

INSERT PV GOLF VILLAS HEADER

USE AGREEMENT

1. Company

1.1 Full Name: Pearl Valley Golf Villas 1 Share Block Company RF Limited

1.2 Reg No: 2021/769917/06

1.3 Physical Address: Management Hub at the Yard, Val de Vie Estate, Paarl

1.4 Contact Person: Renier Swart

Email: Renier@valentia.co.za

2. Shareholder

2.1 Full Name: _____

2.2 Reg / ID No.: _____

2.3 Physical Address: _____

2.4 Email: _____

3. Shareholder

3.1 Full Name: _____

3.2 Reg / ID No.: _____

3.3 Physical Address: _____

3.4 Email: _____

4. Shareholder

- 4.1 Full Name: _____
- 4.2 Reg / ID No.: _____
- 4.3 Physical Address: _____
- 4.4 Email: _____

5. Shareholder

- 5.1 Full Name: _____
- 5.2 Reg / ID No.: _____
- 5.3 Physical Address: _____
- 5.4 Email: _____

6. Shareholder

- 6.1 Full Name: _____
- 6.2 Reg / ID No.: _____
- 6.3 Physical Address: _____
- 6.4 Email: _____

7. Shareholder

- 7.1 Full Name: _____
- 7.2 Reg / ID No.: _____
- 7.3 Physical Address: _____
- 7.4 Email: _____

8. Erf: Erf _____, Pearl Valley Estate, Paarl, Drakenstein Municipality, Paarl

9. Applicability of Terms and Conditions

This Schedule, the agreement attached hereto and appendices attached hereto shall form the use agreement between the Shareholders and the Company.

THE COMPANY

herein represented by

(Print Name)

(who warrants that he/she is duly authorised)

DATE: _____

PLACE: _____

SHAREHOLDER

herein represented by

(Print Name)

(who warrants that he/she is duly authorised)

DATE: _____

PLACE: _____

SHAREHOLDER

herein represented by

(Print Name)

(who warrants that he/she is duly authorised)

DATE: _____

PLACE: _____

SHAREHOLDER

herein represented by

(Print Name)

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(who warrants that he/she is duly authorised)

DATE: _____

PLACE: _____

SHAREHOLDER

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(Print Name)

(who warrants that he/she is duly authorised)

DATE: _____

PLACE: _____

SHAREHOLDER
herein represented by

(Print Name)
(who warrants that he/she is duly authorised)

DATE: _____

PLACE: _____

SHAREHOLDER
herein represented by

(Print Name)
(who warrants that he/she is duly authorised)

DATE: _____

PLACE: _____

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USE AGREEMENT

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- Appendix 1 - Deed of Adherence**
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USE AGREEMENT

PART I – INTRODUCTORY

1 INTERPRETATION

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

1.1.1 “**Acres Estate**” means the Acres residential housing development established on 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 2**;

1.1.2 “**the Act**” means the Companies Act, No 71 of 2008, including all schedules thereto and regulations issued thereunder;

1.1.3 “**the/this Agreement**” means the use agreement as set out in this document and the appendices hereto;

1.1.4 “**the Auditors**” means the auditors of the Company from time to time;

1.1.5 “**Board**” means the board of Directors of the Company from time to time or if there is only one Director, then that Director;

1.1.6 “**Business**” means the business of the Company, being to operate a share block scheme in respect of the Golf Villa, and all ancillary matters related thereto;

1.1.7 “**Business Day**” means a day which is not a Saturday, Sunday or South African public holiday;

- 1.1.8 “**Claims**” means any claim of whatsoever nature by a Shareholder against the Company, including Shareholders' loans advanced to the Company;
- 1.1.9 “**Code of Conduct**” means the codes of conduct in respect of the Acres Home Owners Association, the Val de Vie Winelands Lifestyle Estate Home Owners Association, the Val de Vie II Home Owners Association and the Pearl Valley Golf and Country Estate Home Owners Association;
- 1.1.10 “**Company**” means the Company whose details are reflected in paragraph 1 of the Schedule;
- 1.1.11 “**Constitution**” means, collectively, the constitution of each of the HOA and the Pearl Valley Golf and Country Estate Home Owners Association;
- 1.1.12 “**Control**” means the ability of a Person, together with any Person acting in concert or with it, to exercise, or cause to be exercised, 50,1% (fifty comma one percent) or more of the voting rights and to appoint or remove, or cause to be appointed or removed, directors exercising more than 50,1% (fifty comma one percent) of the voting rights at directors meetings of that company and “Controlled” and “Controlling” shall have corresponding meanings;
- 1.1.13 “**Deed of Adherence**” means a Deed of Adherence in the form of **Appendix 1** to this Agreement, to be completed by each new Person or Entity who wishes to become a Shareholder;
- 1.1.14 “**Developer**” means Pearl Valley Investments (Pty) Ltd, registration number 2015/068356/07, 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;
- 1.1.15 “**Directors**” means the board of directors of the Company from time to time;

