

CPA MANAGING MANDATE

SCHEDULE TO THE MANDATE

1.1	The Agent		
	Registration number / identity number		
	VAT registration number		
1.2	The Landlord		
	Registration number / identity number		
	VAT registration number		
	Income tax registration number		
1.3	The Premises		
1.4	Mandate Period from		TO
1.5	Payment date		
1.6	Reasonable Penalty (excluding VAT)		
1.7	Management Commission (excluding VAT)		
1.8	Sales Commission (excluding VAT)		
1.9	The Landlord's nominated bank account		
	Name of account holder		
	Bank		
	Bank Branch		
	Branch Code		
	Account Number		
	Reference		

1.10	The Landlord's address(es)			
	Physical			
	Postal			
	Telefax			
	Email			
1.11	The Agent's address(es)			
	Physical			
	Postal			
	Telefax			
	Email			
1.12	Was the Landlord approached directly by the Agent with a view to concluding this mandate?		YES <input type="checkbox"/>	NO <input type="checkbox"/>
1.13	Other Provisions			

THE MANDATE

DEFINITIONS AND EXPLANATIONS

1. In this Agreement, the words below mean the following:
 - 1.1 "Business Day" means any day of the week, excluding Saturdays, Sundays and public holidays;
 - 1.2 "the Consumer Protection Act" means the Consumer Protection Act (No 68 of 2008) together with the relevant regulations;
 - 1.3 "this Mandate" means this Agreement, together with any annexures hereto;
 - 1.4 "PayProp" means Property Payment Solutions (Pty) Limited, Registration Number 2005/001364/07 with its registered offices situated at 38 Dorp Street Stellenbosch;
 - 1.5 "the Protection of Personal Information Act" means the Protection of Personal Information Act (No 4 of 2013);
 - 1.6 "Signing" or "sign" means a handwritten signature, advanced electronic signature or electronic signature as defined in the Electronic Communications and Transactions Act (No 25 of 2012).
2. Any reference to one gender includes the other gender.
3. Any reference to the singular includes the plural and any reference to the plural includes the singular.
4. No provision of this Mandate must be interpreted to contravene or limit the applicable provisions of the Consumer Protection Act or the Estate Agency Affairs Act. In the event of any conflict between the provisions of this Mandate and the Consumer Protection Act or the Estate Agency Affairs Act, the provisions which are the most beneficial to the Landlord will govern this Mandate.

INTRODUCTION

5. The Landlord hereby appoints the Agent and the Agent accepts its appointment to procure a Tenant and to manage the Premises.
6. This Mandate will commence on the date as stated in 1.4 of the Schedule and will terminate on the date as stated in 1.4 of the Schedule.

DUTIES OF AGENT FOR PROCURING A SUITABLE TENANT FOR THE PREMISES

7. The Agent will be responsible for:
 - 7.1 ensuring that a Tenant has been secured for the Premises;
 - 7.2 carrying out the necessary checks, such as employment checks and credit checks in respect of the Tenant, in order to verify whether the potential tenant is financially secure to make payment in terms of the lease;
 - 7.3 marketing and advertising the Premises to potential tenants;
 - 7.4 showing the Premises to potential Tenants;
 - 7.5 advising the Tenant who the contact person on behalf of the Landlord is, if the Tenant has any queries in respect of the Premises once the lease has been signed;
 - 7.6 ensuring that the lease with the Tenant is negotiated and finalised, on terms which are acceptable to the Landlord;
 - 7.7 ensuring that the deposit that the Tenant is obliged to pay is invested in an interest-bearing account with a bank, as required by the Rental Housing Act (No 50 of 1999 (as amended)) ("the Rental Housing Act");
 - 7.8 collecting monthly payments from the Tenant and ensuring that the Tenant pays on a monthly basis;
 - 7.9 completing all Tenant inventories required by the Rental Housing Act;
 - 7.10 attending to all complaints by the Tenant;
 - 7.11 ensuring that the terms of the lease are complied with, and that the Landlord is made aware of any breaches in respect of the lease;

- 7.12 when requested by the Landlord, instructing attorneys to take such legal action as may be necessary for the Landlord to protect its rights;
- 7.13 inspecting the Premises on a regular basis in order to ensure that the Tenant is complying with the lease.

COMMISSION DUE TO AGENT

8. In return for meeting the obligations set out above, the Agent will be entitled to commission as stated in 1.7 of the schedule (excluding any taxes or other costs). The value of the commission is calculated by multiplying the commission percentage with the total value of the rent over the lease period.
9. Commission will be offset from the rental received by the Agent and the difference will be paid to the Landlord's account as set out in 1.9 of the Schedule. The commission will be collected throughout the lease period, either as a percentage of the rent or as a fixed amount and will be payable on a monthly basis.

CONCLUSION OF AGREEMENT OF SALE

10. If the Tenant signs a sale agreement with the Landlord at any time during the period of the lease or any renewal of the lease within 12 (twelve) months after the lease terminates, the Agent will be regarded as the effective cause of the sale and will be entitled to payment by the Landlord of commission in an amount as stated in 1.8 of the Schedule.

