



**DRAKENSTEIN**

MUNISIPALITEIT • MUNICIPALITY • UMASIPALA

Paarl | Wellington | Gouda | Saron | Simondium

+27 21 807 4500 +27 21 872 8054  
www.drakenstein.gov.za  
customercare@drakenstein.gov.za  
Civic Centre, Berg River Boulevard, Paarl 7646

Enquiries: C van der Bank  
Contact number: 021 807 6233  
Reference: 15/4/1 (820)P  
Date: 11 June 2021

TV3 Architects and Town Planners  
97 Dorp Street  
Stellenbosch  
7600  
Email:Thys@tv3.co.za

Dear Mr. Walters,

**ESTABLISHMENT OF HOMEOWNERS' ASSOCIATION FOR THE ACRES AND APPROVAL OF THE SITE DEVELOPMENT PLAN OF ERF 644 PEARL VALLEY ESTATE (SUBDIVISION OF PORTION 1 OF FARM 1265 PAARL DIVISION)**

Your land use applications with reference numbers 1724552 and 1744524, refers.

You are hereby notified that approval was granted as follows:

1. Approval in terms of Section 60(2) of the Drakenstein By-law on Municipal Land Use Planning, 2018, for the establishment of The Acres Home Owners Association, resulting from the subdivision of Erf 644 Pearl Valley Estate, as contained in the Constitution for The Acres Home Owners Association, attached as Annexure A.
2. Approval in terms of Section 60(1) of the Drakenstein By-law on Municipal Land Use Planning, 2018, for the approval of the Site Development Plan for Erf 644 Pearl Valley Estate, dated 31 March 2021 (Project No P3474), attached as Annexure B.

Notification of the decision will be placed on the municipal website and any person, whose rights are affected by the decisions above, may appeal in writing in terms of Section 62(3) of the Municipal Systems Act, to the Appeal Authority as stipulated in terms of Section 79(2) of the Drakenstein By-law on Municipal Land Use Planning, 2018.

Regards,

DAVID DELANEY

ACTING EXECUTIVE DIRECTOR: PLANNING AND DEVELOPMENT

ANNEXURE A

**CONSTITUTION**  
**OF**  
**THE ACRES HOMEOWNERS' ASSOCIATION**

**DRAKENSTEIN MUNICIPALITY**

Approved in terms of Section 60 of the Drakenstein Municipal Land  
Use Planning By-law, 2018.

Ref: 15/4/1 (820)PV

Date: 11-06-2021



ACTING EXECUTIVE DIRECTOR: PLANNING AND DEVELOPMENT

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**NO. APPENDICES**

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1. Shared Services Agreement
2. Access Road: Notarial Deed of Servitude
3. Club and Recreational Facilities Agreement



# THE ACRES HOMEOWNERS' ASSOCIATION CONSTITUTION

## 1 DEFINITIONS

In this Constitution and unless inconsistent with the context, the following words and expressions shall have the meanings hereby assigned to them:

- 1.1 “**Alienate**” means in relation to any Erf, Unit or in the instances listed in clause 22.7 below, the transfer of any rights in respect thereof and, without derogating from the generality of the foregoing, includes to alienate by way of sale, exchange, donation, deed, intestate succession, will, cession, assignment, court order, insolvency or liquidation, and by way of mortgage bond registration irrespective of whether such alienation is subject to a suspensive or resolutive condition and “**Alienation**” shall have a corresponding meaning;
- 1.2 “**Architect**” means the controlling architect appointed from time to time by the Developer during the Development Period and thereafter as appointed by the Association from time to time;
- 1.3 “**Association**” means The Acres Homeowners’ Association established in terms of this Constitution;
- 1.4 “**Auditors**” means the auditors of the Association;
- 1.5 “**Body Corporate**” means a body corporate of any Sectional Title Scheme falling within the Development;
- 1.6 “**Business Unit**” means any Erf or Unit zoned in terms of the Town Planning Scheme for commercial or business purposes or which is used for business purposes with the consent of the Local Authority and the Association;
- 1.7 “**Chairman**” means the chairman of the board of Trustees;
- 1.8 “**Common Property**” means –



- 1.8.1 in the case of an Erf on which a Sectional Title Scheme is developed, common property as defined in the Sectional Titles Act, which is not subject to an exclusive right of use by a member in terms of that Sectional Title Scheme;
- 1.8.2 the land registered in the name of the Association, including, but not limited to, Private Spaces; and
- 1.8.3 any portion of the Development which is not subject to an exclusive right in favour of a Member;
- 1.9 “**Constitution**” means this constitution which governs the Association, including all annexures hereto, as may be amended from time to time in accordance with its terms;
- 1.10 “**Contractor**” means a building contractor approved by the Developer during the Development Period, and thereafter by the Association in terms of this Constitution in terms of criteria determined by the Developer or the Association, as the case may be, and employed by a Registered Owner of an Erf or Unit for the construction of Improvements;
- 1.11 “**Deeds Registries Act**” means the Deeds Registries Act No 47 of 1937, as amended;
- 1.12 “**Developer**” means Safariland Devco (Pty) Ltd, with registration number 2017/013321/07 (“**Safariland**”) or its successors in title and assignees, which shall include any third party to whom the Developer cedes and delegates its rights and obligations in terms of this Constitution during the Development Period;
- 1.13 “**Developer Trustee**” means a trustee appointed by the Developer;
- 1.14 “**Development**” means the relevant portion of Farm Safariland, no. 1265, Paarl, situated in the Local Authority, Administrative District Paarl, Western Cape Province as set out in GENERAL PLAN No. 597/2020, which is to be developed into residential units known as “**The Acres**”, and



includes any and all extensions thereof approved by the Local Authority upon application by the Developer during the Development Period;

1.15 “**Development Period**” means the period commencing on the sale of the first Erf in the Development and enduring until the earlier of the date on which all the Erven in the Development have been transferred from the Developer or the date on which the Developer notifies the Association in writing that it terminates the Development Period;

1.16 “**Distressed Sale**” means –

1.16.1 a distressed sale or a sale in execution where a bank or financial institution as mortgage bond holder in respect of an Erf or Unit legally attaches and sells such Erf or Unit due to failure of the relevant Registered Owner to fulfil its obligations towards such mortgage bond holder;

1.16.2 a sale where a bank or financial institution as mortgage bond holder in respect of an Erf or Unit assists a Registered Owner with the sale of such Erf or Unit in accordance with the requirements of the relevant mortgage bond holder’s formal programmes to assist distressed customers to sell their immovable properties in instances of failure of the relevant Registered Owner to fulfil its obligations towards the relevant mortgage bond holder; and/or

1.16.3 where a bank or financial institution as mortgage bond holder in respect of an Erf or Unit legally attached an Erf or Unit due to failure of the relevant Registered Owner to fulfil its obligations towards the said mortgage bond holder and took transfer of the said Erf or Unit and thereafter sold such Erf or Unit;

1.17 “**Estate Agent**” means an Estate Agent approved and listed by the Developer during the Development Period, and thereafter by the Association, in terms of this Constitution in terms of a criteria determined by the Developer for as long as the Developer is a Member and, thereafter, by the Association and contracted by a Registered Owner of



an Erf or Unit for the letting and/or reselling of his Erf or Erven or Unit or Units;

1.18 “**Erf**” or “**Erven**” means any erf or erven in the Development and on which is established or may be established, *inter alia* but not limited to, residential dwellings, Sectional Title Schemes and Business Units, and includes immovable property transferred or to be transferred in accordance with the provisions hereof to the Association;

1.19 “**Estate Rules**” means such estate rules as are made and amended from time to time by the Association and/or the Trustees in terms of the provisions hereof;

1.20 “**Financial Year**” means the financial year of the Association, as determined by the Trustees;

1.21 “**Greater Val de Vie Estate**” means collectively –

1.21.1 Val de Vie Winelands Lifestyle Estate located on the relevant portions of Erf 954, Val de Vie, registration division Paarl, Western Cape and Remainder of Erf 783 Val de Vie, registration division Paarl, Western Cape;

1.21.2 Val de Vie II Estate located on the relevant parts of Erf 954, Val de Vie, registration division Paarl, Western Cape and Remainder of Erf 783 Val de Vie, registration division Paarl, Western Cape; and

1.21.3 such other estate, development, immovable property or sectional title scheme which is determined to form part of the “Greater Val de Vie Estate” in terms of the memorandum of incorporation or constitution, as the case may be, of the Master HOA;

1.22 “**Guide**” means the guidelines for Members in respect of the Development, which document contains the following information and documentation in respect of the Development –

1.22.1 design guidelines;





- 1.22.2 building rules and regulations;
- 1.22.3 Estate Rules; and
- 1.22.4 any relevant annexures to the documents listed in 1.22.1 to 1.22.2 above;
- 1.23 **“Improvements”** means any structure of whatever nature constructed or erected or to be constructed or erected on an Erf and includes any Unit;
- 1.24 **“Levy”** means the levy referred to in clause 23 hereof;
- 1.25 **“Local Authority”** means the Local Authority having jurisdiction over the Development which, at date of approval of the Development, is Local Authority;
- 1.26 **“Managing Agent”** means any person(s) or body(ies) appointed in accordance with the provisions of this Constitution, either as an employee or as an independent contractor, to undertake the management of the Development and the affairs of the Association and as more fully set out in clause 30 below;
- 1.27 **“Master HOA”** means one of the following –
  - 1.27.1 Val de Vie Winelands Lifestyle Estate Homeowners’ Association a homeowners’ association established in terms of Section 29 of Ordinance 15 of 1985; or
  - 1.27.2 Val de Vie II Homeowners’ Association a homeowners’ association established in terms of Section 29 of Ordinance 15 of 1985; or
  - 1.27.3 Pearl Valley Golf and Country Estate Homeowners’ Association a homeowners’ association established in terms of Section 29 of Ordinance 15 of 1985,

of which the Association’s members may become members in accordance with the provisions of clause 5;

- 1.28 **“Member”** means –



- 1.28.1 the Developer, in its capacity as such, during the Development Period;
- 1.28.2 all Registered Owners of any Erf and all Registered Owners of a subdivision of an Erf; and
- 1.28.3 if applicable, in respect of any Erf on which is established a Sectional Title Scheme, the Body Corporate and the Registered Owners of any Units,

it being recorded that if a Member consists of more than one person such persons shall be jointly and severally liable *in solidum* for all obligations in terms of this Constitution;

- 1.29 “**Member Trustee**” means a trustee appointed by the Members; “**Ombud**” means the ombud appointed in terms of the Community Schemes Ombud Service Act No. 9 of 2011;
- 1.30 “**Pearl Valley Developer**” means the developer as defined in the constitution of the Pearl Valley HOA;
- 1.31 “**Pearl Valley Estate**” means the development known as the “*Pearl Valley Golf and Country Estate*”, which, comprises residential, sectional title units and other erven, including an 18-hole signature golf course, club facilities and such other proposed recreational or other facilities/amenities as may be built by the Pearl Valley Developer from time to time, in its sole and absolute discretion;
- 1.32 “**Pearl Valley HOA**” means the Pearl Valley Golf and Country Estate Homeowners’ Association, created in terms of Section 29 of Ordinance 15 of 1985;
- 1.33 “**Private Spaces**” means all Erven on the Development which are identified as private roads, private open spaces, lakes, waterways and pathways and land required for services provided by the Association;



- 1.34 “**Registered Owner**” means the registered owner of an Erf or Unit or a share thereof who is, in terms of the Deeds Registries Act, reflected in the records of the Deeds Registry concerned as a registered owner or joint owner of the Erf or Unit;
- 1.35 “**Resident**” means any person lawfully occupying an Erf or Unit which shall include a tenant leasing the Erf or Unit from the Registered Owner and / or the Registered Owner’s or tenant’s, as the case may be, guests, employees and persons who reside with the Registered Owner or tenant;
- 1.36 “**Sectional Titles Act**” means the Sectional Titles Act No 95 of 1986, as amended;
- 1.37 “**Sectional Title Scheme**” means any scheme established in terms of the Provisions of the Sectional Titles Act;
- 1.38 “**Site Development Plan**” means the plan depicting the Development, as approved by the Surveyor General; and
- 1.39 “**Town Planning Scheme**” means an operative town planning scheme applicable to the township of which the Development forms part of, from time to time;
- 1.40 “**Trustees**” means the Developer Trustees and the Member Trustees, collectively from time to time and includes alternate and co-opted Trustees and “**Trustee**” shall mean any one of them as the context may indicate;
- 1.41 “**Unit**” means a unit as that term is defined in the Sectional Titles Act; and
- 1.42 “**Year**” means any calendar year.

## 2 INTERPRETATION

- 2.1 The clause headings are for convenience and shall be disregarded in construing this Constitution.
- 2.2 Unless the context clearly indicates a contrary intention:
- 2.2.1 the singular shall include the plural and vice versa; and



- 2.2.2 a reference to any one gender shall include the other genders; and
- 2.2.3 a reference to natural persons includes legal persons and vice versa.
- 2.3 Words and expressions defined in any sub-clause shall, for the purpose of the clause to which that sub-clause forms part and in subsequent clauses, unless inconsistent with the context, bear the meaning assigned to such words and expressions in such sub-clause.
- 2.4 When any number of days is prescribed in this Constitution, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.
- 2.5 Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 2.6 If any provision of this Constitution is in conflict or inconsistent with any Law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions of this Constitution.
- 2.7 If any provision in a definition in this Constitution is a substantive provision conferring rights or imposing obligations on any of the Members then, notwithstanding that it is only in the definition clause of this Constitution, effect shall be given to it as if it were a substantive provision in the body of this Constitution.
- 2.8 The annexures to this Constitution are deemed to be incorporated in and form part of this Constitution.

### **3 RECORDAL**

The Developer is desirous of establishing the Association for regulating and controlling harmonious development of the Development and for the promotion, advancement and protection of the communal interests of all owners and occupiers of the Development.



#### **4 COMMENCEMENT DATE**

This Association and this Constitution will come into existence simultaneously with the first registration of transfer of an Erf from the Developer to a Registered Owner.

#### **5 RELATIONSHIP WITH MASTER HOA**

5.1 Given the proximity of the Development to the Greater Val de Vie Estate and the synergy between the Development and the Greater Val de Vie Estate, the Trustees and the Members acknowledge and agree that the Master HOA, on a decision taken by its Trustees or its Members, may, in the exercise of its sole discretion and at any time after the establishment of the Association, but subject at all times to the approval of the Local Authority, determine that the Development shall form part of the Greater Val de Vie Estate and accordingly that the Master HOA shall be the owners' association in respect of the Development on receipt of written notice to this effect from the Master HOA to the Association.

5.2 Each Member and Trustee accordingly agrees that, upon determination by the Master HOA as aforesaid and upon the consent of the Local Authority being obtained that the Master HOA shall become the owners' association in respect of the Development –

5.2.1 all functions, powers, rights and obligations of the Association in respect of the Development and the Members shall be transferred to the Master HOA;

5.2.2 the Members shall become members of the Master HOA; and

5.2.3 the Development shall be regulated by the constitution or memorandum of incorporation, as the case may be, of the Master HOA; and

5.2.4 the Association shall be dissolved.

