

MEMORANDUM OF AGREEMENT

entered into between

VAL DE VIE WINELANDS LIFESTYLE ESTATE HOMEOWNERS' ASSOCIATION

and

VAL DE VIE INVESTMENTS (PTY) LTD

and

PEARL VALLEY GOLF AND COUNTRY ESTATE HOMEOWNERS' ASSOCIATION

and

PEARL VALLEY INVESTMENTS (PTY) LTD




Two handwritten signatures are present. The first is a large, stylized signature. Below it are the initials 'JW' and another signature.

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MEMORANDUM OF AGREEMENT

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MEMORANDUM OF AGREEMENT

1 INTERPRETATION

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

1.1.1 “**the/this Agreement**” means the agreement as set out in this document and the appendices hereto as amended from time to time;

1.1.2 “**Business Day**” means any day that is not a Saturday, Sunday or South African public holiday;

1.1.3 “**By-law**” means the Drakenstein By-law on Municipal Land Use Planning, 2018 (as amended);

1.1.4 “**Estates**” means the VDV Estate and the PV Estate and “**Estate**” means any one of them, as the case may be;

1.1.5 “**HOAs**” means the VDV HOA and the PV HOA and “**HOA**” means any one of them, as the case may be;

1.1.6 “**Infrastructure and Amenities**” means the immovable assets of each HOA and the immovable assets of –

1.1.6.1 PVI on the PV Estate to which the PV HOA members and residents have the right of use and access; and

1.1.6.2 VDVD on the VDV Estate to which the VDV HOA members and residents have the right of use and access;

1.1.7 “**the Parties**” or “**Party**” means the HOAs or any one of them, as the case may be;

1.1.8 “**PV Estate**” means the Pearl Valley Golf and Country Estate residential development outside Paarl in the Western Cape Province;

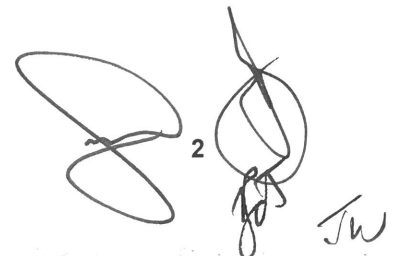
1.1.9 “**PV HOA**” means the Pearl Valley Golf and Country Estate Homeowners' Association created in terms of Section 29 of the By-law;



- 1.1.10 “PVI” means Pearl Valley Investments (Pty) Ltd, registration number 2015/068356/07, a private company duly incorporated in accordance with the laws of the Republic of South Africa;
- 1.1.11 “the Signature Date” means the date on which this Agreement is signed by the Party signing last in time;
- 1.1.12 “VDV Estate” means the Val de Vie Winelands Lifestyle Estate residential development outside Paarl in the Western Cape Province;
- 1.1.13 “VDV HOA” means the Val de Vie Winelands Lifestyle Estate Homeowners’ Association created in terms of Section 29 of the By-law; and
- 1.1.14 “VDVD” means Val de Vie Developments (Pty) Ltd, registration number 2006/022980/07, a private company duly incorporated in accordance with the laws of the Republic of South Africa.

2 INTRODUCTION

- 2.1 The Infrastructure and Amenities are located on various areas on the VDV Estate and the PV Estate and accordingly it falls under the jurisdiction of the relevant HOA which has jurisdiction over the land on which it is located. The members and residents of such HOA which has jurisdiction over land on which the relevant Infrastructure and Amenities are located have the right of access to and use of such Infrastructure and Amenities.
- 2.2 Prior to the Signature Date, the HOAs agreed that the members and residents of the PV HOA would have access to and right of use of the Infrastructure and Amenities on the VDV Estate and that the PV HOA would reciprocate by allowing the members and residents of the VDV HOA access to and right of use of the Infrastructure and Amenities on the PV Estate. In VDV HOA’s view this was done on the basis that it did not create a vested right for either HOA’s members and residents regarding use of such Infrastructure and Amenities located on the neighbouring Estate, and that such reciprocal use could accordingly be revoked by either of the HOAs at any stage. No formal written agreement was concluded between the HOAs to regulate the terms of such reciprocal use arrangement.

Handwritten signatures and initials. On the left, a large, stylized signature. To its right, a smaller signature with the number '2' written next to it. Further right, the initials 'JW' are written.

