

MANAGEMENT AGREEMENT

entered into between

THE OWNERS

and

THE ACRES HOMEOWNERS' ASSOCIATION

and

PROPCENTRAL PROPRIETARY LIMITED



Index

MANAGEMENT AGREEMENT

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MANAGEMENT AGREEMENT

1 INTERPRETATION

- 1.1 In this Agreement, unless inconsistent with or otherwise indicated by the context –
- 1.1.1 “**Acres Estate**” means the Acres Estate, a residential housing development at Erf 645 to Erf 821, Pearl Valley Estate, Paarl, situated in the Drakenstein Municipality, Administrative District Paarl, Western Cape Province as set out in the General Plan (No. 597/2020) attached hereto as **Appendix 3**;
- 1.1.2 “**the/this Agreement**” means the agreement as set out in this document and the appendices hereto;
- 1.1.3 “**BCEA**” means the Basic Conditions of Employment Act No 75 of 1997 as amended or any succeeding legislation;
- 1.1.4 “**Business Day**” means any day that is not a Saturday, Sunday or South African public holiday;
- 1.1.5 “**Commencement Date**” means the signature date hereof or, in the case of each Owner, the date on which the Owner acquires ownership of an erf in the Acres Estate;
- 1.1.6 “**Constitution**” means the constitution of the HOA, as amended and approved by the relevant local authority (Drakenstein Municipality) from time to time;
- 1.1.7 “**Developer**” means the term as it is defined in the Constitution, being Safariland Devco (Pty) Ltd, a private company with limited liability duly incorporated in accordance with the laws of the Republic of South Africa or its successors in title or assignees;

- 1.1.8 “**Disbursements**” means all expenses incurred by the Manager to the extent that such expenses relate to the Services and as contemplated in more detail in **Appendix 1** hereto;
- 1.1.9 “**EEA**” means the Employment Equity Act No 55 of 1998 as amended or any succeeding legislation;
- 1.1.10 “**Force Majeure**” means an event or circumstance (i) beyond the reasonable control of the affected Party, (ii) that is not caused by the fault (as such term is understood in the law of delict) of such Party, (iii) that could not reasonably have been foreseen by such Party as at the Signature Date and could not reasonably have been avoided or overcome by it, and (iv) that renders such Party unable to perform all or part of its obligations in terms of this Agreement or delays such Party from performing all or part of its obligations in terms of this Agreement and such events shall include, but not be limited to –
- 1.1.10.1 fire, flood, storm, lightning, earthquake or any natural disaster, civil disturbance, explosion, power failure or reduction of power supply, acts, orders or regulations of any governmental or regulatory authority, agency or department, lack or shortage of materials or inability to procure equipment and material;
- 1.1.10.2 war, invasion, act of a foreign enemy, hostilities (whether war be declared or not), terrorism, civil war, rebellion, revolution, mobilisation, requisition, embargo, insurrection, military or usurped power, criminal action, theft or vandalism;
- 1.1.10.3 ionising radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosives, or other hazardous properties of any explosive nuclear assembly or nuclear components thereof; and

- 1.1.10.4 strikes, lock-outs and labour disputes causing cessation (whether complete or partial) of work, interruption or slow down of work, whether of the affected Party or the service provider of such Party;
- 1.1.11 “**Golf Villa**” means the golf villas constructed by the Developer on erven in the Acres Estate which shall be owned by the Owners and shall have the Use Rights made available to Owners;
- 1.1.12 “**HOA**” means the Acres Home Owners’ Association created in terms of the Land Use Planning Act, 2014, read with the Drakenstein By-law on Municipal Land Use Planning, 2018;
- 1.1.13 “**LRA**” means the Labour Relations Act No 66 of 1995 as amended or any succeeding legislation;
- 1.1.14 “**Manager**” means Propcentral Proprietary Limited, registration number 2016/026258/07, a private company duly incorporated in accordance with the laws of the Republic of South Africa;
- 1.1.15 “**Owners**” means the owners of Golf Villas at the Estate, which owners shall sign a deed of adherence to this Agreement prior to becoming an owner of a Golf Villa;
- 1.1.16 “**the Parties**” means the Manager, the HOA and the Owners and “**the Party**” means any one of them as the context may require;
- 1.1.17 “**Pearl Valley HOA**” means the Pearl Valley Golf and Country Estate Home Owners Association, established in terms of the Land Use Planning Ordinance, 1985;
- 1.1.18 “**Service Review Meetings**” means the meetings held between the Services Manager and a representative of each of the Owners for the purposes of assessing and reviewing the rendering of the Services, as more fully dealt with in clause 7 below;

