

## VOC SHAREHOLDERS AGREEMENT

**THIS VOC SHAREHOLDERS AGREEMENT** is made on effective 1 July 2007 between the following parties all of which are Thai companies:-

Panaza Co Ltd;  
Novawell Co Ltd;  
Peak Properties Co Ltd;  
Courtenay Holdings Co Ltd;  
RPA Estate Co Ltd;  
Tropikeel Co Ltd;  
British Property Co Ltd;  
Summit Design Co Ltd;  
Casarina Co Ltd;  
Samui Honey Home Co Ltd;  
Yardarm Development Co Ltd;  
Langwil Co Ltd;  
Bay Hill Properties Co Ltd;  
Project JS Co Ltd;  
Yorksam Co Ltd;  
KS Hill Co Ltd (“KSH”); and  
Plain Sailing Co Ltd

(hereinafter individually called a “**Shareholder**” and collectively called “**Shareholders**”) and

Samui Summit Management Co Limited, a Thai company having its registered office at 21<sup>st</sup> Floor Chamnan Phenjat Tower, 65/177 Rama 9 Rd, Huaykwang, Bangkok 10320, Thailand (the “Company”).

**WHEREAS** the Company has been established to act with effect from 1 July 2007 as the villa owners corporation in respect of the Development for the general benefit of all Shareholders and the parties have agreed to this Agreement which sets out the arrangements between them in relation to their respective participation as Shareholders in the Company and the manner in which the affairs of the Company will be regulated.

**NOW IT IS HEREBY AGREED** as follows:

### 1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following words and expression shall have the following meaning:

“Accession Agreement” means the form of Accession Agreement set out in Schedule 1;

“Agreement” means this VOC Shareholders Agreement;

“Articles” means the Articles of Association of the Company as amended from time to time;

“Board” or “Committee” means the board of Directors for the time being of the Company;

“Bye-laws” means the bye-laws from time to time in effect pursuant to Clause 2.2;

“Common Area” means the land owned by the Company upon which the Roads and the Estate Infrastructure are built;

“Development” means the luxury villa development proposed to be named “Samui Summit Estate” at Choengmon, Koh Samui, Thailand the indicative plan of which is set out in Schedule 2 (the “Plan”) subject to Clause 3.2;

“Director” or “Committee Member” means a director for the time being of the Company;

“Estate Infrastructure” means all wells, tanks, pumps, meter boxes and meters, conduits, cables, lightening protection and security equipment and telecommunications infrastructure on and serving the Development (to the extent that the same are not owned by third parties such as utility companies);

“KSH Area” means the land identified as such on the Plan and any assets or facilities built or contained thereon;

“Property” means a land plot in the Development and includes the villa and other buildings or structures for the time being thereon;

“Roads” means all the access roads on the Development and the land marked A on the Plan (upon which Estate Infrastructure is built) all of which are owned by the Company;

“Shares” means shares of the Company;

“Shareholder” means a shareholder of the Company and shall include any person becoming a Shareholder pursuant to this Agreement;

- 1.2 References herein to Clauses and Schedules are to the clauses and the schedules of this Agreement unless the context requires otherwise and the Recitals and the Schedules shall be deemed to form part of this Agreement.
- 1.3 Reference to any statute or statutory provision shall include any statute or statutory provision which amends or replaces or has amended or replaced it and shall include any subordinate legislation made under relevant statute.
- 1.4 Reference to the plural shall include the singular and vice versa; words importing a gender shall include every gender; reference to any person shall include references to an individual, firm, body corporate or unincorporated.
- 1.5 Clause headings are inserted for convenience and reference only and shall not affect the construction of this Agreement.

