during this agreement, which are not payable until after its termination. Broker may deduct any fees under this Paragraph 9 from any funds Broker holds in trust for Owner. If more than one property or unit is made part of and subject to this agreement, each of the provisions below will apply to each property or unit separately.
- A. Set-Up Fee: A one-time Set-Up Fee of \$500.
 - B. Management Fees: Each month the Owner will pay Broker 10% of gross income for monthly management with an overall minimum of \$50 per property.
 - C. Residential Lease Fee: Each time the Property is leased to a new tenant, Owner will pay Broker a leasing fee equal to ½ of the Rental Rate with a minimum of \$500. The leasing fees under this Paragraph 9C are earned and payable at the time the lease is executed.
 - D. Commercial Lease Fees: 6% of the life of the contract to lease a vacancy, with a \$1,000 minimum fee, payable at the commencement date.
 - 1. Property will be listed on the NWMLS and open to other participating members of the NWMLS to secure a tenant and the 6% fee will be split 50/50 between Accolade and the participating member/broker.
 - 2. A separate NWMLS listing agreement for any commercial vacancy is required to be filled in.
 - E. Renewal or Extension Fees and Renewals with Added Residents:
 - 1. Each time a tenant in the Property renews or extends a lease, Owner will pay Broker a renewal or extension fee equal to \$150. The renewal or extension fees under this Paragraph 9E are earned at the time the renewal or lease is executed by the parties to the lease and are payable at the time the renewal or extension is effective. For the purposes of this paragraph, a new lease for the same Property with the same tenant then occupying the Property is an extension or renewal. This Paragraph 9E does not apply to month-to-month renewals or month-to-month extensions.
 - 2. Commercial Property Renewals will be 3% for the life of the contract, payable at the renewal contract date.
 - 3. Adding Residents at the time of renewal is permitted but an additional \$350 Roommate addition fee is assessed.
 - F. Service Fees: In the event that the Owner shall request the Agent to undertake work exceeding the usual normal management, then a fee of \$50 per hour shall be charged to Owner. Normal management does not include: supervision of tenant improvements, activity related to the sale of the Property, refinancing, appraisals, fire restoration, major rehabilitations, insurance claims, obtaining tax advice, presenting petitions to planning or zoning committees. No fee will be

charged for minor cosmetic improvements, i.e. carpet replacement, painting, general maintenance, etc.

- G. Fees in the Event of a Sale: Should a Purchase and Sale Agreement be executed where Accolade is the implied Agent, a commission is due that will be negotiated at the time of the Agreement. If the property is actively listed for sale by another brokerage or the Owner has an agency relationship with another brokerage that they wish to use, this would not apply.
- H. Interest on Trust Accounts: Any trust account Broker maintains under this agreement may be an interest-bearing or income producing account. Broker may retain any interest or income from such accounts as compensation under this agreement.
- I. Termination Prior to Securing a Tenant: In the event that Owner terminates this agreement prior to securing a tenant in the vacant property, Owner will pay to Agent as liquidated damages \$500.
- J. Administrative Fees: If Broker collects administrative charges from tenants or prospective tenants, including but not limited to, application fees, returned check fees, or late charges (as authorized under Paragraph 1A) Broker will retain such fees as compensation under this agreement. The administrative fees under this Paragraph 9J are earned and payable at the time Broker collects such fees.
- K. Fees Related to Legal Proceedings: If Owner requests or instructs Broker to appear in any legal proceeding or deposition related to the Property (including, but not limited to, evictions, tenant disputes, security deposit disputes, and suits for damages), Owner will pay Broker \$50 per hour for Broker's time expended in such matters and in preparation of such matters. Fees under this Paragraph 9K are earned at the time the services are rendered and payable upon Owners receipt of Broker's invoice.

10. FUNDS FOR INVOICES RECEIVED AFTER TERMINATION: Agent may withhold funds for up to sixty (60) days after the end of the month in which this agreement is terminated, in order to pay bills previously incurred but not yet invoiced and to close accounts. Upon termination of this agreement, Owner shall assume the obligations of any contract or outstanding bill executed by Agent under this agreement for and on behalf of Owner, and responsibility for payment of all unpaid bills.