- 1.1.19 **“Services”** means the management services to be rendered by the Manager to the Owners, as contemplated in clause 5 below;
- 1.1.20 **“Services Manager”** means the Manager’s authorised representative referred to in clause 6 below;
- 1.1.21 **“the Signature Date”** means the date on which this Agreement is signed by the Party signing last in time;
- 1.1.22 **“Trustees”** means the trustees of the HOA from time to time;
- 1.1.23 **“Use Rights”** means the rights of each shareholder of an Owner which it will be entitled to enjoy in respect of the Golf Villa for so long as it holds an ordinary share in the Owner and is not in breach of any provision of the memorandum of incorporation of the Owner, the use agreement concluded between the Owner and its shareholders, the Constitutions and the rules and code of conduct promulgated thereunder, or any other agreement to which a shareholder of the Owner is a party in respect of its shareholding in the Owner or which it has agreed to be bound to, which rights are as follows –
- 1.1.23.1 use of the Golf Villa on the terms set out in the aforesaid use agreement; and
- 1.1.23.2 subject to the provisions of the use agreement and the memorandum of incorporation, when residing at the Golf Villa, pre-paid golf at Pearl Valley Jack Nicklaus Signature Golf Course (for such number of memberships of the club as per the provisions of the memorandum of incorporation).
- 1.1.24 **“Val de Vie HOAs”** means, collectively, the Val de Vie Winelands Lifestyle Estate Home Owners Association and the Val de Vie II Home Owners Association, established in terms of the Land Use Planning Ordinance, 1985;
- 1.1.25 **“VAT”** means Value-Added Tax payable in terms of the VAT Act;

- 1.1.1 “**VAT Act**” means the Value Added Tax Act, 1991, as amended.
- 1.1.26 words importing the singular shall include the plural and *vice versa*;
- 1.1.27 words importing natural persons includes legal persons and partnerships and *vice versa*;
- 1.1.28 words importing one gender includes the other genders;
- 1.1.29 any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time; and
- 1.1.30 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 1.2 The clause headings in this Agreement have been inserted for reference purposes only and shall not affect the interpretation of any provision of this Agreement.
- 1.3 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which the sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 1.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in this interpretation clause.
- 1.5 If any period is referred to in this Agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the day shall be the next succeeding Business Day.

- 1.6 The rule of construction that the contract shall be interpreted against the Party responsible for the drafting or preparation of this Agreement, shall not apply.
- 1.7 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.
- 1.8 Expressions defined in this Agreement shall bear the same meanings in any annexure hereto which does not contain its own definitions.

2 INTRODUCTION

- 2.1 The Owners require management services to be rendered in respect of the Golf Villas.
- 2.2 The Manager has agreed to render the management services in respect of the Golf Villas in favour of the Owners.
- 2.3 The Owners wish to appoint the Manager to perform the Services and the Parties accordingly agree as set out herein.

3 APPOINTMENT

- 3.1 The Owners hereby appoint the Manager and the Manager accepts such appointment to render the Services to the Owners on the terms and conditions set out in this Agreement.
- 3.2 The appointment of the Manager shall be subject to such approvals and directives as may reasonably be determined by the Developer from time to time.
- 3.3 The Services shall be provided by the Manager at the business premises of the Manager or at such other location as may be agreed to by the Parties from time to time.

4 DURATION

- 4.1 This Agreement shall bind the Parties from the Commencement Date and shall endure for a period of 1 (one) calendar year and shall renew automatically for a further calendar year after the expiry of the previous calendar year, unless the Agreement is cancelled in accordance with the provisions of clauses 4.2, 16 or 18 below.
- 4.2 The Manager shall be entitled to terminate this Agreement by giving the Owners not less than 6 (six) months' written notice to this effect. The provisions of clause 16.1 and 16.2 shall apply in this regard.
- 4.3 The termination or failure or lapsing of this Agreement, for whatsoever reason, shall not affect any rights or obligations of any of the Parties which may have arisen or are in existence at the date of such termination, failure or lapsing and which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.