2.3 In an attempt to formalise the aforesaid relationship, the HOAs considered the possibility of amalgamation of the HOAs in a single homeowners' association, which would address certain operational and security risks raised by the VDV HOA, but the PV HOA preferred a separate homeowners' association, which was also investigated, but could not, in VDV HOA's opinion, adequately address the VDV HOA's concerns regarding operational security risks and would potentially have required the registration of servitudes to secure indefinitely reciprocal rights of use and access across the Estates, which is not the intention.

2.4 The Parties have therefore resolved to enter into this Agreement, to record their agreement regarding the continued reciprocal use arrangement between them with effect from the Signature Date and for the Parties to proceed on the basis that shared values to establish and maintain a harmonious and friendly community culture is essential to ensure a sustainable long term relationship between the Estates.

3 SUPERSESSION

This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof and in particular, this Agreement supersedes and replaces any previous agreements between any of the Parties regarding the reciprocal use of any of the Infrastructure and Amenities by the members and residents of any of the HOAs.

4 COMMENCEMENT AND DURATION

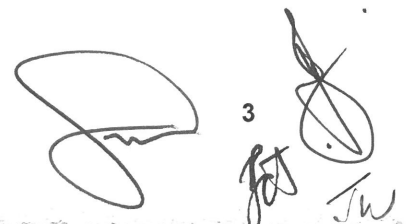
4.1 This Agreement shall commence on the Signature Date.

4.2 This Agreement shall terminate –

4.2.1 if either HOA gives 3 calendar months' notice of termination to the other Parties; or

4.2.2 otherwise in accordance with the provisions of clause 6 below.

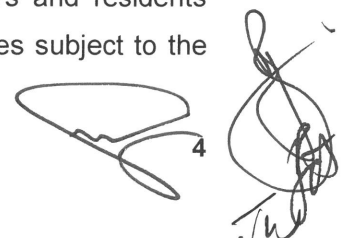
4.3 If this Agreement is terminated in accordance with the provisions of clauses 4.2.1 or 4.2.2 above –

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- 4.3.1 the members of the PV HOA and residents of the PV Estate shall –
- 4.3.1.1 no longer be entitled to have biometric access to the VDV Estate;
- 4.3.1.2 no longer be entitled to make use of the Infrastructure and Amenities on the VDV Estate, except as otherwise agreed to with the owner/s of such facilities;
- 4.3.1.3 only be allowed to enter the VDV Estate on the same terms as the general public, it being specifically recorded that PV HOA members and residents will have to enter and exit the VDV Estate at the same gate;
- 4.3.2 the members of the VDV HOA and residents of the VDV Estate shall –
- 4.3.2.1 no longer be entitled to have biometric access to the PV Estate;
- 4.3.2.2 no longer be entitled to make use of the Infrastructure and Amenities on the PV Estate, except as otherwise agreed to with the owner/s of such facilities;
- 4.3.2.3 only be allowed to enter the PV Estate on the same terms as the general public, it being specifically recorded that the VDV HOA members and residents will have to enter and exit the PV Estate at the PV main gate.
- 4.4 If this Agreement is terminated and if the HOAs agree to erect a fence between the Estates, then the terminating Party shall be responsible to erect a fence and bear the costs thereof, save in the case of termination as a result of breach in terms of clause 4.2.2 above in which event the costs shall be borne by the defaulting Party if the HOAs agree to erect a fence.

5 RECIPROCAL USE TERMS

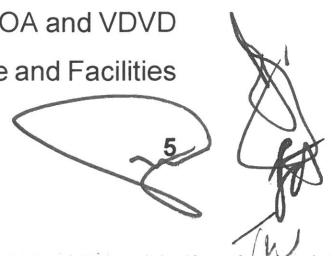
- 5.1 VDV HOA and VDVD hereby grants the PV HOA and its members and residents access to and use of its Infrastructure and Amenities on the basis that the PV HOA and PVI hereby grants the VDV HOA and its members and residents reciprocal access to and use of its Infrastructure and Amenities subject to the following –