11. LIABILITY AND INDEMNIFICATION: Agent is not responsible or liable in any manner for:

- 1. Personal injury to Owner or any tenant resulting from acts of third parties;

2. Loss or damage of personal or real property due to vandalism, theft, or freezing/leaking water pipes; or
3. Late fees Owner incurs to any creditor caused by any late payments by any tenant; or
4. Any lease violations or defaults by any tenant.

12. **DISTRESSED HOMEOWNER:** Owner acknowledges that this is not a distressed property. If this Property becomes a distressed property while under the management of Accolade, Owner will notify Accolade immediately.

EXHIBIT "B"

PROOF OF INSURANCE

The Contractor shall secure and maintain in effect at all times during performance of the Work such insurance as will protect Contractor, its Support and the Additional Insured's from all claims, losses, harm, costs, liabilities, damages and expenses arising out of personal injury (including death) or property damage that may result from performance of the work or this Agreement, whether such performance is by Contractor or any of its Support.

All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports unless otherwise approved by the County. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

The Contractor shall provide proof of insurance for:

- 1) General Liability Insurance.
 - Coverage limits not less than:
 - \$1,000,000 per occurrence per project
 - \$2,000,000 general aggregate
 - \$1,000,000 products & completed operations aggregate
 - \$1,000,000 personal and advertising injury, each offense
 - Certificate Holder – Kittitas County
 - The Certificate must name the County as additional insured as defined in the Agreement
 - Sixty (60) days written notice to the County of cancellation of the insurance policy.

- 2) Workers' Compensation.
 - Workers' Compensation in amounts required by law.

Contractor shall furnish the County a Certificate of Insurance with Endorsement as evidence that policies providing insurance required by this Agreement are in full force and effect. Contractor hereby waives all rights of recourse, including any right to which another may be subrogated, against Kittitas County for personal injury, including death, and property damage. Contractor's insurance policies required above shall be primary insurance and shall be non-contributing with any other insurance maintained by Kittitas County.

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee-owned tools, machinery, equipment, or

motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

The Contractor shall have sole responsibility for ensuring the insurance coverage and limits required are obtained by subcontractors.

NOTE: No contract shall form until and unless a copy of the Certificate of Insurance with Endorsement, properly completed and in the amount required, is attached hereto.

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made by and between Kittitas County (hereinafter “the County” or “Owner”) and Accolade Property Management Group (hereinafter “Contractor” or “Broker”). The County and Contractor agree as follows:

General Conditions; Exhibit A (Scope of Work); Exhibit B (Proof of Insurance).

copies of which are attached hereto and incorporated herein by this reference as fully as if set forth herein.

The term of this Agreement shall commence on September 9, 2016, and continue until completion of the project. Any party may terminate this Agreement by giving thirty (30) days’ notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph.

Contractor acknowledges and by signing this Agreement agrees that the Indemnification provisions set forth in Paragraphs 7 (Independent Contractor), 9 (Taxes), 15 (Defense and Indemnity Agreement), 21 (Patent/Copyright Infringement) and 24 (Confidentiality), are totally and fully part of this Agreement and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2016.

APPROVED:

ACCOLADE PROPERTY
MANAGEMENT GROUP

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

Signature of Signatory
(Date _____)

Obie O'Brien, Chairman

Print Name of Signatory

Paul Jewell, Vice-Chairman

_____, Commissioner

Attest:

Clerk of the Board

Approved as to Form:

By: _____
Deputy Prosecuting Attorney

Contractor Address:

407 N. Pine St.
Ellensburg, WA 98926

County's Address:

Kittitas County
205 West 5th Avenue, Suite 108
Ellensburg, WA 98926

Project Contact:

Project Contact:

GENERAL CONDITIONS

1. Scope of Contractor's Services:

Contractor agrees to provide to the County services and any materials set forth in the project narrative identified in Exhibit "A" during the Agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

2. Performance of Work:

Contractor shall perform work in accordance with, and shall comply with, all of the provisions of this Agreement. All work shall comply with applicable codes and ordinances.