5 SERVICES

- 5.1 The Services shall comprise the management services as set out below.
- 5.2 **Golf Villas**
- The Manager shall render the following services in respect of the Golf Villas –
- 5.2.1 arrange and oversee landscaping at the Golf Villas;
- 5.2.2 arrange and oversee the regular domestic cleaning of the Golf Villas;
- 5.2.3 attend to all maintenance and repairs required from time to time, including in respect of furniture, fixtures, fittings and equipment within the Golf Villas;

- 5.2.4 attend to insuring the Golf Villa and making payment of the insurance premiums in this regard;
- 5.2.5 facilitate any disputes which arise in respect of the Golf Villa;
- 5.2.6 attend to ensuring that the Golf Villa has access to water and electricity and making payment of the charges to the Local Authority in this regard;
- 5.2.7 arrange and make payment of the charges in respect of the Fibre serving the Golf Villas;
- 5.2.8 liaising with the Local Authorities regarding any matters which arise in respect of the Golf Villas;
- 5.2.9 retain all documentation, warranties, contracts and information in respect of each Golf Villa; and
- 5.2.10 attend to the maintenance of the golf carts at the Golf Villa.

5.3 **Owners**

The Manager will render the following Services in favour of the Owners -

- 5.3.1 be the direct liaison between the Owners, the Owners guests, invitees, shareholders, directors, employees and assigns (collectively falling within the definition of “**Owner**” for purposes of this clause) and the HOA, the Pearl Valley HOA and the Val de Vie HOAs;
- 5.3.2 assist with co-ordinating the use rights at the Golf Villas of each of the Owners’ shareholders;
- 5.3.3 attend to all company administration requirements in respect of the companies which own Golf Villas from time to time;
- 5.3.4 attend meetings of the shareholders of the Owners, where applicable, and prepare minutes in this regard;

- 5.3.5 attend to the financial administration of the Owners, where applicable; and
- 5.3.6 attend to all queries raised by the Owners.
- 5.4 In providing the Services, the Manager shall –
 - 5.4.1 use the services of its own staff to perform its obligations under this Agreement, which staff shall at all times remain employed by the Manager who shall retain all obligations in respect of such staff in its capacity as employer; and
 - 5.4.2 devote such of its time and attention as is reasonably required to duly and faithfully perform all its obligations under this Agreement.
- 5.5 It is expressly recorded that the Services of the Manager shall be limited to those of general maintenance and management of the Golf Villas. Should any damage be caused to the Golf Villa or any furniture, fixtures and equipment therein as a result of the conduct of the Owner, its directors, shareholders, invitees or contractors, the Owner shall be liable for the costs of repair in this regard. If the Manager is requested to assist with such repairs or replacement, the Manager shall be entitled to charge the Owner therefor in addition to the service fees payable to the Manager herein.

6 SERVICES MANAGER

The Manager's managing director, being Callie Steyn as at the Signature Date, is designated to head the rendering of the Services and to liaise with the Owners with regard thereto. The designation aforesaid may be changed from time to time by the Manager.

7 SERVICE REVIEW

- 7.1 Service Review Meetings between a nominated representative of each of the Owners and the Services Manager shall be held on request by a majority of the Owners at such date and time as the Parties may decide.
- 7.2 The Services Manager and each Owner's representatives will ensure that they have at their disposal at the aforesaid meetings all information and personnel necessary for a meaningful discussion of the items on the agenda.
- 7.3 The proceedings of the Service Review Meetings will be minuted and distributed to all the relevant persons as soon as reasonably possible after the meeting concerned, for prompt attendance thereto.

8 APPOINTMENT OF THIRD PARTIES

The Parties agree and record that the Manager shall be entitled to enter into agreements with third parties on arm's length terms in terms whereof any of the Services are outsourced to such third party/ies.