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- 5.1.1 the HOAs will remain separated and each will manage its own affairs with the exception of all matters relating to security, which will continue to be managed by the joint security committee made up of the number of representatives of each Estate as constituted at the Signature Date and the security expenses in respect of the Estates, as approved by the joint security committee, will continue to be funded according to the annually agreed ratio of members in each HOA (currently on a 68% (VDVHOA) / 32% (PV HOA) percentage split);
- 5.1.2 the members and residents of the HOAs will retain biometric access to and traversing rights across the Estates and use of the Infrastructure and Amenities located on each of the Estates;
- 5.1.3 all risk and benefits in and to the golf course on the PV Estate will be ringfenced and remain with the PV HOA and accordingly the VDV HOA members will not have to pay any contributions to the PV HOA in respect of the golf course and club related fees and costs;
- 5.1.4 with effect from 1 September 2024 the PV HOA shall pay an amount of R640 per month (no VAT applicable) per registered PV HOA member to the VDV HOA on a monthly basis, which amount shall escalate annually at the same rate as the escalation of the VDV HOA levy;
- 5.1.5 each HOA agrees to pay any fines or costs of physical damages to property due by any of their members or residents to the other HOA on demand from the other HOA if such member/s or resident/s fail/s to pay such fine or costs of damages to property within 30 days of demand by the other HOA;
- 5.1.6 each HOA agrees, if the conduct of a member or resident of another HOA is found to be in breach of the conduct rules of the other HOA from time to time, such member or resident's access and use of Infrastructure and Amenities may be temporarily revoked by the other HOA until such breach is remedied to the satisfaction of the other HOA.
- 5.2 It is recorded, for the avoidance of doubt, that –
- 5.2.1 the reciprocal use as aforesaid will only be granted by VDV HOA and VDVD to PV HOA members and residents in respect of Infrastructure and Facilities

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to which all VDV HOA members and residents who are in good standing with VDV HOA have access and similarly, PV HOA and PVI only grant such reciprocal use to VDV HOA members and residents to Infrastructure and Facilities to which all the PV HOA members and residents who are in good standing with PV HOA have access to; and

- 5.2.2 each Party may still make rules relating to administrative and practical terms and conduct of users in respect of the use of and access to its Infrastructure and Amenities provided such rules apply equally to the HOAs' members and residents and do not distinguish between members and residents of VDV HOA and members and residents of PV HOA.

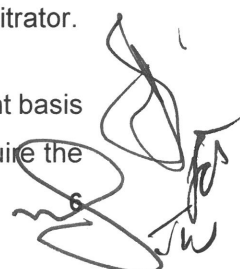
6 BREACH

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

- 6.1 cancel this Agreement forthwith, with or without claiming damages;
- 6.2 obtain an order against the Defaulting Party for specific performance, with or without claiming damages;
- 6.3 claim such damages as it may have suffered in lieu of specific performance together with all amounts owing under or in terms of this Agreement.

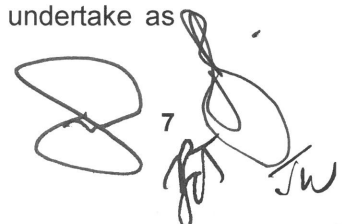
7 DISPUTE RESOLUTION

- 7.1 Any Party may demand that a dispute be determined in terms of this clause 7 by written notice given to the other Parties in accordance with the Expedited Rules of the Arbitration Foundation of Southern Africa ("**AFSA**").
- 7.2 This clause shall not prevent any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction, pending the decision of an arbitrator.
- 7.3 The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should either Party, by written notice, require the



arbitration to be held on an urgent basis. In such event either Party may apply to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.

- 7.4 The arbitration shall be held –
- 7.4.1 at Cape Town;
- 7.4.2 with only the legal and other representatives of the Parties to the dispute present thereat; and
- 7.4.3 otherwise in terms of the Arbitration Act, No. 42 of 1965 (“**Arbitration Act**”), unless otherwise provided for herein.
- 7.5 The arbitrator shall be a practicing advocate of the Cape Bar of at least ten years’ standing, appointed by agreement between the parties to the dispute, subject to clause 7.6.
- 7.6 Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 7.1, the arbitrator shall be appointed by the Chairperson of the Cape Bar Council (or by AFSA if the Cape Bar Council no longer exists), at the request of either Party to the dispute.
- 7.7 The Parties hereby consent to the jurisdiction of the High Court of South Africa in respect of the proceedings referred to in clause 7.8.
- 7.8 The decision of the arbitrator shall be final and binding on the Parties to the dispute and may be made an order of the court referred to in clause 7.7, at the instance of any of the parties to the dispute.
- 7.9 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 7.10 It is recorded that it is the intention of the Parties, that any dispute referred to arbitration in terms of clause 7.1 shall be resolved strictly in accordance with the provisions of this clause 7. The Parties accordingly agree and undertake as follows –

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- 7.10.1 that it shall not make any application to Court as contemplated in terms of section 3(2) of the Arbitration Act;
- 7.10.2 that it shall not make any application as contemplated in terms of section 20(1); and
- 7.10.3 the periods set out in section 23 of the Arbitration Act shall not be applicable to any arbitration proceedings arising out of this Agreement.