5.3 Until such time as the Master HOA determines that the Development will form part of the Greater Val de Vie Estate and that the Master HOA shall



be the homeowners' association of the Development, the Developer, during the Development Period or Trustees, after the Development Period, may enter into agreements with the Master HOA to grant the Association use of the property, infrastructure and service providers of the Master HOA, to the extent that the Developer or the Trustees, as the case may be, deem suitable for the purpose of fulfilling the objectives of the Association, and on such terms and conditions as determined by the Developer or the Trustees, as the case may be. The costs relating to the use of the property, infrastructure and service providers of the Master HOA shall be included in the expenses of the Association to be paid from the levy fund maintained in terms of clause 23.

## **6 STATUS**

6.1 The Association shall –

6.1.1 have legal personality and be capable of suing and being sued in its own name; and

6.1.2 not operate for profit but for the benefit of the Members.

6.2 No Member or Trustee in his personal capacity shall have any right, title or interest to or in the funds or assets of the Association which shall vest in and be controlled by the Trustees in their collective capacities as such.

## **7 OBJECTIVES**

7.1 The Association shall have as its objectives –

7.1.1 to ensure compliance with the conditions for subdivision imposed by the Local Authority when approving the Development and, more specifically –

7.1.1.1 to oversee, maintain and control the Development;

7.1.1.2 ensure the general high standard of the Development;

- 7.1.1.3 generally to carry on, promote, advance and protect the communal interest of the Members, and in particular in so promoting such communal interests to provide, promote and maintain essential and community services, amenities and activities within the Development; and
- 7.1.1.4 to manage the collective interest common to all its Members, which includes expenditure applicable to the Common Property and the collection of levies for which Members are liable;
- 7.1.2 the regulation and control of harmonious development of the Development;
- 7.1.3 to promote a high standard of Improvements on the Development;
- 7.1.4 to administer and enforce the Guide;
- 7.1.5 to ensure the maintenance, upkeep, upgrading and installation, where required, of the Association's infrastructure, the common services serving the Development, such as, but not limited to, the sewerage and drinking water reticulation and storm water systems, security fences and Private Spaces, according to the approved Site Development Plan. It is recorded that the entire sewerage system of the Development is a private system as is the water reticulation system;
- 7.1.6 the payment of the bulk water and sewerage accounts jointly with Registered Owners in the Development;
- 7.1.7 ensuring adherence to drought restrictions and conditions as and when imposed by the Local Authority;
- 7.1.8 managing and maintaining individual water connections, including water meters to each individual Erf and the sub-bulk water(s) to the Development;
- 7.1.9 to control the transfer of Erven and Units in the Development;



- 7.1.10 to ensure adherence to the conditions imposed by the Local Authority in respect of any Erf;
- 7.1.11 to ensure adherence to the conditions imposed by the Developer in the Agreement of Sale between the Developer and the first Registered Owner of an Erf or Unit;
- 7.1.12 to manage and maintain the pathways along the river banks, if applicable, and within the Development;
- 7.1.13 to take transfer of, maintain and insure, where necessary, the roads, the Private Spaces and improvements thereupon in the Development and control the usage thereof and of the facilities belonging to the Association or falling under its control.
- 7.1.14 the preservation of the natural environment, including vegetation and *flora* and *fauna* on the Development;
- 7.1.15 to regulate the conduct of any person and the prevention of nuisance of any nature to any person within the Development;
- 7.1.16 to introduce traffic calming measures and to enforce such measures by issuing fines to any person who fails to adhere to such measures;
- 7.1.17 to impose fines and other penalties that may be payable by and enforced against Members, Residents, any occupants of any Erf or Unit or any visitor to the Development; and
- 7.1.18 in order to give effect to the abovementioned objects, to make rules to accomplish these objectives;
- 7.1.19 control over and maintenance of buildings, services or amenities arising from the subdivision of the Development;
- 7.1.20 the enforcement of conditions of approval or management plans;
- 7.1.21 the implementation and enforcement of the provisions of this Constitution.



7.2 The Association shall have the power to do all such acts as are necessary to accomplish the fulfilment of the foregoing objects, including, but not restricted to the powers specifically contained in this Constitution.

## 8 SHARED SERVICES AND ACCESS TO THE DEVELOPMENT

8.1 The Development will share usage of the potable water and sewage system networks of the Pearl Valley Developer located on the Pearl Valley Estate as provided for in the shared services agreement annexed as **Appendix 1** hereto (“**Shared Services Agreement**”).

8.2 The Association will be liable for the payment of maintenance costs towards the aforesaid water and sewage system networks on the terms as provided for in the Shared Services Agreement.

8.3 Access to the Development for Members will be by way of a servitude to be registered over certain property of the Pearl Valley Developer as provided for in the notarial deed of servitude annexed as **Appendix 2** hereto, which servitude will be registered against such property of the Pearl Valley Developer as set out in the said notarial deed.

## 9 PEARL VALLEY GOLF CLUB

9.1 For the purpose of this clause 8 –

9.1.1 “**Golf Course**” means the 18-hole golf course constructed on the Pearl Valley Estate;

9.1.2 “**PV Club**” means the Pearl Valley Golf Club, but shall exclude the Golf Course, the PV Club Facilities and the PV Recreational Facilities;

9.1.3 “**PV Club Facilities**” means the club house, driving range, pavilions, refreshment rooms and other conveniences built and/or erected on the Pearl Valley Estate for the general functioning of the PV Club and any improvements thereto; and

- 9.1.4 “**PV Recreational Facilities**” means such facilities established/proposed to be established by the developer of the Pearl Valley Estate on the Pearl Valley Estate from time to time, but which shall exclude the Golf Course, PV Club Facilities and the hotel, spa, restaurants and other amenities and facilities proposed to be established by such developer.
- 9.2 The Pearl Valley Developer has established the PV Club Facilities and the PV Recreational Facilities. The PV Club Facilities and the PV Recreational Facilities are held under separate title by the Pearl Valley Developer.
- 9.3 The Developer has secured the rights for the Members to use and access the PV Club Facilities and the PV Recreational Facilities in terms of the agreement between the Developer and the Pearl Valley Developer annexed as **Appendix 3** hereto.
- 9.4 Each Registered Owner shall automatically become a member of the PV Club as from the date of transfer of the Erf or Unit into the name of the Registered Owner and shall remain a member of the PV Club for so long as he is the Registered Owner, it being compulsory for each Registered Owner, as a property owner to become and so remain a member of the PV Club.
- 9.5 As a member of the PV Club –
- 9.5.1 make use of the PV Club Facilities and the PV Recreational Facilities and acquire playing rights in respect of the Golf Course, subject to constitution, rules and regulations applicable thereto;
- 9.5.2 subject to the provisions of clause 9.6 below, the Registered Owner shall be liable to make payment to the Pearl Valley Developer or any nominee of the Pearl Valley Developer of the annual subscription fees determined by the Pearl Valley Developer or its nominee, which payments shall be made in full without deduction or set-off on the due date thereof by way of electronic funds transfer of cleared funds into



the bank account nominated by the Pearl Valley Developer or its nominee;

9.5.3 if the Registered Owner fails to make payment of his annual subscription fees to the Pearl Valley Developer or its nominee, the right to use the Golf Course, PV Club Facilities and PV Recreational Facilities shall automatically be suspended;

9.5.4 the Pearl Valley Developer or its nominee, as the case may be, shall be entitled to charge interest at the Prime Rate on the subscription fees not timeously paid by the Registered Owner to the Pearl Valley Developer or its nominee, reckoned from the due date for such amounts to the date of payment in full;

9.5.5 the Registered Owners shall not be entitled to withhold or delay the payment of the subscription fee by reason of the Golf Course, the PV Club Facilities, PV Recreational Facilities, or any part thereof, being inaccessible for any reason, or in a defective condition or state of disrepair; and

9.5.6 the Registered Owner shall be subject to the constitution, rules and regulations applicable to the Golf Course, the PV Club Facilities and the PV Recreational Facilities and the Pearl Valley Developer shall be entitled to deny any person, including any Member, use of any of the aforementioned facilities should such person transgress or not abide by the provisions of such constitution, rules and regulations.

9.6 The Association shall be obligated to assume the obligations of the Registered Owners to make payment to the Pearl Valley Developer or its nominee of the annual subscription fees determined by the Pearl Valley Developer or any nominee of the Pearl Valley Developer in respect of the PV Club membership of the Registered Owners in the event that the Pearl Valley Developer or its nominee exercise an election in writing for the Association to so assume this obligation and sends written notice of such election to the Association.

- 9.7 The payment of the aforesaid subscription fees by the Association shall be done on the following basis –
- 9.7.1 payment shall be made in full without deduction or set-off on the due date thereof by way of electronic funds transfer of cleared funds into the bank account nominated by the Pearl Valley Developer or its nominee; and
- 9.7.2 the Pearl Valley Developer or its nominee, as the case may be, shall be entitled to charge interest at the Prime Rate on the subscription fees not timeously paid by the Association to the Pearl Valley Developer or its nominee, reckoned from the due date for such amounts to the date of payment in full;
- 9.7.3 the Association shall not be entitled to withhold or delay the payment of any amounts due to the Pearl Valley Developer or its nominee by reason of the PV Club Facilities, or the Golf Course, or any part thereof, being inaccessible for any reason, or in a defective condition or state of disrepair or any particular repairs not being effected by the Pearl Valley Developer or its nominee; and
- 9.7.4 the subscription fees shall be included in the expenses of the Association to be paid from the levy fund maintained in terms of clause 23 and may be collected from the Registered Owners as part of their levies.
- 9.8 All entrance fees, annual/monthly subscriptions, green fees, usage fees, cart fees and other fees associated with the Golf Course and/or the PV Club and/or the PV Club Facilities and/or the PV Recreational Facilities shall be determined from time to time by the Pearl Valley Developer, its nominee and/or its successors in title to the Golf Course and/or PV Club and/or PV Club Facilities and/or PV Recreational Facilities.
- 9.9 The Registered Owner shall be responsible to make payment directly to the Pearl Valley Developer or its nominee of all entrance fees, green fees, usage fees, cart fees and other fees associated with the use of the Golf



Course, as determined by the Pearl Valley Developer from time to time as per clause 9.9 above.

- 9.10 Notwithstanding any contrary provision contained elsewhere in this Constitution, this clause 8 shall not be changed or deleted without the prior written approval of owner of the Golf Course, the PV Club Facilities and the PV Recreational Facilities.

## **10 VAL DE VIE WINELANDS LIFESTYLE ESTATE AND VAL DE VIE II**

With regards to recreational facilities situated on the portions of the Greater Val de Vie Estate falling under the jurisdiction of the Val de Vie Winelands Lifestyle Estate Homeowners' Association and the Val de Vie II Homeowners' Association ("the Val de Vie Facilities"), each Registered Owner shall be entitled to access the Val de Vie Facilities, subject to conditions of membership or other rules laid down by the owners of such Val de Vie Facilities or any other homeowners association having jurisdiction over the land on which the Val de Vie Facilities form part, or any other relevant homeowners association, including the Master HOA.

## **11 TERMS AND CONDITIONS OF MEMBERSHIP**

- 11.1 The Association shall have as its Members –
- 11.1.1 the Developer, for as long as the Developer remains a Registered Owner of any portion of the Development and, without detracting from the generality of the afore going, specifically including any Erf;
- 11.1.2 every Registered Owner upon registration of transfer of an Erf or Unit into his name provided that where a Registered Owner comprises more than one person, such persons shall be deemed jointly to be one Member of the Association and shall be responsible jointly and severally for the obligations of such membership. A Registered Owner of an Erf or Unit shall be a Member of the Association until he ceases to be the registered Owner of such Erf or Unit; and



- 11.1.3 if applicable, in respect of any Erf on which is established a Sectional Title Scheme, the Body Corporate of that Sectional Title Scheme and the individual owners of Units.
- 11.2 Any person reflected in the records of the Deeds Registry concerned as the registered owner or joint registered owner of any Erf or Unit shall be deemed to be the Registered Owner of such Erf or Unit and shall further be deemed, *ipso facto*, to be a Member.
- 11.3 When a Member ceases to be the Registered Owner or joint Registered Owner of an Erf or Unit, he shall, *ipso facto*, cease to be a Member.
- 11.4 No Registered Owner or joint Registered Owner of any Erf or Unit may resign as a Member for so long as he remains a Registered Owner or joint Registered Owner.
- 11.5 Where applicable, no Body Corporate may resign as a Member.
- 11.6 The Developer shall, when it is no longer the Registered Owner of any land in the Development, cease to be a Member.
- 11.7 No Member ceasing to be a Member for any reason shall (nor shall any such Member's executor, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Member or its successors-in-title any arrears of Levies or subscriptions or other sums due from him to the Association at the time of him so ceasing to be a Member.
- 11.8 The Association may claim from any Member or his estate any arrears or Levy and interest or other sums due by him to the Association at the time of his ceasing to be a Member.
- 11.9 Any Member who is in breach of any provision of this Constitution, or who is in arrears with respect to any amount payable to the Association or any related committee, shall not be entitled to the rights and powers provided



to him in terms of this Constitution, for so long as he remains in breach or arrears.

## **12 PHASES**

12.1 The Developer intends to develop and market the Development in phases as the Developer deems fit and, for as long as the Developer is a Member of the Association, the Developer shall enjoy unrestricted rights with regard to the marketing of the Development and, in particular, the right to erect signage within and outside the Development, provided that all signage shall be subject to approval required in terms of the relevant municipal by-laws.

12.2 The Developer shall, in its absolute discretion, be entitled to apply for and subject to approval by the Local Authority, vary the layout and/or zoning and/or size and/or boundaries of Erven and/or the extent and position of streets comprising the Development and Members shall be bound thereby and shall have no claim of whatever nature against the Developer arising there from: Provided that the Developer shall not be entitled to change an Erf or Unit which has been sold by the Developer in any other way than that provided for in the deed of sale in respect of such Erf or Unit. Insofar as the consent of a Member is required for any of the afore going, the Developer (represented by any one of its Directors) is irrevocably granted a power of attorney to grant any/all such consents on behalf of Members, as may be required.

## **13 OBLIGATIONS OF MEMBERS AND RESIDENTS**

13.1 Every Member and Resident, where applicable, is obliged to comply with –

13.1.1 the provisions of this Constitution and all rules or regulations passed by the Association or the Trustees;

13.1.2 the provisions of the Guide annexed hereto;

- 13.1.3 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member or Resident; and
- 13.1.4 any directive given by the Association and/or the Trustees in enforcing the provisions of this Constitution.
- 13.2 The rights and obligations of a Member are not transferable. Each Member shall –
- 13.2.1 to the best of his ability, further the objects and interests of the Association; and
- 13.2.2 observe and be bound by this Constitution, the Estate Rules and all other by-rules, regulations and directives made or given by the Association and/or the Trustees from time to time.
- 13.3 The Members shall be jointly liable for expenditure incurred in connection with the Association as more fully later referred to herein.
- 13.4 A Member shall not consolidate an Erf with one or more Erven without the written consent of the Developer for as long as the Developer is a Member and, thereafter, of the Association.
- 13.5 When granting a request for consolidation of Erven, the Association reserves the right to impose conditions regarding the building parameters of the property and levies payable so as to ensure that the levy base of the Association is not unduly compromised.
- 13.6 This will however not limit the rights of the Developer to consolidate Erven that have not been transferred.
- 13.7 A Member may not resign from the Association.

