

# **PROPERTY MANAGEMENT AGREEMENT**

entered into by and between

**PASSENGER RAIL AGENCY OF SOUTH AFRICA**

**(Acting through its**

**CORPORATE REAL ESTATE SOLUTION division)**

**("PRASA CRES")**

And

**??**

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## 1 PARTIES

1.1 The Parties to this Agreement are –

1.1.1 PRASA, acting through its PRASA CRES division; and

1.1.2 ??

1.2 The Parties agree as set out below.

## 2 INTERPRETATION

2.1 In this Agreement, unless inconsistent with or otherwise indicated by the context –

2.1.1 “**Agreement**” means the agreement as set out in this document, including all appendixes hereto;

2.1.2 “**Auditors**” means the duly appointed auditors of PRASA CRES from time to time;

2.1.3 “**BBBEE Act**” means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003 (as amended or substituted from time to time);

2.1.4 “**Black Person**” shall have the meaning ascribed to it under Code 000 of the Codes, being African, Coloured or Indian persons who are natural persons and citizens of the Republic of South Africa by birth, descent or naturalisation;

2.1.5 “**Business Day**” means a day which is not a Saturday, Sunday or an official public holiday in the Republic of South Africa;

2.1.6 “**Codes**” means the Department of Trade and Industry’s Broad-Based BEE Codes of Good Practice issued in terms of the BBBEE Act (as amended or substituted from time to time);

- 2.1.7 “**Employees**” means on-site employees duly employed ?? that directly work on the Managed portfolio including staff transferred to PRASA in terms of section 197 of the Labour Act, no 66 of 1995, whose costs are recovered from PRASA CRES as provided in clause 7.5.6;
- 2.1.8 “**External Broker**” means an independent broker holding a valid and current fidelity fund certificate in terms of the Estate Agency Affairs Act, No. 112 of 1976 who submits a leasing proposal for vacant space in the managed portfolios to ?? or PRASA CRES;
- 2.1.9 “**Financial Year**” means PRASA CRES financial year end, being 31 March or such other financial year end as PRASA CRES may advise in writing from time to time;
- 2.1.10 ?? means ??, registration number, ?? a private company duly incorporated in the Republic;
- 2.1.11 “**Key Performance Indicators**” or “**KPI**” means the key performance indicators referred to in clause 10 and Schedule 4, in terms of which PRASA CRES will evaluate the performance of ?? from time to time;
- 2.1.12 “**Law**” means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has the force of law;
- 2.1.13 “**Leasing Commission**” means the leasing commission payable to ?? in terms of clause 11.2;
- 2.1.14 “**Management Committee**” means the committee established by PRASA CRES for the purpose of attending to the management of the managed portfolio;

- 2.1.15        **“Management Committee Meetings”** means the meetings held or to be held between ?? and PRASA CRES from time to time;
- 2.1.16        **“Management Fee”** means the management fee payable to ?? in terms of clause 11.1;
- 2.1.17        **“Non-GLA income”** shall include all income generated in respect of non-gross lettable areas in the Properties such as exhibition areas, promotion areas and/or advertising board space within the Properties;
- 2.1.18        **“Operating Expenses”** shall include rates and taxes, insurance premiums, maintenance costs and repair expenses, cleaning costs, electricity, water, meter reading, security, pest control, refuse removal, sewerage, letting commission, signage, merchants association fees and all other costs and expenses of a similar nature but shall exclude all costs of a capital nature;
- 2.1.19        **“Parties”** means the Parties recorded in clause 1.1 and **“Party”** means any one of them as the context may dictate;
- 2.1.20        **“Person”** means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
- 2.1.21        **“Possession Date”** means the 1<sup>ST</sup> August 2017;
- 2.1.22        **“PRASA”** means the Passenger Rail Agency of South Africa, formerly known as the South African Rail Commuter Corporation Limited, a national public entity as listed in Schedule 3B of the Public Finance Management Act, Act No. 1 of 1999 and established in terms of section 22 of the Legal Succession to the South African Transport Services Act, No. 9 of 1989;
- 2.1.23        **“PRASA CRES”** means PRASA Corporate Real Estate Solution, a division of PRASA;

- 2.1.24        **“Procurement Policy”** means a policy to be prepared by ?? and approved by PRASA CRES relating to the conclusion by ?? of contracts on behalf of PRASA CRES for the supply of goods or rendering of services in respect of the managed portfolios, which policy must be in accordance with the requirements of the Constitution of the Republic of South Africa Act, No. 108 of 1996 (as amended), the procurement laws governing PRASA and the procurement policies of PRASA, from time to time;
- 2.1.25        **“Properties”** and/or **“Managed Portfolio”** mean the properties detailed in Schedule 2 below, the list which may be amended by agreement in writing between the Parties by the addition or removal of other properties acquired or disposed of by PRASA from time to time during the duration of this Agreement;
- 2.1.26        **“Signature Date”** means (or words of similar meaning), in relation to this Agreement or any other document, the date on which this Agreement or that other document (as the case may be) is signed by the party signing it last in time;
- 2.1.27        **“Strategic Letting Philosophy Document”** means the strategic letting philosophy document referred to in clause 7.2.3;
- 2.1.28        **“Termination Date”** means the **3<sup>rd</sup> (third)** anniversary of the Possession Date; that date being , or such other date as the Parties may agree in writing;
- 2.1.29        **“Valuer”** means the valuer appointed by PRASA CRES from time to time;
- 2.1.30        **“VAT”** means Value-Added Tax payable in terms of the VAT Act; and
- 2.1.31        **“VAT Act”** means the Value-Added Tax Act, No. 89 of 1991 (as amended).