3. Schedule of Performance:

Unless directed otherwise by the County, Contractor shall perform the work in accordance with any schedules made a part of this Agreement.

4. Definitions:

- 4.1 "Additional Insured's" means the County, its successors and assigns, and the respective directors, officers, employees, agents and representatives of the County and its successors and assigns.
- 4.2 "Support" means the following: Contractor's directors, officers, employees, agents and representatives; and sub-Contractors of any tier; the respective directors, officers, employees, agents and representatives of these sub-Contractors of any tier; and any other person or entity acting under the direction or control of, or on behalf of, Contractor or any Contractor's sub-Contractors of any tier in connection with or incident to the performance of the Work or this Agreement.
- 4.3 The "Work" means all of the duties listed in Exhibit A and the performance of all other obligations, under this Agreement by Contractor or its Support.

5. Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "A". Where Exhibit "A" requires payments by the County, payment shall be based upon billings, supported unless otherwise provided in Exhibit "A", by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested. Unless specifically stated in Exhibit "A" or approved in writing in advance by the Kittitas County Board of Commissioners, the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in performance of this Agreement.

Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, through the County voucher system, for the Contractor's service pursuant to the fee schedule set forth in Exhibit "A".

6. Assignment and Subcontracting:

No portion of this Agreement may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

7. Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent Contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent Contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any County benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Kittitas County employees.

Contractor will defend, indemnify and hold harmless the County, its Additional Insured's, officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

8. No Guarantee of Employment:

The performance of all or part of this Agreement by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any sub-Contractor or any employee of any sub-Contractor by the County at the present time or in the future.

9. Taxes:

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to make withholding for any taxes other than income taxes (i.e. Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net

income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

10. Regulations and Requirement:

This Agreement shall be subject to all laws, rules and regulations of the United States of America, and State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth herein or in the attached exhibits.

11. Right to Review:

This contract is subject to review by any Federal or State auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the County. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluation by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 6 years after contract termination, and shall make them available for such review, within Kittitas County, State of Washington, upon request.

12. Modifications:

12.1 Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.

12.2 The County may, at any time, by written notice thereof to Contractor ("Change Notice") makes changes in the Work within the general scope of this Agreement, including, but not limited to: (a) changes in, revisions to, substitutions for, additions to or deletions of any Work; (b) changes in schedule; and (c) acceleration, deceleration or suspension of performance of any Work.

12.3 If any change in the Work causes an increase or decrease on Contractor's cost of, or the time required for, performance of the Work, an equitable adjustment in the compensation to Contractor and in the schedule for the performance of the Work shall be made to reflect such an increase or decrease.

12.4 Notwithstanding any dispute or delay in arriving at a mutually acceptable equitable adjustment, Contractor shall proceed in accordance with all Change Notices. Contractor must, within thirty (30) days after receipt of any Change Notice that does not set forth any acceptable adjustment, submit to the County a written statement setting forth any adjustment claimed.

- 12.5 If any change results in a decrease in the Work performed, Contractor shall be entitled to compensation associated with changing the Work, such as revising design already completed, revising calculations already performed, and revising documents.

13. Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the Agreement or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the County's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

14. Termination for Public Convenience:

The County may terminate the Agreement in whole or in part whenever the County determines, in its sole discretion that such termination is in the best interests of the County. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. In the event of such termination, an equitable adjustment shall be made in the compensation payable to Contractor.

An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.

15. Defense & Indemnity Agreement:

The Contractor agrees to and shall defend, indemnify and hold harmless the County, its Additional Insured's, appointed and elective officers, agents and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the County, its Additional Insured's, its elected or appointed officials, agents, or employees for damages because of personal or bodily injury, including death at any time resulting therefrom,

sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its sub-Contractors, its elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County, its Additional Insured's, appointed or elected officials, agents, or employees. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

16. Industrial Insurance Waiver:

With respect to the performance of this Agreement and as to claims against the County, its Additional Insured's, officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. **This waiver is mutually negotiated by the parties to this Agreement.**

17. Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Kittitas. This Agreement shall be governed by the law of the State of Washington.