## **14 STATUS OF THE DEVELOPER**

- 14.1 No person or any Member of the Association shall prevent or hinder in any way the Developer from –





- 14.1.1 gaining access to and egress from any part of the Development, provided that the provisions of clause 14.1.1 shall not be interpreted as allowing the Developer access onto any of the Erven or Units already transferred to a Member unless 48 hours' prior written notice has been given to the Member concerned, unless such access is required to conduct its normal building operations or to inspect work in progress. The Developer shall make good any subsequent damage to plants, property or improvements thereon to the satisfaction of the Member. No Member shall be entitled to refuse the Developer immediate access if the required notice has been given;
- 14.1.2 continuing its building and/or construction operations at the Development;
- 14.1.3 marketing and selling any Erven;
- 14.1.4 generally carrying on its business operations; or
- 14.1.5 having the sole right of appointment and dismissal of any Managing Agent during the Development Period
- 14.2 The Developer has reserved the right and shall be entitled to build and establish on the Development recreational facilities, equestrian facilities, paddocks, stables, self-storage units, restaurants, a chapel, a school, luxury apartments, residential erven and any other amenities and facilities as it in its sole discretion deems fit. The Developer has furthermore reserved the right to subdivide from the Development the sites for such aforesaid amenities and facilities as separate Erven and shall have the right to but not be obligated to dispose of and/or operate the aforementioned amenities and facilities for its own benefit, separate and independent from the remainder of the Development.
- 14.3 The Developer has reserved the right in its sole discretion, to establish and locate the amenities and facilities referred to in clause 14.2 on any portion of the Development, excluding such Erven that have already been



sold to Registered Owners other than the Developer, with the approval of the Local Authority.

- 14.4 The facilities referred to in clause 14.2 above can, at the election of the Developer, be transferred to the Association on such terms and conditions agreed to by the Developer and the Association, but the Developer is not obligated to transfer such facilities to the Association.
- 14.5 The Private Spaces shall be transferred to the Association by the Developer in accordance with the provisions of clause 48 below.
- 14.6 The Association will not be entitled to change, amend or impact on the rights of the Developer or his successors in title in respect of the amenities and facilities referred to in clause 14.2 above, without obtaining the written consent of the Developer or his successors in title beforehand.

## **15 DEVELOPER'S RIGHTS**

- 15.1 If the Developer Alienates all its rights in and title to all undeveloped land still vested in it at the time of the transaction to a single transferee, then the Developer shall be entitled to cede to such transferee all its rights and powers in terms of this Constitution without requiring the consent of the Association or any of the Members and the transferee shall be entitled to exercise all such rights and powers upon transfer of the Developer's rights in and title to all the remaining undeveloped land still vested in the Developer to the transferee.
- 15.2 The Developer may at any time after the construction of such number of dwellings or Sectional Title Schemes as it may determine, abandon in whole or in part the particular rights conferred upon it during the Development Period, provided that nothing hereinbefore contained shall be construed as depriving the Developer of any rights it may have in terms hereof as an ordinary Member.



## **16 ACCESS TO THE DEVELOPMENT AND SERVITUDES**

- 16.1 It is recorded that officials, employees and contractors employed by the Association, Local Authority and/or any public service company shall, at all times, have reasonable access to the Erven and Private Spaces for purposes of inspecting and/or maintaining all services. The employees of the Association will have 24/7 access to any individual water meter/connection to take readings and/or to replace meters at the Association's cost.
- 16.2 In as much as any facilities and amenities referred to in clause 14.2 above fall within the Development and access thereto will be necessitated via Private Spaces, the Association shall be obliged and is hereby irrevocably authorised and empowered on behalf of the Members to give access over Private Spaces to and in favour of such facilities and amenities.
- 16.3 The Association shall do all things necessary to ensure that the employees, contractors or authorised representatives of Eskom and the Local Authority shall have 24 hour access any day of the week to the Development in order to erect, inspect, maintain or replace infrastructure of the electrical substations on the relevant subdivided portions of the Development on which such substations are erected.

## **17 REGULATION OF DEVELOPMENT**

- 17.1 The Association may, in its discretion, permit the Members, subject to the provisions of this Constitution, to use the Private Spaces and shall do so unless by special resolution it is otherwise resolved for good reason.
- 17.2 The Trustees may from time to time and whenever they deem necessary, limit, restrict, or suspend such use in relation to any part of such Private Spaces for good reason.
- 17.3 The Trustees shall take such measures as are necessary to ensure that the general public, with the exception of the Members, their guests, lessees, and members of their families and such other persons as the Trustees may reasonably permit, are excluded from the Development.

- 17.4 No resolution for the winding-up of the Association and the transfer of its assets shall be taken unless the Association shall have made adequate provision for the rights of Members to obtain access to their Erven and Units and their rights of exclusive use of any areas to be safeguarded, if necessary, by registration of servitudes at the cost of the Member concerned if the Member so requires.
- 17.5 Notwithstanding that Erven may be held either individually or in undivided shares by Members, Members shall be obliged at all times to allow any persons lawfully within the Development access over any Erf by means of any formed or paved access way including drive-ways, parking areas and pathways.
- 17.6 No Member shall operate or conduct a time-sharing scheme as contemplated in the Property Time-Sharing Control Act No 71 of 1983, as amended, in respect of any dwellings or Units owned by him save where such scheme arises from co-ownership or syndication involving not more than 4 (four) Members per bedroom unit, unless the Association by special resolution resolves otherwise.
- 17.7 Notwithstanding that Members hold title to their Erven individually, it is recorded that the Development is of a homogenous nature and that the Association shall be vested with the overall control of all matters affecting the Development. To this end, the Members agree –
- 17.7.1 in the event of a Member being a Body Corporate, to cede and delegate its powers and duties to the Association;
- 17.7.2 in the event of any association of Members being formed within the Development, specifically for owners of certain Erven or Units or for certain classes of Members, to do all in their power to procure that the powers and duties of any such associations are ceded and delegated to the Association; and
- 17.7.3 the Association shall be entitled, in turn, to cede and delegate the powers and duties ceded and delegated in terms of clauses 17.7.1



and 17.7.2 above to such other person or entity as it may deem fit without requiring the consent of any Member to do so.

- 17.8 No Member shall be entitled to subdivide or rezone any Erf or Unit during the Development Period without the prior written consent of the Developer and thereafter without the prior written consent of the Association, it being recorded that such subdivision or rezoning will at all times also be subject to the prior approval of the Local Authority.

## **18 INTERNAL WORKS**

- 18.1 Where applicable, all water network, sewer network, storm-water network and road network components (downstream of the valve immediately upstream of the build water meter, upstream of the connection to the existing system or intersection point with the existing road) shall be a private combined system and shall be indicated as such on all documents and plans and the Developer will have no obligation to transfer any such private owned networks to the Association.
- 18.2 All private combined systems (including but not limited to water, sewers, storm-water, roads, and irrigation) shall be a joint and several responsibility (including but not limited to the administration of the joint account and operation and maintenance of the relevant systems) of the Members.
- 18.3 The internal electrical network on the Development will be owned by the Local Authority and the Association agrees that if the Developer elects to acquire such network from the Local Authority, this will not be contested by the Association and the Association will not compete with such offer by the Developer and in the event that the Developer so acquires the electrical network it will not be obligated to transfer it to the Association at any stage.
- 18.4 All internal works (including but not limited to water, sewers, storm-water, roads, and irrigation) on the Development shall be constructed in



accordance with the operational infrastructure management plan approved by the Local Authority.

## 19 THE GUIDE

- 19.1 The Guide constitutes an integral part of this Constitution and for as long as the Developer is a Member the Guide may be amended, substituted, added to or repealed only at the instance of the Developer and, thereafter, by the Association.
- 19.2 All landscaping, plants and all Improvements shall be of approved design and of sound construction and shall comply with the provisions of the Guide.
- 19.3 No construction or erection of Improvements on an Erf may commence prior to the approval of plans for such Improvements and, in this regard –
- 19.3.1 a full set of proposed building plans which indicate both construction and design details shall be submitted to the Association for approval by the Architect;
- 19.3.2 thereafter, the approved plans shall be submitted to the Local Authority for approval;
- 19.3.3 having obtained the approval of the Local Authority, the Member shall comply with all conditions and standards imposed by the Local Authority insofar as these may be additional to the requirements of the Guide read with the plans; and
- 19.3.4 the scrutiny fee payable to the Architect will be paid by the Member, such scrutiny fee to be determined by the Trustees, from time to time.
- 19.4 Approval of building plans will not be granted by the Local Authority without the prior written approval of the Architect thereto which approval shall be evidenced by an endorsement by the Architect.
- 19.5 No Improvements may be effected by a Member other than by a Contractor. The Developer and, after the Development Period, the

Association shall designate a list of contractors who will be allowed to do building work of whatever nature in the Development.

- 19.6 In order to ensure that prospective purchasers or tenants are correctly advised of their rights and obligations relative to the Development, Members who wish to re-sell or let their properties, are obliged to appoint an Estate Agent who is accredited by the Developer during the Development Period and, thereafter, by the Association.
- 19.7 A Member will have no claim for damages or loss against the Developer or the Association, arising from whatever cause as a result of any acts or omissions of a Contractor and hereby indemnifies the Developer and Association against any claim from any third party arising from the construction of such Improvements.

## **20 FURTHER OBLIGATIONS OF MEMBERS AND RESIDENTS**

Each Member and Resident, insofar as may be applicable, shall –

- 20.1 maintain his Erf and/or Unit in accordance with the Guide and the Estate Rules respectively;
- 20.2 maintain in a neat and tidy condition and in a state of good repair all Improvements on his Erf;
- 20.3 establish and maintain a garden according to a standard acceptable to the Association, as well as maintaining the road verge bordering his Erf, in terms of the Guide;
- 20.4 be responsible for the maintenance of external and boundary walling inclusive of regular painting thereof, provided that this obligation shall only be applicable to Members;
- 20.5 not park any commercial type vehicle, boat, caravan, trailer, or any vehicle not in good working order, on any roadway in the Development and such vehicle, boat, caravan or trailer shall be parked on the Member's Erf so as not to be visible from the street forming a boundary of such Erf;



- 20.6 not do or suffer to be done on any Erf or in any Unit anything which, in the opinion of the Trustees, is noisome, unsightly, injurious, objectionable or detrimental or a public or private nuisance or a source of damage or disturbance to any Member or Resident of any Erf or Unit in the Development;
- 20.7 conform to the prescripts of the Guide in connection with the erection of a builder's board provided that this obligation shall only be applicable to Members;
- 20.8 adequately insure the Improvements on his Erf and/or his Unit and, if requested by the Trustees, furnish proof of such insurance to them and, in the event of total/partial destruction, he shall, within a reasonable time period, make good such damage or attend to such reconstruction as may be required to restore the Improvements to the state indicated on the original approved plans or, in the event of total destruction, to construct new Improvements in accordance with the Guide and the provisions of clause 15, provided that this obligation shall only be applicable to Members;
- 20.9 where the erection of structures to house animals or the construction/erection of garden/tool shed(s) is permitted, such structures shall be screened from public view and the animals or birds so housed shall not constitute a disturbance or nuisance to Members or their tenants or occupiers and the Trustees shall, in their absolute discretion, be entitled to require the permanent removal from the Development of any animal which, in the opinion of the Trustees, constitutes a disturbance or nuisance;
- 20.10 comply with all security procedures implemented from time to time;
- 20.11 generally ensure that gardening and landscaping of his Erf and/or Unit is undertaken so as to be compatible with the gardening and landscaping of adjoining Erven and/or Units;





- 20.12 ensure that his dog is kept on a leash in all open areas and Private Spaces within the Development and is controlled to ensure that other dogs are not interfered with and, in particular, that no nuisance is caused by such dog to any Member or horse and that no excrement is left lying on any sidewalks within the Development or on the Polo Fields or on any Private Spaces or open spaces within the Development;
- 20.13 adhere strictly to the terms of servitudes granting access to Erven;
- 20.14 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on Private Spaces or open areas of the Development and that planting on his Erf and/or Unit does not interfere with pedestrian traffic or obscure the vision of motorists;
- 20.15 tolerate access to irrigation pipe lines by owners of these lines, their employees and/or contractors;
- 20.16 not erect any structure over any part of the sewerage system;
- 20.17 pay the necessary fees as set out in the Guide, before the commencement of any building operations on his Erf and/or in respect of his Unit. These fees can be amended by the Association from time to time, provided that this obligation shall only be applicable to Members;
- 20.18 if the Member is a Registered Owner of an Erf other than an Erf that measures 1ha (one hectare) or more in extent, within a period of 24 (twenty four) months after the possession date, (or such later date as the Developer may direct in writing), commence with the Improvements on the Erf (the plans and specifications of which shall have been approved in terms of clause 19.3 above) and shall complete such Improvements within a period of 36 (thirty six) months after the date of registration of the Erf in the name of the Member (or such later date as the Developer may direct in writing). This will be the date from which such periods will be calculated irrespective of whether the Erf has been transferred subsequently. If the Member fails to comply with the provisions of this clause 20.18 the



Developer shall be entitled, without prejudice to any other rights which it may have and/or at law and at its election to -

20.18.1 repurchase the Erf from the Member for an amount equal to the original purchase price paid by the Member in terms of the deed of sale; or

20.18.2 sell the Erf to any third party for an amount of not less than the original purchase price paid by the Member in terms of the deed of sale and the Member hereby irrevocably and *in rem suam* appoints the Developer as his duly authorised agent for purposes of such sale,

provided that all costs of transfer shall be for the account of the Member in either case and provided further that the aforesaid provisions of clauses 20.18.1 and 20.18.2 shall not apply in the event of a Distressed Sale.

20.19 if the Member is a Registered Owner of an Erf that measures 1ha (one hectare) or more in extent, within a period of 36 (thirty six) months after the possession date, (or such later date as the Developer may direct in writing), commence with the Improvements on the Erf (the plans and specifications of which shall have been approved in terms of clause 19.3 above) and shall complete such Improvements within a period of 48 (forty eight) months after the date of registration of the Erf in the name of the Member (or such later date as the Developer may direct in writing). This will be the date from which such periods will be calculated irrespective of whether the Erf has been transferred subsequently. If the Member fails to comply with the provisions of this clause 20.19 the Developer shall be entitled, without prejudice to any other rights which it may have and/or at law and at its election to –

20.19.1 repurchase the Erf from the Member for an amount equal to the original purchase price paid by the Member in terms of the deed of sale; or

20.19.2 sell the Erf to any third party for an amount of not less than the original purchase price paid by the Member in terms of the deed of sale. The

Member hereby irrevocably and *in rem suam* appoints the Developer as his duly authorised agent for purposes of such sale,

provided that all costs of transfer shall be for the account of the Member in either case and provided further that the aforesaid provisions of clauses 20.19.1 and 20.19.2 shall not apply in the event of a Distressed Sale.