## **2. MAIN PURPOSE; BYE-LAWS**

- 2.1 The main purpose of the Company is to operate in the nature of a Villa Owners Corporation whereby the Company is responsible for the management and operation of the Common Area and the maintenance at all times of the general

quality and status of the Development as a high quality luxury villa complex for the general benefit of the Development and the Shareholders so as to preserve the value inherent in ownership by the Shareholders of the Properties within the Development. The Company may discharge its obligations hereunder either directly or through the engagement of professional estate/property managers. Without prejudice to the generality of the fore-going the Company shall be responsible for the following matters:-

- (a) ensuring that the Common Area is at all times well maintained and protected in terms of landscaping, gardening, common facilities, utilities, maintenance of roadways and boundaries, provision of cleaning, sanitary and rubbish collection facilities and security services;
- (b) ensuring that suitable Bye-laws are adopted, amended or updated as necessary from time to time, complied with and reasonably enforced;
- (c) requiring (where reasonably deemed appropriate by the Board) Shareholders to enter into Servitudes under Thai law for the general benefit and protection of the mutual interests of all Shareholders and the Development generally;
- (d) agreeing fair and reasonable commercial terms for the use by Shareholders of any facilities on the KSH Area such as the restaurant;
- (e) ensuring that the Company is sufficiently funded by the Shareholders as provided in this Agreement so as to allow the Company to comply with and fulfill its duties and obligations hereunder;
- (f) ensuring that all Shareholders comply with their obligations hereunder and any other covenants given by them, particularly in terms of ensuring that the Company is at all times properly funded to discharge its obligations including, if necessary, enforcing rights and remedies against any Shareholder who defaults in or breaches their obligations.

2.2 The Board shall procure that the Company adopts a set of Bye-laws setting out rules and regulations (as commonly found in respect of similar villa-owner corporations) which all parties shall be required to comply with in relation to the day-to-day management, operation and running of the Development including the Common Area. The Board shall also determine the manner in which the Bye-laws can be amended from time to time and shall also lay down procedures for ensuring compliance by all Shareholders with the Bye-laws. Each Shareholder agrees to comply with and be bound by such Bye-laws. The Bye-laws shall supplement and at all times be subject to and may in no circumstances contradict the matters referred to in Clause 5.

### **3. STRUCTURE OF THE COMPANY**

3.1 The registered capital of the Company is TBT4,000,000 divided into 40,000 Shares of TBT100 each. All of such Shares were issued to KSH in consideration of KSH transferring ownership of the Roads to the Company and KSH will retain title to 2,125 of such Shares in its capacity as owner of the KSH Area. The remaining 37,825 Shares have been or will be, subject to payment therefor and to Clause 3.2, transferred by KSH to the owners of the Properties as follows: -

<u>Name of Shareholder</u>	<u>Related Property</u>	<u>Number of Shares to be Acquired from KSH</u>	<u>Acquisition Price (US\$)</u>	<u>Percentage of Management Fee (US\$)</u>
Panaza Co Ltd	Hill 1	1,275	3,000	4.616%
Novawell Co Ltd	Hill 2	1,275	3,000	4.616%
Peak Properties Co Ltd	Hill 3	1,275	3,000	4.616%
Courtenay Holdings Co Ltd	Hill 4	1,275	3,000	4.616%
RPA Estate Co Ltd	Hill 5	1,275	3,000	4.616%
Tropikeel Co Ltd	Hill 6	1,275	3,000	4.616%
British Property Co Ltd	Hill 7	1,275	3,000	4.616%
Summit Design Co Ltd	Hill 8	1,275	3,000	4.616%
Casarina Co Ltd	Hill 9	1,275	3,000	4.616%
Samui Honey Home Co Ltd	Hill 10	1,275	3,000	4.616%
Yardarm Development Co Ltd	Hill 11	1,275	3,000	4.616%
Langwil Co Ltd	Hill 12	1,275	3,000	4.616%
Bay Hill Properties Co Ltd	Hill 13	1,275	3,000	4.616%
KS Hill Co Ltd	Hill 14	1,275	3,000	4.616%
Project JS Co Ltd	Hill 15	1,275	3,000	4.616%
Yorksam Co Ltd	Plantation 1	850	2,000	3.077%
Yorksam Co Ltd	Plantation 2	850	2,000	3.077%
Yorksam Co Ltd	Plantation 3	850	2,000	3.077%
Yorksam Co Ltd	Plantation 4	850	2,000	3.077%
Yorksam Co Ltd	Plantation 5	850	2,000	3.077%
Yorksam Co Ltd	Plantation 6	850	2,000	3.077%
Yorksam Co Ltd	Plantation 7	850	2,000	3.077%
Yorksam Co Ltd	Plantation 8	850	2,000	3.077%
KS Hill Co Ltd	Plantation 9	850	2,000	3.077%
Plain Sailing Co Ltd	Plantation 10	850	2,000	3.077%
		<u>27,625</u>		<u>100%</u>
Allocated to Phase 2 per Clause 3.2		<u>10,200</u>		
<b>Total</b>		<u><b>37,825</b></u>		

NOTE: The percentage of Management Fee allocated to each Property will be reduced when Phase 2 Shares are transferred.