Initial_____

9 CONSIDERATION AND PAYMENT

9.1 Consideration

- 9.1.1 The Manager shall invoice and the Owners shall pay the fees and Disbursements in accordance with **Appendix 1**.
- 9.1.2 **The fees payable by the Owners shall be exclusive of the levies charged by the HOA to the Owner, which shall be payable directly by the Owners to the HOA, and all rates, taxes and utility charges, which shall be paid directly to the Local Authority and/or service providers. The Manager may agree to the collection of the levy amount from time to time and make payment of such amount received in this regard to the HOA. In**

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this event, the HOA agrees that it shall only be entitled to proceed against an Owner for payment of levies if the Owner has not made payment of such levies to the Manager.

INITIAL _____

9.1.3 Save as contemplated herein to the contrary, all amounts payable in terms of this Agreement shall exclude VAT, withholding taxes, duties, levies, insurance or any statutorily imposed tax or levy to the extent applicable, which shall, if applicable, be paid by the Owners simultaneously with the payment of any amount payable in terms of this Agreement.

9.2 Payment

9.2.1 The consideration payable to the Manager in terms of clause 9.1 is payable by the Owners in accordance with **Appendix 1** hereto.

9.2.2 All amounts due and payable in terms of this Agreement shall be paid free of exchange and without any deduction or set-off (save in terms of clause 15.2) whatsoever by electronic transfer into a bank account nominated by the Manager from time to time.

10 NATURE OF RELATIONSHIP

10.1 The Manager is appointed as an independent contractor.

10.2 The Manager will carry or be responsible for any workman's compensation insurance or any health or accident insurance to cover its employees. The Owners shall not at any stage be liable for any form of loss, damage or personal injury, of whatsoever nature, incurred by the Manager's officers, employees, servants, agents or representatives, unless otherwise agreed or unless same arises from an Owner's negligence or wilful misconduct.

10.3 Any dispute, of whatsoever nature, between the Manager and its employees will not be the Owner's responsibility or affect an Owner in any

way. The Manager hereby indemnifies and holds the Owners harmless against any claim, including, but not limited to, any claim in terms of the LRA, BCEA, EEA or any form of minimum standard legislation that employees of the Manager may have against the Manager at any time, but which are claimed or temporarily instituted against the Owners or any one of them as the case may be.

10.4 It is specifically recorded that the Manager shall be solely responsible for the payment of income tax on behalf of its employees.

10.5 For the avoidance of doubt -

10.5.1 the only relationship between the Manager and the other Parties in respect of the rendering of the Services shall be that of independent contractor and neither shall be responsible for any obligation, expense, action or omission of the other or any employee or representative of the other, except as expressly set forth herein;

10.5.2 no agency, employment, partnership, distributorship or joint venture shall be deemed to exist between the Parties. The business operated by each is separate and apart from that operated by the other. Neither shall have the authority to act for or bind the other, save as contemplated or expressly set forth in this Agreement; and

10.5.3 any person employed by the Manager is not an employee of an Owner and the Manager hereby indemnifies the Owners against any claim, allegation or finding to the effect that an Owner is regarded as employer, co-employer or establishing a temporary employment service in respect of the Manager's employees or that any such person is an employee or agent of an Owner or any claim by such person(s) relating to or arising out of the Services performed by an Owner; and

- 10.5.4 the business operated by each Party is separate and apart from that operated by the other. Neither shall have the authority to act for or bind the other.

11 WARRANTIES BY THE MANAGER

- 11.1 The Manager hereby declares and warrants to and in favour of each Owner that –
- 1.1.2 the Manager has the necessary capacity, skill, expertise, ability and competencies to render and perform the Services in order to fulfil all its obligations in terms of this Agreement;
- 1.1.3 the Services shall be rendered timeously and properly with a reasonable degree of skill and care required;
- 1.1.4 the Manager shall allocate sufficient time and attention to the rendering of the Services so as to comply with its obligations in terms of this Agreement; and
- 1.1.5 the Manager shall provide the Services in such a manner in order to achieve the objectives relevant to the proper management of the Acres Estate.