- 1.1.16 **“Dispose”** means, in the context of a disposal of a Share or Claim -
- 1.1.16.1 the transfer of all or any rights making up such Share or Claim to any other person for his benefit and/or for the benefit of others, whether such transfer is effected pursuant to a sale, exchange, donation, distribution in specie or otherwise; or
- 1.1.16.2 any other transaction or event whereby such Share or Claim becomes beneficially owned by someone other than the person who was the beneficial holder thereof immediately prior to such transaction or event taking place; or
- 1.1.16.3 granting, creating or allowing the Encumbrance of such Share or Claim,
- and **“Dispose”** means to bring about a disposal within the meaning of this definition;
- 1.1.17 **“Effective Date”** means the Signature Date or, in respect of each Shareholder, the date on which such Shareholder acquires Shares in the Company;
- 1.1.18 **“Encumbrance”** means any right of first refusal, purchase right, option or any other restriction of any kind on ownership, transfer, use, possession, receipt of income from or any other exercise of any attribute of ownership, including any mortgage, pledge, lien or other security interest and **“Encumber”** shall bear a corresponding meaning;
- 1.1.19 **“Erf”** means the erf described in paragraph 8 of the Schedule;
- 1.1.20 **“Golf Villa”** means the Golf Villa, constructed or to be constructed on the Erf, owned or to be owned by the Company at the Acres Estate;
- 1.1.21 **“HOA”** means the Acres Home Owners Association established or to be established in terms of the Land Use Planning Act, 2014, read

with the Drakenstein By-law on Municipal Land Use Planning, 2018 or any other home owners association which replaces such home owners association as the home owners association in respect of which the owner of an erf in the Acres Estate becomes a member;

- 1.1.22 **“Intellectual Property”** means, in relation to the Company, all –
- 1.1.22.1 patents, trademarks, service marks, copyright, designs, licences, formulae (whether registered or not) and/or registrations, renewals or applications relating thereto,
- 1.1.22.2 scientific, financial or manufacturing notes, tables, drawings, designs, plans, diagrams, pictures, concepts and similar such figures;
- 1.1.22.3 manufacturing procedures, formulisation procedures, method development, product development methods, manuals, business plans, financial models, forecasts, systems and procedures;
- 1.1.22.4 trade names, internet domain names, logos, designs, source code, slogans and general intangibles of like nature, together with all goodwill related to the foregoing; and
- 1.1.22.5 data and database rights, software (whether in source or object code form), technology, trade secrets and other confidential information, know-how, proprietary processes, formulae, algorithms, models and methodologies,
- 1.1.23 **“Manager”** means Propcentral (Pty) Ltd, registration number 2016/026258/07, a private company with limited liability duly incorporated in accordance with the laws of the Republic of South Africa;

- 1.1.24 **“Market Value”** means, in relation to any Shares and/or Claims, the market value thereof as agreed or determined in accordance with the provisions of clause 13;
- 1.1.25 **“MOI”** means the memorandum of incorporation of the Company which sets out the rights, duties and responsibilities of shareholders, directors and others within and in relation to the Company;
- 1.1.26 **“the Parties”** means the Shareholders and the Company and **“the Party”** means any one of them as the context may indicate;
- 1.1.27 **“Pearl Valley Estate”** means the Pearl Valley residential and golf estate located at R301, Wemmershoek Road, Paarl;
- 1.1.28 **“Person”** or **“Entity”** means any natural person, company, close corporation, trust, partnership, body corporate, voluntary association or other entity whether or not having separate legal personality;
- 1.1.29 **“Prime Rate”** means a rate of interest per annum which is equal to the published minimum lending rate of interest per annum, calculated daily and compounded monthly in arrears, charged by the Company’s bank on unsecured accounts (and in the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose decision shall be final and binding on the Parties);
- 1.1.30 **“Rules”** means the rules of each of the HOA and the Pearl Valley Golf and Country Estate Home Owners Association;
- 1.1.31 **“the Shareholders”** means the shareholders holding Shares from time to time as reflected in paragraphs 2 to 7 of the Schedule and all such shareholders who acquire shares and execute Deeds of Adherence hereto, and **“Shareholder”** shall mean any one of them as the context may indicate;

