

CONSTITUTION

OF

THE VAL DE VIE WINELANDS LIFESTYLE ESTATE HOMEOWNERS'
ASSOCIATION

**As amended according to the special resolutions passed at the Special General Meeting
held on 7 August 2023**

Index

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CONSTITUTION OF THE VAL DE VIE WINELANDS LIFESTYLE ESTATE HOMEOWNERS' ASSOCIATION

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 or Unit, 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, 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 Boogertman + Partners Architects of 1st Floor, Uitzicht Building, Tygerberg Office Park, 163 Hendrik Verwoerd Drive, Platteklouf, or their successors or such Architects as appointed from time to time as such by the Association;
- 1.3 **“Association”** means the Val de Vie Winelands Lifestyle Estate Homeowners' Association which is bound by the provisions 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 **“By-Law”** means the Local Authority's By-Law on Municipal Land Use Planning (as amended);

- 1.8 **“Chairperson”** means the Chairperson of the Trustees appointed in terms of this Constitution from time to time;
- 1.9 **“Combined Cadastral Plan”** means the combined cadastral plan in respect of the Development attached as **Appendix 1** hereto;
- 1.10 **“Common Property”** means –
- 1.10.1 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;
- 1.10.2 the land registered in the name of the Association, including, but not limited to, Private Spaces;
- 1.10.3 any portion of the Development which is not subject to an exclusive right in favour of a Member;
- 1.11 **“Constitution”** means this document with the annexures hereto;
- 1.12 **“Contractor”** means a building contractor approved by the Developer or the Association in terms of this Constitution in terms of criteria determined by the Developer or the Association and employed by a Registered Owner of an Erf for the construction of Improvements;
- 1.13 **“Developer”** means –
- 1.13.1 VDVI, together with any Subsidiaries of VDVI, or VDVI’s or such Subsidiary’s successor in title with reference to VDVI or the Subsidiary’s rights and obligations as Developer; and
- 1.13.2 VDVEH or VDVEH’s successor in title with reference to VDVEH’s rights and obligations as Developer;
- 1.13.3 VDVEH2 or VDVEH2’s successor in title with reference to VDVEH2’s rights and obligations as Developer;

1.14 **“Developer Trustee”** means a Trustee appointed by VDVI (as Developer) or its successor in title as Developer;

1.15 **“Development”** means –

1.15.1 certain immovable property being Portions 2 & 7 of the Farm Kliprug No 826 Registration Division Paarl, Western Cape;

1.15.2 Erven 1652 and 1653 Val de Vie, Drakenstein Municipality, Western Cape as indicated on the approved General Plans with number GP1946/2020 and 1947GP/2020;

1.15.3 Erf 954 Val de Vie, Drakenstein Municipality, Western Cape;

1.15.4 Remainder Erf 783 Val de Vie, Drakenstein Municipality, Western Cape; and

1.15.5 Erf 782 Val de Vie, Drakenstein Municipality, Western Cape,

which properties have been subdivided into townships known as **“Val de Vie Winelands Lifestyle Estate”** and **“Val de Vie II”** in accordance with approval obtained from the Local Authority, generally in accordance with the Combined Cadastral Plan , and includes all/any extension(s) of such townships approved by the Local Authority upon application by the Developer;

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 Association in terms of this Constitution in terms of a criteria determined by the Association and contracted by a Registered Owner of an Erf for the letting and/or reselling of his Erf or Erven;

1.18 “**Estate Rules**” means the rules under this name promulgated by the Association from time to time;

1.19 “**Erf**” means every Erf that was created as a result of the subdivision of the properties comprising the Development;

1.20 “**Erf 782**” Erf 782 Val de Vie, Drakenstein Municipality, Western Cape;

1.21 “**Erven**” means the plural of Erf;

1.22 “**Farms**” means –

1.22.1 Erf 782 ;

1.22.2 Valentia;

1.22.3 L’Huguenot;

being the portions of the Development which will be used for agricultural activities;

1.23 “**Guide**” means the Val de Vie Design Guidelines promulgated by the Association and which has been prepared for and applicable to the Development, including all/any amendments made thereto from time to time in accordance with the provisions of the Constitution;

- 1.24 **“HDSRP Act”** means the Housing Development Schemes for Retired Persons Act No. 65 of 1988 (as amended);
- 1.25 **“Housing Interest”** means the right of an occupant in a Retirement Village Scheme to exclusive use and occupation of a unit in such Retirement Village Scheme, as contemplated in the HDSRP Act;
- 1.26 **“Improvements”** means any structure of whatever nature constructed or erected or to be constructed or erected on an Erf;
- 1.27 **“L’Huguenot”** means Erf 753 Val de Vie, Drakenstein Municipality, Western Cape;
- 1.28 **“Levy”** means the levies payable by Members as referred to in clause 18.1 hereof, which includes Normal Levies and Extraordinary Levies (as these terms are defined in clause 15.1.18), special levies, building control levies, road levies fines, administrative fees, services connection fees and such other contributions payable by Members to the Association in their capacity as members of the Association from time to time;
- 1.29 **“Levy Fund”** means the accumulation of all Levies collected from Members by the Association;
- 1.30 **“Local Authority”** means the Local Authority having jurisdiction over the Development which, at date of approval of the Development, is Drakenstein Municipality;
- 1.31 **“LUPO”** means the Land Use Planning Ordinance No 15/1985 (as amended) and includes any substituted legislation, i.e. the By-Law;
- 1.32 **“Managing Agent”** means any person or body appointed by the Association as an independent contractor to undertake any of the functions of the Association;
- 1.33 **“Member”** means –
- 1.33.1 the Developer for so long as it is the Registered Owner of an Erf or Unit in the Development;

- 1.33.2 all Registered Owners of any Erf and all Registered Owners of a subdivision of an Erf; and
- 1.33.3 in respect of any Erf on which is established a Sectional Title Scheme, the Body Corporate and the Registered Owners of any Units,
- 1.33.4 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;
- 1.34 “**Member Trustee**” means a trustee appointed by the Members;
- 1.35 “**Pearl Valley Estate**” means the Pearl Valley Golf and Country Estate adjacent to the Development.;
- 1.36 “**Polo Club**” means the Val de Vie Polo Club, its members and invitees;
- 1.37 “**Polo Fields**” means the Polo Fields, designated as such on the Val de Vie Extension Map;
- 1.38 “**Prime Rate**” means a rate of interest per annum which is equal to the Developer’s commercial bank’s published minimum lending rate of interest per annum, compounded monthly in arrears, charged by the said bank on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time (and in the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager of any branch of the said bank, whose decision shall be final and binding);
- 1.39 “**Private Spaces**” means all Erven on the Development which are identified as private roads, private open spaces, lakes, waterways and pathways;
- 1.40 “**Record Date**” means the date referred to in clause 25.4 below on which date the identity of the Members will be determined;
- 1.41 “**Registered Owner**” means the registered owner of an Erf or Unit or a share thereof who is, in terms of the Deeds Registries Act No 47 of 1937, as amended, reflected in

the records of the Deeds Registry concerned as a registered owner or joint owner of the Erf or Unit;

1.42 “**Resident**” means any person lawfully occupying an Erf or Unit which shall include but not be limited to –

1.42.1 a Tenant; and /or

1.42.2 an occupant of the Retirement Village Scheme, i.e. a party who holds a Housing Interest in respect of a unit in a Retirement Village Scheme, including third parties to whom such occupant has granted the right to occupy his/her unit in the Retirement Village Scheme; and / or

1.42.3 guests and employees of a Registered Owner or Tenant, as the case may be, and persons who reside with a Registered Owner or Tenant, as the case may be; and/or

1.42.4 an occupant of any hotel or similar establishment in the Development, if applicable;

1.43 “**Retirement Village Scheme**” mean any retirement village scheme established on the Development in accordance with the HDSRP Act;

1.44 “**Resolution**” means a resolution passed at an annual general meeting or any other general meeting of the Association by an ordinary majority of the total votes represented at such meeting by members present in person or by proxy;

1.45 “**River Farm Precinct**” means the portion of the Development located on Erven 1652 and 1653 Val de Vie, Drakenstein Municipality, Western Cape;

1.46 “**Sectional Titles Act**” means the Sectional Titles Act No 95 of 1986, as amended;

1.47 “**Sectional Title Scheme**” means any scheme established in terms of the Provisions of the Sectional Titles Act;