12 UNDERTAKINGS BY THE OWNERS

Each Owner hereby undertakes to and in favour of the Manager that the Owner and its duly authorised representatives shall at its cost co-operate with the Manager in such a manner which will enable the Manager to render the Services and perform its obligations under this Agreement timeously and in accordance with the provisions of this Agreement. Without limiting the aforesaid, each Owner shall at its own costs –

- 12.1 provide the Manager with unrestricted access to its Golf Villa for the duration of this Agreement in order to enable the Manager to render the Services;**

- 12.2** so as not to delay the Services and within a reasonable time provide the Manager with such information and documentation regarding or pertaining to the Golf Villa, the business of the Owner, its shareholders or directors as may be required by the Manager to enable the Manager to render the Services;
- 12.3** authorise the Manager to act as its agent, if necessary, for such purposes as are necessary for the Manager to render the Services and perform its obligations pursuant to this Agreement;
- 12.4** ensure that it renders to the Manager all the assistance which the Manager shall require to procure any necessary licences and permits from municipal, governmental and other authorities having jurisdiction over Acres Estate so as not to delay the Manager in the performance of its Services; and
- 12.5** designate in writing an individual to act as its representative, such person to have complete and exclusive authority to receive information from the Manager and shall give prompt written notice to the Manager whenever an Owner or its representative become aware of any defects or deficiencies in the Services.

INITIAL _____

13 SURRENDER OF DOCUMENTS

The Parties agree that any and all documents belonging to a Party which came into the possession of the other Party at the commencement of, or at any time during the currency of, this Agreement, shall be returned to the first Party at the termination of this Agreement, or on demand by the first Party, and the other Party shall not retain copies or extracts of such documents without prior consent of the first Party, which consent shall not be unreasonably withheld nor delayed.

14 CONFIDENTIALITY

- 14.1 Each Party shall ensure that its employees and agents at all times treat the business processes and confidential information of the other Party, and the terms of this Agreement, (collectively the "**Confidential Information**") as confidential and undertakes not to disclose to any third party any such information, except insofar as such disclosure is authorised in writing by all Parties (which authorisation shall not be unreasonably withheld), is ordered by a court of law or is otherwise essential for application in judicial process or the obtaining of legal advice or is essential for financial reporting, and the Party required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure and to limit, as far as reasonably possible, the extent of such disclosure and, additionally, has given the other Party reasonable notice of the required disclosure and a reasonable opportunity to participate in opposing, preventing or limiting the disclosure.
- 14.2 Notwithstanding clause 14.1, the Parties shall be entitled to disclose Confidential Information to their officers, directors, employees, consultants and professional advisors who:
- 14.2.1 have a need to know (and then only to the extent that each such a person has a need to know);
 - 14.2.2 are aware that the Confidential Information should be kept confidential;
 - 14.2.3 are aware of the disclosing Party's obligations in relation to such information in terms of this Agreement; and
 - 14.2.4 have been directed by the disclosing Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.
- 14.3 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not

extend to information that (i) is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such information is known to be in the lawful possession or control of that Party, or (ii) is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who disclosed such Confidential Information.

15 LIMITATION OF THE MANAGER'S LIABILITY

15.1 The Manager shall effect and maintain, throughout the currency of this Agreement, at its own expense, public liability insurance in an amount of not less than R5,000,000 (five million Rand) and pay all premiums in respect of such policy from time to time as they fall due.

15.2 Confirmation of availability of the aforesaid insurance shall be made available to an Owner within 5 (five) days of such written request. Should the Manager not furnish proof of insurance and/or proof of payment of such insurance premiums, any Owner shall be entitled, without prejudice to any of its other rights, to effect such insurance on the Manager's behalf and recover the costs thereof from the Manager by way of set-off or otherwise.

15.3 The Manager's total aggregate liability under this Agreement and in respect of the transactions contemplated in this Agreement (including in respect of a breach of any warranties, representations, undertakings or indemnities given by the Manager to the Owners), howsoever arising, shall be capped at an aggregate amount equal to 100% of the fees payable and paid to the Manager by the Owners pursuant to this Agreement.

15.4 In no event will the Manager be liable for -

15.4.1 any loss of profits, loss of revenue or savings, loss of goodwill, loss of data, or loss of business opportunities, whether direct or indirect; or

15.4.2 any indirect, incidental, special, punitive, exemplary or consequential losses of any kind.