2.2        Any reference to –

- 2.2.1 the singular includes the plural and vice versa;
- 2.2.2 natural persons includes juristic persons and vice versa;
- 2.2.3 any one sex or gender includes the other sexes or genders, as the case may be;
- 2.2.4 any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment or legislative measure of government (including local or provincial government) statutory or regulatory body which has the force of law means the relevant enactment or legislative measure as at Signature Date and as amended or re-enacted from time to time; and
- 2.2.5 “**including**” (or words of similar meaning) means to include without limitation, and if the expression is used with reference to specific examples the “*eiusdem generis*” rule shall not apply;
- 2.3 The clause headings in this Agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.4 Words and expressions defined in any sub-clause shall, for the purpose of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.5 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to that provision as if it were a substantive clause in the body of the Agreement, notwithstanding that it is only contained in the interpretation clause.
- 2.6 If any period is referred to in this Agreement by way of a reference to a number of days or weeks or months or other intervals, the period shall be reckoned exclusively of the 1<sup>st</sup> (first) day and inclusively of the last day of the relevant interval, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day.



- 2.7 If the due date for performance of any obligation in terms of this Agreement is a day which is not a Business Day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding Business Day.
- 2.8 If any obligation or act is required to be performed on a particular day it shall be performed (unless otherwise stipulated) by 16h00 (local time at the place where the obligation or act is required to be performed) on that day.
- 2.9 This Agreement shall be governed, interpreted and enforced in accordance with the laws of the Republic of South Africa from time to time.
- 2.10 If amounts or figures are specified in numerals and in words and if there is any discrepancy between the numerals and the words then the words shall apply.
- 2.11 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement shall not apply.
- 2.12 Where this Agreement requires a Party to use "best endeavours" in relation to an act or omission, that Party shall do all such things as are or may be commercially reasonably necessary or desirable so as to achieve that act or to omit taking an action, unless the Parties agree that it is not reasonable to take the action or to omit taking an action. To the extent that such action or omission is frustrated, hindered or otherwise difficult to attain, the Parties shall consult and co-operate with each other in good faith and continue to take reasonable action so as to achieve that action or omission.

### **3 INTRODUCTION**

- 3.1 PRASA CRES is the division in PRASA responsible for the management of the immovable property held by PRASA. Certain properties have been

identified by PRASA CRES as requiring to be managed by external professional property managers.

- 3.2 ?? is a leading property management company in South Africa, managing a large number of commercial and retail rental producing properties for clients.
- 3.3 PRASA CRES wishes to appoint ?? to manage the Properties, and ?? wishes to accept such appointment.
- 3.4 The Parties wish to reduce the details of their agreement into writing as set out in this Agreement.

#### **4 APPOINTMENT**

- 4.1 PRASA CRES hereby appoints ?? , with effect from the Possession Date, on an exclusive basis in respect to the Properties, as its property management agent in to respect to the Properties, on the terms and conditions set out in this Agreement, which appointment ?? hereby accepts.
- 4.2 The legal relationship between PRASA CRES and ?? shall be that between the principal and agent; accordingly, the appointment in terms of clause 4.1 shall not, and no other provision of this Agreement shall, be construed as creating any partnership or joint venture between PRASA CRES and ??.
- 4.3 PRASA CRES hereby authorises ?? to act as its agent in terms of clause 8 (Authority of ??) of this Agreement.
- 4.4 PRASA CRES further authorises ?? to act as its agent in terms of section 54 of the VAT Act.

## 5 DURATION

- 5.1 The appointment of ?? shall commence on the Possession Date and shall endure until the Termination Date.

## 6 BEE STATUS

- 6.1 ??’s Broad Based Black Empowerment (BBBEE) status, as wholly owned subsidiary of ?? , equals to a level 3 contributor with a black ownership of 52.55%.
- 6.2 If the BBBEE status at the Possession Date materially decreases (i.e. a decrease in two BEE levels) for any reason whatsoever, ?? hereby undertakes to notify PRASA CRES of such decrease in writing. ?? shall have a period of 9 (nine) months to rectify this to restore its BBBEE status as it was on the Possession Date. If however, ?? fails to rectify the position, after PRASA CRES has put ?? on terms, PRASA CRES shall be entitled to cancel this Agreement on 2(two) months’ notice in writing to ??, without prejudice to any of its rights in law.

## **7 DUTIES OF ?? RETAIL (PTY) LTD AND GENERAL RESTRICTIONS**

Without limiting the general duties of the ?? in terms of this Agreement, ??'s duties, as the property manager the Properties, shall include all duties normally carried out by a property management company which services shall include but not limited to the following:

### **7.1 General Maintenance**

- 7.1.1 The general provision of control, management, maintenance and cleaning services to the Properties;
- 7.1.2 Performing regular inspections of each of the Properties and preparing property inspection reports on an annual basis and submitting same to PRASA CRES;
- 7.1.3 Appointment of service providers on behalf of, and at the cost of, PRASA CRES, subject to the prior written consent of the Management Committee, which consent shall not be unreasonably withheld and/or delayed;
- 7.1.4 Ensuring that all services are procured in accordance with the Procurement Policy;
- 7.1.5 Drawing up detailed schedules of on-site employees' duties in respect to the upkeep and maintenance of the Properties;
- 7.1.6 Ensuring the provision of proper and adequate security services to the Properties and the supervision thereof and the maintenance of optimal security from time to time at the cost of PRASA CRES;
- 7.1.7 Drawing up detailed maintenance, future refurbishment and potential expansion plans, including, but not limited to anticipated action programmes and cost schedules, where necessary in consultation

with professional consultants at PRASA CRES' cost which cost shall be pre-approved by PRASA CRES;

- 7.1.8 Undertaking, at the cost of PRASA CRES, approved refurbishments and any necessary expansions subject to written approval by PRASA CRES before any such works could be executed as well as accounting for the manner in which funding granted for these purposes by PRASA CRES is spent.