20.20 For the purpose of this sub-clause 20.20, the following words shall have the meanings ascribed as follows –

20.20.1 “**Normal Levy**” means the normal monthly levy determined from time to time in terms of clause 23 of this Constitution;

20.20.2 “**Extraordinary Levy Base Cost (ELBC)**” means the amount of R3969, or the amount as amended by the Trustees from time to time;

20.20.3 “**Extraordinary Levy**” means the additional monthly levy determined hereunder in terms of this sub-clause 20.20;

20.21 Notwithstanding the provisions of clauses 20.18.1, 20.18.2, 20.19.1, and 20.19.2 above, a Member who is in breach of the said clause 20.18 or 20.19 (whichever is applicable) by not completing the Improvements within the stated period of 3 (three) or 4 (four) years (whichever is applicable) from first registration of the Erf from the Developer to the relevant Member, will, subject to clauses 20.21 below 20.31, be liable to pay to the Association an Extraordinary Levy calculated as set out hereunder, over and above the Normal Levy.

YEARS SINCE FIRST REGISTRATION	YEARS OF NON-COMPLIANCE TO CLAUSE 9	YEARS OF NON-COMPLIANCE TO CLAUSE 20.19	LEVY PAYABLE BY MEMBERS WHOSE ERVEN IS SMALLER THAN 1HA (ONE HECTARE) IN EXTENT	LEVY PAYABLE BY MEMBERS WHOSE ERVEN MEASURE 1HA (ONE HECTARE) OR LARGER IN EXTENT
1	0	0	Normal Levy	Normal Levy



2	0	0	Normal Levy	Normal Levy
3	0	0	Normal Levy	Normal Levy
4	1	0	Normal Levy + 1 x ELBC	Normal Levy
5	2	1	Normal Levy + 2 x ELBC	Normal Levy + 1 x ELBC
6	3	2	Normal Levy + 3 x ELBC	Normal Levy + 2 x ELBC
7	4	3	Normal Levy + 3 x ELBC	Normal Levy + 3 x ELBC

**Thereafter the total levy payable will be the Normal Levy plus the Extraordinary Levy of 3 (three) times the ELBC, until compliance with clause 20.18 or 20.19 (whichever is applicable) by the Member:**

20.22 Any further structural improvements that a Member wishes to make to his property after finalisation of the construction of his house should also be submitted to the Association for approval and has to be finalised within 6 (six) months of commencement of construction thereof.

20.23 Should an Erf be sold pursuant to a Distressed Sale, the new Member who acquired such Erf ("**Post Distressed Sale Member**") will be liable for the Normal Levy for the first 4 (four) full months after the date of registration of the Erf in his name, to enable him to prepare plans and obtain a Site Handover Certificate ("**SHOC**") which is a certificate issued by the Association after approval of the building plans by the Association and Local Authority.

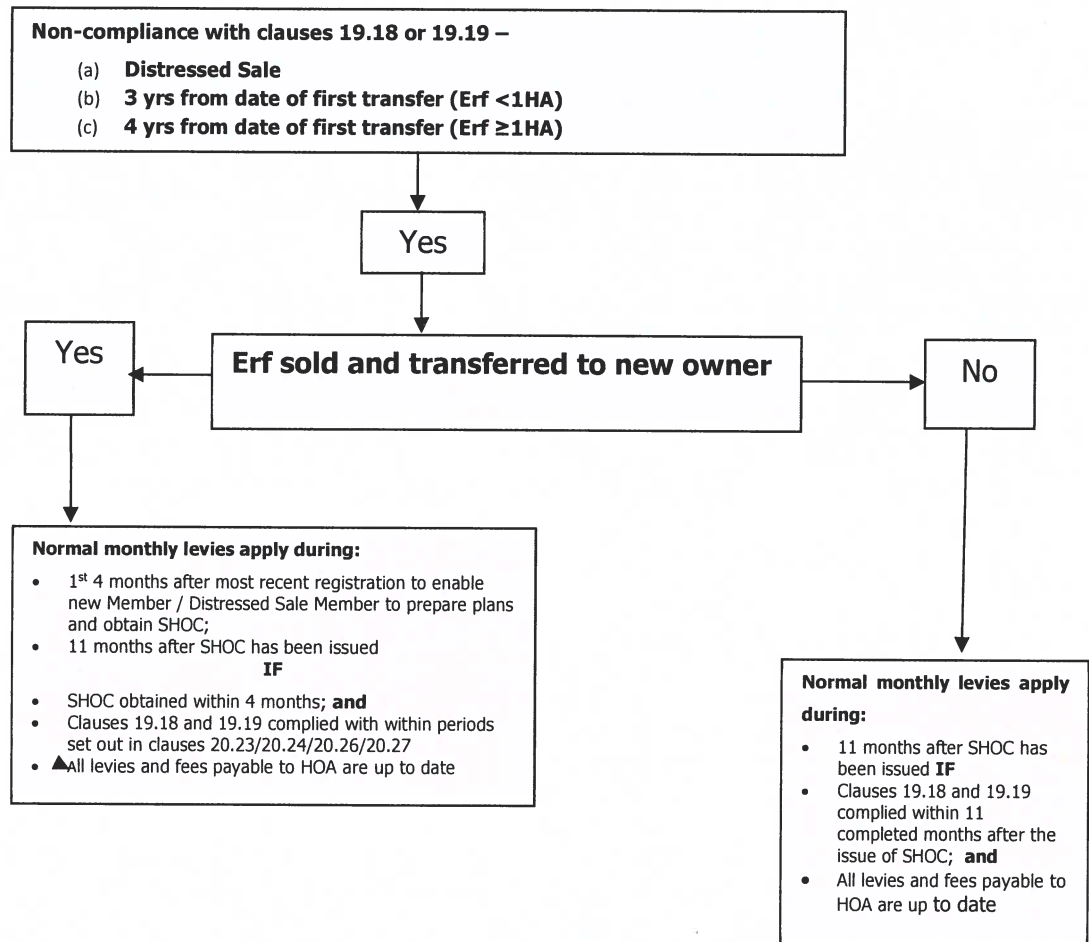
20.24 After a SHOC has been issued to the Post Distressed Sale Member in terms of clause 20.23 above, the Normal Levy will be payable by such Member for a period of 11 (eleven) completed months after the issue of such a SHOC.

- 20.25 Should a Post Distressed Sale Member not obtain a SHOC or comply with obtaining the SHOC within the 4 (four) month period referred to in clause 20.23 or should such Member fail to complete the Improvements on the Erf within the 11 (eleven) month period as per clause 20.24, he will be liable to pay the Association an Extraordinary Levy calculated as set out in clause 20.21, over and above the Normal Levy.
- 20.26 Should the Erf be sold and transferred –
- 20.26.1 where the Erf is less than 1ha in extent, after 3 (three) years after the first transfer of the Erf from the Developer; or
- 20.26.2 where the Erf is 1ha or more in extent, after 4 (four) years after the first transfer of the Erf from the Developer,
- the new Member will be liable for the Normal Levy for the first 4 (four) full months after the date of registration of the Erf in his name, to enable him to prepare plans and obtain a SHOC.
- 20.27 After a SHOC has been issued to a Member as per clause 20.26 above, the Normal Levy will be payable by such Member for a period of 11 (eleven) completed months after the issue of such a SHOC.
- 20.28 Should a Member contemplated in clause 20.26 not obtain a SHOC or comply with clauses 20.18 or 20.19 (as the case may be) in the periods set out in clauses 20.26 and 20.27, he will be liable to pay the Association an Extraordinary Levy calculated as set out in clause 20.21, over and above the Normal Levy.
- 20.29 Provided further that in any other case, other than as contemplated in clause 20.26 above, where a SHOC has been obtained by a Member in respect of an Erf, the Normal Levy will be payable by such Member for a period of 11 (eleven) completed months after the issue of such a SHOC, where after sub-clause 20.28 will *mutatis mutandis* apply.



20.30 Provided further that the reductions in levies contemplated in clauses 20.23 to 20.29 above, will only apply for as long as the Member has paid all levies and fees due and payable to the Association.

20.31 For the sake of clarity the levies payable will be as set out in the following flow chart:



## 21 RESTRICTIONS

21.1 Subject to the provisions set out hereunder, no Member shall apply for the rezoning of his Erf or Unit (whichever is applicable) with a view to procuring a variation or amendment or substitution of use rights and shall not be entitled to use his Erf or Unit (as the case may be) for any purpose other than the permitted use applicable upon establishment of the Development. No Member shall be allowed to use his Erf or Unit (as the case may be) for the supply of temporary accommodation for



consideration and/or letting out on a short-term basis, i.e. for periods shorter than three months.

21.2 No Member or Resident shall conduct any business on an Erf or Unit (as the case may be) other than the uses envisaged here-in or use his Erf or Unit for purposes other than residential purposes unless the Trustees have approved the use to which the Erf or Unit is to be put in writing and the Local Authority has, to the extent that it may be necessary, granted the necessary approvals authorizing such use in terms of applicable laws and regulations and there has been compliance with the following –

21.2.1 any Member wishing to conduct a business on his Erf or Unit or who wishes to use his Erf or Unit for purposes other than residential, shall, during the Development Period, apply in writing to the Developer for permission to do so and thereafter to the Trustees for permission to do so. The Developer or Trustees (as the case may be) shall be entitled in their absolute discretion to refuse such application or to approve the application unconditionally or to approve the application subject to such conditions as the Developer or the Trustees (as the case may be) deem necessary;

21.2.2 an application in terms of the afore going shall contain a full description of the proposed business or usage, including but not limited to –

21.2.2.1 the type of business;

21.2.2.2 the number of full-time and/or part-time staff;

21.2.2.3 the times and duration of the business operation, including the number of days per week;

21.2.2.4 the projected growth of the business operation;

21.2.2.5 whether any alteration to the existing Improvements is proposed;



- 21.2.2.6 in which portion of the Improvements the business activity is to be located;
- 21.2.2.7 the number and type of vehicles which will be regularly involved in the business operation;
- 21.2.2.8 the estimated number of visitors per week resulting from the business operation;
- 21.2.2.9 the estimated number of deliveries necessitated by the business operation;
- 21.2.2.10 what provision is to be made for parking; and
- 21.2.2.11 the likely impact of the business operation on neighbouring properties and the neighbourhood in general;
- 21.2.3 the Trustees shall not approve any such application unless they are satisfied that the application complies with the following –
  - 21.2.3.1 the business operation will not detrimentally alter the character of the neighbourhood or affect the privacy and rights of neighbours;
  - 21.2.3.2 the number of employees involved in the running of the business operation will not exceed 2 (two);
  - 21.2.3.3 the Member will reside permanently on the Erf or Unit in respect whereof the application is made;
  - 21.2.3.4 comment has been obtained from the Members who are affected by the application and made available for consideration by the Trustees;
  - 21.2.3.5 adequate provision has been made for parking within the Erf and the landscaping of the Erf will be suitable for the type of business contemplated and that no parking of vehicles off the Erf within the Development will result from the business operation;





- 21.2.3.6 the granting of the application will not have any significant effect on the density of traffic in the Development;
- 21.2.3.7 non-residents will not be afforded uncontrolled access into the Development;
- 21.2.3.8 no signage will be erected;
- 21.2.3.9 the hours of the business operation will be confined between 08:00 and 18:00 on weekdays and no business will be conducted on Saturdays, Sundays and proclaimed public holidays;
- 21.2.4 should any Member to whom permission has been granted for the conduct of a business change any aspect of such business then such Member shall submit a new application in accordance with the provisions hereof to continue such business;
- 21.2.5 no Member to whom approval has been granted shall be entitled to erect any sign or advertisement on his Erf or Unit or on any of the Common Property in connection with such business save with the approval of the Association; and
- 21.2.6 the Trustees shall not at any time or under any circumstances be entitled to approve the use of an Erf or Unit for the supply of temporary accommodation for consideration, other than in respect of any guesthouses which may be established by the Developer.
- 21.3 No Member shall be entitled to –
- 21.3.1 at any time operate a guest house on his Erf or Unit, provided that this prohibition shall not apply to any guest houses operated by the Developer or his successors in title from time to time where the necessary zoning approval has been obtained in respect of such guest houses; and/or
- 21.3.2 lease his Erf or Unit for any period less than 30 days,



without the approval of the Developer during the Development Period and thereafter without the approval of the Trustees.

21.4 Notwithstanding anything else herein contained, the Developer shall be entitled to have commercial offices on the Development in which it can conduct its business activities and shall be entitled to do all things reasonably necessary to lawfully establish such offices on the Development.

21.5 No Member shall permit the number of occupants of his Erf or Unit to exceed 2 (two) persons per bedroom. The word "occupants" shall include but shall not be limited to any person who resides or stays on such Erf or Unit on a regular or occasional basis irrespective of whether such person is related to or is financially dependent upon the Member or whether such person pays rental or gives any other form of consideration in respect of such Erf or Unit or any portion thereof.

## 22 PRE-EMPTIVE RIGHT IN FAVOUR OF THE DEVELOPER

22.1 A Member shall not in any manner Alienate an Erf or a Unit (as the case may be) unless he shall first, in writing, have offered it for sale to the Developer who, for a period of 14 (fourteen) days calculated from the date of receipt of the offer, shall have the right to purchase the Erf or Unit upon the terms and conditions offered to it.

22.2 Should the Developer fail to accept the offer within the said 14 (fourteen) day period or waive its right to do so, in writing, before expiry of the aforesaid period, the Member may accept any other written offer which he may have received for the Erf or Unit, the terms and conditions whereof he had conveyed to the Developer, provided that the price and/or terms are no more beneficial to the purchaser than those offered to the Developer, any variation of the price and/or terms and conditions being regarded as a fresh offer which the Member shall again be obliged to convey to the Developer and to which the provisions of clause 22.1 above shall apply *mutatis mutandis*.