15.5 The provisions of clauses 15.3 and 15.4 above in no way limits or exempts the Manager from any loss suffered by an Owner as a result of gross negligence or wilful misconduct on the part of the Manager.

15.6 To the extent that any conflict exists between the provisions of this clause 15 and any other provisions of this Agreement, the provisions of this clause 15 shall prevail and be implemented.

INITIAL_____

16 TERMINATION

16.1 If the Agreement is terminated in terms of clause 4.2, the Owners' representatives will, by majority resolution, appoint a new manager on the same or substantially similar terms to those provided for herein. The resolution of the majority will bind all Owners who shall be bound to comply with the provisions of the new management agreement and appoint the new manager. Each Owner will do all such actions and sign all such documentation as may be required to give effect to the aforesaid. This clause shall survive the termination of this Agreement.

16.2 Notwithstanding the aforesaid, it is expressly recorded that the Developer's consent in writing shall be required for the appointment of a new manager by the owners.

INITIAL_____

16.3 Notwithstanding anything to the contrary herein contained, in the event that –

- 16.3.1 a provisional order or final order of liquidation is granted by a court of competent jurisdiction against a Party or a Party is placed under business rescue;
- 16.3.2 a meeting of the shareholders/members of a Party is convened for the purpose of its voluntary winding-up or a resolution to that effect is passed; or
- 16.3.3 any final judgment of any court or arbitration award against a Party remains unsatisfied for a period of 14 (fourteen) days after it has been granted against that Party and, for the purposes of this clause, a final judgment means a judgment (i) which is not appealable; or (ii) which is appealable but in respect of which the period for the lodging of an appeal has lapsed and that Party has failed to institute appeal proceedings; or (iii) which is not capable of rescission; or (iv) which is capable of rescission but in respect of which the period for applying for rescission has lapsed and that Party has failed to apply for rescission or that Party has applied for rescission of such judgment and the application for rescission has been denied,

then, in any such event, any other Party shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement or in law, on account thereof, to terminate this Agreement in respect of such Party summarily or with immediate effect. Termination aforesaid will be in respect of the relevant Party only and shall not include the remaining Parties who will continue to be bound hereto and the provisions of clause 16.1 shall apply where the relevant Party is the Manager.

- 16.4 The termination of this Agreement, for whatever reason, shall not in any manner whatsoever affect any rights or obligations of the Parties that may have arisen or are in existence at the date of such termination.

17 FORCE MAJEURE

- 17.1** Notwithstanding anything to the contrary contained in this Agreement, the provisions of this clause 17, shall apply in the event of *Force Majeure*.
- 17.2** Should any of the Parties be unable to perform, or prevented from performing, any or all of its obligations in terms of this Agreement by reason of *Force Majeure*, such Party (“the Affected Party”) shall not be considered to be in default or in breach of the relevant affected obligations and shall be excused from any liability for non-performance of the affected liabilities, whether direct or contingent or of any nature whatsoever and subject to 17.4 below, the Affected Party shall be entitled to such extension of time as may *be* reasonably required by it for performance of its obligations in terms of this Agreement.
- 17.3** The Affected Party shall advise the other Party (“the Other Party”) in writing as soon as reasonably possible after becoming aware of the *Force Majeure* event, stating the nature, extent and expected duration of same and the Affected Party shall use all reasonable endeavours to minimise the effect of any delay occasioned thereby and, subject to clause 17.4 below, shall continue with the performance of its affected obligations in terms of this Agreement at the earliest possible opportunity.
- 17.4** The burden of proof of the existence and extent of the alleged *Force Majeure* event and the enforceability thereof shall rest on the Affected Party.
- 17.5** The Other Party shall within 7 (seven) days of receipt of the aforesaid written notice, notify the Affected Party of its acceptance or otherwise of the claim. In the event of the Other Party failing to notify the Affected Party as aforesaid, the Other Party shall be deemed to

have accepted the Affected Party's claim of the existence of the *Force Majeure* event.