18. Withholding Payment:

In the event the Contractor has failed to perform any obligation to be performed by the Contractor under this Agreement within the time set forth in this Agreement, then the County may, upon written notice, withhold all monies due and payable to Contractor, without penalty, until such failure to perform is cured or otherwise adjudicated.

19. Future Non-Allocation of Funds:

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the County in the event this provision applies.

20. Contractor Commitments, Warranties and Representations:

The Contractor represents and warrants to the County as follows:

- 20.1 The Contractor is duly incorporated, validly existing and in good standing under the laws of the State of Washington, and has all requisite corporate power and authority to enter into and to perform its obligations under this Agreement.
- 20.2 The Contractor has the authority to execute this Agreement, to make the representations and warranties set forth in it and to perform the

obligations of the Contractor under this Agreement in accordance with its terms.

- 20.3 This Agreement has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.
- 20.4 The Contractor has or will obtain prior to the commencement date such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Agreement.
- 20.5 The Contractor is not in violation of any applicable law, ordinance or regulation the consequence of which will or may materially affect Contractor's ability to perform its obligations under this Agreement. The Contractor is not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects its operations or assets in the State of Washington, or its ability to perform its obligations under this Agreement.
- 20.6 None of the representations or warranties in this Agreement, and none of the documents, statements, certificates or schedules furnished or to be furnished by Contractor pursuant hereto or in connection with the performance of the obligations contemplated under this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.

21. Patent/Copyright Infringement:

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County; to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

- 21.1 Contractor shall be notified promptly in writing by County of any notice of such claim.
- 21.2 Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information, in the event such claim of infringement is made, provided no reduction in performance or loss results to the County.

22. Disputes:

22.1 General

Differences between the Contractor and the County, arising under and by virtue of the Agreement Documents shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are

made of record in the manner hereinafter specified and within the time limits stated, the records, orders, instructions, and decisions of the Kittitas County Commissioners shall be final and conclusive.

22.2 Notice of Potential Claims

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

22.3. Detailed Claim

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the completion of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or extension of time claimed to be due.

23. Ownership of Items Produced:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or sub-Contractors, in connection with performance of this Agreement shall be the sole and absolute property of the County.

24. Confidentiality:

The Contractor, its employees, sub-Contractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the Kittitas County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceedings seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its Additional Insured's, officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

25. Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the department head of the department for whom services are rendered, and to the Kittitas County Commissioners, 205 W 5th Ave, Suite 108, Ellensburg, WA 98926. Notice to the Contractor for all purposes under this Agreement shall be given to the address reflected on the signature page. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

26. Severability:

If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

27. Miscellaneous:

27.1 The County's failure or delay to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions, rights or remedies in that or any other instance; rather the same shall be and remain in full force and effect.

27.2 This Agreement embodies the entire Agreement between the County and Contractor, and supersedes any and all prior agreements, regarding the Work. No change, amendment or modification of any provisions of this Agreement shall be valid unless set forth in a written instrument signed by the party to be bound thereby.

27.3 The rights and remedies of the County set forth in any provision of this Agreement are in addition to and do not in any way limit any other rights of remedies afforded to the County by any other provisions of this Agreement, by any of Contractor's Support or by law.

27.4 The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

28. Waiver:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

29. Survival:

The provisions of paragraphs 7, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 30, and 31, 32 shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

30. Nondiscrimination:

30.1 The County is an equal opportunity employer.

30.2 Nondiscrimination in Employment

In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Contractor shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The Contractor shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

30.3 Nondiscrimination in Services

The Contractor will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.

30.4 If any assignment and/or subcontracting has been authorized by the County, said assignment or subcontract shall include appropriate safeguards against discrimination. The Contractor shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

31. Prevailing Wage:

Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12

and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wages rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate. It is understood that the Contractor is responsible for obtaining and completing all required government forms and submitting same to the proper authorities.

Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.