3.2 Phase 2: A plan of the current proposal for Phase 2 of the Development, proposed to be implemented over approximately a 12 month period commencing in Q1 2008, is set out in Schedule 3. The Phase 2 villas are proposed to be similar in size/capacity/quality to the existing Plantation Villas and will accordingly be allocated Shares on the same basis as the Plantation Villas. When 10,200 Shares have been transferred in respect of all villas contemplated by Phase 2, Properties in the Development will represent 37,825 Shares out of the total of 40,000 Shares (94.56%) with the remaining 2,125 Shares being held by KSH. Pending transfer of the 10,200 Shares allocated to Phase 2, such Shares will not carry voting rights. As part of Phase 2, KSH will donate to the Company for zero consideration, for the benefit of all Shareholders, the extra roads, access-ways and car park areas marked "X" on the plan set out in Schedule 3. An Accession Agreement will be executed by the registered owner of each property in Phase 2 to the intent that the relevant new Shareholder becomes a party to and bound by this Agreement.

- 3.3 The Shareholders shall ensure that the Company adopts the provisions of this Agreement and, if any provision of the Articles conflicts with provisions in this Agreement, the parties shall hold shareholders' meetings to amend the Articles to be in accordance with this Agreement.
- 3.4 H. Toosi Co Ltd, lawyers in Bangkok, shall keep and maintain the statutory books and records of the Company and be the secretary of the Company, save as otherwise resolved by the Board.

#### **4. BOARD OF DIRECTORS**

- 4.1 The Directors shall manage the business of the Company and may exercise all powers normally exercised by a Board, except for such powers as have been limited by this Agreement and such powers as are required by law to be exercised by the Shareholders.
- 4.2 The maximum number of Directors shall be five (5) persons. Any Shareholder or group of Shareholders together representing or controlling 17% or more of the total Shares in issue shall be entitled to appoint one Director and to replace or remove such Director at their discretion. Any Shareholder shall be entitled to require any Director who cannot at any time evidence such 17% representation or control to resign forthwith. The Directors shall not retire by rotation in accordance with the Civil and Commercial Code.
- 4.3 The Shareholders shall co-operate together in good faith to effect the appointment or removal of Directors in accordance with this Agreement and if a vacancy occurs, for whatever reason, the Shareholders shall vote their Shares to effect the appointment of the nominee selected by the relevant Shareholders and shall forthwith cause such replacement Director to be registered as such with the appropriate authorities.
- 4.4 All resolutions at meetings of the Board are required to be passed by at least a 65% majority vote of those present. The quorum for a meeting of the Board shall be two Directors and a Director shall, for so long as he remains a Director, be entitled to nominate a representative for any specific meeting or purpose, or generally.
- 4.5 The Board may adopt a resolution without holding a meeting if at least 65% of all Directors approve the resolution by placing their signatures on a copy of the resolution. The duly signed resolution shall be placed in the minutes book of the Company.
- 4.6 The determination of the Board shall be final and binding as to any question of interpretation or application of this Agreement or the Articles or Bye-Laws.

#### **5. MAJOR MATTERS**

- 5.1 All Shareholders acknowledge and accept that the Company is expressly charged with ensuring the performance of its duties and obligations under this Agreement. All Shareholders acknowledge that they have freely and willingly entered into this Agreement for their mutual benefit and confirm that they will not challenge or object to in any way (whether through legal proceedings or otherwise) any proper enforcement by the Company

or the other Shareholders of any rights stated in this Agreement, including consequent to any breach of this Agreement by any individual Shareholder. This Agreement accordingly acts as both an agreement between the Shareholders in terms of their respective shareholdings in the Company and also as an agreement between each Shareholder individually and the Company in terms of the Company's rights (pursuant to valid resolution of the Company) to ensure and enforce compliance by each individual Shareholder of its duties and obligations as set out in this Agreement.