## 7.2 Letting

- 7.2.1 Sourcing and vetting all new tenants (including, but not limited to, their creditworthiness);
- 7.2.2 Drawing up of agreements of leases and negotiation of all the terms and conditions thereof;
- 7.2.3 Re-negotiation of rentals in existing leases in terms of tenant-mix as per the Strategic Letting Philosophy Document to be prepared by ?? and submitted by ?? to PRASA CRES for approval annually at the beginning of each Financial Year;
- 7.2.4 Inspection of the leased premises after vacation by tenant/s and, where necessary, withholding tenant deposits and using such deposits for the renovation of any damage to the leased premises caused by such tenant in accordance with the provisions of the respective leases;
- 7.2.5 Active marketing of vacant areas in the Properties which includes advertising, liaising with other agents, ensuring vacant premises are in a good and attractive state of repair and showing the premises to prospective tenants;
- 7.2.6 Cancellation of leases upon specific written instruction of the Management Committee;

7.2.7 Reduction or deferral of tenant's rental, only upon approval and the written instructions of the Management Committee.

### 7.3 **Financial, Accounting and Secretarial**

7.3.1 Operate a trust bank account in the name of PRASA CRES and maintaining such bank account ("**the Trust Account**"). All interest earned on the Trust Account will be for the benefit of PRASA CRES and all bank charges will be for the account of PRASA CRES;

7.3.2 Depositing all income derived from the letting of the Properties into the Trust Account;

7.3.3 Collection of rent and other charges due by the tenants in the Properties and the prompt following up of late payments in accordance with agreed arrears policy.

7.3.4 Writing-off bad debts, subject to the written approval of the Management Committee and PRASA CRES as per approved delegation of Authority.

7.3.5 Preparation of detailed monthly reports, including monthly disbursement statements, rent rolls and reports on the business to PRASA CRES, in the terms, form and substance reasonably acceptable to PRASA CRES. Such formats and contents of reports to be as currently agreed upon with PRASA CRES.

7.3.6 Distribution of monthly statement to tenants indicating the rent and all other charges due by tenants.

7.3.7 Preparation of detailed annual budget of anticipated income and expenditure, in the terms, form and substance reasonably acceptable to PRASA CRES.

- 7.3.8 Preparation of detailed monthly reports of actual financial results and updating on a monthly basis of the analytical forecasts of anticipated income and expenditure for the Financial Year.
- 7.3.9 Supplying PRASA CRES with all material financial information timeously (for purpose of this clause, on 3 (three) Business Days written notice) as provided in this Agreement, provided that PRASA CRES shall be entitled to require ?? to provide any financial information relating to the Properties or any of them, which should reasonably be in the possession of ??, on reasonable notice. The material financial information will be agreed with PRASA CRES within 1 (one) month of signature of this Agreement and such material financial information will be included in this Agreement as an annexure.
- 7.3.10 Maintenance of financial and administrative records in connection with the financial management and administration of the Properties in accordance with the International Financial Reporting Standards (IFRS), the Companies Act, No. 71 of 2008 (as amended) ("**Companies Act**"), any other relevant or applicable Laws and PRASA CRES' applicable policies.
- 7.3.11 Ensuring that all financial and administrative records referred to in clause 7.3.10 are –
- 7.3.11.1 available at all reasonable times for inspection by PRASA CRES or its duly appointed agents or advisors;
- 7.3.11.2 kept in the format acceptable to PRASA CRES and/or the Auditors; and
- 7.3.11.3 delivered to PRASA CRES on the Termination Date.
- 7.3.12 Payment of expenditure referred to in clause 12.

- 7.3.13 Monthly distribution to PRASA CRES (or its duly appointed agent) of such net amount as may be available after deductions and provisions and within such time periods as agreed with PRASA CRES.
- 7.3.14 Submission of a detailed Disbursements Statement Document clearly showing the calculation methods used in respect of distributions referred to in clause 7.3.13.
- 7.3.15 Provision of accounting services as agreed with PRASA CRES and the Auditors.
- 7.3.16 Timeous and efficient answering of all Auditors' queries that may be raised by the Auditors or Auditor General ("AG") during the preparation of the financial year-end information.
- 7.3.17 General co-operation with the Auditors including the AG and Valuers in respect of any other information they may require.
- 7.3.18 Provision of all financial or any other information required by PRASA CRES from time to time.
- 7.3.19 Continuous (i.e. 5 (five) days prior to every Management Committee Meetings) delivery of monthly management packs reflecting information as required by PRASA CRES from time to time. The format and content of the management pack will be as currently agreed with PRASA CRES.
- 7.3.20 Implementation and maintenance of adequate internal controls.
- 7.3.21 Implementation and maintenance of sufficient risk management procedures.
- 7.3.22 Co-ordination of the periodic review of internal controls and risk management procedures by the Auditors.
- 7.3.23 Attending, reporting and carrying out all secretarial functions at Management Committee Meetings.