LIABILITY OF THE PARTIES

11. The parties cannot sue each other for any loss, damage or injury suffered unless:
- 11.1 the party being sued was negligent or acted with wilful intent; or
- 11.2 the party being sued breached the provisions of the Consumer Protection Act the Rental Housing Act or in the instance of the Agent, the Estate Agency Affairs Act.
12. In addition, the Agent is not responsible, except in the case of gross negligence or contravention of any law, for damage, loss or destruction in respect of any property of the Landlord, whether caused by fire, burglary or any other cause.
13. To the extent legally permissible, the Agent will not be liable for any indirect, special, consequential or punitive damages arising out of this Mandate.

RIGHT OF CANCELLATION BY LANDLORD WITHOUT REASON OR PENALTY IN TERMS OF SECTION 16 OF THE CONSUMER PROTECTION ACT

14. If the Agent first approached the Landlord directly with a view to concluding this Mandate, and such approach resulted in the conclusion of this Mandate, the Landlord has the right to cancel this Mandate without reason or penalty within 5 (five) Business Days of signing this Mandate, by giving the Agent written notice of cancellation. The Landlord is entitled to a refund of any payments made to the Agent in terms of this Mandate within 15 (fifteen) Business Days after the Agent has given notice.
15. If the Agent did not first approach the Landlord directly to persuade the Landlord to conclude this Lease, and the Landlord contacted the Agent of his own accord to discuss the marketing and procurement of a tenant and management of the Premises, the Landlord does not have the right to cancel this Mandate without reason or penalty within 5 (five) Business Days of signing this Mandate.

AGENT'S DUTY TO NOTIFY LANDLORD BEFORE END OF MANDATE PERIOD

16. Unless the Mandate Period is for less than 40 (forty) days, the Agent will notify the Landlord in writing, between 40 (forty) and 80 (eighty) Business Days before the end of the Mandate Period, of the following:
- 16.1 the date that the Mandate Period ends and if the Agent wants the Mandate term to continue; In the event of the Agent wanting to accept a renewed Mandate Period offered by the Landlord, the Agent must notify the Landlord, in a letter, by no later than 30(thirty) days before the end of the Mandate Period.

- 16.2 any material changes that will apply if this Mandate is automatically continued on a month-to-month basis after the end of the Mandate Period;
- 16.3 that the Mandate will be automatically continued on a month-to-month basis after the mandate period ends, unless the landlord expressly asks the agent not to continue this Mandate or the parties enter into a new Mandate for a fixed period.
17. If the Mandate is continued on a month-to-month basis in terms of the above clause, either party may end this Mandate, without reason or penalty, provided that such party gives the other party a calendar month's written notice of termination.

BREACH OF THIS MANDATE BY THE LANDLORD

18. In the case of a material breach of this Mandate by the Landlord, the Agent may cancel this Mandate if the Landlord does not remedy such breach within 20 (twenty) Business Days of notification being sent to the Landlord, in writing, instructing the Landlord to do so. In the event that any further material breach occurs during the Mandate Period, subsequent to this notice, this Mandate may be cancelled immediately.
19. The Agent may institute Court action:
- 19.1 where the breach involves non-payment of commission by the Landlord, for the recovery of any commission which the Landlord has not paid;
- 19.2 for the recovery of damages suffered by the Agent as a result of the breach.

BREACH OF THIS MANDATE BY THE AGENT

20. If the Agent commits a material breach of this Mandate, the Landlord may cancel this Mandate if the Agent does not remedy such breach within 20 (twenty) Business Days of notification being sent to the Agent, in writing, instructing the Agent to do so. In the event that any further material breach occurs during the Mandate Period, subsequent to this notice, this Mandate may be cancelled immediately.
21. The Landlord may institute Court action for the recovery of any damages suffered by the Landlord as a result of such material breach; and for specific performance by the Agent of any obligation under this Mandate.
22. The Landlord may also cancel this Mandate, without penalty, if the Agent does not remedy the material breach within 20 (twenty) Business Days of notification being sent to the Agent instructing the Agent to do so.

RIGHT OF LANDLORD TO CANCEL THIS MANDATE BEFORE THE MANDATE PERIOD ENDS

23. If the Landlord chooses to cancel this Mandate for any reason other than a material breach of this Mandate by the Agent, the following will apply:
- 23.1 the Landlord must give the Agent at least 20 (twenty) Business Days written notice of cancellation;
- 23.2 the Agent can recover any loss suffered as a result of the early cancellation of this Mandate by charging the Landlord a reasonable cancellation penalty, which will be no less than the amount stated in 1.6 of the Schedule, depending on the circumstances of the cancellation. The Landlord agrees this is a fair and reasonable cancellation penalty.