- 1.48 **“Sub-HOA”** means any new homeowners’ association established as a result of any extensions of the Development as per clause 55 below;
- 1.49 **“Sub-HOA Trustee”** means a Trustee appointed by a Sub-HOA to serve as a Trustee of the Association;
- 1.50 **“Subsidiary”** means an entity in which VDVI or a wholly owned subsidiary of VDVI holds a minimum of 50% (fifty percent) of the issued shares;
- 1.51 **“Tenant”** means a person leasing an Erf or a Unit from the Registered Owner thereof;
- 1.52 **“Town Planning Scheme”** means an operative town planning scheme applicable to the Development from time to time;
- 1.53 **“Trustee”** means the Developer Trustees and the Member Trustees of the Association and any Sub-HOA Trustees, collectively from time to time and includes alternate and co-opted Trustees;
- 1.54 **“Unit”** means a unit as that term is defined in the Sectional Titles Act;
- 1.55 **“Val de Vie Extension Map”** means the map attached as **Appendix 3** hereto and indicating the additional land which may be incorporated by the Developer into the Development in terms of this Constitution;
- 1.56 **“Val de Vie Phase 1”** means the portion of the Development located on Portions 2 & 7 of the Farm Kliprug No 826, Registration Division Paarl, Western Cape and which, for the avoidance of doubt, excludes the River Farm Precinct;
- 1.57 **“Val de Vie Phase 2”** means the portion of the Development located on Erf 954 Val de Vie, Remainder Erf 783 Val de Vie and Erf 782 Val de Vie;
- 1.58 **“Valentia”** means Erf 754 Val de Vie, Drakenstein Municipality, Western Cape;
- 1.59 **“VDVEH”** means VDV Evergreen Holdings (Pty) Ltd (Reg. No. 2016/515584/07), a private company with limited liability duly incorporated according to the laws of the Republic of South Africa;

- 1.60 “**VDVEH2**” means VDV Evergreen Holdings Two (Pty) Ltd (Reg. No. 2016/535340/07), a private company with limited liability duly incorporated according to the laws of the Republic of South Africa;
- 1.61 “**VDVI**” means Val de Vie Investments (Pty) Ltd (Reg. No. 2014/016853/07), a private company with limited liability duly incorporated according to the laws of the Republic of South Africa.

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

- 3.1 The Local Authority when approving the application for subdivision to allow the Development, imposed a condition in terms of section 29(1) of LUPO whereby the Registered Owner of each subdivided portion of the immovable property comprising the Development and all successors in title shall be members of a homeowners association in respect of the Development.
- 3.2 The Developer is desirous of regulating and controlling harmonious development of the Development.

4 COMMENCEMENT DATE

The Association, as contemplated in terms of section 29 of LUPO, replaced by section 29 of the By-Law, came into existence simultaneously with the first registration of transfer of an Erf from the Developer to a Registered Owner.

5 STATUS

- 5.1 The Association shall:
- 5.1.1 have legal personality and be capable of suing and being sued in its own name;
and

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

5.2 No Member 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.

6 OBJECTIVES

6.1 The Association shall have as its objectives:

6.1.1 the matters referred to in section 29(3) of the By-Law and without detracting from the generality thereof to ensure compliance with the conditions for subdivision imposed by the Local Authority when approving the Development and, more specifically:

6.1.1.1 to oversee, maintain and control the Development;

6.1.1.2 ensure the general high standard of the Development;

6.1.1.3 generally to promote, advance and protect the Development and the interests of the Association;

6.1.2 the regulation and control of harmonious development of the Development;

6.1.3 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;

6.1.4 to promote a high standard of Improvements on the Development;

6.1.5 to administer and enforce the Guide and Estate Rules;

6.1.6 to incorporate any adjoining property/ies into and within the ambit of the Association and to incorporate owners of any such adjoining property/ies and any subdivisions thereof as Members of the Association;

- 6.1.7 subject to clauses 52 and 53, to ensure the maintenance, upkeep, upgrading and installation, where required, of 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 roads, according to the approved infrastructure plans submitted to the Local Authority from time to time;
- 6.1.8 the payment of the bulk water and sewerage accounts jointly with Registered Owners of Erven in the Development;
- 6.1.9 to control the transfer of Erven and Units in the Development and the conditions imposed by the Local Authority and conditions imposed by the Developer in the Agreement of Sale between the Developer and the first Registered Owner of an Erf;
- 6.1.10 to manage and maintain the pathways along the riverbanks and within the Development;
- 6.1.11 to take transfer of, maintain and insure, where necessary, the roads, the private open space and improvements thereupon in the Development and control the usage thereof and of the facilities belonging to the Association or falling under its control;
- 6.1.12 to maintain, insure and manage the assets of the Association;
- 6.1.13 the preservation of the natural environment including vegetation and flora and fauna on the land;
- 6.1.14 to regulate the conduct of any person and the prevention of nuisance of any nature of the owner of any property forming part of the Development;
- 6.1.15 to introduce traffic calming measures;
- 6.1.16 to impose fines and other penalties that may be payable by and enforced against members or Residents of the Association; and

6.1.17 in order to give effect to the abovementioned objects, to make rules to accomplish these objectives.

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

7 MEMBERSHIP

7.1 The Association shall have as its Members:

7.1.1 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;

7.1.2 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

7.1.3 in respect of any Erf on which is established a Sectional Title Scheme, the Body Corporate of that Sectional Title Scheme and the individual registered owners of Units.

8 PHASES

8.1 Notwithstanding anything to the contrary contained in this clause 8, the Developer agrees and undertakes to and in favour of the Association that no further phases will be incorporated by the Developer into the Development beyond the areas indicated on the Val de Vie Extension Map unless approved by the Members by way of an ordinary resolution, subject at all times to the provisions of clause 8.2 below.

- 8.2 The Association hereby undertakes to and in favour of the Developer not to incorporate any further phases owned by a third party developer or land owner without the Developer's consent, which consent may be withheld in the Developer's sole and absolute discretion.
- 8.3 The Developer intends to develop and market the Development in phases as the Developer deems fit, subject to clause 8.1, 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.
- 8.4 The Developer shall have the right to market and develop any products including plot-and-plan products and sectional title scheme developments on the Development.
- 8.5 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 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. Insofar as the consent of a Member is required for any of the afore going in relation to Erven not already sold by the Developer, 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.

9 MEMBERS' AND RESIDENTS' OBLIGATIONS

- 9.1 Every Member and Resident, insofar as may be applicable, is obliged to comply with:
- 9.1.1 the provisions of this Constitution and all rules or regulations passed by the Association or the Trustees;
- 9.1.2 the provisions of the Guide;

- 9.1.3 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member or Resident;
- 9.1.4 any directive given by the Association and/or the Trustees in enforcing the provisions of this Constitution.
- 9.2 The rights and obligations of a Member are not transferable and every Member shall:
 - 9.2.1 to the best of his ability, further the objects and interests of the Association;
 - 9.2.2 observe all directives made or given by the Association and/or the Trustees.
- 9.3 The Members shall be jointly liable for expenditure incurred in connection with the Association as more fully later referred to herein.
- 9.4 A Member shall not be entitled to alienate or transfer an Erf without the written consent of the Trustees which consent shall be if there has not been compliance with the provisions of this Constitution.
- 9.5 Such consent by the Association in terms of clause 9.4 above shall be withheld when –
 - 9.5.1 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;
 - 9.5.2 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;
 - 9.5.3 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;

- 9.5.4 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;
- 9.5.5 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;
- 9.5.6 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; and
- 9.5.7 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.
- 9.6 A Member, other than the Developer, shall not consolidate or subdivide an Erf with one or more Erven without the written consent of the Association.
- 9.7 When granting a request for consolidation or subdivision 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.
- 9.8 The above provisions will, however, not limit the rights of the Developer to consolidate or subdivide Erven that have not been transferred.
- 9.9 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.

- 9.10 A Member may not resign from the Association.
- 9.11 The provisions of this Constitution shall be binding upon all Members, persons on the Development and Residents.
- 9.12 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:
- 9.12.1 in the event of a Member being a Body Corporate, to cede and delegate its powers and duties to the Association;
- 9.12.2 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;
- 9.12.3 the Association shall be entitled, in turn, to cede and delegate the powers and duties ceded and delegated in terms of clauses 9.12.1 and 9.12.2 above to such other person or entity as it may deem fit without requiring the consent of any Member to do so.
- 9.13 **Conduct/Access to the Polo Fields**
- 9.13.1 Members and, if applicable, Residents shall exercise the utmost caution when accessing the Polo Fields and ensure that right of way/preference is given to Polo players at all times.
- 9.13.2 No pets are allowed on the Polo Fields.
- 9.13.3 Members and Residents shall not obstruct any movement of players on the Polo Fields and shall not damage the Polo Fields in any way.
- 9.13.4 No social play will be allowed on the Polo Fields whatsoever unless so agreed to by the Registered Owner of the Polo Fields.

- 9.13.5 Notwithstanding any contrary provision contained elsewhere in this Constitution, the provisions of this clause 9.13 shall not be changed or deleted without the prior written approval of the Registered Owner of the Polo Fields.