- 7.3.24 Deposits, bank guarantees and/or cheques which have not been cleared may not be reflected as rental, unless specifically approved by the Management Committee.
- 7.3.25 In the event that PRASA CRES suffers any direct, proven loss as a result of ?? not properly maintaining financial and administrative records and/or in the event that additional costs in excess of the budgeted costs for conducting financial audits are incurred, ?? shall reimburse PRASA CRES for the direct, proven loss suffered and/or for the additional costs incurred, which amount shall be payable on demand.
- 7.3.26 It is recorded that PRASA is a VAT vendor. It is recorded that ?? will act as agent for and on behalf of PRASA acting through its PRASA CRES division in terms of section 54 of the VAT Act as provided in clause 4.4. ??, in acting as agent for and on behalf of PRASA will comply with the requirements set out in section 20 of the VAT Act, as amended, save that PRASA will prepare and submit any VAT returns necessary, based on financial information provided by ??.
- 7.3.27 PRASA CRES undertakes to immediately inform ?? should PRASA CRES receive any VAT enquiries from SARS in terms of the Tax Administration Act, No. 28 of 2011 (as amended), as it relates to financial information provided by ?? upon which PRASA completed and submitted any applicable VAT return.
- 7.3.28 ?? undertakes to maintain sufficient records as required under section 54(3) of the VAT Act.
- 7.3.29 PRASA CRES acknowledges and accepts that ?? will take no responsibility for any interest, understatement penalties and late payment penalties levied by SARS, provided that ?? has calculated the relevant amounts of VAT to be paid correctly and timeously. ?? hereby indemnifies PRASA CRES against the imposition of any interest, understatement penalties and late payments levied by

SARS in the event that the imposition of such interest, understatement penalties and late payment penalties is as a direct result of a calculation or timing error by ??.

7.3.30 The Parties record that the fees in respect of rendering the services as set out in clauses 4.4, 7.3.26 and 7.3.30 will amount to R4 500 (four thousand five hundred Rand) (excluding VAT) escalating annually at 7%, charged on a monthly basis for all Properties with effect from the Possession Date and payable in accordance with the provisions of clause 11.1.1.1.

#### 7.4 Insurance

7.4.1 If required by PRASA CRES, procure, at PRASA CRES' cost, the preparation (by quantity surveyors approved by PRASA CRES) of an estimate of replacement value of the Properties, with the view to take insurance cover for the Properties against fire and other risks, for consideration by ?? and arrange insurance on PRASA CRES's instructions, such insurance to include –

7.4.1.1 public liability;

7.4.1.2 political riot;

7.4.1.3 loss of rental (including turnover rental);

7.4.1.4 fidelity guarantee; and

7.4.1.5 other relevant risks which are applicable to shopping centres in general.

7.4.2 Payment of insurance premiums and brokerage fees and ensuring that the improvements on the Properties remain insured at the values required by PRASA CRES from time to time.

7.4.3 Attend to any repair occasioned by damage covered under any insurance policy and the recovery of funds thus disbursed.

## 7.5 Employment of Staff by ??

- 7.5.1 Procure sufficient resources to enable it to perform its obligations in terms of this Agreement.
- 7.5.2 Employ such employees, whether temporary or permanent, as are reasonably necessary to enable ?? to comply with its obligations in terms of this Agreement and keep all such employees (including the Employees) under its control and management.
- 7.5.3 The Parties hereby agree that PRASA CRES is not the employer of any of the employees (including the Employees) and that the relationship between ?? and PRASA CRES is not intended to result in management and related services to be provided by ?? becoming a “*temporary employment service*” as this term is defined in section 198 of the Labour Relations Act, No. 66 of 1995 (as amended).
- 7.5.4 ?? hereby irrevocably indemnifies PRASA CRES and shall keep PRASA CRES indemnified, against all and any claims that may arise against PRASA CRES, as well as any damage or losses of whatsoever nature that may be suffered by PRASA CRES, pursuant to the employment or termination of employment of its employees except the Employee.
- 7.5.5 ?? shall be liable for the payment to the Employees (including the Employees) of all salaries, employee benefits (including, but not limited to, bonuses, leave pay, and any other costs required to be paid by an employer to an employee in terms of the Law).
- 7.5.6 ?? shall recover the costs related to 7.5.4 of all Employees in terms of **Schedule 1**.
- 7.5.7 ?? shall be liable for the payment of all taxes, levies and local authority charges in respect of the employees (including the Employees), including but not limited to, unemployment insurance in

terms of the Unemployment Insurance Act, No. 63 of 2001 (as amended and skills development levies in terms of the Skills Development Levies Act, No. 9 of 1999 (as amended)).

- 7.5.8            ?? hereby irrevocably indemnifies PRASA CRES, and shall keep PRASA CRES indemnified, against all and any claims that may arise against PRASA CRES, as well as any damage or losses of whatsoever nature that may be suffered by PRASA CRES, as a result of ??’s failure or refusal to pay taxes, levies and charges referred to in clause 7.5.7.

## **7.6            Computer Software and Hardware**

- 7.6.1            Purchasing, at ??’s expense, sufficient computer software, hardware and upgrades and replacements; provided that ?? shall only be entitled to upgrade and/or purchase any additional software and hardware in the event that the existing computer software and hardware is not sufficient or appropriate for ?? to carry out its duties, which purchase and /or upgrade shall be at ??’s cost.