17.6 Notwithstanding anything to the contrary contained herein, should the event of *Force Majeure* continue for a period of 30 (thirty) days from the date on which the Other Party has accepted the existence thereof in terms of clause 17.5 above, either Party shall be entitled to terminate this Agreement with immediate effect.

INITIAL _____

18 BREACH

18.1 If any Party ("**the Defaulting Party**") commits a breach of any of the material provisions of this Agreement and fails to remedy such breach within 10 (ten) Business Days of receipt of written notice from the other Party ("**the Innocent Party**") calling upon it to do so then the Innocent Party shall be entitled, without prejudice to any other rights which it may have in terms of this Agreement and/or at law to –

18.1.1 obtain an order against the Defaulting Party for specific performance, with or without claiming damages; and

18.1.2 claim such damages as it may have suffered in lieu of specific performance together with all amounts owing under or in terms of this Agreement.

18.2 In the event that the Manager is in breach of any of the provisions of his Agreement or if it is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Owner may, without notice, cancel this Agreement and in such event the Managing Agent shall have no claim whatsoever against the Trustees and/or the Owner as a result of such cancellation.

19 DISPUTE RESOLUTION

- 19.1 Any Party may demand that a dispute be determined in terms of this clause 19 by written notice given to the other Parties in accordance with the Expedited Rules of the Arbitration Foundation of Southern Africa (“**AFSA**”).
- 19.2 This clause shall not prevent any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction, pending the decision of an arbitrator.
- 19.3 The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should either Party, by written notice, require the arbitration to be held on an urgent basis. In such event either Party may apply to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.
- 19.4 The arbitration shall be held –
- 19.4.1 at Cape Town;
- 19.4.2 with only the legal and other representatives of the Parties to the dispute present thereat; and
- 19.4.3 otherwise in terms of the Arbitration Act, No. 42 of 1965 (“**Arbitration Act**”), unless otherwise provided for herein.
- 19.5 The arbitrator shall be a practising advocate of the Cape Bar of at least ten years’ standing, appointed by agreement between the parties to the dispute, subject to clause 19.6.
- 19.6 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 19.1, the arbitrator shall be appointed by the Chairperson of the Cape Bar Council (or by AFSA if the Cape Bar Council no longer exists), at the request of either Party to the dispute.
- 19.7 The Parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to in clause 19.8.

- 19.8 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court referred to in clause 19.7, at the instance of any of the parties to the dispute.
- 19.9 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 19.10 It is recorded that it is the intention of the Parties, that any dispute referred to arbitration in terms of clause 19.1 shall be resolved strictly in accordance with the provisions of this clause 19. The Parties accordingly agree and undertake as follows -
- 19.10.1 that it shall not make any application to Court as contemplated in terms of section 3(2) of the Arbitration Act;
- 19.10.2 that it shall not make any application to court as contemplated in terms of section 20(1); and
- 19.10.3 the periods set out in section 23 of the Arbitration Act shall not be applicable to any arbitration proceedings arising out of this Agreement.

20 NOTICES AND DOMICILIA

- 20.1 Each of the Parties choose as *domicilia citandi et executandi* their respective addresses set out in this clause for the purposes of the giving of any notice, the serving of any process and for any other purpose arising out of or in connection with this Agreement.
- 20.2 Each of the Parties shall be entitled from time to time to vary its *domicilia citandi et executandi* to any other address within the Republic of South Africa which is not a post office box or *post restante*.
- 20.3 For purposes of this Agreement the Parties' respective addresses shall be -

- 20.3.1 the Owners at the Polo Pavilion, Val de Vie Estate, Paarl,
Email: As provided in each deed of adherence;
- 20.3.2 the HOA at the Management Hub at the Yard, Val de Vie Estate,
Paarl
Email: sarel.rossouw@valdevie.co.za
- 20.3.3 the Manager at 7 Val de Vie Estate, Paarl,
Email: callie@propcentral.co.za.
- 20.4 Any notice given in terms of this Agreement shall be in writing and shall -
- 20.4.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;
- 20.4.2 if transmitted by electronic mail, be deemed to have been received by the addressee on the first Business Day after transmission;
- 20.4.3 if sent by courier be deemed to have been received on the date of delivery by the courier service concerned,
- unless the contrary is proved.
- 20.5 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from the other including by way of facsimile transmission or electronic mail shall be adequate written notice or communication to such Party.