- 1.1.32 **“Shareholder Interest”** means a Shareholder’s Shares together with a proportionate share of its Claims, if any;
- 1.1.33 **“Share”** means one of the units into which the proprietary interest in the Company is divided;
- 1.1.34 **“the Signature Date”** means the date on which this Agreement is signed by the last Party hereto;
- 1.1.35 **“Surviving Provisions”** means clauses 1 to 3 (inclusive) and clauses 14 to 21 (inclusive) and any other provisions of this Agreement which are expressed to continue in force after termination or which by necessary implication must continue after termination;
- 1.1.36 **“Use Rights”** means the rights of each Shareholder which it will be entitled to enjoy in respect of the Golf Villa for so long as it holds an Ordinary Share and is not in breach of any provision of the MOI, this Agreement, the Constitutions and the Rules, the Code of Conduct or any other agreement to which the Ordinary Shareholder is a party in respect of its shareholding in the Company or which it has agreed to be bound to, which rights are as follows –
- 1.1.36.1 use of the Golf Villa on the terms set out in this Agreement; and
- 1.1.36.2 subject to the provisions of this Agreement, when residing at the Golf Villa, pre-paid golf at Pearl Valley Jack Nicklaus Signature Golf Course (subject to the provisions of the MOI relating to number of memberships).
- 1.1.37 words importing the singular shall include the plural and *vice versa*;
- 1.1.38 words importing natural persons include legal persons and partnerships and *vice versa*;
- 1.1.39 words importing one gender include the other genders;

- 1.1.40 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
- 1.1.41 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 This Agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

2 BACKGROUND

- 2.1 The Parties agree that the provisions of this Agreement will become effective with effect from the Effective Date and shall endure for so long as there are one or more of the Shareholders or their successors-in-title remain Shareholders, or until:

- 2.1.1 all the Shareholders and the Company agree in writing to terminate this Agreement;
 - 2.1.2 a binding order is made by a court having jurisdiction for the winding-up of the Company; or
 - 2.1.3 an effective resolution to wind up the Company is passed and registered.
- 2.2 Save in relation to the Surviving Provisions, a Shareholder shall cease to be bound by this Agreement from the date on which that Shareholder validly ceases to hold any Shares. For the avoidance of doubt, the termination of this Agreement with respect to a Shareholder shall not affect any of its existing or contingent obligations and liabilities which arose prior to the termination of this Agreement in relation to that Shareholder, or which may accrue thereafter in respect of any act or omission which occurred prior to such termination.
- 2.3 The Shareholders wish to regulate –
- 2.3.1 the relationship between the Company and the Shareholders;
 - 2.3.2 the relationship between the Shareholders *inter se*;
 - 2.3.3 the use of the Golf Villa by the Shareholders; and
 - 2.3.4 matters ancillary and/or incidental to the foregoing.
- 2.4 The Parties accordingly agree as set out hereafter.

PART II – THE COMPANY

3 MEMORANDUM OF INCORPORATION

- 3.1 To the extent that the provisions of the MOI may conflict with the provisions of this Agreement –

- 3.1.1 any Shareholder may request the MOI be amended accordingly, which amendment will be required to be approved by the Developer in terms of the MOI; and
- 3.1.2 the Shareholders shall vote in favour of all resolutions of the Company necessary to amend the MOI in terms of 3.1.1.
- 3.2 Without detracting from the provisions of 3.1, to the extent that the provisions of this Agreement may conflict with the provisions of the MOI of the Company, the provisions of the MOI shall, as required in terms of the Act, take precedence and shall be given effect to accordingly by the Parties.

PART III – GOVERNANCE

4 DIVIDENDS

- 4.1 Unless otherwise agreed to in writing by the Shareholders and the Company, the Directors shall declare and pay dividends from time to time, at their discretion, from the distributable profits of the Company in each financial year.
- 4.2 Notwithstanding the provisions of clause 4.1, no dividend shall be declared to the extent that the payment thereof will –
- 4.2.1 prevent the Company from paying its debts as they become due in the ordinary course of business;
- 4.2.2 be in contravention of section 46 of the Act; or
- 4.2.3 result in the Company having an inappropriate amount of working capital.
- 4.3 It is expressly acknowledged that the only income which will be generated by the Company will be through letting the Golf Villa to third parties in accordance with the provisions of clause 8 and/or the sale of the Golf Villa.

It is accordingly not intended for the Company to be in a position to distribute dividends frequently.