10 THE FARMS

10.1 Erf 782

- 10.1.1 The Registered Owner of Erf 782 from time to time shall ensure that suitable servitudes will be registered in favour of the Association over the portions of Erf 782 as indicated on the map annexed as **Appendix 2** hereto, such portions to be agreed to between the Trustees and the Registered Owner from time to time for the purpose of providing the Members with access for recreational purposes to footpaths and horse trails on Erf 782, and with access to the Berg River.
- 10.1.2 Members and Residents of the Development shall exercise the utmost caution when accessing the portions of Erf 782, which they are allowed to access by agreement between the Registered Owner of Erf 782 and the Trustees, and in terms of the servitudes referred to in clause 10.1.4, and such Members and Residents shall make use of such areas entirely at their own risk.
- 10.1.3 The Registered Owner of Erf 782 or any portions thereof, from time to time shall ensure that the portions of Erf 782 as indicated on **Appendix 2** hereto, which are not utilised for the purposes of a residential dwelling, shall at all times be utilised only for equestrian and/or agricultural activities in accordance with the provisions of the Guide.
- 10.1.4 Notwithstanding any contrary provision contained elsewhere in this Constitution, the provisions of this clause 10.1 and its sub-clauses shall not be changed or deleted without the prior written approval of the Registered Owner of the relevant portions of Erf 782 in respect of which servitudes are registered in favour of the Association.

10.1.5 Erf 782 shall be part of the Association, subject to the condition that a Normal Levy (as per clause 15.1.18) equal to the Normal Levy of 1 (one) residential Erf shall be payable in respect of Erf 782.

10.2 **L'Huguenot**

10.2.1 It is recorded that wine farming and winemaking operations are conducted on L'Huguenot.

10.2.2 The Registered Owner of L'Huguenot shall be entitled to use the farming land on L'Huguenot for any other farming which is consistent with the lifestyle envisaged for the Development and which is in accordance with the provisions of the Guide.

10.2.3 Members and Residents of the Development shall exercise the utmost caution when accessing the portions of L'Huguenot, which they are allowed to access by agreement between the Registered Owner of L'Huguenot and the Trustees, and in terms of the servitudes as reflected on the Combined Cadastral Plan, and such Members and Residents shall make use of such areas entirely at their own risk.

10.2.4 L'Huguenot shall be part of the Association, subject to the condition that a levy equal to the Normal Levy (as per clause 15.1.18) of 1 (one) residential Erf shall be payable in respect of L'Huguenot and a Normal Levy equal to the Normal Levy of 3 (three) residential Erven shall be payable by the Registered Owner of Erf 778 Val de Vie on which the L'Huguenot wine cellar is located.

10.3 **Valentia**

10.3.1 The Registered Owner of Valentia shall be entitled to use the farming land on Valentia for any farming which is consistent with the lifestyle envisaged for the Development and which is in accordance with the provisions of the Guide.

10.3.2 Members and Residents of the Development shall exercise the utmost caution when accessing the portions of Valentia, which they are allowed to access by agreement between the Registered Owner of Valentia and the Trustees, and in

terms of the servitudes as reflected on the Combined Cadastral Plan, and such Members and Residents shall make use of such areas entirely at their own risk.

- 10.3.3 Valentia shall be part of the Association, subject to the condition that a Normal Levy (as per clause 15.1.18) equal to the Normal Levy of 1 (one) residential Erf shall be payable in respect of Valentia.

11 STATUS OF THE DEVELOPER

- 11.1 No person or any Member or Resident of the Association shall prevent or hinder in any way the Developer from:

11.1.1 gaining access to and egress from the Development;

11.1.2 continuing its building and/or construction operations at the Development;

11.1.3 marketing and selling any Erven;

11.1.4 generally carrying on its business operations, provided that the provisions of clause 11.1.1 shall not be interpreted as allowing the Developer access onto any of the Erven 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.

- 11.2 The Developer has reserved the right and shall be entitled to build and establish on the Development any 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 be entitled to dispose of and/or operate the aforementioned amenities and facilities for its own benefit.

- 11.3 The Developer has reserved the right in its sole discretion, to establish and locate the amenities and facilities referred to in clause 11.2 on any portion of the Development, save such Erven that have already been sold to Registered Owners other than the Developer, with the approval of the Local Authority.
- 11.4 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 11.2 above without obtaining the written consent of the Developer or his successors in title beforehand.

12 DEVELOPER'S RIGHTS

- 12.1 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.
- 12.2 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 as Developer in terms of this Constitution, provided that nothing herein contained shall be construed as depriving the Developer of any rights it may have in terms hereof as an ordinary Member.

13 ACCESS TO THE DEVELOPMENT AND SERVITUDES

- 13.1 There shall be 4 (four) permanent entrances to the Development.
- 13.2 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.

- 13.3 In as much as the facilities and amenities referred to in clause 11.2 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.
- 13.4 The Developer and the Association shall have the right to register servitudes in respect of the installation of civil services over the Private Areas and/or Erven in the Development. The Members and where applicable, the Association, shall accordingly be obliged and is hereby irrevocably authorised and empowered on behalf of the Members to grant the registration of such servitudes over Erven and/or Private Areas, as the case may be. In the event of such services being installed by the Developer it will retain the obligation to restore the Association property or private property after installation of such services and in the event of such services being installed by the Association it will retain the obligation to restore private property after installation of such services.

14 THE GUIDE

- 14.1 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, subject to the provisions of clause 14.2 below.
- 14.2 The Guide can be amended by the Developer without the Association's consent, but in consultation with the Association, for any –
- 14.2.1 new phases of the Development incorporated by the Developer in terms of clause 45.1 for so long as the Developer owns erven in such further phase and once the Developer has sold all its erven in such phase the Guide can only be amended by the Association in respect of such phase/s; and/or
- 14.2.2 any new sectional title schemes developed by the Developer on land owned by the Developer in the Development.

- 14.3 All landscaping, plants and all improvements shall be of approved design and of sound construction and shall comply with the provisions of the Guide.
- 14.4 No construction or erection of Improvements on an Erf may commence prior to the approval of plans for such Improvements and, in this regard:
- 14.4.1 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;
 - 14.4.2 thereafter, the approved plans shall be submitted to the Local Authority for approval;
 - 14.4.3 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.
- 14.5 The scrutiny fee payable to the Architect will be paid by the Registered Owner, such scrutiny fee to be determined by the Trustees, from time to time.
- 14.6 Approval of building plans will not be granted by the Local Authority without the prior written approval of the Architect thereto on behalf of the Association, which approval shall be evidenced by an endorsement by the Architect.
- 14.7 No Improvements may be effected by a Registered Owner or Resident other than by a Contractor, but the Developer shall have the right to use a building contractor of its choice to construct buildings and facilities on properties owned by the Developer or on the Developer's plot and plan products. The Association shall designate a list of contractors who will be allowed to do building work of whatever nature in the Development.
- 14.8 In order to ensure that prospective purchasers or tenants are correctly advised of their rights and obligations relative to the Development, Members, excluding the Developer, who wish to sell or let their properties, are obliged to appoint an Estate Agent who is accredited by the Association it being recorded, however, that the provisions of this

clause will not apply in the case of a Distressed Sale or a sale or lease by the Developer in respect of a Developer owned property.

- 14.9 A Registered Owner 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 or subcontractor of the Developer or Association and hereby indemnifies the Developer and Association against any claim from any third party arising from the construction of such Improvements.