- 22.3 If there is no offer in existence which the Member can accept at the time he decides to Alienate his Erf or Unit, the Member shall appoint the Developer's nominated estate agents as his agent with a sole mandate or joint sole mandate (if the Developer nominates more than one estate agent) for a period of 90 (ninety) days to sell the Erf or Unit to a third party. Such appointment shall be upon the usual terms and conditions of the said nominated estate agent/s and shall include a provision for payment of commission to such nominated estate agent/s of the Developer at the rate prescribed in the then current guideline of the Institute of Estate Agents of South Africa or its successors in office. If the Erf or Unit is not sold within the aforesaid 90 (ninety) day period or such extended period as may be agreed between the Member and the said nominated estate agent/s in writing, the Member shall be entitled to appoint another estate agent to sell the Erf or Unit. The provisions of clause 22.1 above shall apply *mutatis mutandis* to any offer for the Erf or Unit which may be obtained in the manner contemplated in this clause 22.3.
- 22.4 An amount of 1% (one percent) of the purchase price payable (or if there is no purchase price paid or payable, then 1% (one percent) of the fair market value of the Erf or Unit) in respect of each Erf or Unit (as the case may be) sold by a Member to a third party up to a maximum of R106 000 (one hundred and six thousand Rand) per sale transaction will be paid by the Member (as seller of the Erf or Unit) to the Association as an exit levy. The aforesaid amount payable to the Association will form part of the clearance to be obtained from the Association in respect of registration of transfer of the Erf or Unit in question in the name of such third party purchaser.
- 22.5 The amount payable by a selling Member to the Association in terms of clause 22 above can be adjusted annually by the Trustees in accordance with the provisions of this Constitution, provided such increase shall not be more than the prevailing rate of inflation in South Africa at the time of such increase.



- 22.6 The amount payable by a selling Member to the Association in terms of clause 22 above shall not be payable in the event of –
- 22.6.1 a Distressed Sale
- 22.6.2 transfer of an Erf from an individual to a family trust where such individual is the founder of the trust and a beneficiary of the trust; and
- 22.6.3 transfer of an Erf to a deceased estate, to a surviving spouse or to a direct family member.
- 22.7 The Alienation by a shareholder of his shares in a company owning an Erf or Unit, or by a person of his member's interest in a Close Corporation owning an Erf or a Unit, or by a beneficiary of his interest in a Trust owning an Erf or Unit, shall be deemed to be the Alienation of an Erf or Unit and the provisions of clauses 22.1 to 22.5 above shall apply *mutatis mutandis* to such transaction.

## 23 LEVIES

- 23.1 Subject to the provisions of clause 5, the Trustees shall –
- 23.1.1 establish and maintain a levy fund for the purposes of meeting all expenses of the Association for the control, management and administration of the Development and for payment of the costs of supplying any services required by the Association and/or for payment of all expenses necessary or reasonably incurred in connection with the management of the Association;
- 23.1.2 estimate the amount which will be required by the Association to meet its expenses during each year, together with such estimated deficiency, if any, as shall result from the preceding year and may include in such estimate an amount to be held in reserve to meet anticipated future expenditure not of an annual nature, including all expenses relating to the Sectional Title Schemes administered by the Association;

- 23.1.3 require Members whenever necessary to make contributions to such fund for the purposes of satisfying the expenses referred to in clauses 23.1.1 and 23.1.2, equal as nearly as is reasonably practical to such estimated amount; and
- 23.1.4 not increase the levy contributions payable by the Members by 80% (eighty percent) or more from one year to the next without the sanction of a special resolution of the Association.
- 23.2 The Trustees may, from time to time, determine special levies which will become payable by Members with effect from such date as the Trustees shall determine in respect of such expenses referred to in clause 23.1 (which are not included in any estimate made in terms of clause 23.1.2) and such special levies may be imposed and shall be payable in one sum or by such instalments and at such time or times as the Trustees shall deem fit.
- 23.3 Any amount due by a Member by way of a levy shall be a debt due by him to the Association payable within such time as determined by the Trustees. The obligation of a Member to pay a levy shall cease upon his ceasing to be a Member save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Member. No levies paid by a Member shall be repayable by the Association upon his ceasing to be a Member. A Member's successor in title to an Erf or Unit shall be liable as from the date upon which he becomes a Member pursuant to the transfer of such Erf or Unit to pay the levies attributable to that Erf or Unit. No Member other than the Developer shall be entitled to transfer his Erf or Unit until the Trustees have consented thereto in writing and have certified that the Member has, at the date of transfer, paid all amounts owing by him to the Association.
- 23.4 In the event that the Association ceases to function for any reason the consent referred to in clause 23.3 above which is required from the Trustees for a Member's Erf or Unit to be transferred shall be obtained –



- 23.4.1 during the Development Period, by the Developer and 51% of the Members giving written consent to such transfer; and
- 23.4.2 after the Development Period, by 51% of the Members giving written consent to such transfer.
- 23.5 In calculating levies, the Trustees shall take into account the income, if any, earned by the Association.
- 23.6 The decision of the Trustees in calculating the levies shall be final and binding on all Members.
- 23.7 In calculating the levy payable by any Member, the Trustees shall as far as reasonably possible –
- 23.7.1 assign those costs arising directly out of the Erf or Unit itself to the Member owning such Erf or Unit;
- 23.7.2 assign those costs relating to the Development generally to the Registered Owners of all Erven equally provided, however, that the Trustees may in any case where they consider it equitable so to do –
- 23.7.2.1 assign to any Business Unit such greater share of the costs and expenses mentioned in this clause 23 as they may consider reasonable in the circumstances; and
- 23.7.2.2 assign to any Member any greater or lesser share of the costs and expenses as they may consider to be reasonable in the circumstances; and
- 23.7.3 if applicable, assign a proportion of those costs attributable generally or specifically to a particular Sectional Title Scheme (“**the Sectional Title Levy**”), it being agreed that the Body Corporate of such Sectional Title Scheme shall determine the pro-rata portion due by each Registered Owner of a Unit in the said Sectional Title Scheme in respect of such Sectional Title Levy and shall be responsible for collecting such pro-rata amounts from each Registered Owner of a



Unit, which Registered Owners agree to be jointly and severally liable with the Body Corporate to the Association for payment of each such pro-rata portion of the Sectional Title Levy.

- 23.8 If applicable, the Bodies Corporate acknowledge and agree that any increase in levies payable by the Registered Owners of Units in each Body Corporate as members of such Body Corporate will be market related and will be communicated to the Association prior to such increase taking effect.
- 23.9 The Association may come to an agreement with the Developer for the repayment by the Association to the Developer of ongoing costs or expenses incurred by the Developer for the provision of services and the facilities within the Development.
- 23.10 No Member shall be entitled to any of the privileges of membership unless and until he shall have paid every levy and other sum (if any) which shall be due and payable to the Association or, if applicable, to the Body Corporate of which he is a member (as the case may be).
- 23.11 All levies, other than special levies which will be payable in accordance with the provisions of clause 23.3, are due and payable monthly in advance on the first day of each and every month free of any deductions or set-off of any nature, commencing from such date as the Trustees will determine.
- 23.12 Members shall be liable for payment of interest on outstanding amounts at a rate determined by the Trustees from time to time but not exceeding the maximum annual rate permitted by law. Interest calculated at the determined rate is recoverable from the date on which the amount is due and payable to the date of payment provided that any portion of a month will be regarded as a full calendar month for the purposes of this calculation.
- 23.13 The Developer shall not be obliged to pay levies in respect of any portion of the Development, and, without detracting from the generality of the



afore going, specifically including any Erf or Unit, for as long as he remains the Registered Owner thereof.

- 23.14 During the Development Period, the Developer shall be liable to pay to the Association any shortfall between the levies paid to the Association by its Members and the Association's operational expenses ("**operating losses**"). The operating losses (if any) will be calculated retrospectively by the Association's auditors at the end of each financial year of the Association and will be payable by the Developer to the Association within 30 days from date of demand for payment by the Trustees.
- 23.15 It is recorded that 5% (five percent) of the levies payable by a Member to the Association in terms of this Constitution from time to time shall be paid by the Association to the Val de Vie Foundation on a monthly basis, which foundation has been established as a trust registered in accordance with the provisions of South African Law with the sole aim of providing assistance to the disadvantaged communities in the Winelands area surrounding the Development.
- 23.16 The Association shall not be allowed to charge Members higher charges for water than the charges of the Local Authority to the Association for water at any stage of a municipal financial year. The Association will be allowed to levy the Members for maintenance and operating losses in respect of water.
- 23.17 The Association shall be allowed to introduce fines for Members who fail to comply to the Local Authority's bylaws and water restriction conditions.
- 23.18 Levy income will be exempt from tax in terms of the provisions of Section 10(1)(e) of the Income Tax Act No 58 of 1962, as amended, provided that –
- 23.18.1 the sole object of the Association is to manage the collective interest common to all its Members, which includes expenditure applicable to the Common Property and the collection of levies for which Members are liable; and





23.18.2 the Association is not permitted to distribute its funds to any person other than to a similar association of persons.

## 24 ALIENATION AND OCCUPATION

24.1 A Member shall not be entitled to Alienate or transfer an Erf or a Unit (as the case may be) without the written consent of the Developer for as long as the Developer is a Member and, thereafter, by the Trustees which consent shall not be unreasonably withheld provided there has been compliance with the provisions of this Constitution.

24.2 Such consent shall be withheld if –

24.2.1 the Member in question is indebted to the Association in respect of Levies or any other amounts which the Association may in terms of this Constitution be entitled to claim from him, i.e. if the Association has not issued a clearance that all amounts owing to the Association by such Member have been paid;

24.2.2 if applicable, the Member as member of a Body Corporate is indebted to such Body Corporate in respect of any amounts which the Body Corporate may be entitled to claim from him, i.e. if the Body Corporate has not issued a clearance that all amounts owing to it by such Member as a member of the Body Corporate have been paid to it;

24.2.3 in the case of an Erf, the proposed transferee has not agreed in writing to become a Member of the Association and to observe the Constitution for the duration of his ownership of the Erf;

24.2.4 if applicable, in the case of a Unit, the proposed transferee has not agreed in writing to become a member of the applicable Body Corporate and to observe the Constitution for the duration of his ownership of the Unit;

- 24.2.5 the proposed transferee does not acknowledge that upon the registration of the Erf or Unit (as the case may be) into his name, he shall *ipso facto* become a Member of the Association;
- 24.2.6 if applicable, the proposed transferee does not acknowledge that upon the registration of the Unit into his name, he shall *ipso facto* become a member of the applicable Body Corporate;
- 24.2.7 in those cases where an Erf or Unit is owned jointly and subject to an arrangement whereby the co-owners are entitled to occupy the Erf or Unit at particular times during the year, the Association is not satisfied that the transferee of an undivided share in the Erf or Unit is aware of such arrangements and has bound himself thereby; and
- 24.2.8 the exit levy payable in terms of clause 22.4 above has not been paid, or a satisfactory undertaking to pay against transfer has not been furnished to the Association.
- 24.3 No Member shall let or otherwise part with occupation of his Erf or Unit without the consent of the Association, which consent shall only be withheld if the Association is not satisfied that the provisions of the Estate Rules, and any other by-rules or regulations made in terms of this Constitution, have been complied with and/or is not satisfied that the Resident of the Erf or Unit has in writing agreed to be bound by same.
- 24.4 The provisions of this Constitution shall be binding upon all Members, persons on the Development and Residents.

## **25 CO-OWNERS AND BODIES CORPORATE**

- 25.1 Where any Erf or Unit is owned by more than 1 (one) person or in the event of a Body Corporate being a Member (if applicable), the co-owners or Body Corporate concerned shall elect one of their number as a liaison officer and shall notify the Association of the name and address of such liaison officer. Any notices which may be required to be given in respect of such Erf or Sectional Title Scheme, regarding the appearance or maintenance or repair thereof or the appearance or maintenance or repair



of any Unit shall be given to the liaison officer and served upon such liaison officer and shall be deemed for purposes of this Constitution to have been served upon the Member concerned.

- 25.2 In the event of the co-owners failing to elect a liaison officer as aforesaid, service of notice upon any one of the co-owners shall be deemed to be service upon all the co-owners.
- 25.3 Notwithstanding the provisions of clause 25.1 above, any notice required to be served upon any Body Corporate (if applicable) shall be deemed to have been properly served if served in terms of clause 50 below at the address given as the *domicilium citandi et executandi* of that Body Corporate.
- 25.4 In the event of any Erf or Unit being owned in undivided shares by more than 1 (one) Registered Owner on the basis that each owner of an undivided share shall be entitled to occupy the Erf or Unit for a particular period in each year, the Registered Owners shall as between them arrange the annual allocation of occupation periods to each particular co-owner and shall provide the Managing Agent with an occupation roster, if required to do so.

## 26 BREACH

- 26.1 The Trustees may on behalf of and in the name of the Association institute legal proceedings in accordance with the provisions of this clause 26.
- 26.2 If any Member or Resident fails to observe any of the provisions of this Constitution and/or any of the provisions of the Guide and/or fails to comply with any rules or regulations made in terms thereof, the Trustees may on behalf of and in the name of the Association, serve notice on such Member or Resident calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance the Trustees or their authorised representatives may –
- 26.2.1 enter upon the Member's or Resident's Erf or Unit (as the case may be) to take such action as may reasonably be required to remedy the



breach and the Member or Resident concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand; and/or

26.2.2 call upon such Member or Resident in writing to remove or alter within a specified period any portion of the Improvements or any addition erected contrary to the provisions of this Constitution, read with the Guide and, failing which, the matter shall be referred to a special meeting of the Association convened to afford Members or Residents the opportunity to give directions to the Trustees. The resolution of the Association at such meeting shall be binding upon such defaulting Member or Resident and shall be implemented by the Trustees; and/or

26.2.3 institute proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary and such Member or Resident shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief.

26.3 If any Member fails to make payment on the due date of levies or other amounts payable by such Member, the Trustees may give notice to such Member requiring him to remedy such breach within such period as the Trustees may determine and should he fail to timeously remedy his breach, the Trustees may, on behalf of the Association, institute legal proceedings against such Member without further notice and such Member will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in obtaining recovery. Any notice given in terms of this clause shall attract a fee as determined by the Association and payable by such Member.

26.4 Nothing in the afore going shall derogate from or in any way diminish the right of the Trustees (as they may, in their sole and absolute discretion elect) to refer a dispute to arbitration, in accordance with the arbitration



provisions set out hereunder, or to institute proceedings in any court of competent jurisdiction for recovery of any money due by any Member arising from any cause of action whatsoever or for any other relief.

- 26.5 In the event of any breach of this Constitution by the members of any Member's household or his invitees or lessees, such breach shall be deemed to have been committed by the Member himself but, without prejudice to the afore going, the Trustees shall be entitled to take or cause to be taken such steps against the person actually committing the breach as they may in their discretion deem fit, with or without proceedings against the Member.

## 27 TRUSTEES

- 27.1 The Trustees of the Association shall comprise 4 (four) Developer Trustees (for so long as the Developer is a Member), a maximum of 4 (Four) alternate Developer Trustees (for as long as the Developer is a Member) and 3 (three) Member Trustees. Upon the Developer ceasing to be a Member the Trustees for the Association shall comprise 7 (seven) Member Trustees; provided that the Association may, in general meeting, vote to increase or decrease the number of Trustees.
- 27.2 A Trustee shall be an individual but need not himself be a Member, provided that the majority of Member Trustees shall be Members.
- 27.3 A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.
- 27.4 The Developer shall appoint the first Developer Trustees upon formation of the Association.
- 27.5 Subject to the provisions of clause 27.6, each Member Trustee shall continue to hold office until the annual general meeting of the Association following his appointment, at which meeting each Member Trustee shall be deemed to have retired from office as such but will be eligible for re-election at such meeting. The Developer shall, by written notice to the Trustees, be entitled to remove any Developer Trustee appointed by the



Developer and upon such removal or upon any Developer Trustee ceasing to hold office for any other reason, by written notice, appoint in their stead another person or persons.