PART IV – GOLF VILLAS

5 SALE AGREEMENT

- 5.1 The Company has concluded or is in the process of concluding a sale agreement with the Developer in terms whereof the Company will acquire ownership of the Golf Villa.
- 5.2 In terms of such agreement, the Golf Villa is to be constructed on an erf in the Acres Estate and the Company is purchasing the Golf Villa on a turnkey basis.
- 5.3 Accordingly, the use rights granted to the Shareholders in respect of the Golf Villa will be suspended until such time as the Company acquires ownership of the Golf Villa.
- 5.4 While the Company will use its best endeavours to ensure that it acquires ownership of the Golf Villa as soon as possible after the Signature Date, no Shareholder shall have a claim against the Company for any delay in the Company acquiring ownership thereof.
- 5.5 The Shareholders shall not do or cause anything to be done which would directly or indirectly result in the Company being in breach of the sale agreement.

6 MANAGEMENT AGREEMENT

- 6.1 The Company shall appoint the Manager to attend to the management and maintenance of the Golf Villa.
- 6.2 The Company will appoint a representative to liaise with and instruct the Manager from time to time.

- 6.3 The Shareholders and the Company agree that the Manager may only be removed and/or the agreement with the Manager terminated by a Board resolution and with the consent of the Developer.
- 6.4 The Shareholders shall act in good faith and professionally in all dealings with the Manager and shall limit their direct dealings with the Manager, it being agreed that, insofar as is reasonably possible, the Shareholders shall liaise with the Company's representative who will address any queries, concerns and instructions with the Manager directly.
- 6.5 The Shareholders shall not do or cause anything to be done which would hinder the Manager in rendering the services in favour of the Company or result in the Company being in breach of the management agreement.

7 USE RIGHTS

- 7.1 Each Shareholder is, following acquisition by the Company of the Golf Villa, granted Use Rights in respect of the Golf Villa.
- 7.2 The Shareholders shall negotiate in good faith, with the assistance of the Manager, the finalisation of a schedule which provides for when a Shareholder is entitled to reside and have access to the Golf Villa. The Shareholders shall meet with the Manager and the Board once per annum to finalise the schedule, with the first meeting taking place within 1 month of the Company acquiring ownership of the Golf Villa and the subsequent meetings taking place on each anniversary thereof. The quorum, notice periods and formalities relating to such meetings shall be determined as per the provisions of the MOI.
- 7.3 At such meetings, the schedule will be determined by way of special resolution of the Shareholders.
- 7.4 The Shareholders may, by written agreement between them and subject to the provisions of clause 8, agree in writing to amend the schedule. The Manager must be notified of any amendment made as aforesaid. If any amendment only affects some but not all of the Shareholders' use rights,

only those shareholders whose use rights will be affected shall be required to agree to the amendment.

- 7.5 In the event that the Shareholders are unable to agree on the schedule and a deadlock arises, the Board, by majority resolution, will make a final determination of the schedule, taking into account all representations made by the Shareholders, acting in a reasonable manner and making a determination based on the percentage Shareholder Interest held by each Shareholder in the Company.
- 7.6 The schedule and any amendment thereto shall be furnished to the HOA.
- 7.7 A Shareholder shall be entitled to invite guests to occupy the Golf Villa from time to time but will remain ultimately responsible to the Company for any damages caused to the Golf Villa and/or any claim, loss, expense, damages or costs incurred by the Company in respect of the occupation of the Golf Villa by the Shareholder or its guests or the use of any facilities by the Shareholder or its guests at the Pearl Valley Estate, Acres Estate or Val de Vie Estate. The Golf Villa shall be used solely for residential purposes.
- 7.8 The Shareholders, when in occupation of the Golf Villa, shall –
 - 7.8.1 exercise the utmost care in their use of the furniture, fittings, fixtures and equipment (inclusive of the golf cart) and shall be liable for any damages caused thereto;
 - 7.8.2 keep the Golf Villa in a clean state of repair;
 - 7.8.3 comply with the provisions of the Constitution, Rules, Code of Conduct and all such other regulatory documentation in effect in respect of the Acres Estate, the Val de Vie Estate or the Pearl Valley Estate;
 - 7.8.4 not cause any nuisance to other residents of the Acres Estate, Pearl Valley Estate or Val de Vie Estate;

- 7.8.5 on vacating the Golf Villa, remove all items of a personal nature and all items brought to the Golf Villa by the Shareholder, leaving the Golf Villa in the same state as which it was in at the commencement of such Shareholder's occupation; and
- 7.8.6 grant the Manager access to the Golf Villa for the purpose of enabling the Manager to perform its services in terms of the management agreement.
- 7.9 The Shareholders each indemnify and hold the Company harmless against any claim, loss, damages, costs and expenses which may be incurred by the Company arising from the use and occupation of the Golf Villa by a Shareholder, its guests or invitees and/or arising from a Shareholder, its guests or invitees' use of the facilities at the Acres Estate, Val de Vie Estate or Pearl Valley Estate and undertakes to indemnify the Company in respect of same on first written demand.
- 7.10 Notwithstanding any provision of this Agreement to the contrary, for so long as a Shareholder is in breach of this Agreement, a Constitution, Rules or Code of Conduct, the Company shall be entitled to suspend such Shareholders entitlement to use and occupy the Golf Villa and use any facilities at the Acres Estate, Val de Vie Estate and Pearl Valley Estate.