## **7.7            General**

- 7.7.1            ?? shall utilise its power and influence to the best advantage of PRASA CRES in procuring products, services as contemplated in this Agreement.
- 7.7.2            ?? shall, in the conduct of its duties and functions as property manager –
- 7.7.2.1            comply with all reasonable and lawful instructions given to it from time to time by PRASA CRES;

- 7.7.2.2 devote such time and attention as may be necessary or requisite to the performance of its duties and functions as property manager
- 7.7.2.3 ensure that at all times it has adequate and properly trained staff and other personnel to discharge its duties and obligations in terms of this Agreement; and
- 7.7.2.4 act at a standard which is at least equal to the standard that could reasonably be expected of a good managing a similar portfolio in the Republic of South Africa.
- 7.7.3 ?? shall at all times display the highest degree of good faith in respect of its obligations in terms of this Agreement. In particular ?? shall at all times exercise its powers and duties for the benefit of PRASA and its shareholder and towards achieving the objectives of PRASA CRES as set out in any business plan of PRASA CRES adopted from time to time.
- 7.7.4 ?? hereby indemnifies PRASA CRES and all its employees, directors and officers, and shall keep PRASA CRES and all its employees, directors and officers indemnified, against any direct loss, reasonable costs, direct damage, claim, reasonable expense or proven liability, including but not limited to proven liability as a result of injury to or death of any person, or direct damage to or direct loss or destruction of any property, to the extent that this is attributable to any gross negligent, negligent or intentional act or omission on the part of ?? or its Employees or Sub-contractors.
- 7.7.5 ?? shall be required to establish and maintain an updated data base of suppliers of good and/or services required in managing of the Properties.

## 8 AUTHORITY OF ??

8.1 PRASA CRES hereby gives to ?? authority to –

- 8.1.1 seek appropriate tenants;
- 8.1.2 place advertisements and undertake such other publicity campaigns, marketing and promotions as ?? may deem appropriate;
- 8.1.3 settle the terms of leases and execute same in the name, and on behalf of PRASA CRES;
- 8.1.4 represent PRASA CRES in all dealings with tenants and take all steps that ?? may deem appropriate from time to time to enforce the terms of the leases;
- 8.1.5 establish, liaise with and, as far as necessary, support tenants' or merchants' association or advertising fund;
- 8.1.6 enter into, settle and execute contracts for the provision of services on behalf of PRASA CRES for the maintenance and repairs thereof and for all other purposes as may be appropriate in the circumstances;
- 8.1.7 appoint on behalf of PRASA CRES contractors, workmen and other specialists;
- 8.1.8 acquire equipment, machinery and the like for use in connection with the maintenance of the Properties or the performance of ??'s functions as provided in the budget approved by the Management Committee;
- 8.1.9 act as agent in terms of section 54 of the VAT Act subject to the terms of clause 7.3.26;

- 8.1.10 receive rentals and other monies payable to PRASA CRES from time to time and provide receipts therefor and deposit such collections directly into the credit of the Trust Account;
- 8.1.11 instruct attorneys approved by the Management Committee and to take any steps in any court of law to –
- 8.1.11.1 recovery any monies payable to PRASA CRES;
- 8.1.11.2 ejection any tenant;
- 8.1.11.3 enforce any other legal rights,
- 8.1.11.4 institute and/or defend any action or other proceedings and to withdraw, settle and/or compromise same;
- 8.1.11.5 defer any matter to arbitration and to carry out and perform any award made thereunder;
- 8.1.11.6 appoint counsel recommended by the attorneys as and when required; and/or
- 8.1.11.7 sign any documentation, including affidavits, to give effect to the foregoing;
- 8.1.12 procure goods and services in accordance with the Procurement Policy; and
- 8.1.13 generally to do all such things and execute all such documents as may at any time at the absolute discretion of ?? appear necessary for the proper performance of its duties and obligations in terms of this Agreement.
- 8.2 ?? warrants that it shall exercise due care and attention in the exercise of its functions in terms of this Agreement.

## **9 MANAGEMENT COMMITTEE**

- 9.1 ?? shall report to a Management Committee comprising of PRASA CRES representatives, on a monthly basis on all matters relating to the management of the Properties.

## 10 KEY PERFORMANCE INDICATORS (KPI)

- 10.1 ?? shall assess the various properties included in **Schedule 2** against the criteria set out in **Schedule 4**, particularly against the International Property Databank ("IPD") statistics for the particular type of property and submit its proposals in writing to PRASA CRES as to what it believes will be reasonable KPI benchmarks for it to achieve, within 21 (twenty one) Business Days of the Signature Date.
- 10.2 PRASA CRES shall assess the submissions from ?? as provided in terms of clause 10.1 as soon as reasonably possible and in any event within 10 (ten) Business Days of receipt.
- 10.3 Thereafter the Parties shall engage with each other to settle the KPI's. The parties shall use their best endeavours to agree on the KPI within 2 (Two) months after the Possession Date. In the event that the Parties are not able to agree on the KPI's or any of them, either Party may refer the dispute to arbitration in terms of clause 18, after giving the other party 21 (twenty one) Business Days' notice in writing that it is doing so.
- 10.4 ?? undertakes that it will perform its duties and functions in terms of this Agreement in accordance with the targets set out in the KPI's as agreed with PRASA CRES or determined in terms of arbitration as the case may be. The due and proper performance of the KPI's by ?? shall be a material provision of this Agreement.
- 10.5 The Key Performance Indicators shall be reviewed by PRASA CRES and ?? annually at the anniversary of the Signature Date. The provisions of clause 10.3 shall apply, amended as necessary, in regard to any variations to the KPI's.



## 11 MANAGEMENT FEE AND LEASING COMMISSION

### 11.1 Management Fee

11.1.1 The Management Fee shall be –

11.1.1.1 payable to ?? by PRASA CRES as consideration for services rendered by ?? RETAIL (PTY) LTD in terms of this Agreement within 30 (thirty) days of the due date;

11.1.1.2 calculated in accordance with the formula set in **Schedule 1** and in accordance with 11.1.1.3;

11.1.1.3 calculated as a percentage (excluding VAT) of all rental monies collected (excluding VAT) and other sums recovered by ?? from tenants (but not tenant's deposits received) in terms of lease agreements, and including Non-GLA income collected (i.e. a percentage of amounts actually paid (excluding VAT)) by tenants but not including damages or costs of repairs to the leased premises recovered from tenants.

