IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

TERRACAP SC PARTNERS, L.P.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 16-00037-CV-W-DW
	)	
AMERICAN MANAGEMENT SERVICES CENTRAL, LLC d/b/a PINNACLE,	)	
	)	
Defendant.	)	

ORDER

Before the Court is the Motion to Stay and Compel Arbitration or, in the alternative, Dismiss the Complaint (Doc. 7). Defendant American Management Services Central, LLC d/b/a Pinnacle ("Pinnacle") moves the Court to enter an order compelling arbitration and staying this action pending the completion of that arbitration. In the alternative, Pinnacle moves for an order dismissing Counts IV and V of the Complaint. Plaintiff Terracap SC Partners, L.P. ("Terracap") opposes the relief requested. Upon review, the Court concludes that the motion to stay and compel arbitration should be granted.

This case arises from property management services allegedly provided by Pinnacle under a contract entered by the parties on July 17, 2013 and titled "Property Sub-Management Agreement" (the "PMA") (Doc. 1-2). Terracap has filed a complaint raising claims against Pinnacle for: (1) breach of the PMA; (2) breach of implied duty of good faith and fair dealing under the PMA; (3) breach of fiduciary duty under the PMA; (4) fraud; and (5) equitable accounting. Pinnacle argues that the PMA includes a dispute resolution clause which requires

the parties to arbitrate these claims if either party so demands. The relevant portion of the PMA, Section 24.2, reads as follows:

> DISPUTE RESOLUTION. If either party shall notify the other that any matter is to be determined by arbitration, the parties shall first try to resolve any dispute or controversy arising out of this Agreement. If there is no resolution within thirty (30) days, then (a) within fifteen (15) calendar days thereafter, each party shall appoint an arbitrator by notice to the other party; (b) if either party shall fail to make such appointment within the prescribed time, then the arbitrator appointed by the party not so failing shall appoint, on behalf of the party so failing, one other arbitrator; (c) the arbitrators so appointed shall meet within ten (10) business days and shall, if possible, determine such matter within thirty (30) days after the second arbitrator is appointed, and their decision shall be binding and conclusive on the parties; (d) if the two arbitrators fail to determine said within the 30-day period, they shall appoint a third arbitrator, and in the event of their failure to agree upon such third arbitrator within ten (10) days after the time aforesaid, either party may apply to any court of competent jurisdiction for the appointment of such third arbitrator, and the other party shall not raise question as to the court's power and jurisdiction; and (e) the determination of any two of the three arbitrators shall be given within thirty (30) days (or as soon as is possible) after the appointment of the third arbitrator and shall in all cases be binding and conclusive upon the parties. Each arbitrator shall be sworn to determine fairly and impartially the matter(s) submitted for arbitration. A replacement arbitrator shall be appointed in the same manner as the arbitrator being replaced in cases of death, disqualification, incapacitation or failure/refusal to act. Each party shall pay the fees and expenses of the arbitrator by or on behalf of such party and one-half of the fees and expenses of the third arbitrator, if any. The arbitration shall be conducted pursuant to the American Arbitration Association ("AAA") then- existing rules and regulations and shall be held within fifty (50) miles of the Project, unless otherwise agreed to by the parties.

Pinnacle now moves to enforce this dispute resolution clause. Terracap opposes arbitration, arguing that it did not agree to arbitrate and that the arbitration provision is irreconcilably vague.

Agreements to arbitrate are strongly favored under federal law. See Lyster v. Ryan's Family Steak Houses, Inc., 239 F.3d 943, 945 (8th Cir.2001). Congress enacted the Federal Arbitration Act ("FAA") "to overcome courts' refusals to enforce agreements to arbitrate." Allied–Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 270 (1995). Under the FAA, arbitration agreements are presumed valid and enforceable, reflecting a "liberal federal policy favoring arbitration agreements." 9 U.S.C. § 2; Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.,

460 U.S. 1, 24 (1983). The FAA also provides for stays of proceedings in federal district courts when an issue is referable to arbitration, and for orders compelling arbitration when one party has failed, neglected, or refused to comply with an arbitration agreement. 9 U.S.C. §§ 3, 4.

Ordinarily, a district court should determine whether the parties agreed to arbitrate a certain matter, "unless the parties clearly and unmistakably provide otherwise." Fallo v. High-Tech Inst., 559 F.3d 874, 877 (8th Cir. 2009). An arbitration provision that incorporates the Rules of the American Arbitration Association ("AAA Rules") "is a clear and unmistakable expression of the parties' intent to reserve the question of arbitrability for the arbitrator and not the court." Id. at 878. This is because Rule R-7(a) of the AAA Rules expressly gives the arbitrator "the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim."

Here, the dispute resolution clause at issue incorporates the AAA Rules, specifically providing that arbitration "shall be conducted pursuant to the American Arbitration Association ("AAA") then-existing rules and regulations." Thus, the Court finds that the parties have expressed a clear and unmistakable intent to have any questions regarding the existence, scope, or validity of the arbitration agreement determined by an arbitrator. Furthermore, in accordance with the dispute resolution clause, Pinnacle notified Terracap that it was electing to have the claims and matters set forth in Terracap's complaint determined by arbitration. Terracap responded by refusing to voluntarily engage in arbitration, stating that it did not agree to such arbitration. Terracap does not, however, contest that it entered the PMA or that the dispute resolution clause was a part of the PMA. Rather, Terracap argues as to the proper interpretation of the dispute resolution clause. Accordingly, the Court shall grant the request to compel

arbitration, leaving all questions as to the existence, scope, or validity of the dispute resolution clause or to the arbitrability of Terracap's claims to the arbitrator(s).

It is therefore ORDERED that:

1. The Motion to Stay and Compel Arbitration (Doc. 7) is GRANTED;

2. The Motion to Dismiss is DENIED without prejudice;

3. Terracap shall submit its claims to arbitration in accordance with the Property Sub-Management Agreement, Section 24.2;

4. All proceedings in this case are stayed pending arbitration of Terracap's claims; and

5. Terracap shall file a report on the status of this case within sixty (60) days from the date of this Order, and every sixty days thereafter. Failure to timely file the initial or subsequent status reports may result in the dismissal of this case without further notice.

SO ORDERED.

Date: June 10, 2016

/s/ Dean Whipple
Dean Whipple
United States District Judge