32. Debarment Certification:

The Contractor certifies that it:

- 32.1 Is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
- 32.2 Has not within a three-year period preceding the execution of this contract with Kittitas County, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice.
- 32.3 Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 32.2 of this section.
- 32.4 Has not within a three-year period preceding the preceding the execution of this contract with Kittitas County had one or more public transactions (Federal, State, or local) terminated for cause of default.

EXHIBIT "A"

SCOPE OF WORK

In addition to providing all material and labor, the Contractor shall perform the following:

1. **AGENT'S AUTHORITIES AND OBLIGATIONS:** Kittitas County hereby authorizes Broker to both manage and lease the Shady Acres Mobile Home Park at 1200 E University Way, Ellensburg, WA, legally described as:
 - A. Management Authority: Owner hereby confers upon Agent the following authorities and obligations that Broker may exercise when and to the extent Broker determines to be in Owner's interest:
 1. To negotiate and present leases to Owner for execution.
 2. To collect rents, security deposits, and all other receipts, and to deposit such monies in a trust account with a qualified banking institution. Agent shall retain interest paid on Security Deposit and/or General Trust accounts. Agent shall charge prospective tenants any application fee as deemed reasonable to process rental applications.
 3. To serve notice of termination of tenancies, notices to quit or pay rent and such other notices as Agent may deem appropriate or as directed by Owner.
 4. To notify Owner when legal action needs to be instituted against a tenant on behalf of Owner.
 5. To hire, supervise and discharge all employees and independent contractors required in the operation and maintenance of the Property. DISCLOSURE: The Worx is an affiliate company of Accolade that is regularly contracted.
 6. To contract for emergency repairs as deemed necessary to ensure tenant and building safety/security in the event Owner is not available for consultation, to contract for such repairs and expenditures as deemed necessary for the protection of the Property from damage.
 7. To execute service contracts for utilities and services for the operation, maintenance and safety of the Property as Agent deems necessary or advisable.
 8. To pay from gross receipts operating expenses and other such expenses.
 9. To maintain accurate records of monies received and disburse in connection with the management of the Property. A monthly statement of

income and expenses shall be sent to the Owner on or before the 20th of each month. A 1099 MISC FORM and Year End Financial Statement will be sent annually by January 31 for the preceding year.

B. Leasing Authority: Owner grants to Broker the following authority, which Broker may exercise when and to the extent Broker determines to be in Owner's interest:

1. To exclusively advertise the Property for lease by means and methods that Broker determines are reasonably competitive, including but not limited to creating and placing advertisements with interior and exterior photographic and audio-visual images of the property and related information in any media, including the internet;
2. Place "For Lease" signs, "For Information" signs, or other signs on the Property in accordance with applicable laws, regulations, ordinances, restrictions, and owners' association rules;
3. Remove all other signs offering the Property for sale or lease;
4. Submit the Property as a listing with one or more listing services at any time the Property is marketed for lease and to change or terminate such listings;
5. Authorize other brokers, their associates, and their clients to access the Property at reasonable times and to lend keys and disclose security codes to such persons to enter the Property;
6. Duplicate keys and access devices to facilitate convenient and efficient showings of the Property and to lease the Property;
7. To screen and use diligence in the selection of prospective tenants and to abide by all **Fair Housing Laws**;
8. Offer to pay another broker, from the compensation Broker receives under this agreement, a portion of the compensation received by Broker;
9. Negotiate leases on Owner's behalf for the Property at market rates and on competitively reasonable terms for initial terms of not less than _____ months and not more than _____ months and in accordance with any instructions, and present to Owner to execution;
10. Negotiate any amendments, extensions, or renewals to any leases for the Property on Owner's behalf, and present to Owner for execution;
11. Collect application fees from prospective tenants; and
12. Perform other necessary services related to the leasing of the Property.

C. Recordkeeping: Broker will:

1. Maintain accurate records related to the Property and retain such records for not less than six (6) years;
2. File reports with the Internal Revenue Service which Broker may be required to file concerning funds received on behalf of Owner under this agreement (for example, Form 1099);
3. Send to Owner each month a statement of receipts, disbursements, and charges; and

4. Remit to Owner the funds collected by Broker that have been fully processed and cleared for Owner under this agreement, less authorized deductions, by the 20th of each month.