15 FURTHER OBLIGATIONS OF MEMBERS AND RESIDENTS

- 15.1 Each Member and Resident, insofar as may be applicable, shall:

- 15.1.1 maintain his Erf and/or Unit in accordance with the Guide and the Association's rules respectively;
- 15.1.2 maintain in a neat and tidy condition and in a state of good repair all Improvements on his Erf, and if the Member or Resident fails to do so, resulting in the Erf or Improvements falling into disrepair, the Trustees shall be entitled to enter the Erf to conduct reasonable maintenance or other work to camouflage, obstruct or obscure the Erf or Improvements that has / have fallen into disrepair;
- 15.1.3 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;
- 15.1.4 be responsible for the maintenance of external and boundary walling inclusive of regular painting thereof, provided that this obligation shall only apply in respect of Members and not Residents;
- 15.1.5 not do or suffer to be done on any Erf 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, tenant or occupier of any Erf in the Development;

- 15.1.6 conform to the prescription of the Guide in connection with the erection of a builders' board, provided that this obligation shall only apply in respect of Members and not Residents;
- 15.1.7 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 reconstruction in accordance with the original approved plans or, in the event of total destruction in accordance with the Guide, provided that this obligation shall only apply in respect of Members;
- 15.1.8 the erection of any structures on Erven in the Development shall be in accordance with the Guide;
- 15.1.9 the Trustees shall, in their sole and absolute discretion be entitled to require permanent removal from the Development of any animals or birds, which, in the opinion of the Trustees, constitute a disturbance or nuisance;
- 15.1.10 comply with all security procedures implemented from time to time;
- 15.1.11 ensure that his dog is kept on a leash in all open areas 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 the Polo Club and that the dog does not cause unclear fouling of sidewalks within the Development or on the Polo Fields or on open spaces within the Development;
- 15.1.12 adhere strictly to the terms of servitudes granting access to Erven;
- 15.1.13 ensure that he and his invitees do not damage or destroy trees, vegetation and landscaping on open areas of the Development and that planting on his Erf does not interfere with pedestrian traffic or obscure the vision of motorists;
- 15.1.14 tolerate access to all pipelines, conduits and meters by owners of these pipelines, conduits and meters, their employees and/or contractors;

- 15.1.15 not erect any structure over any internal services sewerage systems, pipelines, conduits or meters; ;
- 15.1.16 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;
- 15.1.17 if the Member is a Registered Owner of an Erf that is a residential 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, commence with the Improvements on the Erf (the plans and specifications of which shall have been approved in terms of clause 14.4 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. 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 15.1.17 the Developer shall be entitled, without prejudice to any other rights which it may have and/or at law and at its election to –
- 15.1.17.1 repurchase the property from the Member for an amount equal to the original purchase price paid by the Member in terms of the Deed of Sale in terms whereof the Member in question acquired the property (inclusive of VAT); or
- 15.1.17.2 sell the property 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 in terms whereof the Member in question acquired the property. 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 15.1.17.1 and 15.1.17.1 shall not apply in the event of a Distressed Sale;

- 15.1.18 if the Member is a Registered Owner of an Erf that is a residential Erf that measures 1ha (one hectare) or more in extent, within a period of 36 (thirty six) months after the possession date, commence with the Improvements on the Erf (the plans and specifications of which shall have been approved in terms of clause 14.4 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. 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 15.1.18, the Developer shall be entitled, without prejudice to any other rights which it may have and/or at law and at its election to –
- 15.1.18.1 repurchase the property from the Member for an amount equal to the original purchase price paid by the Member in terms of the Deed of Sale in terms whereof the Member in question acquired the property (inclusive of VAT); or
- 15.1.18.2 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 in terms whereof the Member in question acquired the property. 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 15.1.18.1 and 15.1.18.2 shall not apply in the event of a Distressed Sale.
- 15.2 For the purpose of this clause 15, the following words shall have the meaning ascribed as follows:
- 15.2.1 “Normal Levy”: The normal monthly levy per Erf determined by the Association from time to time in terms of clause 18.1 of this Constitution;
- 15.2.2 “Extraordinary Levy Base Cost (ELBC)”: An amount equal to the Normal Levy unless a different amount is determined by the Trustees ;

15.2.3 “Extraordinary Levy”: The additional monthly levy determined hereunder in terms of clause 15.3.

15.3 Notwithstanding the provisions of clauses 15.1.17 and 15.1.18 above, a Member who is in breach of the said clauses 15.1.17 and/or 15.1.18 by not completing the Improvements within a period of 3 (three) or 4 (four) years (whichever is applicable) from first registration of the Erf from the Developer to any Member, will be liable to pay to the Association an Extraordinary Levy calculated as set out here-under, over and above the Normal Levy, it being recorded, however, that in the case of a Distressed Sale such penalty levies payable by a Member as a result of failure by the Member to timeously commence or complete the Improvements, will be waived by the Association.

YEARS SINCE FIRST REGISTRATION	YEARS OF NON- COMPLIANCE TO CLAUSE 15.1.17 or 15.1.18	LEVY PAYABLE
1	0	Normal Levy
2	0	Normal Levy
3	0	Normal Levy
4	1	Normal Levy + 50% x ELBC
5	2	Normal Levy + ELBC
6	3	Normal Levy + 300% x ELBC

15.4 Thereafter the total levy payable will be the Normal Levy plus the Extraordinary Levy of 300% times the ELBC, until compliance with clause 15.1.17 or 15.1.18 by the Member (whichever is applicable):

Provided that –

- 15.4.1 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 6 (six) 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 the Local Authority;
- 15.4.2 After a SHOC has been issued to the Post Distressed Sale Member in terms of clause 15.4.1 above, the Normal Levy will be payable by such Member for a period of –
- 15.4.2.1 12 (twelve) completed months after the issue of such a SHOC if the Erf is smaller than 1 hectare; or
- 15.4.2.2 18 (eighteen) completed months after the issue of such a SHOC if the Erf is 1 hectare or larger;
- 15.4.3 Should a Post Distressed Sale Member not obtain a SHOC or comply with obtaining the SHOC within the 6 (six) month period referred to in clause 15.4.1 above or should such Member fail to complete the Improvements on the Erf within the 12 (twelve) month period as per clause 15.4.2.1 or within the 18 (eighteen) month period as per clause 15.4.2.2 above, he will be liable to pay the Association an Extraordinary Levy calculated as set out in clauses 15.1.18 and 15.3 above, over and above the Normal Levy.
- 15.5 Should the Erf be sold and transferred –
- 15.5.1 where the Erf is less than 1ha in extent, after 3 (three) years after the first transfer of the Erf from the Developer; or
- 15.5.2 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.

15.6 After a SHOC has been issued to a Member as per clause 15.5 above, the Normal Levy will be payable by such Member for a period of –

15.6.1 12 (twelve) completed months after the issue of such a SHOC if the Erf is smaller than 1 hectare; or

15.6.2 18 (eighteen) completed months after the issue of such a SHOC if the Erf is 1 hectare or larger;

15.7 Should a Member contemplated in clause 15.5 not obtain a SHOC or comply with clauses 15.1.17 or 15.1.18 (as the case may be) in the periods set out in clauses 15.5 and 15.6, he will be liable to pay the Association an Extraordinary Levy calculated as set out in clauses 15.1.18 and 15.3, over and above the Normal Levy.

15.8 Provided further that in any other case, other than as contemplated in clause 15.5 above, where a SHOC has been obtained by a Member in respect of an Erf, the Normal Levy will be payable after 1 March 2019 by such Member for a period of –

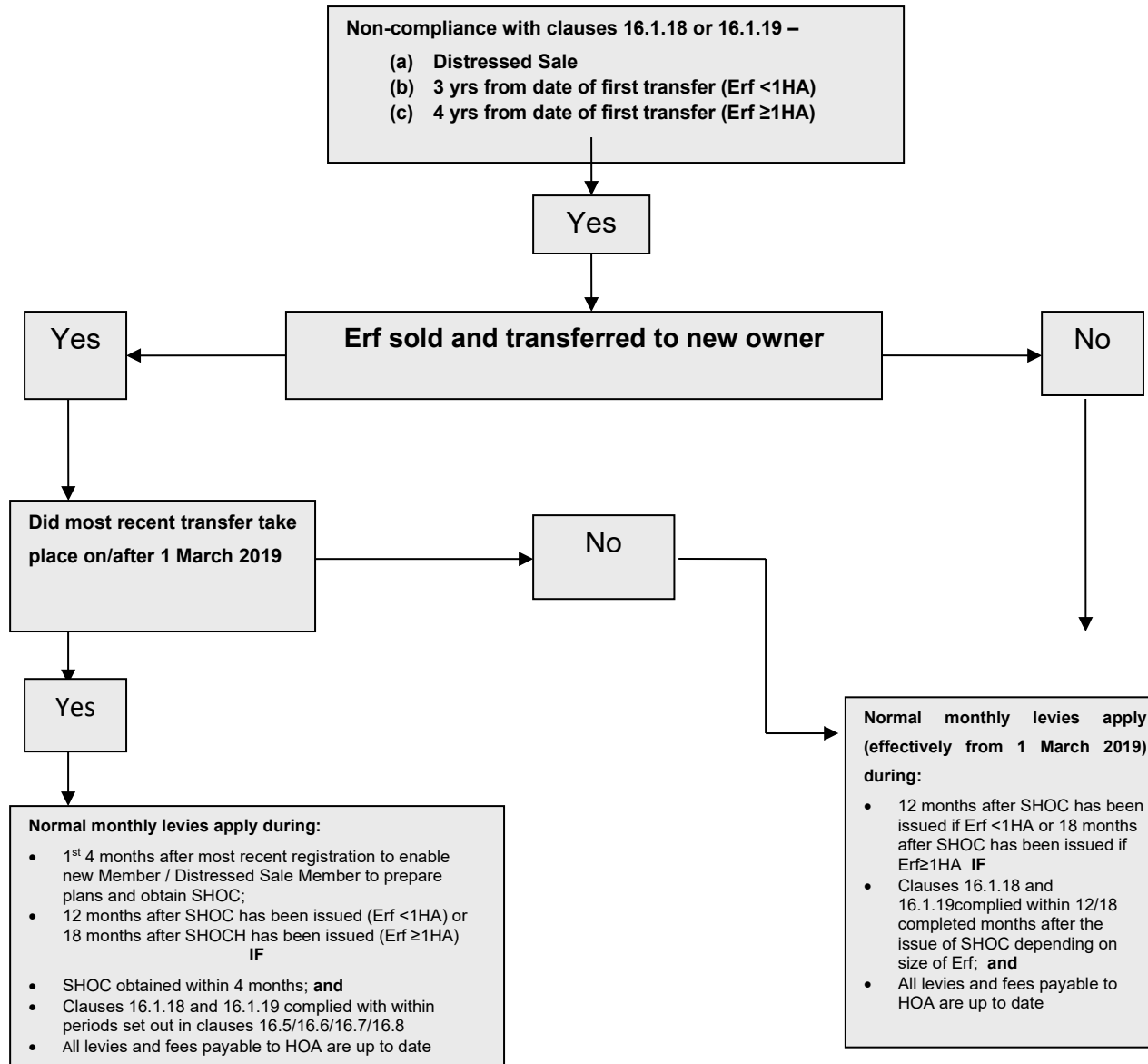
15.8.1 12 (twelve) completed months after the issue of such a SHOC if the Erf is smaller than 1 hectare; or