11.1.2 ?? shall calculate the Management Fee and cost of Employees after the close-off of the accounts for each month and shall retain adequate information supporting its calculation for auditing purposes and make that information available to PRASA CRES on demand. Such supporting information shall be submitted to PRASA CRES monthly on or before the 20<sup>th</sup> day of the month for sign off prior to the Management Fees and on-site employee expenses being disbursed from the Trust Account. PRASA CRES shall use its best endeavours to sign-off on such Management Fees and cost of Employee expenses within 5 (five) Business Days.

## 11.2 Leasing Commission

- 11.2.1 ?? shall be entitled to claim a lease renewal commission for the successful renewal of existing lease agreements and claim commission for new leases concluded which shall be calculated as provided in **Schedule 1**. Leasing Commission shall be paid by PRASA CRES within 30 (thirty) days from invoice date. ?? shall be entitled to issue such invoice upon the earlier of the date of occupation or the payment of first month's rental, receipt of deposit and signature of lease agreement.
- 11.2.2 No Lease Commission shall be –
- 11.2.2.1 payable for rent free periods; or
- 11.2.2.2 payable or refundable to ?? in respect of cessions, relocations, sale of business, renewals or further leases negotiated with existing tenants. Notwithstanding the foregoing and in the event of relocations and/or further leases negotiated with existing tenants to premises in excess of the area previously let by such tenant, ?? shall be entitled to claim leasing commission for relocations and/or further leases negotiated with existing tenants for such additional and/or increase in area let, calculated as letting fee on new leases as provided for in **Schedule 1**
- 11.2.3 The Lease Commission shall be paid to the External Brokers in respect of leases negotiated with new tenants procured by the External Brokers and only upon approval by the Management Committee.

## 12 EXPENDITURE

- 12.1 All Operating Expenses, maintenance and repair costs, legal fees, the Management Fee and the cost of Employees shall be for the account of

PRASA CRES, but shall in the first instance be paid by ?? from monies collected by ?? from the tenants.

- 12.2 ?? shall bear its own administration costs associated with the management of the Managed Portfolio, including all costs for the employment of its employees (but excluding the Employees), including but not limited to, all costs for advertising and marketing of areas to let.

### **13 CONFLICT OF INTERESTS**

?? shall disclose to PRASA CRES in writing of any interests which it or its employees may have, directly or indirectly, in any Person with whom it intends contracting in terms of this Agreement prior to so doing, and shall only be entitled to contract with such Person with the approval of PRASA CRES. ?? shall further disclose any interests which it or its employees may have, directly or indirectly, in any Person who is a party to any of the service agreements to be concluded by ?? on behalf of PRASA CRES in respect of the Properties. The provisions of this clause shall apply with the necessary changes in points of detail to PRASA CRES.

### **14 ACCESS TO RECORDS**

PRASA and the Auditors or their agents shall at all reasonable times have access to all documents in the possession of ?? relating to the management and administration of the managed portfolio.

### **15 DOCUMENTS**

?? shall (at its cost) keep all documents relating to the management and administration of the managed portfolio for the duration of this Agreement and to the extent that ?? still has any documents available after complying with the provisions of clause 17.2 below, for a period of 5 (five) years after the termination of this Agreement and shall allow PRASA CRES and the Auditors or their agents access to the documents in ??'s possession should they require them at any time during the said 5 (five) years period.



## 16 CONFIDENTIALITY

The Parties, including the on-site employee and employees of ??, shall at all times during the currency of this Agreement (including any extensions hereof) ensure that the terms contained in this Agreement are kept confidential and not disclosed to any third party except in so far as such disclosure is authorised in writing by both Parties, or is ordered by a court of law, or is otherwise essential for application in a judicial action or application.

## 17 BREACH

17.1 If ?? -

- 17.1.1 commits a breach of any of the terms of this Agreements, including but not limited to, failure to pay any amount due to PRASA CRES on the due date for such payment and persist in such breach for a period 10 (ten) days after receipt of a notice from PRASA CRES to remedy such breach;
- 17.1.2 be wound-up, whether provisionally or finally, or a special resolution be passed for its winding-up or be placed under business rescue; or commits an act which would amount to an act of insolvency as envisaged in the Insolvency Act, No. 24 of 1936 (as amended), if ?? were a natural person;
- 17.1.3 compromises or attempts to compromise or defer payment of debts owing to its creditors in general;
- 17.1.4 dispose of the whole or majority portion of its assets without the prior written consent of PRASA CRES; or
- 17.1.5 enters into any agreement or arrangement which results in the change of Control without the prior written consent of PRASA CRES, which consent shall not be unreasonably withheld and/or delayed. For purpose of this clause "Control" means that any person or group

of persons acting in concert whether in terms of a voting pool or similar agreement or otherwise:

- 17.1.5.1 owns more than 50% (fifty percent) in the equity of ??;
- 17.1.5.2 has the right and power to exercise more than 50% (fifty percent) of the voting rights attaching to the equity in ??;
- 17.1.5.3 has the right and power to appoint more than 50% (fifty percent) of the board of directors of ??; or
- 17.1.5.4 otherwise has the right to exercise management control (without limitation by inference from the foregoing) over ??,

then PRASA CRES shall be entitled, at its sole and absolute discretion, without prejudice to its rights to claim damages, or any other rights it may have in law and/or in terms of this Agreement, to either claim specific performance or forthwith terminate the appointment of ?? in terms of this Agreement and claim direct damages from ??.