8 RENTAL OF GOLF VILLA

- 8.1 At each annual meeting contemplated in clause 7.2, if it is determined that the Golf Villa will be vacant for any period of time, the Shareholders may resolve by way of ordinary resolution to rent the Golf Villa to third parties.
- 8.2 If the Shareholders resolve as aforesaid, Val de Vie Properties (Pty) Ltd shall be appointed to attend to rentals of the Golf Villa. The aforesaid shall be on the terms and conditions prescribed by Val de Vie Properties (Pty) Ltd. The Board shall execute any such agreement with the relevant entity and the Company and Shareholders shall be bound thereto.

- 8.3 For the avoidance of doubt, no rental other than rental facilitated by the entities aforesaid will be permitted in respect of the Golf Villa. Furthermore, the Shareholders shall not be entitled to agree to an amendment to the schedule as provided for in clause 7.4 which has the effect of a Shareholder occupying the Golf Villa for any period of time during which the Golf Villa is intended to be rented out, save with the express written authorisation of the Company.

PART VI – SHARE TRANSFER AND EXIT PROVISIONS

9 GENERAL: TRANSFER OF SHAREHOLDER INTEREST

- 9.1 No Shareholder shall Dispose of any Shareholder Interest unless such Disposal is made pursuant to the provisions of this Agreement.
- 9.2 Notwithstanding anything to the contrary contained or implied in this Agreement, the Company and the Shareholders hereby agree and undertake that no Shareholder shall Dispose of any Shareholder Interest unless the transferee agrees to become a party to and observe the terms and conditions of this Agreement and has entered into a Deed of Adherence.
- 9.3 No Shares may be sold unless a like portion of the Claims, if any, of the disposing Shareholder concerned are simultaneously sold.
- 9.4 Shareholders shall be entitled to transfer their Shareholder Interests to persons or entities agreed to between the Shareholders in writing.
- 9.5 For the purposes of any Disposal of Shareholder Interest, any reference to a Shareholder Interest shall include any rights attaching to or derived from any Share forming part thereof.
- 9.6 No Shareholder shall be entitled to cede, pledge or in any other manner Encumber for the purpose of creating security over any of its Shareholder Interest, unless consented to in writing by the Company.

10 PRE-EMPTIVE RIGHTS

- 10.1 No Shareholder shall Dispose of any of its Shareholder Interest unless that Shareholder (“**the Selling Shareholder**”) has first offered to sell its Shareholder Interest to the other Shareholders (“**the Remaining Shareholders**”) in writing (“**Offer**”) and such notice has been delivered to the Remaining Shareholders (“**the Offer Notice**”).
- 10.2 The Offer Notice shall constitute an offer as provided for in clause 10.1 and shall –
- 10.2.1 be irrevocable and remain open for acceptance by the Remaining Shareholders, pro rata to their respective Shareholder Interests, for a period of 20 (twenty) Business Days after receipt;
- 10.2.2 where a particular third party has been identified, indicate the name of the proposed purchaser, if any, and the ultimate shareholder, beneficiaries, trustees and directors, as the case may be, of such third party;
- 10.2.3 be in respect of all or a specified portion of the Selling Shareholder’s Shareholder Interest (“**the Sale Interest**”);
- 10.2.4 state the consideration and full terms and conditions upon which the Selling Shareholder wishes to sell the Sale Interest;
- 10.2.5 be subject to the conditions that –
- 10.2.5.1 unless stated to the contrary in terms of the Offer Notice, the whole and not a part only of the Shareholder Interest must be sold and purchased;
- 10.2.5.2 where there is more than 1 (one) Remaining Shareholder –
- 10.2.5.2.1 each Remaining Shareholder shall be entitled to accept the entire Offer made to him or a portion thereof;