- 5.2 Each Shareholder shall use its related Property as described in Clause 3.1 for residential purposes only and agrees not to use nor allow any persons to use such Property for purely commercial purposes or purposes which are illegal or against good morals of the public, or in a manner which may cause damage, trouble or nuisance to other Shareholders or users of the Development provided that the Property can be let out commercially as a residential or holiday property. KSH retains title to and, subject to Clause 2.1(d), discretion as to the utilization or development of the KSH Area depending upon the future circumstances of the Development as a whole.
- 5.3 Each Shareholder agrees that the relevant terms and intent of this Agreement shall be binding upon the lessees, dependents, contractors, guests, tenants or any other persons for whom the Shareholder shall be responsible and undertakes to cause such persons to abide by the same rules and regulations as apply to all Shareholders.
- 5.4 The Shareholders agree that the following matters are fundamentally important to the operations of the Company and the well being of the Development and accordingly the parties hereby agree that neither the Shareholders nor the Board (either directly or through the application of the Bye-laws) shall be capable of amending or varying the following matters (and the obligations of each of the Shareholders in relation thereto) save with the express written agreement of Shareholders representing not less than 80% of the total issued/registered Shares for the time being:-
- (a) the Company shall not sell, dispose of, charge or pledge in any way all or any of its interest in the Roads;
  - (b) the Company shall not change (or permit change of) the fundamental nature of the Development as a high quality residential estate; and
  - (c) save as provided in this Agreement, there shall be no change to the capital structure of the Company as set out in Clause 3.1.

**6. MANAGEMENT FEES AND RIGHTS IN RESPECT OF FAILURE TO PAY MANAGEMENT FEES**

- 6.1 In order to properly fund the business and operations of the Company each Property owner listed in the table set out in Clause 3.1 agrees to contribute to the Company management fees of such amount as shall be determined by the Board on an annual basis (subject to interim arrangements of a total charge of US\$5,000 per month or otherwise as advised by the Board in respect of the period 1 July 2007 to 31 December 2007). Each Property owner's percentage of such fees shall be as set out in the table in Clause 3.1. The total amount of management fees payable will be calculated by the Board in good faith and on the basis of all expenses they anticipate will be incurred during the relevant year in respect of the business and operations of the Company and taking account of the Accounts as referred to in Clause 8 for previous years (including any deficit or surplus from

previous periods).

- 6.2 Management fees will be payable yearly in advance on or before 1 January of each year in respect of the year commencing on that date unless otherwise determined by the Board and details of management fees payable will be notified in writing to each Shareholder no later than 30 days prior to the relevant payment date. Only Shareholders in good standing under this Agreement and otherwise in respect of the Development shall be entitled to exercise voting or other rights under this Agreement.
- 6.3 No Shareholder shall have any rights to withhold or fail to pay any management fee properly payable by it and if any Shareholder fails so to pay, and the failure continues for a period of 30 days following issue by the Company of a written reminder that the payment is overdue, the defaulting Shareholder acknowledges that the Company shall be entitled to exercise full legal rights against the defaulting Shareholder to obtain such payment and the defaulting Shareholder agrees to indemnify and hold harmless the Company accordingly, including in respect of any related legal or other costs. Without prejudice to the foregoing each Shareholder acknowledges that the legal rights of the Company to enforce payment shall include any or all of the following rights:-
- (a) to cease providing services or support of any kind, including specifically water and electricity, to the defaulting Shareholder or his Property;
  - (b) to withhold rights of access over the Common Area to the defaulting Shareholder (including rights of access by third parties to the defaulting Shareholder's Property);
  - (c) to appropriate any income arising from the defaulting Shareholder's Property;
  - (d) to charge late payment interest at 1.5% per month or such other rate as the Company may specify; and
  - (e) to take any enforcement action or injunctive or other proceedings available under the laws of Thailand or otherwise in respect of but not limited to the matters described above.