15.8.2 18 (eighteen) completed months after the issue of such a SHOC if the Erf is 1 hectare or larger;

where after sub-clause 15.7 will *mutatis mutandis* apply.

15.9 Provided further that the reductions in Levies contemplated in clauses 15.5 to 15.8 above, will only apply for as long as the Member has paid all Levies and fees due and payable to the Association.

- 15.10 It is placed on record that the reduction of Levies in terms of clauses 15.6 to 15.8, will be applicable from 1 March 2019. This will not change any obligation for the payment of any Levies prior to this date.
- 15.11 For the sake of clarity the Normal and Extraordinary Levies payable will be as set out in the following flow chart:



- 15.12 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 finalized within 6 (six) months of commencement of construction thereof.

16 RESTRICTIONS

- 16.1 Subject to the provisions set out hereunder, no Member, other than the Developer, 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 or the relevant Sectional Title Scheme.
- 16.2 No Member or Resident, other than the Developer, 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:
- 16.2.1 any such 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 apply in writing to the Trustees for permission to do so. The Trustees 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 Trustees deem necessary;
- 16.2.2 an application in terms of the afore going shall contain a full description of the proposed business or usage, including but not limited to:
- 16.2.2.1 the type of business;
- 16.2.2.2 the number of full time and/or part time staff;
- 16.2.2.3 the times and duration of the business operation, including the number of days per week;

- 16.2.2.4 the projected growth of the business operation;
 - 16.2.2.5 whether any alteration to the existing Improvements is proposed;
 - 16.2.2.6 in which portion of the Improvements the business activity is to be located;
 - 16.2.2.7 the number and type of vehicles which will be regularly involved in the business operation;
 - 16.2.2.8 the estimated number of visitors per week resulting from the business operation;
 - 16.2.2.9 the estimated number of deliveries necessitated by the business operation;
 - 16.2.2.10 what provision is to be made for parking.
- 16.3 The Trustees shall not approve any such application unless they are satisfied that the application complies with the following:
- 16.3.1 the business operation will not detrimentally alter the character of the neighbourhood or affect the privacy and rights of neighbours;
 - 16.3.2 the number of employees involved in the running of the business operation will not exceed 2 (two);
 - 16.3.3 the Member will reside permanently on the Erf in respect whereof the application is made;
 - 16.3.4 comment has been obtained from the Members who are affected by the application and made available for consideration by the Trustees;
 - 16.3.5 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;
 - 16.3.6 the granting of the application will not have any significant effect on the density of traffic in the Development;

- 16.3.7 non-residents will not be afforded uncontrolled access into the Development;
- 16.3.8 no signage will be erected;
- 16.3.9 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.
- 16.4 Should any Member, other than the Developer, 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.
- 16.5 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.
- 16.6 No Member shall be entitled to:
- 16.6.1 at any time operate a guest house on his Erf or Unit, provided that this prohibition shall not apply to any guest house or any hotel 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
- 16.6.2 lease his Erf or any portion of a building on such Erf or his Unit used for residential purposes for any period less than 3 (three) months, but a Unit in a Sectional Title Scheme that is used for commercial purposes or as a hotel room can be let out for shorter periods than 3 (three) months provided it is done in compliance with the Body Corporate's rules (as approved by the Association) and through the Body Corporate's approved letting agents,
- without the approval of the Trustees.
- 16.7 No Member shall be entitled 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 unit, unless the Association by special resolution resolves otherwise.

- 16.8 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.
- 16.9 No Member shall permit the number of occupants of his Erf or Unit to exceed twice the number of bedrooms on the Erf or Unit. The word “occupants” shall include but shall not be limited to any person who resides or stays on such Erf or in such 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.

17 MAINTENANCE OF THE POLO FIELD

- 17.1 The Association, as the Registered Owner of the Polo Fields, shall be responsible to ensure that the Polo Fields are maintained in strict compliance with the standards prescribed by the Hurlingham Polo Association.
- 17.2 It is recorded that the Association has entered into a lease agreement with the Polo Club in respect of the use of the Polo Fields by the Polo Club, which lease agreement regulates the use and maintenance obligations of the Polo Fields.
- 17.3 If the Association disposes of the Polo Fields, the following provisions shall be applicable:
- 17.3.1 subject to clause 17.3.4, the new Registered Owner of the Polo Fields shall maintain the Polo Fields, in strict compliance with standard prescribed by the Hurlingham Polo Association;
- 17.3.2 if the Association is of the opinion that the obligations in terms of clause 17.1 are not complied with it shall in writing advise the Registered Owner of the Polo Fields accordingly. The new Registered Owner of the Polo Fields shall then have a period of 30 days to take all reasonable steps to rectify its alleged breach. If the Association, after 30 days is still of the

opinion that the new Registered Owner of the Polo Fields has not rectified the situation, the Association and the new Registered Owner of the Polo Fields shall agree upon an expert to adjudicate on the matter. Such expert shall act as an expert and not an arbitrator;

- 17.3.3 should the parties fail to reach agreement on who to appoint in terms of 17.3.2 within 7 days, such expert shall be appointed by the Chairperson of the Cape Bar Council or its successor body;
- 17.3.4 should the expert be of the opinion that the new Registered Owner of the Polo Fields is in breach of its obligations as regards the maintenance of the Polo Fields, the new Registered Owner of the Polo Fields shall have a further period of 3 (three) months to rectify the situation. Should the expert thereafter rule that the Registered Owner of the Polo Fields is still in breach, the Association may take over the maintenance of the Polo Fields at the expense of the new Registered Owner of the Polo Fields;
- 17.3.5 if either the Association or the new Registered Owner of the Polo Fields does not agree with the ruling of the expert, the matter will be referred for arbitration, in terms of clause 43;
- 17.3.6 the fees of the expert in clauses 17.3.2 and 17.3.3 shall be borne by the new Registered Owner of the Polo Fields.

18 CLEARANCE FEE

- 18.1 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 relevant Erf or Unit) in respect of each residential Erf or residential Unit (as the case may be) sold by a Member to a third party up to a maximum amount to be determined by the Trustees per sale transaction will be paid by the Member (as seller of the Erf or Unit) to the Association, except for Members of erven situated on Val de Vie Phase 1 who are registered owners of such erven as at 7 August 2023. 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. The provisions of this clause 18.1 shall not apply in the event of a Distressed Sale.

- 18.2 The amount payable by a selling Member to the Association in terms of clause 18.1 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 Consumer Price Index rate in South Africa at the time of such increase.
- 18.3 The amount payable by a selling Member to the Association in terms of clause 18.1 above shall not be payable in the event of –
- 18.3.1 a Distressed Sale;
- 18.3.2 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
- 18.3.3 transfer of an Erf from a deceased estate to a surviving spouse or to a direct family member.
- 18.4 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 clause 18.2 above shall apply *mutatis mutandis* to such transaction.