*Note: Owner is responsible to determine the treatment of expense payments in regards to their financial reports and taxes.

D. Security Deposits:

1. Broker will:
 - a. Maintain security deposits received from tenants in the trust account described under Paragraph 1A; and
 - b. in accordance with applicable law and the leases for the Property, account to the tenants for the security deposit, make lawful deductions from the security deposit, and return the security deposit balance to the tenants from the trust account.
2. After this agreement ends, Broker will deliver to Owner or the Owner's designee the security deposits held by Broker under the leases of the Property, less deductions authorized by this agreement, and will send written notices to the tenants that state:
 - a. That this agreement has ended;
 - b. The contact information for the Owner or the Owner's designee; and
 - c. That Owner is responsible for accounting for and returning the tenant's security deposit.
3. If Broker complies with this Paragraph 1D, Owner will indemnify Broker from any claim or loss from a tenant for the return of a security deposit. This Paragraph 1D survives termination of this agreement.

E. Performance Standard: Broker will:

1. Use reasonable care when exercising Broker's authority and performing under this agreement; and
2. Exercise discretion when performing under this agreement in a manner that Broker believes to be in Owner's interest, provided that Broker will treat any tenant honestly and fairly.

F. Deductions and Offset: Broker may disburse from any funds Broker holds in trust for Owner:

1. Any compensation due Broker under this agreement;
2. Any funds Broker is authorized to expend under this agreement; and
3. Any reimbursement Broker is entitled to receive under this agreement.

G. Insurance and Attorneys:

1. Broker may not file a claim for a casualty loss with the carrier insuring the Property. Broker may communicate with the carrier to facilitate the processing of any claim Owner may file or perform other matters that Owner instructs Broker to communicate to the carrier.

2. Broker may not directly or indirectly employ or pay a lawyer to represent Owner. Broker may communicate with Owner's attorney in accordance with Owner's instructions.
2. **RELATIONSHIP OF THE PARTIES:** This agreement does not create a partnership or joint venture between the parties. Broker is an independent contractor.
3. **LEGAL COMPLIANCE:** The parties will comply with all obligations, duties, and responsibilities under the fair housing laws and any other statute, administrative rule, ordinance, or restrictive covenant applicable to the use, leasing, management, or care of the Property.
4. **RESERVES:** Upon execution of this agreement, Owner will deposit the following amount with Broker to be held in a trust account as a reserve for Owner: \$ _____ (\$200 if not filled in or \$500 if Accolade is going to pay utilities for the Property). Broker may, at Broker's discretion, use the reserve to pay any expense related to the management of the Property (including but not limited to Broker's fees). If the balance of the reserve becomes less than the amount stated, Broker may: (a) deduct an amount that will bring the balance to the amount stated from any subsequent rent received on behalf of Owner and deposit the amount into the reserve; or (b) notify Owner that Owner must promptly deposit additional funds with Broker to bring the balance to the amount stated.
5. **ADVANCES:** Broker is not obligated to advance any money to Owner or to any other person.
6. **OWNER REPRESENTATIONS:**
 - A. General: Owner represents that:
 1. Owner has fee simple title to and peaceable possession of the Property and all its improvements and fixtures, unless rented, and the legal capacity to lease the Property;
 2. Owner is not bound by another agreement for the management of the Property that is or will be in effect during this agreement;
 3. If Broker has the authority to lease the Property, Owner is not bound by: (a) another agreement with another broker for the lease of the Property that will be in effect during this agreement; or (b) any agreement or covenant that prohibits Owner from leasing the Property;
 4. Owner is not delinquent in the payment of any property taxes, owners' association fees, property insurance, mortgage, or any encumbrance on or affecting the Property;
 5. The Property is not subject to the jurisdiction of any court; and
 6. All information related to the Property that Owner provides to Broker is true and correct to the best of Owner's knowledge.