21 SEVERANCE

Each of the provisions of this Agreement is separate and severable and enforceable accordingly. If any such term or condition is or becomes unenforceable for any reason whatsoever, that term or condition is severable

from and shall not affect the validity of any other term or condition contained in this Agreement.

22 OPERATION

- 22.1 The expiration, cancellation or other termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after such expiration, cancellation or other termination or which of necessity must continue to endure after such expiration, cancellation or other termination, notwithstanding that the relevant clause may not expressly provide for such continuation.
- 22.2 If the operation of this Agreement is suspended or conditional upon the happening of any event and if any obligation or restriction imposed on the parties or any of them is clearly intended to be implemented and given effect to notwithstanding the fact that this Agreement in its entirety may at that time not yet be unconditional, then the relevant obligation or restriction shall nevertheless apply and be given effect to, and the relevant provisions shall create binding obligations on the parties.

23 GENERAL

- 23.1 This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof and save as may be expressly set out herein, no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.
- 23.2 No indulgence, leniency or extension of time which any Party may give or allow to the other Party in respect of the performance of any obligation hereunder, shall in any way prejudice the Party giving or allowing the indulgence, leniency or extension or preclude such Party from exercising any of its rights and enforcing the obligations of the other Party in terms of this Agreement.

23.3 No addition to, alteration, cancellation, variation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by a majority of the Owners and the Manager or their duly authorised representatives at an annual general meeting or at such other meeting called by either an Owner or the Manager for this purpose. It is expressly recorded that the provisions of the Electronic Communications and Transactions Act No. 25 of 2002 shall not apply to the provisions of this clause.

24 CESSION AND ASSIGNMENT

No Party shall be entitled to cede, assign or delegate any of his rights and/or obligations in terms of or arising from this Agreement to any third party without the prior written consent of the other Party.

25 SIGNATURE

25.1 This Agreement is signed by the Parties on the dates and at the places indicated opposite their respective names.

25.2 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

25.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

DRAFT – NOT FOR SIGNATURE

PROPCENTRAL (PTY) LTD

Date:

Place:

(Duly authorised)

DRAFT – NOT FOR SIGNATURE

**THE ACRES HOME OWNERS
ASSOCIATION**

(Duly authorised)

Date:

Place:

CONSIDERATION & PAYMENT**1 FEE**

- 1.1 Each Owner shall be liable for payment of an amount equal to R3,000 (excluding VAT) per month, payable on or before the last day of each month against receipt of an invoice issued by the Manager.
- 1.2 The first fee shall be due by the Owner on the last day of the month in which it acquired ownership of the Golf Villa and shall be pro-rated to take account of the number of days from the date of transfer to the last day of the relevant month.
- 1.3 The fee payable by the Owner shall escalate at such rate as is determined by the Manager from time to time.
- 1.4 All Disbursements incurred by the Manager in rendering the Services provided for herein shall be payable by the Owners, or any one of them as the case may be, which disbursements include but are not limited to cleaning fees, insurance, landscaping fees, fees paid by the Manager for utilities and services to the Golf Villas and all such other disbursements incurred by the Manager in rendering the Services, simultaneously with payment of the Manager's fees provided that the Manager has provided the Owners with proof of the disbursement incurred.

DEED OF ADHERENCE

The undersigned, _____ ("**the Owner**") agrees to become a Party to the management agreement concluded between the Acres Home Owners Association ("**HOA**") and Propcentral (Pty) Ltd, which agreement to become a party the Owner acknowledges is a requirement to acquiring ownership of a Golf Villa in the Acres Development.

Upon signature hereof, the Owner agrees to be bound to the HOA, the Manager and other owners who have signed deeds of adherence on substantially the same terms set out herein. The Owner confirms that it has read the provisions of the Management Agreement and agrees to the terms and conditions provided for therein.

The Owner's details are as follows –

Full name: _____

Registration number: _____

Address: _____

Email: _____

Owner's Representative: _____

Property: _____

Signed at _____ on _____

OWNER

(Duly Authorised)

GENERAL PLAN