19 LEVIES

- 19.1 The Trustees shall:
- 19.1.1 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 charges for the supply of 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;
- 19.1.2 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;

- 19.1.3 require Members whenever necessary to make contributions to such Levy Fund for the purposes of satisfying the expenses referred to in clauses 19.1.1 and 19.1.2, equal as nearly as is reasonably practical to such estimated amount.
- 19.2 The Trustees may, from time to time, impose special levies upon members effective from the date of passing of the applicable Resolution in respect of such expenses referred to in clause 19 (which are not included in any estimate made in terms of clause 19.1.2) and such special levies shall be payable in one sum or by such instalments and at such time or times as the Trustees shall deem fit.
- 19.3 Any amount due by a Member by way of a Levy and for the avoidance of doubt including special Levies 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 shall be liable as from the date upon which he becomes a Member pursuant to the transfer of such Erf to pay the Levies attributable to that Erf. No Member shall be entitled to transfer his Erf until the Trustees have certified that the Member has, at the date of transfer, paid all amounts owing by him to the Association.
- 19.4 In calculating Levies, the Trustees shall take into account all income, if any, earned by the Association.
- 19.5 The decision of the Trustees in calculating the Levies shall be final and binding on all Members.
- 19.6 In calculating the Levy payable by any Member, the Trustees shall as far as reasonably possible –
- 19.6.1 assign those costs arising directly out of the Erf or Unit itself to the Member owning such Erf or Unit;
- 19.6.2 not distinguish between different usages when determining the percentage increase in Normal Levy per Erf or Unit;

- 19.6.3 assign those costs relating to the Development generally to the Registered Owners of all Erven equally, i.e. on the basis of “one Erf one Normal Levy”, provided that any assignment to an Erf that forms part of an adjoining property incorporated into the Development in terms of clause 45.1 shall be determined by the Developer in consultation with the Trustees provided that the Normal Levy per Erf (as defined in clause 15.1.18) in a new phase incorporated by the Developer shall not be less than 80% of such Normal Levy payable per Erf in the rest of the Development;
- 19.6.4 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, provided that –
- 19.6.4.1 any assignment to a Body Corporate that is developed on a property owned by the Developer shall be determined by the Developer in consultation with the Trustees and the pro-rata portion due by each Registered Owner of a Unit shall not be less than 20% of the Normal Levy (as defined in clause 15.1.18) per residential Erf; and
- 19.6.5 the percentage of the Normal Levy assigned to a Body Corporate to determine the Sectional Title Levy may not be increased by the Association without the consent of the relevant Body Corporate;
- 19.6.6 The Bodies Corporate acknowledge and agree that any increase in Normal Levies (as defined in clause 15.1.18) 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.
- 19.6.7 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 to the Body Corporate of which he is a member (as the case may be).

- 19.6.8 All Levies are, unless the contrary is determined by the Trustees, due and payable monthly in advance on the first day of each and every month from the first of the month following the approval of this sub-clause 19.6 by the General Meeting.
- 19.7 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.
- 19.8 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 foregoing, specifically including any Erf or incomplete Unit, for as long as the Developer remains the Registered Owner thereof.
- 19.9 It is recorded that a maximum of 5% (five percent) of the Normal Levies (as defined in clause 15.1.18) payable by a Member to the Association in terms of this Constitution from time to time shall be paid by the Association to the trustees for the time being of the Val de Vie Foundation Trust with Master's reference number IT38/2016 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. To ensure that the objects of the Foundation as set out herein are achieved, the Association shall at all times be entitled to appoint a majority of the trustees to the board of trustees of the Val de Vie Foundation Trust.
- 19.10 The Developer shall in respect of new phases incorporated as per clause 45.1 and only for so long as the Developer owns 1 (one) or more erven in such new phase be liable to fund by way of a loan payment from the Developer ("**Operational Loan**") to the Association any shortfall between the income of the Association from its Members and the Association's operational expenses in

respect of such newly incorporated phase (“**Operating Losses**”) in the instances provided for in clauses 19.11.1 and 19.11.2 below.

19.11 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 the Operational Loan will be payable by the Developer to the Association within 30 days from date of demand for payment by the Trustees if and when –

19.11.1 the Association's income from the newly incorporated phase is less than the operational expenses in respect of the newly incorporated phase (thereby resulting in Operating Losses); and

19.11.2 the Association’s accumulated reserves are not sufficient to fund Operational Losses.

19.12 The repayment of the Operational Loan will –

19.12.1 form part of the Association’s annual budget;

19.12.2 accrue interest at the Prime Rate; and

19.12.3 be repayable before the end of the subsequent financial year, or such longer period agreed to by the Developer in writing.

19.13 The Developer shall not be liable for payment of any other shortfall in Levies or any other costs or expenses of the Association except as provided for in clauses 19.10 to 19.12 above.

20 BREACH

20.1 The Trustees may on behalf of and in the name of the Association institute legal proceedings in accordance with the provisions of this clause 20.

20.2 If any Member or Resident fails in the observance of any of the provisions of this Constitution with regard to Improvements and/or 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:

- 20.2.1 enter upon the Erf to take such action as may be reasonably 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
- 20.2.2 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.
- 20.3 If any Member or Resident fails to make payment on the due date of Levies or other amounts payable by such Member or resident, the Trustees may give notice to such Member or Resident 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 or Resident without further notice and such Member or Resident 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 or Resident.
- 20.4 Nothing in the afore going shall derogate from or in any way diminish the right of the Association 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.
- 20.5 In the event of any breach of this Constitution by the members of any Member's or Resident's household or his invitees or lessees, such breach shall be deemed to have been committed by the Member or Resident 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 or Resident.

21 TRUSTEES

- 21.1 The Trustees of the Association shall comprise 2 (two) Developer Trustees (for as long as VDVI (as Developer) or its successor in title as Developer is a Member), a maximum of 2 (two) alternate Developer Trustees (for so long as VDVI or its successor in title as Developer is a Member), 4 (four) Member Trustees and 1 (one) Sub-HOA Trustee from each Sub-HOA. Upon VDVI or its successor in title as Developer ceasing to be a Member, the Trustees of the Association shall comprise 6 (six) Member Trustees and 1 (one) Sub-HOA Trustee for each of the Sub-HOAs. Upon VDVI or its successor in title as Developer ceasing to be a Member, the Association may, in general meeting, vote to increase or decrease the number of Trustees.
- 21.2 A Trustee shall be an individual but need not himself be a Member provided that the majority of Member Trustees shall be Members.
- 21.3 A trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.
- 21.4 The Developer shall appoint the first Developer Trustees upon formation of the Association.
- 21.5 Subject to the provisions of clause 21.6, each Member Trustee shall continue to hold office until the second 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.
- 21.6 A Trustee shall be deemed to have vacated his office as such upon:
- 21.6.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
- 21.6.2 his making any arrangement or composition with his creditors;
- 21.6.3 his conviction for any offence involving dishonesty;

- 21.6.4 his becoming of unsound mind;
 - 21.6.5 his resigning from such office in writing;
 - 21.6.6 his death;
 - 21.6.7 his being removed from office by a resolution approved by the majority of the remaining Trustees;
 - 21.6.8 his being disentitled to exercise a vote in terms of this Constitution provided he is a Member Trustee.
- 21.7 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 21.6, 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, by the remaining Member Trustees if the vacancy is in respect of a Member Trustee and by the relevant Sub-HOA Trustees whose representative has vacated office if the vacancy is in respect of a Sub-HOA Trustee and the person so appointed shall hold office until the next Annual General Meeting.
- 21.8 The Chairperson shall be appointed by the Trustees by majority vote 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 Chairperson upon his ceasing to be a Trustee for any reason.
- 21.9 Within 21 (twenty-one) days of the holding of each annual general meeting of the Association the Trustees shall meet and shall elect from their own number the Chairperson who shall hold office until the annual general meeting held next after his appointment, provided that the office of Chairperson 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.

- 21.10 Save as otherwise provided in this Constitution, the Chairperson 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 Chairperson 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.
- 21.11 If the Chairperson 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 Chairperson for such meeting.
- 21.12 If any Chairperson vacates his office as Chairperson or no longer continues in office for any reason, the Trustees shall elect another Chairperson who shall hold office as such for the remainder of the period of office of the first mentioned Chairperson.
- 21.13 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.
- 21.14 No contract concluded on behalf of the Trustees shall be valid and binding unless it is signed by persons who are specifically appointed as authorised signatory in terms of the Resolution of Trustees whereby the Trustees bind the Association.
- 21.15 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 Chairperson, 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.
- 21.16 Trustees may not make loans on behalf of the Association to Members or to themselves.