- B. Property Condition: Except as stated below, in this agreement, or in any addendum, Owner is not aware of any:
1. Condition affecting the Property that materially affects the health or safety of any ordinary tenant;
 2. Environmental hazard on the Property; or
 3. Violation of any ordinance, statute restriction, or law related to the Property.
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7. **OWNERS COOPERATION:** Owner agrees to:
1. Cooperate with Broker to facilitate the management of the Property;
 2. Not deal with or negotiate with any tenant in the Property concerning any matter related to the management of the Property but refer all such dealings to Broker;
 3. Not to enter into a management agreement with another broker for the management of the Property to become effective during this agreement;
 4. Provide Broker with copies of any existing leases or rental agreements related to the Property;
 5. Provide Broker with keys and access devices to the Property;
 6. Provide Broker with copies of all warranties related to the Property or any item in the Property;
 7. Tender to Broker any security deposits paid by existing tenants in the Property;
 8. Complete any disclosures or notices required by law or a lease of the Property;
 9. Amend applicable notices and disclosures if a material change occurs during this agreement;
 10. Notify Broker if Owner becomes delinquent in the payment of: (a) any mortgage or other encumbrance secured by the Property; (b) property taxes; (c) property insurance; or (d) owners' association fees;
 11. Owner will maintain funds in the Agent's trust account equal to a minimum \$200 or as specified in paragraph 4;
 12. If Agent is to make mortgage payments, property tax or insurance payments, the Owner will maintain an additional reserve of \$ _____ in the Agent's trust account; and
 13. Funds under Agent's control, which are requested by Owner to be sent directly to a financial institution for deposit, must be accompanied by a pre-printed deposit slip or coupons.
8. **INSURANCE:** Owner will maintain insurance on the Property, including public liability insurance of not less than \$500,000.

9. **BROKER'S FEES:** This Paragraph 9 survives termination of this agreement with regard to fees earned during this agreement, which are not payable until after its termination. Broker may deduct any fees under this Paragraph 9 from any funds Broker holds in trust for Owner. If more than one property or unit is made part of and subject to this agreement, each of the provisions below will apply to each property or unit separately.
- A. Set-Up Fee: A one-time Set-Up Fee of \$500.
 - B. Management Fees: Each month the Owner will pay Broker 10% of gross income for monthly management with an overall minimum of \$50 per property.
 - C. Residential Lease Fee: Each time the Property is leased to a new tenant, Owner will pay Broker a leasing fee equal to ½ of the Rental Rate with a minimum of \$500. The leasing fees under this Paragraph 9C are earned and payable at the time the lease is executed.
 - D. Commercial Lease Fees: 6% of the life of the contract to lease a vacancy, with a \$1,000 minimum fee, payable at the commencement date.
 - 1. Property will be listed on the NWMLS and open to other participating members of the NWMLS to secure a tenant and the 6% fee will be split 50/50 between Accolade and the participating member/broker.
 - 2. A separate NWMLS listing agreement for any commercial vacancy is required to be filled in.
 - E. Renewal or Extension Fees and Renewals with Added Residents:
 - 1. Each time a tenant in the Property renews or extends a lease, Owner will pay Broker a renewal or extension fee equal to \$150. The renewal or extension fees under this Paragraph 9E are earned at the time the renewal or lease is executed by the parties to the lease and are payable at the time the renewal or extension is effective. For the purposes of this paragraph, a new lease for the same Property with the same tenant then occupying the Property is an extension or renewal. This Paragraph 9E does not apply to month-to-month renewals or month-to-month extensions.
 - 2. Commercial Property Renewals will be 3% for the life of the contract, payable at the renewal contract date.
 - 3. Adding Residents at the time of renewal is permitted but an additional \$350 Roommate addition fee is assessed.
 - F. Service Fees: In the event that the Owner shall request the Agent to undertake work exceeding the usual normal management, then a fee of \$50 per hour shall be charged to Owner. Normal management does not include: supervision of tenant improvements, activity related to the sale of the Property, refinancing, appraisals, fire restoration, major rehabilitations, insurance claims, obtaining tax advice, presenting petitions to planning or zoning committees. No fee will be

charged for minor cosmetic improvements, i.e. carpet replacement, painting, general maintenance, etc.