- 10.2.5.2.2 if some of the Remaining Shareholders accept the Offer in full (“**the Accepting Shareholders**”) but others do not (“**the Rejecting Shareholders**”), the Selling Shareholder shall advise the Accepting Shareholders in writing, who shall be entitled, *pro rata* to their Shareholder Interests and within a period of 5 (five) Business Days after receipt of notice from the Selling Shareholder aforesaid, to accept the offers made to the Rejecting Shareholders or a portion thereof; and
- 10.2.5.2.3 the process as set out above shall be continued until no further acceptances are received by the Selling Shareholder or until the Remaining Shareholders have accepted Offers in respect of all the Sale Interest;
- 10.2.5.3 if the Selling Shareholder obtains acceptances for all of the Sale Interest, the Selling Shareholder shall, no later than 5 (five) Business Days after the date of the last such acceptance, deliver to the relevant Remaining Shareholders written assignments of its Claims, share certificates in respect of its Shares and share transfer forms in respect thereof, duly completed and executed but undated and blank as to transferee.
- 10.3 If all Shareholders who would have been entitled to an Offer Notice in terms of clauses 10.1 and 10.2 consent in writing to the transfer of the Sale Interest (whether to a Shareholder or not), the Sale Interest may be so transferred.
- 10.4 If the Remaining Shareholders do not accept the Offer, the Selling Shareholder shall be entitled to sell the Sale Interest to the third party identified in terms of clause 10.2.2, or where no third party has been so identified, to any third party, provided that the Sale Interest shall be sold to the third party at a price and on terms and conditions not more favourable to the third party than those set out in the Offer Notice.

- 10.5 If the Transferor does not sell the Sale Interest to a third party within a period of 20 (twenty) Business Days after becoming entitled to do so in terms of clause 10.2, the Transferor shall again be obliged to comply with the provisions of clauses 10.1, 10.2 and 10.3.

11 DEEMED OFFER

- 11.1 For purposes of this clause 11, "**the Selling Shareholder**" means –
- 11.1.1 any Shareholder who becomes subject to any provisional or final order for its liquidation, winding up, business rescue or sequestration, or is made subject to any similar disability;
- 11.1.2 any Shareholder who breaches any material provision of this Agreement, the Constitution, Rules or Code of Conduct and fails to remedy such breach within 10 (ten) Business Days of receipt of written notice from any other Shareholder demanding that such breach be remedied, or who commits or who knowingly allows any one or more of its employees or other representatives to commit fraud in relation to the Company and/or the Business.
- 11.2 Each event referred to in clause are hereinafter referred to as an "**Offer Event**".
- 11.3 As soon as any Offer Event occurs, the Selling Shareholder shall be deemed to have offered to sell all of its Shareholder Interest to the remaining Shareholders ("**Transferee**") *pro rata* to their shareholding, on the day prior to the date on which the Offer Event occurred. As soon as any Shareholder becomes aware of the occurrence of an Offer Event, such Shareholder shall be obliged to immediately notify the Company and remaining Shareholders in writing of the happening of such Offer Event.
- 11.4 The Transferee shall have the right, but not the obligation, to purchase the Selling Shareholder's Shareholder Interest, provided that –

- 11.4.1 the offer shall be open for 30 (thirty) days from the later of the date of the Offer Event or the date on which the Company becomes aware of the Offer Event;
- 11.4.2 the offer shall be in respect of all of the Selling Shareholder's Shareholder Interest and not only a portion thereof;
- 11.4.3 the consideration for the Selling Shareholder's Shareholder Interest shall –
 - 11.4.3.1 in the event of an Offer Event in clause 11.1.1, the Market Value as determined in accordance with clause 13, unless the Parties agree otherwise,
 - 11.4.3.2 in the event of an Offer Event in terms of clause 11.1.2, 75% of the Market Value as determined in accordance with clause 13, unless the Parties agree otherwise,

("Deemed Offer Consideration");
- 11.4.4 the Deemed Offer Consideration shall be paid to the Selling Shareholder within 30 (thirty) days of acceptance by the Transferee of the offer, unless agreed otherwise by the Parties; and
- 11.4.5 any amounts outstanding in respect of the Deemed Offer Consideration shall not bear interest, unless agreed otherwise by the Parties.
- 11.5 If the offer is not accepted in respect of all or a portion of the Shareholder Interest, the Selling Shareholder shall be deemed to have offered its Shareholder Interest, or remaining portion thereof, to the Company for repurchase (subject to the provisions of the Act), provided that –
 - 11.5.1 the Company shall have the right but not the obligation to repurchase the remaining Shareholder Interest;

- 11.5.2 the Company shall have 30 (thirty) days to accept the offer (“**Second Deemed Offer Period**”); and
- 11.5.3 the Deemed Offer Consideration shall be paid on the same terms as set out in clause 11.4.
- 11.6 If on the expiry of the Second Deemed Offer Period, any portion of the Shareholder Interest remains available for purchase, the Selling Shareholder shall be entitled to retain such Shareholder Interest subject to the continuing operation of the provisions of this Agreement.
- 11.7 The Selling Shareholder hereby irrevocably authorises and empowers any Director or any of the Transferees *in rem suam* to sign any form or other document on behalf of the Selling Shareholder and to do anything else which may be necessary to give effect to the sale and transfer of the Selling Shareholder’s Shareholder Interest as contemplated in this clause 11.