- 27.6 A Trustee shall be deemed to have vacated his office as such upon –
- 27.6.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
  - 27.6.2 his making any arrangement or composition with his creditors;
  - 27.6.3 his conviction for any offence involving dishonesty;
  - 27.6.4 his becoming of unsound mind and or being found lunatic;
  - 27.6.5 his resigning from such office in writing;
  - 27.6.6 his death;
  - 27.6.7 his being removed from office by a resolution of Trustees;
  - 27.6.8 his being disentitled to exercise a vote in terms of this Constitution provided he is a Member Trustee; and
  - 27.6.9 his being disqualified to hold office as a director in terms of the Companies Act 71 of 2008.
- 27.7 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 27.6, anything done by such Trustee in the capacity of a Trustee in good faith shall be valid until the fact that he is no longer a Trustee has been recorded in the minute book of the Trustees. Should the office of a Trustee fall vacant prior to the next annual general meeting of the Association, the vacancy in question may be filled by the Developer if the vacancy is in respect of a Developer Trustee and by the remaining Member Trustees if the vacancy is in respect of a Member Trustee and the person so appointed shall hold office until the next annual general meeting.



- 27.8 The first Chairman shall be appointed by the Developer and shall hold office until the first annual general meeting provided that such office shall *ipso facto* be vacated by the Trustee who was appointed Chairman upon his ceasing to be a Trustee for any reason.
- 27.9 Within 7 (seven) days of the holding of each annual general meeting of the Association the Trustees shall meet and shall elect from their own number the Chairman who shall hold office until the annual general meeting held next after his appointment, provided that the office of Chairman shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. In the event of any vacancy occurring in the aforesaid office, the Trustees shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.
- 27.10 Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustees and all general meetings of the Association and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustees or by Members and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings and provided further that a Member's spouse shall be entitled to speak at any meeting.
- 27.11 If the Chairman vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Trustees present at such meeting shall choose another Chairman for such meeting.
- 27.12 If any Chairman vacates his office as Chairman or no longer continues in office for any reason, the Trustees shall elect another Chairman who shall hold office as such for the remainder of the period of office of the first mentioned Chairman.

- 27.13 A Trustee shall be disqualified from voting in respect of any contract or proposed contract or any litigation or proposed litigation or any dispute, with the Association, by virtue of any interest he may have therein.
- 27.14 No contract concluded on behalf of the Trustees shall be valid and binding unless it is signed by the Chairman and one Trustee, the latter specifically appointed as authorised signatory in terms of a resolution of Trustees whereby the Trustees bind the Association.
- 27.15 Notwithstanding the provisions of this Constitution, the Trustees may formally resolve to ratify and adopt any unauthorised actions which may have been taken by any Trustee or any representative of the Trustees on behalf of the Association, if the Trustees deem it to be to the benefit of the Association to do so.
- 27.16 Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them in or about the performance of their duties as Trustees and/or Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- 27.17 Trustees may not make loans on behalf of the Association to Members or to themselves.
- 27.18 The Trustees shall inform the Local Authority of any new Trustees appointed from time to time.

## **28 FUNCTIONS, POWERS AND DUTIES OF TRUSTEES**

- 28.1 Subject to the express provision of this Constitution, the Trustees shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs, including the right of appointment and dismissal of any Managing Agent, may exercise all such powers of the Association and do all such acts on behalf of the Association as may be exercised and done by the Association and as are not by this Constitution required to be exercised or done by the Association in general meeting subject however to such





regulations as may have been made by the Association in general meeting provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustees which would have been valid if such regulation had not been made.

28.2 Save as specifically provided in this Constitution, the Trustees shall have the right to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, town planners or any other professional firm or person whatsoever or any employees for any reason deemed necessary by the Trustees on such terms as the Trustees shall decide.

28.3 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.

28.4 The Trustees shall have the right to co-opt any person or persons chosen by them. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees provided that such co-opted Trustee shall only serve until the next annual general meeting.

28.5 The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member, Resident or Trustee of this Constitution in such reasonable manner as they shall decide from time to time.

28.6 The Trustees may make regulations and rules not inconsistent with this Constitution or any regulations or rules prescribed by the Association in general meeting –

28.6.1 as to the resolution of disputes generally;

28.6.2 for the furtherance and promotion of any of the objects of the Association;

28.6.3 for the better management of the affairs of the Association;

28.6.4 for the advancement of the interests of Members;



- 28.6.5 for the conduct of Trustees at meetings of Trustees and meetings of the Association;
- 28.6.6 to levy and collect contributions from Members in accordance with clause 22 and 23;
- 28.6.7 to levy and recover from Members moneys which are necessary to defray the necessary expenses of the Local Authority in the event of the Local Authority imposing any levies and imposts against the Association;
- 28.6.8 to assist it in administering and governing its activities generally; and
- 28.6.9 to impose fines in respect of Members and Residents not complying with this Constitution or any rules imposed by the Association or the Trustees.
- 28.7 Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include –
  - 28.7.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and Improvements of all Erven in the Development in strict accordance with the provisions of the Guide which shall be additional to the powers of the Developer for as long as the Developer is a Member. The Trustees shall be entitled to require any Member, who shall be obliged, to repaint or renovate his Improvements if in the reasonable opinion of the Trustees such Improvements require essential repairs or have become dilapidated;
  - 28.7.2 entering into of agreements with third parties on behalf of the Association for any purposes of the Association;
  - 28.7.3 the employment on behalf of the Association of agents, servants and any other party and the payment of such persons;



- 28.7.4 the taking of steps in all matters of common interest in respect of the Association and, without detracting from the generality thereof, such as common sewage, electricity supply, water supply, landscaping, maintenance of private roads, refuse facilities, removal of refuse and suchlike, where applicable;
- 28.7.5 the institution or defence of legal proceedings in the name of the Association and to appoint legal representatives for such purpose;
- 28.7.6 administrating, inspecting and maintaining all individual metered connections. When a Member suspects a meter serving his/her Erf is faulty or over registering, the meter must be removed for testing and a new water meter be installed. The Member must pay the testing fee for the meter to be tested at a SANAS registered test bed. In the instant that the meter registered more than +2%, the account will be adjusted proportionally. The testing fee will be paid by the Member and if the meter is found to be faulty and out of range (over registering with more than +2%) the Member will then be refunded, including the testing fee. Meter under registering during the testing of the meter, will be for the Association to determine; and
- 28.7.7 complying with and enforcing all applicable municipal by-laws including any water restrictions imposed on the Association by the Local Authority from time to time.

## **29 PROCEEDINGS OF TRUSTEES**

- 29.1 The Trustees may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they deem fit, subject to the provisions of this Constitution.
- 29.2 Meetings of the Trustees shall be held at least once every 6 (six) months.
- 29.3 The Chairman always has the right to convene meetings of Trustees.
- 29.4 A Trustee may, provided he has the support in writing of 3 (three) other Trustees, at any time convene a meeting of Trustees by giving to the other



Trustees not less than 14 (fourteen) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.

29.5 A resolution in writing signed by all the Trustees shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and constituted.

29.6 The quorum necessary for the holding of any meeting of Trustees shall be 4 (four) Trustees present personally provided that, for as long as the Developer is a Member, no less than 3 (three) Trustees present are Developer Trustees. If no quorum is present within 15 (fifteen) minutes after the time for commencement of the meeting then it shall stand adjourned for the same time and place on the following day which is not a Saturday, Sunday or public holiday and, if at such adjourned meeting, a quorum is not present within 30 (thirty) minutes after the time appointed for the meeting, the Trustees then present shall be a quorum.

29.7 Any resolution of the Trustees, other than a special resolution, shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against such resolution, the Chairman shall have a second or casting vote.

29.8 The Chairman shall preside as such at all meetings of Trustees provided that, should at any meeting of Trustees the Chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the Trustees shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

29.9 A Trustee may be represented at a meeting of Trustees by a proxy provided such proxy is a Trustee.

29.10 The instrument appointing a proxy shall be in writing and signed by the Trustee concerned but need not be in any particular form. The proxy shall



be deposited with the Chairman at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.

29.11 The Trustees shall –

29.11.1 ensure that minutes are taken of every meeting of Trustees, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;

29.11.2 cause such minutes to be kept of all meetings of the Trustees in a minute book of meetings of Trustees kept for that purpose;

29.11.3 keep all books of meetings of Trustees in perpetuity; and

29.11.4 on the written application of any Member, make all minutes of their proceedings available for inspection by such Member.

29.12 All resolutions recorded in the minutes of any meeting of Trustees shall be valid and of full force and effect as therein recorded with effect from the passing of such resolutions and until varied or rescinded, but no resolution or purported resolution of Trustees shall be of any force or effect or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustees.

29.13 Save as otherwise provided in this Constitution, the proceedings at any meeting of Trustees shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

29.14 The Trustees may vote upon and pass resolutions by way of email correspondence, subject to the following conditions –

29.14.1 each of the Trustees must be included in all email correspondence relating to any decision to be taken by the Trustees by email;

29.14.2 no decision shall be taken by email if any of the Trustees requires that the matter be decided at a meeting of the Trustees;



29.14.3 the necessary quorum required for a decision to be taken by email will be achieved if a majority of the Trustees vote in favour of the decision by return email to each of the other Trustees; and

29.14.4 all resolutions passed by email shall be recorded in the minute book containing the minutes of the meetings of the Trustees and shall be ratified at the following or any subsequent meeting of the Trustees.

### **30 MANAGING AGENT**

30.1 For the duration of the Development Period, the Developer shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Managing Agent to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the Developer notifies the Managing Agent to the contrary, such appointment will be automatically renewed from year to year.

30.2 After termination of the Development Period, the Trustees shall, in addition to the powers contained herein, have the power from time to time, if deemed necessary, to appoint in terms of a written contract, a Managing Agent to control, manage and administer the Development and to exercise such powers and duties as may be entrusted to the Managing Agent, including the power to collect levies, provided that a Managing Agent shall be appointed for a year at a time, and unless the Trustees notify the Managing Agent to the contrary, such appointment will be automatically renewed from year to year.

30.3 The Association shall take out fidelity insurance to the satisfaction of the Trustees for all monies held by the Managing Agent on behalf of the Association from time to time.

30.4 The Developer or the Trustees (as the case may be) shall ensure that there is included in the contract of appointment of a Managing Agent a



provision to the effect that if the Managing Agent is in breach of any of the provisions of his contract or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the Trustees may, without notice, cancel such contract of employment and the Managing Agent shall have no claim whatsoever against the Developer, Trustees and/or the Association as a result of such cancellation.

30.5 It is agreed that with effect from the termination of the Development Period the Managing Agent appointed by the Trustees shall be the same entity/person as the managing agent appointed by the Master HOA.

### **31 PROXIES**

31.1 A Member may be represented at a general meeting by a proxy, who shall be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent, but need not be in any particular form, provided that if a Member is more than 1 (one) person, a majority of those persons shall sign the instrument appointing a proxy on such Member's behalf. If a Member is a company, the proxy may be signed by the chairman of the board of that company or by its secretary, if a close corporation, by any member of such close corporation and if an association of persons, by the secretary thereof and, if a trust, by a person duly authorised by the trustees of such trust.

31.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a notarially certified copy thereof shall be deposited at the office of the Association at least 24 (twenty four) hours before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument proposes to vote, unless the Chairman otherwise directs. The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.

31.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation



of the proxy provided that no intimation in writing of the death or revocation shall have been received by the Board at least 1 (one) hour before the time fixed for the holding of the meeting.

- 31.4 A proxy may not delegate his authority to act to another person.
- 31.5 The proxy must vote in accordance with the instructions received from the person who appointed him.
- 31.6 Notwithstanding the foregoing, the Chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

## **32 ANNUAL GENERAL MEETINGS**

- 32.1 The Association shall within 6 (six) months after the end of each Financial Year hold a meeting as its annual general meeting, in addition to any other general meetings during that Year, and shall specify the nature of the meeting in the notice calling it.
- 32.2 Such annual general meeting shall be held at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time.
- 32.3 All general meetings other than the annual general meetings shall be called extraordinary general meetings.
- 32.4 The Trustees may, whenever they deem fit, convene an extraordinary general meeting, and an extraordinary general meeting shall also be convened –
  - 32.4.1 during the Development Period on a requisition of a majority of the Trustees if such demand describes the specific purpose for which the meeting is proposed; and
  - 32.4.2 after the Development Period on a requisition of Members if such demand describes the specific purpose for which the meeting is proposed and in aggregate, demands for substantially the same purpose are made and signed by the holders, as of the earliest time





specified in any of those demands, of at least 10% (ten percent) of the voting rights entitled to be exercised in relation to the matter proposed to be considered at the meeting.

### **33 VENUE OF MEETINGS**

- 33.1 Meetings of the Association shall take place at such place as shall be determined by the Trustees from time to time, either within the Development or the Master Development or entirely by way of electric communication, provided, however, that the Members may by simple majority direct that the annual general meeting of the Association shall be held at such other place as the Members may by simple majority deem fit.
- 33.2 One or more Member, or proxies for Members, may also be allowed by the Trustees or by simple majority decision by the Members to participate in the Association's meetings by electronic communication in all or part of such meetings that are held in person.

### **34 NOTICES OF MEETINGS**

- 34.1 An annual general meeting and a general meeting called for the passing of a special resolution shall be called by 15 (fifteen) business days' notice in writing at least, and an extraordinary general meeting, other than one called for the passing of a special resolution shall be called by 10 (ten) business days' notice in writing at least. In each case the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting, and in the case of special business, in addition to any other requirements contained in this Constitution, the general nature of that business, and in the case of a special resolution the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustees to such persons as are under this Constitution entitled to receive such notices from the Association; provided that a general meeting of the Association shall, notwithstanding that it is called by a shorter notice period than that specified in this Constitution, be deemed to have been duly called if it is so agreed –



- 34.1.1 in the case of a meeting called as the annual general meeting, by the Members entitled to attend and vote thereat; and
- 34.1.2 in the case of an extraordinary general meeting, by a majority in number of the Members having a right to attend and vote at the meeting being a majority together holding not less than 75% (seventy five percent) of the total voting rights of all Members.
- 34.2 The accidental omission to give notice of a meeting or of any resolution, or to give any other notification, or present any document required to be given or sent in terms of this Constitution or the non-receipt of any such notice, notification or document by any Member or other person entitled to receive same, shall not invalidate the proceedings at or any resolution passed at any meeting.

## **35 AGENDA AT MEETINGS**

In addition to any matters required by this Constitution to be dealt with at an annual general meeting, the following matters shall be dealt with at every annual general meeting –

- 35.1 the confirmation of the minutes of the preceding annual general meeting and of any general meetings held subsequently;
- 35.2 the consideration of the Chairman's report to the Members;
- 35.3 the election of the Trustees;
- 35.4 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 35.5 the consideration of the income statement and balance sheet of the Association for the last Financial year of the Association preceding the date of such meeting;
- 35.6 the noting of the levy for the Financial Year during which such annual general meeting takes place; and



35.7 any other matters as may be required to be deal with by the Members or the Trustees.