- G. Fees in the Event of a Sale: Should a Purchase and Sale Agreement be executed where Accolade is the implied Agent, a commission is due that will be negotiated at the time of the Agreement. If the property is actively listed for sale by another brokerage or the Owner has an agency relationship with another brokerage that they wish to use, this would not apply.
- H. Interest on Trust Accounts: Any trust account Broker maintains under this agreement may be an interest-bearing or income producing account. Broker may retain any interest or income from such accounts as compensation under this agreement.
- I. Termination Prior to Securing a Tenant: In the event that Owner terminates this agreement prior to securing a tenant in the vacant property, Owner will pay to Agent as liquidated damages \$500.
- J. Administrative Fees: If Broker collects administrative charges from tenants or prospective tenants, including but not limited to, application fees, returned check fees, or late charges (as authorized under Paragraph 1A) Broker will retain such fees as compensation under this agreement. The administrative fees under this Paragraph 9J are earned and payable at the time Broker collects such fees.
- K. Fees Related to Legal Proceedings: If Owner requests or instructs Broker to appear in any legal proceeding or deposition related to the Property (including, but not limited to, evictions, tenant disputes, security deposit disputes, and suits for damages), Owner will pay Broker \$50 per hour for Broker's time expended in such matters and in preparation of such matters. Fees under this Paragraph 9K are earned at the time the services are rendered and payable upon Owners receipt of Broker's invoice.

10. FUNDS FOR INVOICES RECEIVED AFTER TERMINATION: Agent may withhold funds for up to sixty (60) days after the end of the month in which this agreement is terminated, in order to pay bills previously incurred but not yet invoiced and to close accounts. Upon termination of this agreement, Owner shall assume the obligations of any contract or outstanding bill executed by Agent under this agreement for and on behalf of Owner, and responsibility for payment of all unpaid bills.

11. LIABILITY AND INDEMNIFICATION: Agent is not responsible or liable in any manner for:

- 1. Personal injury to Owner or any tenant resulting from acts of third parties;

2. Loss or damage of personal or real property due to vandalism, theft, or freezing/leaking water pipes; or
3. Late fees Owner incurs to any creditor caused by any late payments by any tenant; or
4. Any lease violations or defaults by any tenant.

12. **DISTRESSED HOMEOWNER:** Owner acknowledges that this is not a distressed property. If this Property becomes a distressed property while under the management of Accolade, Owner will notify Accolade immediately.

EXHIBIT "B"

PROOF OF INSURANCE

The Contractor shall secure and maintain in effect at all times during performance of the Work such insurance as will protect Contractor, its Support and the Additional Insured's from all claims, losses, harm, costs, liabilities, damages and expenses arising out of personal injury (including death) or property damage that may result from performance of the work or this Agreement, whether such performance is by Contractor or any of its Support.

All insurance shall be issued by companies admitted to do business in the State of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports unless otherwise approved by the County. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

The Contractor shall provide proof of insurance for:

- 1) General Liability Insurance.
 - Coverage limits not less than:
 - \$1,000,000 per occurrence per project
 - \$2,000,000 general aggregate
 - \$1,000,000 products & completed operations aggregate
 - \$1,000,000 personal and advertising injury, each offense
 - Certificate Holder – Kittitas County
 - The Certificate must name the County as additional insured as defined in the Agreement
 - Sixty (60) days written notice to the County of cancellation of the insurance policy.

- 2) Workers' Compensation.
 - Workers' Compensation in amounts required by law.

Contractor shall furnish the County a Certificate of Insurance with Endorsement as evidence that policies providing insurance required by this Agreement are in full force and effect. Contractor hereby waives all rights of recourse, including any right to which another may be subrogated, against Kittitas County for personal injury, including death, and property damage. Contractor's insurance policies required above shall be primary insurance and shall be non-contributing with any other insurance maintained by Kittitas County.

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee-owned tools, machinery, equipment, or

motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

The Contractor shall have sole responsibility for ensuring the insurance coverage and limits required are obtained by subcontractors.

NOTE: No contract shall form until and unless a copy of the Certificate of Insurance with Endorsement, properly completed and in the amount required, is attached hereto.