22 FUNCTIONS, POWERS AND DUTIES OF TRUSTEES

- 22.1 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.
- 22.2 Save as specifically provided in this Constitution, the Trustees shall at all times have the right to engage on behalf of the Association the services of accountants, advocates, attorneys, auditors, architects, engineers, land surveyors, managing agents, town planners or any other professional firm or person or other employees whatsoever for any reason deemed necessary by the Trustees on such terms as the Trustees shall decide.
- 22.3 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 22.4 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.
- 22.5 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.
- 22.6 The Trustees may make regulations and rules not inconsistent with this Constitution or any regulations or rules prescribed by the Association in general meeting –
- 22.6.1 as to the resolution of disputes generally;

- 22.6.2 for the furtherance and promotion of any of the objects of the Association;
- 22.6.3 for the better management of the affairs of the Association;
- 22.6.4 for the advancement of the interests of Members;
- 22.6.5 for the conduct of Trustees at meetings of Trustees and meetings of the Association;
- 22.6.6 to levy and collect contributions from Members in accordance with clause 19.10;
- 22.6.7 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;
- 22.6.8 to assist it in administering and governing its activities generally;
- 22.6.9 to impose fines in respect of Members and Residents not complying with this constitution or any rules imposed by the Association.
- 22.7 Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include:
 - 22.7.1 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;
 - 22.7.2 entering into of agreements with third parties on behalf of the Association for any purposes of the Association;
 - 22.7.3 the employment on behalf of the Association of agents, servants and any other party and the payment of such persons;

- 22.7.4 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;
- 22.7.5 taking 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 identify, are excluded from the Development;
- 22.7.6 entering into finance or loan agreements and encumbering the assets of the Association where such finance/loan agreements form part of the approved budget for the relevant financial year. If the finance or loan agreements are in excess of what has been provided for in the budget, a special resolution of the Members is required for approval of such loan transaction and encumbrance of the Association's assets;
- 22.7.7 the institution or defence of actions in the name of the Association and to appoint legal representatives for such purpose.

23 PROCEEDINGS OF TRUSTEES

- 23.1 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.
- 23.2 Meetings of the Trustees shall be held at least once every 6 (six) months.
- 23.3 The Chairperson always has the right to convene meetings of Trustees.
- 23.4 A Trustee may, provided he has the support in writing of 1 (one) other Trustee, 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.

- 23.5 A resolution, submitted in writing to the Trustees by any of them, and 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.
- 23.6 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 2 (two) 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.
- 23.7 Each Trustee will have 1 (one) vote in respect of each resolution or decision of Trustees, subject to the provisions of clause 23.8 below.
- 23.8 In respect of all resolutions and decisions of the Trustees related to any decision, act approval, consent or agreement which may, in the opinion of the majority of the Developer Trustees, have a materially negative impact, effect or consequence on the assets of the Developer in or on the Development, whether movable or immovable, tangible or intangible, the Developer Trustees shall, for so long as the Developer owns at least 20% of the unsold Erven in the last phase to be incorporated in terms of clause 45.1, have a right of veto against such resolution. If the Developer Trustees wish to exercise such veto right, the Developer Trustees must exercise the veto at the meeting where such resolution has been put to a vote, after the results of the vote is declared by the Chairperson. The Chairperson shall not be entitled to close the meeting until it has given the Developer Trustees sufficient time to exercise its veto.
- 23.9 In respect of all resolutions and decisions of the Trustees related to the assignment of costs by the Trustees in terms of clauses 19.6.2 (assignment of costs to a Member who is the Registered Owner of an Erf) and 19.6.4 (assignment of costs to a Body Corporate), where such Erf is situated on any adjoining land incorporated into the Development by the Developer in terms of clause 45.1 or such sectional title scheme is developed on property owned by the Developer (**"the Affecting Resolution"**) the Developer Trustees shall have the number of votes calculated as follows:

- 23.9.1 the Developer Trustees present at a meeting of Trustees at which the Affecting Resolution is put to a vote shall, in total, have twice the number of votes as all Member Trustees present at such meeting, which votes shall be apportioned equally between the Developer Trustees that are present at the meeting; and
- 23.9.2 where the Affecting Resolution is put to a vote by means of electronic mail, the Developer Trustees that vote on such Affecting Resolution shall, in total, have twice the number of votes as all Member Trustees voting on such resolution, which votes shall be apportioned equally between the Developer Trustees that vote on the resolution by means of electronic mail.
- 23.10 Any Resolution of the Trustees shall be carried by a simple majority of all votes cast. In the case of an equality of votes for and against a Resolution, the Chairperson shall have a second or casting vote
- 23.11 The Chairperson shall preside as such at all meetings of Trustees provided that, should the Chairperson not be present at any meeting of the Trustees within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the Trustees shall vote to appoint a Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 23.12 A Trustee may be represented at a meeting of Trustees by a proxy provided such proxy is a Trustee.
- 23.13 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 Chairperson 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.
- 23.14 The Trustees shall:
- 23.14.1 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 Chairperson of the meeting;

- 23.14.2 cause such minutes to be kept of all meetings of the Trustees in a minute book of meetings of Trustees kept for that purpose;
- 23.14.3 keep all books of meetings of Trustees for a period of at least 10 (ten) years;
- 23.14.4 on the written application of any Member, make all minutes of their proceedings available for inspection by such Member.

- 23.15 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.

- 23.16 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 Chairperson of the meeting shall decide.

- 23.17 The Trustees may vote upon and pass Resolutions by way of email correspondence, subject to the following conditions:
 - 23.17.1 each of the Trustees must be included in all email correspondence relating to any decision to be taken by the Trustees by email;
 - 23.17.2 no decision shall be taken by email if any of the Trustees requires that the matter be decided at a meeting of the Trustees;
 - 23.17.3 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;
 - 23.17.4 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 Trustee meeting.

24 MANAGING AGENT

- 24.1 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.
- 24.2 The Trustees 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 Trustees and/or the Association as a result of such cancellation.
- 24.3 If the Developer incorporates a new phase into the Development in accordance with clause 45.1, the Developer shall be entitled to appoint a management company ("**the Supervisory Manco**") to perform a supervisory function over the role and functions of the Managing Agent, for the purpose of the successful incorporation of such new phase into the Development, including but not limited to –
- 24.3.1 the exercise of oversight in respect of the day-to-day functions of the Managing Agent;
 - 24.3.2 the provision of strategic advice and guidance to the Managing Agent; and
 - 24.3.3 consultation with the Trustees and the Managing Agent in respect of the functions of the Managing Agent.
- 24.4 The Developer shall be entitled to appoint the Supervisory Manco in terms of clause 24.3 for such period as determined by the Developer to ensure the successful incorporation of the new phase into the Development.

- 24.5 For the purpose of enforcing the Developer's rights in terms of clause 24.3, the Trustees shall ensure that the Supervisory Manco has the necessary authority to exercise effective control and oversight over the Managing Agent, including but not limited to -
- 24.5.1 the right to give instruction and direction to the Managing Agent; and
- 24.5.2 the ability to exercise step-in rights in respect of the functions of the Managing Agent, where the Managing Agent has failed to act in accordance with the Supervisory Manco's instructions and directions.
- 24.6 In consideration for its services, the Supervisory Manco shall be entitled to the payment of a fee as agreed to between the Supervisory Manco and the Association.

25 GENERAL MEETINGS OF THE ASSOCIATION

- 25.1 The Association shall, within 12 (twelve) months of the date of commencement of the Association hold a general meeting as its first annual general meeting. Thereafter, within 6 (six) months of the financial year end of the Association it shall hold second and subsequent annual general meetings.
- 25.2 Such annual general meetings shall be held at such time and place, subject to the afore going provisions, as the Trustees shall decide from time to time, but subject to such meeting being held within the jurisdiction area of the Paarl Magistrate's Court or by way of electronic communication as per clause 26 below.
- 25.3 The Trustees may, whenever they deem fit, convene a general meeting and a general meeting shall also be convened on a requisition made by not less than 25% (twenty five per centum) of Members or should the Trustees fail to do so such meeting may be convened by the requisitionists themselves provided that notice thereof be given in terms of clause 26.
- 25.4 The Record Date is –

- 25.4.1 in the case of determining the Members who are entitled to receive notice of a Members meeting, the earlier of the date on which the Association gives notice of such meeting in compliance with the provisions of this Constitution and the date on which the Association is required to give notice of such meeting in terms of this Constitution; and
- 25.4.2 in the case of determining the Members who are entitled to participate in and vote at any meeting of Members, the date of the meeting,
- unless the Estate Rules provide otherwise.