12 RELEASE FROM SURETY OBLIGATIONS

If one or more of the Shareholders purchases the entire Shareholder Interest of another Shareholder pursuant to the provisions of this Agreement, the purchasing Shareholder shall be obliged to use its best endeavours to procure the release of the selling Shareholder from any guarantees given for the obligations of the Company, provided that such best endeavours shall not require the discharge or material variation of any principal obligation and, until the release is procured, the purchasing Shareholder shall indemnify the selling Shareholder against liability under any such guarantee.

13 VALUATION

- 13.1 For purposes of this Agreement the “**Market Value**” of any Shareholder Interest means –
- 13.1.1 the value of the Shares as designated annually by the Auditors on or before 1 March each year (“**Valuation Certificate**”), which Valuation

Certificate shall serve as conclusive proof of the market value the Shares for the relevant period or at the relevant date of determination; and

13.1.2 the face value of the Claims.

13.2 In the determination of the Market Value, the Auditors –

13.2.1 shall act as an expert and not as an arbitrator;

13.2.2 shall take into account the most recent Valuation Certificate and such further considerations as they deem fit;

13.2.3 shall take into account the market value of the Golf Villa;

13.2.4 shall be entitled to take advice from any person considered by them to have expert knowledge with reference to the subject matter of the valuation;

13.2.5 shall be obliged to receive written representations from any Party, and such other representations and in such form as it may determine; and

13.2.6 shall make all such representations available to all Parties and allow them reasonable time to furnish further written representations in relation thereto.

13.3 The Shareholders shall immediately be informed of a valuation of the Shareholder Interest by the Auditors.

13.4 The Company shall bear the cost of any valuation, unless the Auditors have determined that any other Party should bear such costs because such other Party, in the opinion of the Auditors, acted in a grossly unreasonable manner.

PART VII – DISPUTE RESOLUTION

14 LIMITED REMEDY IN EVENT OF BREACH

- 14.1 In the event of any of the Parties ("**the Defaulting Party**") committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of 10 (ten) Business Days after receipt of a written notice from another party ("**the Aggrieved Party**") calling upon the Defaulting Party so to remedy, then the Aggrieved Party shall be entitled to claim specific performance of the terms of this Agreement and without further notice, claim and recover damages from the Defaulting Party, but shall not be entitled to cancel this Agreement.
- 14.2 It is recorded for the avoidance of any doubt that any claim for damages is independent of and separate to any claim for specific performance.

15 DEADLOCK

- 15.1 In the event that any resolution of the Shareholders is a tied vote, a deadlock shall be deemed to exist, which deadlock shall be resolved by way of a special resolution of the Shareholders.
- 15.2 The Parties agree that the deadlock shall not constitute grounds for winding up of the Company and the Company shall not implement the decision in question, it being agreed that the deadlock shall be resolved in accordance with the provisions of this clause 15.

16 DISPUTE RESOLUTION

Except as otherwise specifically provided for herein, should any dispute arise between the Parties in respect of or pursuant to this Agreement, such dispute shall be determined and resolved in accordance with the provisions of the MOI.

PART VIII – CONFIDENTIALITY

17 CONFIDENTIALITY

- 17.1 The Shareholders acknowledge that any information supplied in connection with this Agreement or in connection with the technical, industrial or business affairs of the Company or its subsidiaries or associated companies which has or may in any way whatsoever be transferred or come into the possession or knowledge of any other of them (“**the Receiving Party**”) may consist of confidential or proprietary data, disclosure of which to or use by third parties might be damaging to the Company.
- 17.2 The Receiving Party therefore agrees to hold such material and information in the strictest confidence, to prevent any copying thereof by whatever means and not to make use thereof other than for the purposes of this Agreement and to release it only to such properly authorised directors, employees or third parties requiring such information for the purposes of this Agreement and agree not to release or disclose it to any other party who has not signed an agreement expressly binding himself not to use or disclose it other than for the purposes of this Agreement.
- 17.3 The undertaking and obligations contained in this clause do not apply to information which –
- 17.3.1 is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Parties;
- 17.3.2 is already in possession of the Receiving Party prior to its receipt by or disclosure to such Receiving Party;
- 17.3.3 is required by law or any regulatory authority to be disclosed; and/or
- 17.3.4 after being disclosed to the Receiving Party is disclosed by any other person to the Receiving Party otherwise than in breach of any obligation of confidentiality.