The Shareholders agree to the above freely and hereby endorse the fundamental importance of all Shareholders contributing management fees to the Company so as to ensure the ongoing ability of the Company to carry on its business as contemplated by this Agreement.

## **7. TRANSFER OF SHARES**

- 7.1 Each Shareholder agrees that it shall not in any circumstances assign, pledge or otherwise encumber any Shares. Each Shareholder further agrees that it will not transfer, sell or otherwise dispose of any Shares, unless strictly in accordance with the following conditions:-
- (a) a Shareholder may only transfer its Shares (which may only be transferred in whole and not in part) in conjunction with and as a condition of a sale or

transfer to the same transferee of the whole of the Shareholder's interest in the relevant Property in the Development owned by such Shareholder;

- (b) the price for the sale/transfer of such Shares shall be as agreed between the outgoing Shareholder and the transferee;
- (c) the sale/transfer of such Shares will not be permitted and will not be capable of registration unless the relevant transferee (i) provides satisfactory evidence that it has also purchased the related Property and (ii) enters into this Agreement with the remaining Shareholders and the Company by signing an Accession Agreement in the form set out in the Schedule hereto. A proper signatory to such an Accession Agreement shall be deemed a signatory and party to this Agreement. The failure of the proposed transferor to have the proposed transferee sign an Accession Agreement shall be deemed and constitute a material breach of this Agreement by the proposed transferor equivalent to failure to pay management fees under Clause 6 and permitting the Company to exercise all rights and remedies under Clause 6.3 against the Property, the Shareholder, the purchaser or otherwise;
- (d) the outgoing Shareholder must fully pay up-to-date and account for all amounts owing by such Shareholder in respect of his participation in and involvement with the Company.

7.2 All transfers of Shares referred to in Clause 7.1 must be in writing and executed both by the transferor and the transferee. The transferor shall be deemed to remain the holder of the Shares until the relevant signed Accession Agreement has been delivered to the Company and the particulars of the transferee and the Shares transferred are recorded in the books of the Company. All costs of the Company related to the transfer shall be paid by the transferor, regardless of any other agreement between the transferor and the transferee.

7.3 The Directors may not refuse to register any transfer of shares in accordance with this Clause 7.

## **8. ACCOUNTING AND BUDGETS**

8.1 The fiscal year of the Company shall end on 31 December of each year.

8.2 Complete books of accounts and records shall be prepared in Thai with an English translation, and shall be maintained in accordance with accounting practices generally acceptable in Thailand.

8.3 A balance sheet and a profit and loss statement certified by the approved auditor shall be submitted by the Company to all Shareholders on an annual basis at such time as may be provided by law.

## **9. WAIVER; AMENDMENT, ETC**

9.1 No waiver by any party at any time of any breach of any of the terms and conditions of this Agreement shall be interpreted as a waiver of any subsequent breach, whether of the same or of any other terms and conditions of this Agreement.



- 9.2 No amendment or variation of this Agreement shall be effective unless in writing signed by the person against whom enforcement is sought, provided that the Company reserves the right at its discretion and in good faith to reasonably vary any provision of this Agreement to take fair and proper account of any change in the nature or scope of the Development and the Shareholders hereby agree to be bound by any such variation provided the variation applies equitably to all Shareholders.
- 9.3 The officers/corporate representatives of each party hereto are hereby fully empowered to sign and complete all relevant Thai share issue formalities and related matters.
- 9.4 If one or more of the provisions hereof shall be void, invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions contained shall not be affected or impaired in any way.

## **10. NOTICES**

- 10.1 Every notice or demand under this Agreement shall be in the English language and in writing but may be given or made by first-class registered mail or facsimile or delivered by hand.
- 10.2 Every notice or demand to be given by one party to another hereunder shall be sent to the address stated at the head of this Agreement (or such other address or facsimile number as is notified by one party to the other parties to this Agreement) or the address of the relevant party in the Development.
- 10.3 Every notice or demand shall, except so far as otherwise required by this Agreement, be deemed to have been received in the case of facsimile at the time of dispatch and in the case of a letter 7 days after the posting of the same by prepaid airmail post.