### **36 PROCEEDINGS AT GENERAL MEETINGS**

36.1 The Chairman shall preside as such at all general meeting provided that should he not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Members present at such meeting entitled to vote, shall appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.

36.2 The Chairman may, with the consent of any general meeting at which a quorum is present, and shall if so directed by the meeting, adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting adjourned for 7 (seven) days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.

36.3 Save as otherwise provided in this Constitution, the proceedings at any general meeting shall be conducted in such reasonable manner as the Chairman of the meeting shall decide.

### **37 VOTING**

37.1 At every general meeting –

37.1.1 the Developer, during the Development Period, shall have 500 (five hundred) votes in addition to its votes in respect of its unsold Erven;

37.1.2 every Member that is Registered Owner of an Erf, including the Developer, in person or by proxy, and entitled to vote shall have 1 (one) vote for each Erf registered in his name;



- 37.1.3 if an Erf is registered in the name of more than 1 (one) person then all such co-owners shall jointly have 1 (one) vote;
- 37.1.4 in the event of any Member, including the Developer, holding undeveloped land in the Development, such Member shall have 1 (one) vote for each separate piece of land depicted as an Erf on the general plan of the Development and registered in his name;
- 37.1.5 if applicable, the Members that are Registered Owners of Units in a specific Sectional Title Scheme and the relevant Body Corporate shall have a total number of votes per Sectional Title Scheme equal to the number of Normal Levies (as per clause 20.20.1 above) payable by such Body Corporate to the Association, as determined in accordance with the provisions of clause 23.7.3, which votes shall only be capable of being exercised by a representative appointed by the relevant Body Corporate from time to time for such purpose and in accordance with the provisions of clause 37.11;
- 37.1.6 save as expressly provided for in this Constitution, no person other than a Member, and who shall have paid every Levy and other sum, if any, which shall be due and payable to the Association in respect of or arising out of his Membership, and who is not under suspension, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting;
- 37.1.7 if a Member is a juristic person, such Member shall be represented by such representative as the Member may determine provided that the Chairman may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairman as to his right to represent the Member;
- 37.1.8 if a Member comprises more than 1 (one) person, such Member shall be represented by such representative as the Member may determine provided that –

- 37.1.8.1 the Chairman may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairman as to his right to represent the Member;
- 37.1.8.2 if such persons cannot decide unanimously, then the person whose name stands first in the register of Members shall be entitled to cast the vote; and
- 37.1.8.3 the vote(s) cast to the satisfaction of the Chairman shall be final and binding upon all persons constituting the relevant Member, irrespective of any error or absence of authority.
- 37.2 Unless the Chairman of the meeting otherwise directs, all voting shall be in writing, by way of a secret poll, which shall be taken during the course of the meeting in such manner as the Chairman of the meeting may direct.
- 37.3 Notwithstanding the provisions of clause 37.2 above, after the Development Period, voting on the election of a Chairman of a general meeting (if necessary) or any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.
- 37.4 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not so seconded, shall be deemed not to have been proposed.
- 37.5 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, by Members present in person or by proxy and entitled to vote at the meeting, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.
- 37.6 A vote cast under a proxy, power of attorney, or other authority, which has been revoked, shall nevertheless be valid unless –



- 37.6.1 written notice of the revocation is received by the Association prior to the meeting concerned; or
- 37.6.2 the Chairman of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 37.7 No objection shall be raised to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is cast and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the meeting whose decision shall be final and conclusive.
- 37.8 If any difficulty or dispute arises regarding the admission or rejection of a vote, or regarding any other matter, such difficulty or dispute is to be determined by the Chairman, whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.
- 37.9 Read with clause 37.7, unless any Member present in person or by proxy at a general meeting shall, before the closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.
- 37.10 Any resolution which could be passed at a general meeting (other than a special resolution) may be passed without a meeting being held if one or more copies of the resolution are signed by or on behalf of all the Members entitled to vote.



37.11 If applicable, a Body Corporate shall be entitled to attend any annual general meeting or general meeting of the Association, but may only vote in respect of matters which also materially and directly impact upon the rights and obligations of the Registered Owners of Units as members of the Association.

## 38 QUORUM

38.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be Members holding an aggregate of not less than 10% (ten percent) of the total of all Members entitled to vote at such general meeting, present in person or by proxy, provided that there will always be at least 3 (three) Members present in person and provided further that, for the duration of the Development Period, the Developer is present in person or by proxy.

38.2 If within half an hour from the time appointed for the holding of a general meeting, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, or at such other place as the Chairman of the meeting shall appoint.

38.3 If within half an hour from the time appointed for the holding of an adjourned meeting, a quorum is not present, the meeting shall stand adjourned for second time to the same day in the next week at the same place and time, or at such other place as the Chairman of the meeting shall appoint.

38.4 If at such second adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum, provided that, for the duration of the Development Period, the Developer is present in person or by proxy for the first meeting and for the first adjourned meeting in order for a quorum to be constituted. The Developer need not be present at the second adjourned meeting for a quorum to be constituted.



## 39 SPECIAL RESOLUTIONS

39.1 Any special resolutions or an amendment of a special resolution, shall be caused at a general meeting of which not less than 15 (fifteen) business days' notice has been given specifying the intention to propose the resolution as a special resolution, the terms and effect of the resolution and the reasons for it and at which –

39.1.1 Members holding in the aggregate not less than 25% (twenty five percent) of the total votes of all the Members, are present in person or by proxy; and

39.1.2 the resolution has been passed on a show of hands by not less than 75% (seventy five percent) of the number of Members entitled to vote on a show of hands at the meeting who are present in person or by proxy, or where a poll has been demanded, by not less than 75% (seventy five percent) of the total votes to which the Members present in person or by proxy are entitled.

39.2 Special resolutions are required for the following matters:

39.2.1 after the Development Period, for Erven forming Private Spaces to be –

39.2.1.1 sold; or

39.2.1.2 mortgaged; or

39.2.1.3 subjected to any rights, whether registered in a Deeds Registry or not, of use, occupation and servitude, save as specified in the said conditions of establishment, and save as such rights as are enjoyed by the Members in terms hereof, without the sanction of a special resolution of the Association;

39.2.2 the Association may, in its discretion, permit the Members, subject to the provisions of this Constitution, to use the Private Spaces and shall do so unless by special resolution taken at an extraordinary general





meeting called for the purpose, it is otherwise resolved for good reason;

- 39.2.3 for a Member to operate or conduct a time-sharing scheme as contemplated in the Property Time-Sharing Control Act No 71 of 1983, as amended, in respect of any dwellings or Units owned by him save where such scheme arises from co-ownership or syndication involving not more than 4 (four) Members per bedroom per unit, unless the Members by special resolution resolve otherwise;
- 39.2.4 amending this Constitution;
- 39.2.5 ratifying actions by the Association or the Trustees in excess of their authority in terms of this Constitution;
- 39.2.6 disposing of all or a greater part of the assets of the Association;
- 39.2.7 increasing the levy contributions payable by the Members by 80% (eighty percent) or more from one year to the next; and
- 39.2.8 winding-up or dissolving the Association.

#### **40 MINUTES OF MEETINGS OF THE ASSOCIATION**

- 40.1 The Trustees shall –
  - 40.1.1 ensure that minutes are taken of every meeting of the Association, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;
  - 40.1.2 cause such minutes to be kept of all such meetings of the Association in a minute book of meetings of the Association kept for the purpose.
- 40.2 The Trustees shall keep all minute books of meetings of the Association in perpetuity.
- 40.3 On the written application of any Member or any director of the Master HOA, the Trustees shall make all minutes of the proceedings and/or



meetings of the Association available for inspection at the Association's offices by such Member or, in respect of a request by a director of the Master HOA, provide the director of the Master of the HOA with a complete and accurate copy of such minute(s) requested. The Association will not be obliged to distribute the minutes electronically.

- 40.4 All resolutions recorded in the minutes of any meetings of the Association shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Association shall be of any force or effect, or shall be binding upon the Members or any of the Trustees, unless such resolution is competent within the powers of the Association.
- 40.5 Save as otherwise provided in this Constitution, the proceedings at any meeting of the Association shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

## **41 FINANCIAL YEAR END**

The financial year end of the Association is the last day of February of each year.

## **42 ACCOUNTS**

- 42.1 The Trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the Association including –
- 42.1.1 a record of the assets and liabilities of the Association;
- 42.1.2 a record of all sums of money received and expended by the Association and the matters in respect of which such receipt and expenditure occur;
- 42.1.3 a register of Members showing in each case their addresses; and
- 42.1.4 individual ledger accounts in respect of each Member.



- 42.2 On the application of any Member or a director of the Master HOA, the Trustees shall make all or any of the books of account and records available for inspection by such Member or, in respect of a request by a director of the Master HOA, provide the director with a complete and accurate copy of such books of account and records so requested.
- 42.3 The Trustees shall cause all books of account and records to be retained for a period of 5 (five) years after completion of the transactions, acts or operations to which they relate.
- 42.4 The Association in general meeting or the Trustees may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by Members of the accounts and books of the Association, or any of them, and subsequent to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.
- 42.5 At each annual general meeting, the Trustees shall lay before the Association financial statements for the immediately preceding financial year of the Association or, in the case of the first period since the date of commencement of the Association, made up for that period. Such financial statements shall be drawn up in accordance with generally accepted accounting practise and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees.

### **43 DEPOSIT AND INVESTMENT OF FUNDS**

- 43.1 The Trustees shall cause all moneys received by the Association to be deposited to the credit of an account or accounts with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the Association or investment.
- 43.2 The Trustees will set up reserve accounts for funds that are held over and above one year's working capital requirements. These reserves may be



invested in absolute return funds with an explicit target of no more than CPI + 5% (five percent) with any financial institution as approved by the Trustees from time to time.

- 43.3 Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

#### **44 AUDIT**

- 44.1 Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.
- 44.2 The duties of the Auditors shall be regulated in accordance with general practise and applicable professional standards and the auditors shall be appointed by the Trustees from time to time.

#### **45 INDEMNITY**

- 45.1 All the Trustees, managers, servants, agents or employees of the Association are indemnified by the Association against any liabilities *bona fide* incurred by them in their capacities as such and in the case of the Chairman in his capacity as Chairman, as well as for all costs, losses and expenses (including travelling expenses) which they may incur or become liable for by reason of any authorised contract entered into, or any authorised act or deed done, in the discharge of any of their duties and, without detracting from the generality thereof, whether defending any proceedings, civil or criminal or otherwise in which relief is granted by a court.
- 45.2 A Trustee shall not be liable for the acts, or omission of the Auditors or of any of the other Trustees whether in their capacities as Trustees or as Chairman or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of any security in or upon which moneys of the Association are invested or for loss or damage arising from the insolvency or wrongful act of any person with whom any



moneys, securities or effects are deposited or for any loss or damage occasioned by any error of judgement or oversight on his part or for any loss, damage or misfortune of whatsoever nature occurring in the execution of his duties or in relation thereto unless occurring as a result of *mala fides*, breach of duty or breach of trust.

#### **46 DEFAMATION PRIVILEGE**

Every Member of the Association and every Trustee shall be deemed by virtue of his membership of the Association or, as the case may be, his holding office as a Trustee, to have waived as against every other Member, the Chairman, every other Trustee, and everybody else engaged to perform the function or duty on behalf of or for the benefit of the Association, or the Trustees, or any sub-committee, all claims and rights of action which such Member or Trustee might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee, or any reference to such Member or Trustee, made at any meeting of Trustees, or otherwise in the performance or exercise of any right, function, duty, power or trust, within the ambit of this Constitution, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee, whether such statement be true or false.

#### **47 OWN RISK**

Any person using any of the services, land or facilities of the Association does so entirely at his own risk.

#### **48 TRANSFER OF LAND**

48.1 The Developer shall, free of consideration, transfer to the Association the Private Spaces indicated on the Site Development Plan and the risk therein shall pass to the Association upon transfer thereof to the Association where after the maintenance and upkeep shall be the responsibility of the Association as well as liability for rates and taxes and all charges attaching thereto.



48.2 The transfer of Private Spaces to the Association in terms of clause 48.1 will occur as follows –

48.2.1 in the case of the private road Erf, being Erf 820 Pearl Valley Estate in the Development, it shall be transferred to the Association by the Developer on or before transfer of the first Erf in 'phase 3' of the Development from the Developer to a third party purchaser;

48.2.2 in the case of land required for services provided by the Association it shall be transferred to the Association by the Developer on or before transfer of the first Erf in 'phase 3' of the Development from the Developer to a third party purchaser;

48.2.3 in the case of private open spaces, lakes, waterways and pathways ("**Communal Areas**") located in 'phase 1' of the Development, it shall be transferred to the Association by the Developer on or before transfer of the first Erf in 'phase 1' of the Development from the Developer to a third party purchaser;

48.2.4 in the case of Communal Areas located in 'phase 2' of the Development, it shall be transferred to the Association by the Developer on or before transfer of the first Erf in 'phase 2' of the Development from the Developer to a third party purchaser; and

48.2.5 in the case of Communal Areas located in 'phase 3' of the Development, it shall be transferred to the Association by the Developer on or before transfer of the first Erf in 'phase 3' of the Development from the Developer to a third party purchaser.

## 49 ARBITRATION

49.1 Should any dispute, question or difference arise between any of the following, namely a Member, a Resident, a Trustee, the Association or the Developer out of or in regard to –

49.1.1 the interpretation of;



- 49.1.2 the effect of;
- 49.1.3 their respective rights or obligations under;
- 49.1.4 a breach of (save for non-payment of levies or any other amount due by a Member in terms of this Constitution, which claim will be dealt with in accordance with the provisions of clause 49.2),

this Constitution or the Estate Rules, such dispute shall, subject to a Member's right to refer such dispute to the Ombud for determination, be decided by arbitration in the manner set out in this clause 49.

- 49.2 In respect of any claim arising from non-payment of levies or any other amount due by a Member to the Association in terms of this Constitution, the Association and Trustees shall continue to enjoy common law rights and shall not be required to proceed to arbitration. The Trustees will be entitled to elect, within their sole and absolute discretion, whether to refer the dispute to arbitration or whether to institute legal proceedings in any court of competent jurisdiction.

- 49.3 The arbitration shall –

- 49.3.1 be conducted in an informal summary manner on the basis that it shall not be necessary to observe or carry out either the usual formalities or procedures relating to pleadings or discovery or the strict rules of evidence; and

- 49.3.2 commence as soon as reasonably possible after it is demanded and with a view to its being completed within 30 (thirty) days after it is demanded; and

- 49.3.3 be held under the provisions of the Arbitration Act of the Republic of South Africa (as amended or replaced from time to time) except insofar as the provisions of this arbitration clause shall apply.