8 NOTICES AND DOMCILIA

8.1 Each of the Parties choose as *domicilia citandi et executandi* their respective addresses set out in this clause for the purposes of the giving of any notice, the serving of any process and for any other purpose arising out of or in connection with this Agreement.

8.2 Each of the Parties shall be entitled from time to time to vary its *domicilia citandi et executandi* to any other address within the Republic of South Africa which is not a post office box or *post restante*.

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

8.3.1 PV HOA at The Clubhouse, Pearl Valley Golf Estate, R301 Wemmershoek Road,

Email: greg.vanheerden@pvhoa.co.za;

8.3.2 VDV HOA at the Management Hub at the Yard, Val de Vie Estate, Paarl,

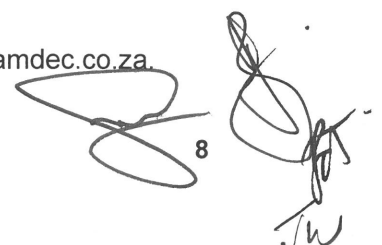
Email: eugene.botha@valdevie.co.za;

8.3.3 VDVD at the Management Hub at the Yard, Val de Vie Estate, Paarl,

Email: sarel.rossouw@valdevie.co.za and martin.venter@valdevie.co.za;

8.3.4 PVI at The Clubhouse, Pearl Valley Golf Estate, R301 Wemmershoek Road,

Email: pieter.schoeman@pearlvalley.co.za and jamesw@amdec.co.za

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- 8.4 Any notice given in terms of this Agreement shall be in writing and shall -
- 8.4.1 if delivered by hand, be deemed to have been duly received by the addressee on the date of delivery;
- 8.4.2 if transmitted by electronic mail, be deemed to have been received by the addressee on the expiration of 24 (twenty four) hours after transmission;
- 8.4.3 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.
- 8.5 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 electronic mail shall be adequate written notice or communication to such Party.

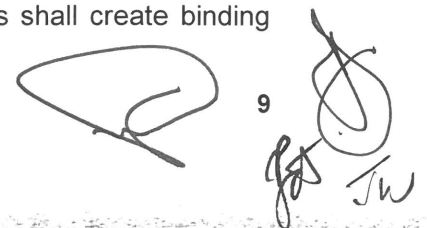
9 SEVERANCE

Each of the provisions of this Agreement is separate and severable and enforceable accordingly. If any such term or condition is or becomes unenforceable for any reason whatsoever, that term or condition is severable from and shall not affect the validity of any other term or condition contained in this Agreement.

10 OPERATION

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

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11 GENERAL

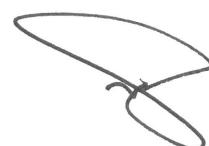
- 11.1 This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof and save as may be expressly set out herein, no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties.
- 11.2 No indulgence, leniency or extension of time which any Party may give or allow to the other Party in respect of the performance of any obligation hereunder, shall in any way prejudice the Party giving or allowing the indulgence, leniency or extension or preclude such Party from exercising any of its rights an enforcing the obligations of the other Party in terms of this Agreement.
- 11.3 No addition to, alteration, cancellation, variation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives by hand in manuscript. It is expressly recorded that the provisions of the Electronic Communications and Transactions Act No. 25 of 2002 shall not apply to the provisions of this clause.

12 CESSION AND ASSIGNMENT

- 12.1 PVI and VDVD shall be entitled to cede, assign or delegate any of its rights and/or obligations in terms of or arising from this Agreement without consent of the other Parties to any entity who replaces them as Developer and Golf Course Owner (as the case may be) in terms of the constitutions of the VDV HOA and the PV HOA.
- 12.2 The VDV HOA and the PV HOA shall not be entitled to cede, assign or delegate any of their 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.


13 SIGNATURE

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

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13.2 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.


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



**VAL DE VIE WINELANDS
LIFESTYLE ESTATE
HOMEOWNERS' ASSOCIATION**
(Duly authorised)

12/07/24

Date: _____ Place: VDV



**VAL DE VIE DEVELOPMENTS
(PTY) LTD**
(Duly authorised)

11/07/24

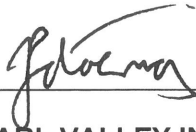
Date: _____ Place: VDV



**PEARL VALLEY GOLF AND
COUNTRY ESTATE
HOMEOWNERS' ASSOCIATION**
(Duly authorised)

08 July 2024

Date: _____ Place: Paarl



**PEARL VALLEY INVESTMENTS
(PTY) LTD**
(Duly authorised)

08/07/2024

Date:

PEARL

Place:



12 JW
JOS