LETTERS AND NOTICES

24. All letters or notices for the purposes of this Mandate will be delivered by hand, electronic transmission or facsimile.
25. If delivered during the receiving party's Business Hours, letters or notices delivered by hand, electronic transmission or facsimile will be or considered to be received on the date of delivery or transmission, even if the party is not present at the address at the time. If the letter or notice is delivered after the receiving party's Business Hours, it will be presumed to have been received on the following Business Day from date of such delivery or transmission.
26. For purposes of the above clauses, the contact details of the Landlord and the Agent will be as stated in 1.10 and 1.11 of the Schedule.

SURETYSHIP

27. If the Landlord is a body corporate, partnership, association, company, close corporation or trust, the trustees, partners, directors or members (as the case may be) confirm in writing that they agree to be personally liable under this Mandate, together with the Landlord, and sign the annexure hereto entitled "Suretyship".
28. If the person signing this Mandate is not the Landlord, the person signing confirms he has the authority to do so and accepts his liability jointly and severally with the Landlord as surety and co-principal debtor for amounts which the Landlord may owe the Agent under this Lease.

PARTIES MARRIED IN COMMUNITY OF PROPERTY

29. If any person signing this Mandate is married in community of property, he confirms that his spouse gave him permission to sign this Mandate.

APPLICABLE LAW

30. This Mandate will in all respects be governed by and construed under the laws of the Republic of South Africa.
31. The Parties hereby consent to the jurisdiction of the Magistrates Court, notwithstanding the fact that such action may otherwise be beyond the jurisdiction of such Court, and this clause will be regarded as constituting the necessary written consent granting jurisdiction to the Magistrates Court in terms of Section 45 of the Magistrates Court Act (No 32 of 1944).

GENERAL

32. This Mandate constitutes the whole of the agreement between the parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Mandate not incorporated in this Mandate will be binding on either of the parties.
33. This Mandate supersedes and replaces any and all agreements between the parties in relation to the subject matter hereof.
34. No addition to or variation, deletion or agreed cancellation of all or any clauses or provisions of this Mandate will be of any force or effect unless in writing and signed by the parties.
35. If either Party for any reason chooses not to act against the other in the event of a breach of any provision of this Mandate, this will not constitute a waiver of any of the rights of such party, who may still demand compliance with the provisions of this Mandate at a later stage.
36. No waiver, suspension or postponement by either party of any right arising out of or in connection with this Mandate will be of any force or effect, unless in writing and signed by that party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.
37. All provisions and the various clauses of this Mandate are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Mandate which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, will, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions and clauses of this Mandate will remain of full force and effect. The parties declare that it is their intention that this Mandate be executed without such unenforceable provision, once they become aware of such unenforceability at the time of execution hereof.
38. The expiration or termination of this Mandate will not affect the provisions which of necessity must continue to have effect after its expiration or termination, notwithstanding any failure of the clauses to expressly provide for this.
39. Neither this Mandate nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either party without the prior signed written consent of the other, save as otherwise provided herein.
40. If this Mandate (or any part of it) is signed by the Landlord and Agent on different copies, it will be valid despite the fact that the signatures of the parties do not appear on a single document.

- 41. The Landlord confirms he has read and understands this Mandate, that the agent has explained all necessary clauses and advised him of all his rights in terms of this Mandate and of the relevant sections of the Consumer Protection Act, where applicable, and moreover signs this Mandate freely and voluntarily.
- 42. The Agent will comply with the governing law at all times.
- 43. The Agent will ensure that it procures all consents necessary insofar as the Agent will request, store, transmit or in any way use personal information of the Tenant as required under The Protection of Personal Information Act. The Agent shall in all respects comply with the Protection of Personal Information Act.

SPECIAL CONDITIONS

- 44. The Agent makes use of the services of PayProp to process rental collections and payments to beneficiaries. PayProp is a registered estate agent under the provisions of the Estate Agency Affairs Act (No 112 of 1976) processing all rental monies through properly constituted trust accounts which are subject to annual audits and protected by the Fidelity Fund operated by the Estate Agency Affairs Board. By signing this Mandate, the Landlord acknowledges the joint mandate of the Agent and PayProp to act herein.
- 45. All contracting parties agree to be bound by the additional provisions specified in 1.13 of the Schedule.

SIGNED BY LANDLORD ON THIS THE _____ DAY OF _____ 20_____

AS WITNESSES:

1. _____ 2. _____
Witness 1 signature Witness 2 signature

SIGNED BY AGENT ON THIS THE _____ DAY OF _____ 20_____

AS WITNESSES:

1. _____ 2. _____

SURETYSHIP

Annexure "A"

I, the undersigned,

[Insert full name and identity number]

("the Surety")

Do hereby bind myself as surety and co-principal debtor, jointly and severally to the Agent for the due and proper fulfilment of all the obligations of the Landlord and for the punctual payment of all sums which are or may become due by the Landlord arising out of this Mandate or the renewal of this Mandate between the Landlord and the Agent in respect of the Premises described in 1.3 of the Schedule.

Surety

DATE: _____ PLACE: _____

TIME: _____

WITNESS _____