- 17.2 The provisions of clauses 17.1.1 and 17.1.3 shall apply, with the necessary changes in points of detail (*mutatis mutandis*) to PRASA CRES.
- 17.3 On the Termination Date, ?? shall immediately deliver all original lease agreements and other documents or electronic data in its possession or under its control relating to the portfolio, including, but not limited to, all correspondence, account records, deposits, monies in cash or on account, cheques in hand, keys, and passwords to systems to PRASA CRES.

## 18 ARBITRATION

- 18.1 Should any dispute (other than a dispute in respect of which urgent relief may be obtained from a court of competent jurisdiction) arise between the Parties in the widest sense in connection with –

- 18.1.1 the formation or existence of;
- 18.1.2 the carrying into effect of;
- 18.1.3 the interpretation or application of the provisions of;
- 18.1.4 the Parties' respective rights and obligations in terms of or arising out of;
- 18.1.5 the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of;
- 18.1.6 any documents furnished by the Parties pursuant to the provisions of,

this Agreement or which relates in any way to any matter affecting the interests of the Parties in terms of this Agreement, that dispute shall, unless resolved amongst the Parties to the dispute within 20 (twenty) Business Days, be referred to and be determined by arbitration in terms of this clause, provided that a party to the dispute has demanded the arbitration by written notice to the other party.

18.2 The arbitration shall be held –

- 18.2.1 at Johannesburg;
- 18.2.2 with only the representatives and legal representatives of the Parties to the dispute present thereat;
- 18.2.3 otherwise in terms of the Arbitration Act, No. 42 of 1965 (as amended), it being the intention that the arbitration shall be held and completed within 21 (twenty one) Business Days after it was demanded.

18.3 The arbitrator shall be, if the matter in dispute is principally –

- 18.3.1 a legal matter, a practising advocate or attorney of Johannesburg of at least 15 (fifteen) years' standing;
- 18.3.2 an accounting matter, a practising chartered accountant of Johannesburg of at least 15 (fifteen) years' standing;
- 18.3.3 any other matter, any independent person of at least 10 (ten) years' standing, agreed upon between the Parties to the dispute.
- 18.4 Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter shall be deemed to be a legal matter.
- 18.5 Should the Parties to the dispute fail to agree on an arbitrator within 7 (seven) days after the expiry of the period referred to in clause 18.4, the arbitrator shall be appointed at the request of any party to the dispute by the President or Vice President for the time being of the Law Society of the Northern Provinces.
- 18.6 The decision of the arbitrator shall, save for manifest error, be final and binding on the Parties to the dispute and may be made an order of any competent court at the instance of any of the Parties to the dispute.
- 18.7 The Parties hereby consent, to the extent legally permissible, to the jurisdiction of the High Court of South Africa South Gauteng in respect of any proceedings arising out of this Agreement not subject to arbitration in terms of this clause.
- 18.8 The provisions of this clause –
- 18.8.1 constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and



18.8.2 are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.

## 19 NOTICES AND DOMICILIA

19.1 The Parties choose as their *domicilia citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.

19.2 For purposes of this Agreement the Parties' respective addresses shall be –

19.2.1 **PRASA**, at 6<sup>TH</sup> Floor Umjantshi House, 30 Wolmarans Street, Braamfontein, 2017

Private Bag X301, Braamfontein, 2017

facsimile: N/A;

for the attention of: Acting Executive Manager (Real Estate Asset Management) PRASA CRES and

19.2.2 **??**,

?? Excellerate on Summit

Block B, 3A Summit Road, Dunkeld West, Hyde Park, South Africa

Fax: +27 86 206 4392;

for the attention of the Managing Director,

or at such other address in the Republic of South Africa of which the party concerned may notify the others in writing provided that no street address

mentioned in this sub-clause shall be changed to a post office box or *poste restante*.

19.3 Any notice given in terms of this Agreement shall be in writing and shall -

19.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

19.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8<sup>th</sup> (eight) day following the date of such posting;

19.3.3 if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of dispatch, unless the contrary is proved.

19.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one Party from another, including by way of facsimile transmission, shall be adequate written notice or communication to such Parties.

## 20 SEVERABILITY

Each and every provision of this Agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) shall be deemed to be separate and severable from the remaining provisions of this Agreement. If any of the provisions of this Agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) is found by any court of competent jurisdiction to be invalid and/or unenforceable then, notwithstanding such invalidity and/or unenforceability, the remaining provisions of this Agreement shall be and remain of full force and effect.

## 21 WHOLE AGREEMENT

This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.

## **22 CESSION AND ASSIGNMENT**

- 22.1 ?? shall not be entitled in any way whatsoever to cede, assign or transfer or encumber its rights or portion thereof under this Agreement without the prior written consent of PRASA CRES, which consent shall not be unreasonably withheld and/or delayed. Notwithstanding the foregoing, ?? shall have the right to assign this Agreement to any successor to the entire business of ?? (subject to 17.1.4) by way of re-organisation, merger or consolidation by way of acquisition of the entire assets of ?? or with an affiliated division of ??, provided however, that such successor shall expressly assume all obligations of ?? under this Agreement and shall abide by the terms and conditions hereof.
- 22.2 PRASA CRES shall be entitled at its sole and absolute discretion to cede, assign and/or transfer its rights and obligations under this Agreement and notify ?? accordingly in writing.

## **23 VARIATION**

No addition to or variation, consensual cancellation 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 the Parties or their duly authorised representatives.

## **24 RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by one Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of the Party arising from this Agreement, and no single or partial exercise

of any right by the Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or stop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

## 25 COSTS

Each Party shall be liable for all its own costs relating to, but not limited to, the drawing, negotiation, signing and implementation of this Agreement.

## 26 SIGNATURE

- 26.1 This Agreement is signed by the Parties on the dates and at the places indicated opposite their respective names.
- 26.2 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.
- 26.3 The persons signing this Agreement in a representative capacity warrant their authority to do so.