- 17.4 The Parties shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of its directors, employees, agents, and/or directors, employees or agents of any assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary data may have been or will be disclosed.
- 17.5 Save as may be required by law or any regulatory authority, no announcement or publicity of the existence of this Agreement or its content or the transaction embodied in this Agreement shall be made or issued by or on behalf of any Party without the prior written agreement of all the Parties.

18 INTELLECTUAL PROPERTY

The Shareholders' acknowledge and agree that the Intellectual Property shall at all times vest in and be owned by the Company, and nothing contained in this Agreement shall be construed as granting or transferring to any Shareholder any rights in and to the Intellectual Property.

19 GOOD FAITH

- 19.1 The Parties shall co-operate and consult with each other regarding the activities of the Company and the promotion of the Business of the Company, it being the intention that -
- 19.1.1 the relationship between them shall be governed by the principles of the utmost good faith as such principles are understood in the context of a partnership; and
- 19.1.2 the affairs of the Company shall be administered and promoted with the highest degree of integrity between the Shareholders.
- 19.2 All dealings between the Company and the Shareholders and between the Shareholders and other entities Controlling or Controlled by the Company, whether directly or indirectly, shall be conducted on a *bona fide*

arm's length basis. Any facilities, whether for finance, goods or services, whether from the Shareholders or from third parties, shall be procured on an arm's length basis on normal commercial terms and prices.

- 19.3 The Parties will do and procure the doing of all such things, including the passing of any resolutions of directors or Shareholders of the Company to the extent that same may lie within such Parties, as may be required to give effect to the import or intent of this Agreement.

PART IX – GENERAL

20 NOTICES AND DOMICILIA

- 20.1 Each of the Parties choose as their *domicilia citandi et executandi* their respective physical addresses set out in this clause for the purposes of the serving of any process and choose their respective physical addresses and e-mail addresses for the giving of any notice 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 physical address within the Republic of South Africa which is not a post office box or *post restante* and also vary its e-mail address from time to time.
- 20.3 For purposes of this Agreement the Parties' respective addresses shall be –
- 20.3.1 the Company at Polo Pavilion, Val de Vie Estate, Paarl;
email: renier.swart@valdeview.co.za;
- 20.3.2 Each Shareholder at the addresses provided for in the Deed of Adherence.
- 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 message, be deemed to have been delivered to and received by the addressee on the first Business Day following transmission; and
- 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 message shall be adequate written notice or communication to such Party.

21 GENERAL

- 21.1 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.
- 21.2 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 all the Parties or their duly authorised representatives.
- 21.3 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.

- 21.4 No Party shall be entitled to cede, assign or delegate any of its rights and/or obligations in terms of or arising from this Agreement to any third party without the prior written consent of the other Parties.
- 21.5 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.
- 21.6 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.
- 21.7 This Agreement shall be binding upon the Parties hereto, their successors in title, administrators and heirs.

DEED OF ADHERENCE

I, the undersigned, _____ ("**the new Shareholder**") wish to become a Shareholder in Pearl Valley Golf Villas 1 Share Block Company RF Ltd ("**the Company**"). The new Shareholder acknowledges that as a precondition of acquiring any Shares in the Company, the new Shareholder is required to bind itself to the shareholders' agreement subsisting between all of the other Shareholders of the Company and the Company itself ("**the Shareholders Agreement**").

The new Shareholder hereby agrees and undertakes that with effect from the date of acquisition of any Shares in the Company, and provided that such acquisition of Shares is approved in terms of the Shareholders Agreement, it will be bound by all of the provisions of the Shareholders Agreement and all the terms thereof shall be enforceable against it by all of the parties thereto, as if the new Shareholder had been a party thereto.

The New Shareholder's details are as follows –

Full name:

Registration

Number/Identification

number:

Physical Address:

Postal Address:

Email:

Income Tax No:

Signed:

.....

FOR: [NEW SHAREHOLDER]

ACCEPTED AT _____ THIS _____ DAY OF _____

.....

.....

.....

**FOR: PEARL VALLEY GOLF VILLAS
1 SHARE BLOCK COMPANY RF
LTD**

GENERAL PLAN

APPENDIX 2