## **11. GOVERNING LAW AND VALIDITY**

- 11.1 The provisions of this Agreement shall be governed in all respects by and construed in accordance with the law of Thailand.
- 11.2 The parties hereby irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Thai courts but shall be entitled to enforce this Agreement in any court of competent jurisdiction.
- 11.3 This Agreement is executed in the English language which shall be the governing language.
- 11.4 The original signature of each Property purchase contract, and the issue to each Shareholder of its respective Shares consequent to its payment therefor, constitutes each Shareholder's agreement to this Agreement, and each Shareholder further confirms this Agreement by participating in the affairs of the Company. The Company confirms the same and its agreement hereto by hereby executing this Agreement:-

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for and on behalf of  
Samui Summit Management Co Ltd

**SCHEDULE 1**

**THIS ACCESSION AGREEMENT** is made on \_\_\_\_\_ between:-

- (1) Samui Summit Management Company Limited, a Thai company having its registered office at 21<sup>st</sup> Floor Chamnan Phenjat Tower, 65/177 Rama 9 Rd, Huaykwang, Bangkok 10320, Thailand (the "Company") both for itself and, also, for and on behalf of, both individually and collectively, all other parties to the VOC Shareholders Agreement (the "Agreement") dated effective 1 July 2007 in respect of the Company, including all persons who have subsequently become Shareholders of the Company and parties to the Agreement by virtue of signing an Accession Agreement in the same form as this Accession Agreement (each hereinafter called a "Shareholder" and collectively the "Shareholders"); and
- (2) [ \_\_\_\_\_ ] of [ \_\_\_\_\_ ] (the "New Shareholder").

**WHEREAS** the New Shareholder has agreed to purchase the Property known as \_\_\_\_\_ in the Development NOW it is hereby agreed as follows:-

- 1. The New Shareholder hereby agrees to become a Shareholder of the Company in respect of the said Property and to be and be deemed a party to the Agreement as if the New Shareholder were an original signatory thereto and legally bound to all other Shareholders and the Company accordingly.
- 2. The Company both for itself, and also for and on behalf of every other Shareholder, hereby confirms the admission of the New Shareholder as a Shareholder of the Company (subject to Clause 3 below) and as a party to the Agreement.
- 3. This Accession Agreement shall be of no effect and shall grant the New Shareholder no rights or benefits until the New Shareholder has executed all such transfer and other documents and done all such things as are necessary to complete the transfer to it of (a) the relevant Shares and (b) the related Property.
- 4. All terms used in the Agreement shall have the same meaning when used in this Accession Agreement.

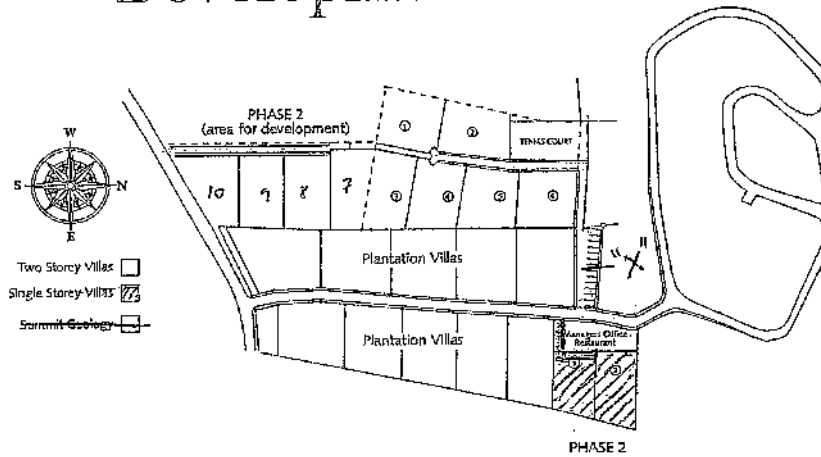
Signed by \_\_\_\_\_ )  
for and on behalf of the Company )  
both for itself and also for and )  
on behalf of every other Shareholder )  
in the presence of: )

Signed by the New Shareholder )  
in the presence of: )  
)  
)



### SCHEDULE 3

## Development Phase 2.



1. Additional roads and access ways to be gifted to VOC Company
2. Additional area marked "X" to be gifted by KSH to VOC Company as car park.
3. Tennis Court to be relocated as above.