SIGNED \_\_\_\_\_ on \_\_\_\_\_

AS WITNESS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Name of witness in print)

\_\_\_\_\_  
For PASSENGER RAIL AGENCY OF SOUTH AFRICA  
acting through PRASA CRES Division

\_\_\_\_\_

\_\_\_\_\_

SIGNED at \_\_\_\_\_ On \_\_\_\_\_

AS WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
(Name of witness in print)

\_\_\_\_\_  
For ?? RETAIL PROPRIETARY  
LIMITED

AS WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
(Name of witness in print)

## SCHEDULE 1: FEES

## 1. Monthly management fee payable to ?? shall be calculated as

**A percentage** of all rental monies collected (excluding VAT) and other sums recovered by ?? from the tenants (but not tenants deposits received in terms of the lease agreement/s) for the Managed Portfolio as detailed in Schedule 2.

The monthly management fees on additional portfolios not listed in Schedule 2 will be negotiated and agreed upon with PRASA CRES.

## 2. The letting fees will be as reflected below:-

The governance of fees on this agreement shall be structured in the following manner:-

- 2.1 letting fees on new leases shall be **100%** of the tariffs structure as set out in clause 4 below;
- 2.2 letting fees on lease renewals shall be **35%** of the tariffs structure as set out in clause 3 below.

## 3. Letting fees for renewal of leases

Letting fees shall be calculated at 35% of the tariffs reflected below

- 5% on the aggregate of the first 2 years gross rental (1-2) plus
- 2,5% on the aggregate of the next 3 years gross rental (3-5) plus
- 1,5% on the aggregate of the next 3 years gross rental (6-8) plus
- 1% on the aggregate of the balance (9)

## 4. Fees on new leases

New leases letting fees as well as lease extensions shall be calculated at 100% of tariffs as reflected below

- 5% on the aggregate of the first 2 years gross rental (1-2) plus
- 2,5% on the aggregate of the next 3 years gross rental (3-5) plus
- 1,5% on the aggregate of the next 3 years gross rental (6-8) plus
- 1% on the aggregate of the balance (9)

**5. Recovery of ?? on-site employee cost**

- ?? shall recover the costs referred to in clauses 7.5.5 and 7.5.7 of the Agreement related to all the on-site employees.

**6. Fees for Property Projects Management**

- 7,5% (excluding VAT) on the value of the projects

**7. Property Valuation exercises, fees applicable are as follow:**

- Fees will be negotiated in respect of each valuation to be conducted by ?? and will be based on the type of valuation performed

**8. Other consulting fees**

- Fees will be negotiated in respect of other consulting work to be conducted by ??

**9. Contract value**

- Management fees payable in terms of this Agreement as set out in clauses 1 of this Schedule 1 shall not exceed the contract value of R 10 455 129.30 including VAT for a period of 3 years from the Possession Date

All fees reflected in Schedule 1 are, save if otherwise stated, exclusive of VAT.

## SCHEDULE 2: LIST OF PROPERTIES AS AT THE SIGNATURE DATE

1. The properties detailed in below may be amended by agreement in writing between the Parties by the addition or removal of other properties acquired or disposed of by PRASA from time to time during the duration of this Agreement;

PROPERTY	Size (m <sup>2</sup> )	Gross Annual Income	No of Tenants	Vacancies (Units)	Collection Fee (exc Vat)
Lot 421 & 422 Umgeni Park	2352	R2.7m	2	0	2%
11 & 17 Intersite Property	13206	R10.4m	1	0	2%
The Bridge Shopping Centre	8681	R26.1m	45	1	3.5%
Station Bazaar Shopping Centre	9631	R8.2m	85	2	3.5%
35 Intersite Ave Umgeni	10000	R13.3m	26	5	3%
28 Intersite Property	644	R1.7m	1	0	2%
Detroit Plaza	6872	R4.5m	19	1	3.5%
Rapiprop	17869	R20.4m	8	0	2.6%
Imperial Group	8163	R3.3m	1	0	2%
40 Intersite Property	1900	R2.1m	1	0	2%
Dendovect	1870	R1.9m	1	0	2%



### **SCHEDULE 3: AD HOC PROFESSIONAL SERVICES**

1. PRASA may from time to time require additional professional services to be performed by ?? in respect of the management of the properties
2. The services shall include, but not limited, to project management, property valuations and other ancillary services related.
3. PRASA shall provide ?? with a detailed brief and ?? shall be required to submit a proposal with cost and deliverables.
4. PRASA reserves the right to contract ?? for these services or elect to make use of other service providers for such services and in an effort to avoid a duplication of work, advise ?? accordingly.

#### **SCHEDULE 4: KEY PERFORMANCE INDICATORS ("KPI's")**

1. The intention of the Parties in setting the KPI's is to ensure that PRASA CRES is receiving a property management service in respect to the Properties from ?? which meets South African and International best practice, in relation to both Property Management and Facilities Management.
2. The International Property Databank ("**IPD**") statistics for property management will be used as the basis for setting the benchmarks for the KPI's for ?? to achieve as the property manager of the Properties, having regard to the categories into which the various properties comprising the Properties fall.
3. The Parties record that for purpose of this Agreement, the KPI's are as set out below:
  - a. Vacancy percentage excluding strategic vacancies
  - b. Total Utility Recovery percentage
  - c. Outstanding documents as percentage of total leases
  - d. Net Income deviation percentage to budget
  - e. Renewals
  - f. Rent collection percentage
  - g. Facilities Management
4. The Parties record that any amendments to the KPI's will be recorded in writing and signed by both Parties as an annexure to the Agreement