- 49.4 The arbitrator shall be a practicing senior counsel of not less than 5 (five) years standing appointed by agreement between the parties to the



arbitration within 7 (seven) days of being called upon to make such appointment and failing such agreement within the 7 (seven) day period, appointed by the Chair of the Cape Bar Council.

49.5 The arbitrator shall in giving his award have regard to the principles contained in this Constitution and he shall decide the matter as submitted to him according to what he considers just and equitable in the circumstances and, therefore, the strict rules of Law need not be observed or be taken into account by him in arriving at his decision. The arbitrator's decision shall be presented within 10 (ten) days after the completion of the arbitration in a written document and he shall state the reasons for his decision therein. The arbitrator may determine that the cost of the arbitration be paid either by one or other of the disputing parties or by the Association as he in his sole discretion may deem fit.

49.6 Each of the parties to the arbitration irrevocably agrees that the decision of the arbitrator made at such arbitration proceedings:

49.6.1 shall be final and binding on each of them; and

49.6.2 shall be carried into effect immediately; and

49.6.3 may be made an order of any Court to whose jurisdiction the parties are subject.

49.7 Notwithstanding anything to the contrary contained in this clause 49, the Trustees shall be entitled to institute legal proceedings on behalf of the Association by way of application, action or otherwise in any Court having jurisdiction for the purposes of restraining or interdicting breaches of any of the provisions of this Constitution, including the Guide.

## 50 DOMICILIUM

50.1 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:



- 50.1.1 such address shall be the address of the Chairman or of a resident Trustee nominated by the Trustees or the address of any duly appointed Managing Agent;
- 50.1.2 the Trustees shall give notice to all Members of any change of such address.
- 50.2 The *domicilium citandi et executandi* of each Member shall be the street address of the Member's Erf or Unit (as the case may be).
- 50.3 The *domicilium citandi et executandi* of each Resident shall be the street address of the Erf or Unit which such Resident occupies.
- 50.4 It shall be competent to give notice by telefax or email where the telefax number or email address of the Member or Resident is recorded with the Trustees.
- 50.5 A Member or Resident who has furnished an electronic address to the Association or, if applicable, to his Body Corporate authorises the Association to use that electronic address and to use electronic communication to give any notices, documents, records, legal process or statements which the Association is required to or wishes to serve upon the Member or Resident.
- 50.6 A Member or Resident may by notice in writing to the Trustees alter his *domicilium*, provided such new address may not be a post office box or post restante and provided such address is within the Republic of South Africa and shall not be effective until 14 (fourteen) days after receipt of such notification.
- 50.7 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Member or Resident shall be adequate written notice or communication to such Member or Resident notwithstanding that it was not sent to or delivered at his *domicilium citandi et executandi*.
- 50.8 Any notice to a Member or Resident –



- 50.8.1 sent to him by prepaid registered post in a correctly addressed envelope at his *domicilium et executandi* shall be deemed to have been received on the 7<sup>th</sup> day after posting (unless the contrary is proved);
- 50.8.2 delivered by hand to a responsible person at his *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery;
- 50.8.3 successfully transmitted by telefax to his chosen telefax number shall be deemed to have been received on the 1<sup>st</sup> day after the date of transmission; or
- 50.8.4 sent to him by electronic mail shall be deemed to have been received on the date and at the time recorded by the computer used by the Association, unless there is conclusive evidence that it was delivered on a different date or at a different time,
- unless the contrary is proved.

## 51 AMENDMENT

- 51.1 No provision hereof shall be added to, amended, substituted or repealed without the prior consent in writing of:
- 51.1.1 the Local Authority if such amendment affects the Local Authority if it in any way amounts to an amendment of the requirements set out in section 29(3) of the Drakenstein By-Law on Municipal Land Use Planning, 2015 (as amended), and
- 51.1.2 the Community Scheme Ombud Service, only insofar as may be applicable; and
- 51.1.3 the Developer for as long as the Developer is a Member, provided that clauses, 9.8, 14.6 and 21.3 shall not be amended without the written approval of the relevant successor in title of the Developer.



51.2 Subject to the provisions of clause 51.1, such addition, amendment, substitution, or repeal shall require the passing of a special resolution adopted at an annual general meeting or general meeting of the Members, subject thereto that during the development period the Developer shall be entitled to add, amend, substitute, or repeal this Constitution in its sole and absolute discretion, subject to the prior consent in writing of the Local Authority.

## **52 INCORPORATION OF FURTHER PHASES**

The Developer has a continuing and permanent interest to ensure that certain basic provisions are entrenched in perpetuity to ensure the success of the Development. Accordingly, none of the following provisions may be deleted or varied in any way, in terms of clause 48 without the prior written consent of the Developer –

52.1 the Developer has the right at any time and from time to time to extend or alter the area or composition of the Development by requiring the Association to incorporate into the Development any part/s of any adjoining properties owned by the Developer from time to time as further phases of the Development which the Developer shall be entitled to develop as it may deem fit;

52.2 should any further property be incorporated into the Development, the Developer shall be entitled to require that the first and all subsequent Owners of Erven therein become Members of the Association in respect of those parts from such date as the Developer may determine, and on the same terms and conditions as are applicable to the other Members of the Association. The Members shall be bound by any such requirement of the Developer.

## **53 USE OF INTELLECTUAL PROPERTY**

Nothing in this Constitution shall grant Member or Resident any right, title or interest in and to the intellectual property of the Developer and/or any other entity in respect of the Development, including but not limited to the trade



name, brand and logo associated with “*The Acres*”, “*Val de Vie*” and/or “*Pearl Valley*”.

## **54 PUMPING OF WATER FROM BERG RIVER**

- 54.1 The Development is entitled to certain water rights from the Berg River. The Developer shall allocate such water rights to the various Erven in its sole and exclusive discretion, but subject to the consent of the Minister of Water and Sanitation or his duly appointed agent. It is not envisaged that any residential Erf will be entitled to any water rights in terms of such allocation.
- 54.2 The costs of obtaining and distributing such water shall be apportioned according to the use thereof.
- 54.3 Any party entitled to water, shall be entitled to register at his costs a servitude for the pumping, storage and distribution of such water over other Erven in the Development.
- 54.4 No Member shall be entitled to sink or use any borehole or seepage pit or well except with the prior written approval of the Developer during the Development Period and thereafter with the prior written approval of the Association.
- 54.5 All water from the Berg River will be pumped to the storage dams on the Development and/or the Greater Val de Vie Estate, from where it will be distributed to the individual Erven entitled thereto.
- 54.6 All production boreholes on Members’ Erven must be registered with the Local Authority. No borehole water can be shared with any other member without a licence issued by the Department of Water and Sanitation (DWS) that allows the transfer of any ground water. Ground water/borehole water cannot be connected to any private combined potable water system without an intermediary agreement, which complies to SANS 0241 as amended from time to time.

## **55 STREET LIGHTS**

It is recorded that no street lights will be provided along the minor streets in the Development.

## **56 RIGHT OF FIRST REFUSAL**

Should the Developer, or its successors in title, decide to sell any non-residential Erf; the Association shall have a right of first refusal for a period of 30 (thirty) days after receipt by the Association of a written offer to buy such Erf from the Developer. This clause will not be applicable should the Developer wish to sell such Erf to one of its subsidiaries or its holding company, as defined in the Companies Act No. 71 of 2008 or to the Developer's successor in title or any entity to whom the Developer has ceded its rights and obligations in terms of this Constitution.

## **57 ERVEN BOUNDING ON WATER BODIES/LAKES**

Owners of Erven bounding on water bodies and lakes, will be bound by the obligations and entitled to the rights as contained in the Guide. This clause and such rights and obligations may not be amended without the approval of at least 75% (seventy five percent) of the Members who own Erven which will be affected by such amendment.

## **58 AIR QUALITY MANAGEMENT**

- 58.1 Each Member acknowledges that it is aware thereof that agricultural activities are conducted on certain properties surrounding the Development.
- 58.2 The Association will take any measures required in terms of the National Environmental Management: Air Quality Act No 39 of 2004 to ensure that measures are put in place for Members to safeguard the indoor air quality in habitable buildings owned by them anywhere on the Development from emissions from normal agricultural activity.



## 59 DISSOLUTION OF ASSOCIATION

Upon dissolution of the Association for any reason whatsoever, the Association's remaining assets shall be distributed to the Master HOA or in the event that the Master HOA is not a person which is exempt from income tax under section 10(1)(e) of the Income Tax Act No. 58 of 1962, to any such exempt person.



Notation	Zoning	Land Use	Erf No.	No of Erven	Area (ha)	%
	Conventional Housing	Dwelling House	645 - 809	165	21.31	62.58
	Open Space	Private Open Space & Private Road	810 - 819	10	6.69	19.64
	Transport	Private Road/ Access Control	820	1	5.12	15.02
	Transport	Public Road	821	1	0.94	2.75
<b>Total</b>				<b>177</b>	<b>34.06</b>	<b>100</b>

Building parameters including building lines, coverage, floor area and height are as specified in the approved **The Acres Design Guidelines**.  
Note, the height for erven 649 & 650 is limited to single storey structures as per condition of approval 3.11.1.

Right of Way Servitudes	
Servient Tenement	Servitude diagram no
85	2496/2015
87	2498/2015; 2499/2015
493	2500/2015
498	in its entirety
510	in its entirety

Servitude information as provided by **David Hellig & Abrahamse Professional Land Surveyors**

**Services Infrastructure Notation:**

- Water
- Storm Water
- Sewer
- Electrical

**Additional Services Infrastructure Notes:**

- Erf 810 - subject to a pump station and sewer transmission manhole.
- Erf 815 - subject to an electrical servitude in favour of the local authority.
- Sewer- and water services will be provided in accordance with a Services Agreement with Pearl Valley Golf and Country Estate Home Owners Association.
- Shared sewer line transects the following Pearl Valley Estate erven: 305, 314, 315, 376, 407, 433, 490, 493, 510, 596
- Shared water line transects the following Pearl Valley Estate erven: 85, 87, 497, 498, 510
- Refuse, central collection point to be provided.



**The Acres**  
ARCHITECTS AND TOWN PLANNERS

**The Acres**  
**Erf 644 Pearl Valley Estate**  
(Previously Farm 1265, Paarl)

First Floor • La Gratitude Office Building  
97 Dorp Street • Stellenbosch 7600  
tel: (021) 861 3800  
fax: (021) 862 8025  
e-mail: stel@nv3.co.za  
web: www.nv3.co.za

**nv3**  
**ARCHITECTS AND TOWN PLANNERS**

Site Development Plan

Drawn:	Checked:	Date:
WH	MW	31/03/202
Project no:	Revision no:	
P 3474		
Drawing:		
Site Development Plan		

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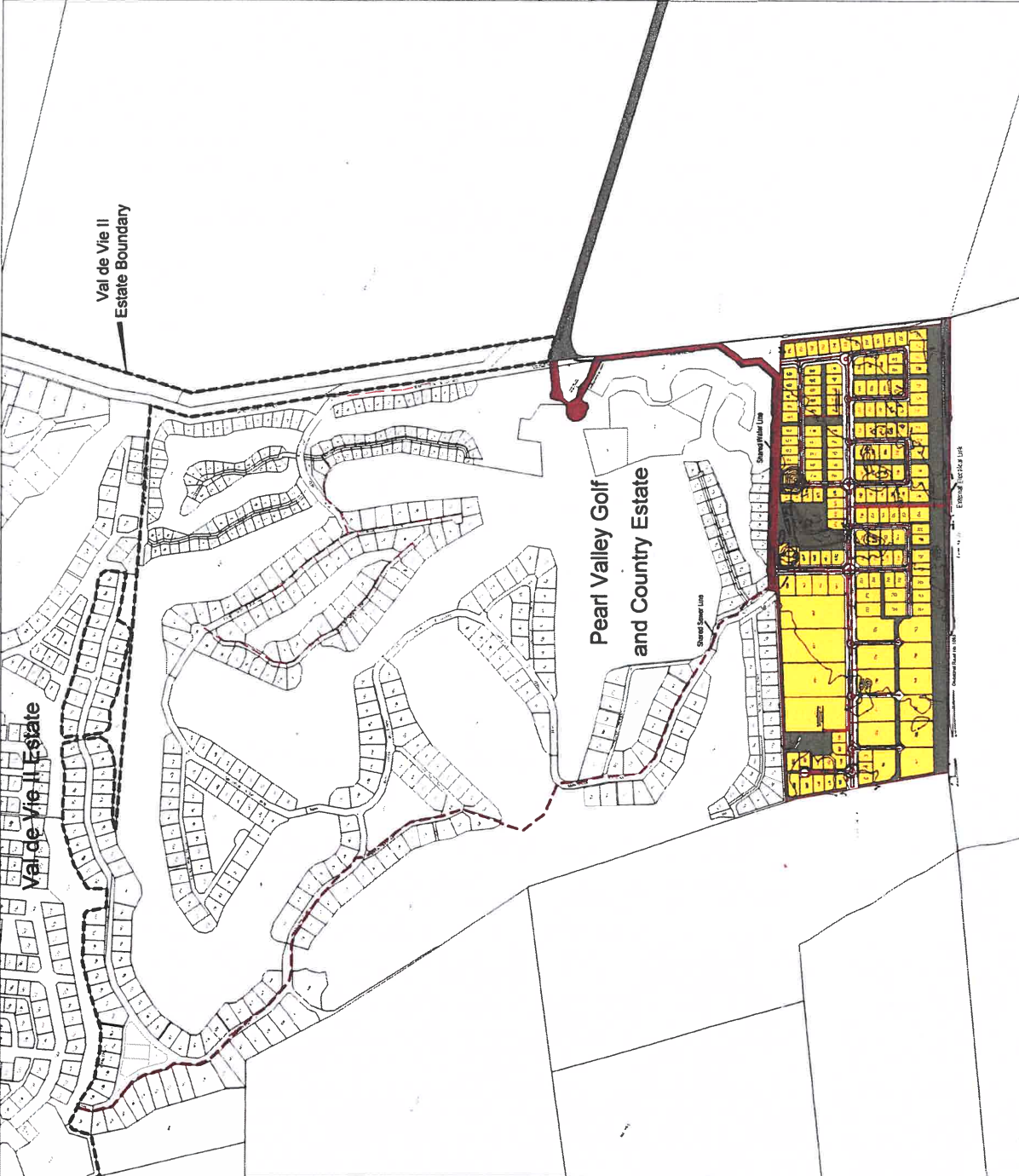
Servitude information as provided by  
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First Floor • La Gratitude Office Building  
 97 Dorp Street • Stellenbosch 7600  
 tel (021) 861 3800  
 fax (021) 862 8025  
 e-mail: [sta@tv3.co.za](mailto:sta@tv3.co.za)  
 web: [www.tv3.co.za](http://www.tv3.co.za)

**TV3**  
**ARCHITECTS AND TOWN PLANNERS**

Drawn: VJH	Checked: MW	Date: 31/03/2021
Project no.: P 3474	Revision no.:	
Drawing: Extended Site Development P1		

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