26 MEMBERS MEETINGS HELD BY WAY OF ELECTRONIC COMMUNICATION

- 26.1 For purposes of this clause 26 the term “**Electronic Communication**” has the meaning set out in section 1 of the Electronic Communications and Transactions Act, No 25 of 2002;
- 26.2 The Association may conduct any Members meeting entirely by Electronic Communication or provide for participation in a meeting by Electronic Communication and the power of the Association to do so is not limited or restricted by this Constitution. Accordingly –
- 26.2.1 any Members meeting may be conducted entirely by Electronic Communication; or
- 26.2.2 one or more Members, or proxies for Members, may participate by Electronic Communication in all or part of any Members meeting that is being held in person,
- so long as the Electronic Communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other and without an intermediary, and to participate reasonably effectively in the meeting.
- 26.3 Any notice of any meeting of Members at which it will be possible for Members to participate by way of Electronic Communication shall inform Members of the ability to so participate and shall provide any necessary information to enable Members or their proxies to access the available medium or means of Electronic

Communication, provided that such access shall be at the expense of the Member or proxy concerned.

27 NOTICES OF MEETINGS

- 27.1 An annual general meeting shall be called by not less than 15 (fifteen) Business Days' notice and a general meeting, subject to the provisions of clause 30 for the passing of special resolutions, by not less than 10 (ten) Business Days' notice, as provided in clause 27.3. The notice 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 the reasons for it shall be given in the manner hereafter 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 or an annual general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in this Constitution, be deemed to have been duly called if it is agreed to by not less than 60% (sixty per centum) of Members having a right to attend and vote at the meeting.
- 27.2 The accidental omission to give notice of any Resolution or to present any document required to be given or sent in terms of this Constitution, shall not invalidate the proceedings at or any Resolution passed at any meeting.
- 27.3 Notice of the annual general meeting and/or a general meeting shall be sent to Members by email or by registered post at the *domicilium citandi et executandi* of such Member as contemplated in clause 44.
- 27.4 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

28 PROXIES

- 28.1 A Member may be represented at an annual general meeting and/or general meeting by a proxy who must be a Member of the Association.
- 28.2 The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing but need not be in any particular

form provided that where a Member is more than one person any one of those persons may sign the instrument appointing a proxy on such Member's behalf. Where a Member is a company, the proxy may be signed by any person authorised by resolution of the board of directors of the company or by its secretary and, where a close corporation, by any member of such close corporation and, where an association of persons, by the secretary thereof and, where a trust, by a person duly authorised by the trustees of such trust.

- 28.3 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 lodged with the Association at least 24 (twenty four) hours before the scheduled time for the commencement of the meeting or adjourned meeting concerned. The instrument appointing a proxy shall be valid only for the specific meeting or the adjournment thereof.
- 28.4 Notwithstanding the foregoing, the Chairperson of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

29 QUORUM

- 29.1 No business shall be transacted at any annual general meeting or general meeting unless a quorum is present when the meeting proceeds to business and when any Resolution is to be passed. The quorum necessary for the holding of any 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.
- 29.2 If, within 30 (thirty) minutes after the time appointed for the commencement of the 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 Chairperson of the meeting shall appoint and, if at such adjourned meeting, a quorum is not present, the Members present shall constitute a quorum.

30 SPECIAL RESOLUTION

- 30.1 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 the resolution has been passed on a show of hands by not less than two thirds of the number of Members present in person or by proxy and entitled to vote on a show of hands at the meeting, or where a poll has been demanded, by not less than two thirds of the total votes to which the Members present in person or by proxy are entitled.

30.2 Special resolutions are required for the following matters:

30.2.1 regarding Erven forming part of Private Spaces –

30.2.1.1 the sale of such Erven; or

30.2.1.2 the mortgaging of such Erven where the transaction in respect of which it is mortgaged does not form part of the Association's approved budget for the relevant financial year; or

30.2.1.3 subjecting such Erven 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;

30.2.2 allowing 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 such Member other than where such scheme arises from co-ownership or syndication involving not more than 4 (four) Members per bedroom per unit;

30.2.3 amending this Constitution in accordance with clause 45 below;

30.2.4 ratifying actions by the Association or the Trustees in excess of their authority in terms of this Constitution;

30.2.5 entering into a loan agreement that does not form part of the Association's approved budget for the relevant financial year;

30.2.6 disposing of all or a greater part of the assets of the Association, it being recorded that no resolution for the transfer of the Association's assets shall

be taken unless the Association has 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;

- 30.2.7 increasing the Levy contributions payable by the Members by 80% (eighty percent) or more from one year to the next;
- 30.2.8 winding-up or dissolving the Association, it being recorded that no resolution for the winding-up of the Association shall be taken unless the Association has 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;
- 30.2.9 incorporating land, apart from the further phases as indicated on the Val de Vie Extension Map, into the Development.

31 AGENDA AT MEETINGS

- 31.1 In addition to any other matters required by legislation or by this Constitution to be dealt with at any annual general meeting, the following matters shall be dealt with at every annual general meeting:
 - 31.1.1 the consideration of the Chairperson's report;
 - 31.1.2 the election of Member Trustees;
 - 31.1.3 the consideration of the financial statements of the Association for the last financial year of the Association preceding the date of such meeting;
 - 31.1.4 the presentation of the budget as presented by the Trustees and Levies, as determined and approved by the Trustees, it being recorded that such budget and Levies, as determined by the Trustees, are binding on Members and are presented for information purposes at the annual general meeting;

- 31.1.5 any other business pertinent to such meeting, including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions.

32 PROCEDURE AT MEETINGS

- 32.1 The Chairperson shall preside as such at all meetings provided that should he not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, then the Trustees present at such meetings shall vote to appoint a Chairperson for the meeting who shall thereupon exercise all the powers and duties of the Chairperson in relation to such meeting.
- 32.2 The Chairperson may, with the consent of any meeting at which a quorum is present (and 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 the business that might have been transacted at the meeting from which the adjournment took place. No notice needs to be given of the adjourned meeting save for an announcement at the meeting of the date, time and venue of the adjourned meeting unless the meeting is to be adjourned for 30 (thirty) days or more, in which event notice is to be given in the same manner as the original meeting. Only business left uncompleted at the original meeting may be transacted at the adjourned meeting.

33 VOTING

- 33.1 At every annual general meeting or general meeting –
- 33.1.1 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, but if more than one Erf is consolidated, the Registered Owner shall have a vote/votes equal to the number of Levies paid in respect of such consolidated Erven/Erf;
- 33.1.2 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;
- 33.1.3 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 or any extension of the Development and registered in his name;

33.1.4 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 defined in clause 15.1.18) payable by such Body Corporate to the Association, as determined in accordance with the provisions of clause 19.6.4 above, which votes shall be exercised at general meetings by a representative appointed by the relevant Body Corporate from time to time for such purpose and in accordance with the provisions of clause 33.12 below;

33.1.5 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;

33.1.6 if a Member is a juristic person, such Member shall be represented by such representative as the Member may determine provided that the Chairperson may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairperson as to his right to represent the Member;

33.1.7 if a Member comprises more than 1 (one) person, such Member shall be represented by such representative as the Member may determine provided that :-

33.1.7.1 the Chairperson may disallow the vote of such representative unless he is able to produce proof to the satisfaction of the Chairperson as to his right to represent the Member;

33.1.7.2 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

- 33.1.7.3 the vote(s) cast to the satisfaction of the Chairperson shall be final and binding upon all persons constituting the relevant Member, irrespective of any error or absence of authority.
- 33.2 The members of any Sub-HOA 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 their rights and obligations of the members of such Sub-HOA. When voting upon any matter which directly and materially affects the rights and obligations of the members of any Sub-HOA, the registered owner of any erf in the Sub-HOA shall have one vote per erf registered in his/her/its name, provided that if an Erf is registered in more than one person's name, then they shall jointly have one vote. A member of a Sub-HOA shall only be entitled to exercise his/her vote if he/she has paid every Levy and other sum (if any) which shall be due and payable by him/her to the Sub-HOA of which he/she is a member and provided that such member is not under suspension by the Sub-HOA of which he/she is a member.
- 33.3 Unless the Chairperson 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 Chairperson of the meeting may direct.
- 33.4 Notwithstanding the provisions of clause 33.3 above, voting on the election of a Chairperson 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.
- 33.5 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.
- 33.6 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, subject to clause 33.13. In the case of an equality of votes for and against any resolution, the resolution shall be deemed to have been defeated.

- 33.7 A vote cast under a proxy, power of attorney, or other authority, which has been revoked, shall nevertheless be valid unless :-
- 33.7.1 written notice of the revocation is received by the Association prior to the meeting concerned; or
- 33.7.2 the Chairperson of the meeting agrees to accept written or oral notice of such revocation at the meeting.
- 33.8 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 Chairperson of the meeting whose decision shall be final and conclusive.
- 33.9 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 Chairperson, whether or not scrutineers have been appointed to count the votes and his decision shall be final and conclusive.
- 33.10 Read with clause 33.8, 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 Chairperson 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 Chairperson 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 Chairperson of the meeting as to the result of any voting at the meeting.
- 33.11 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.

- 33.12 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.
- 33.13 In respect of all resolutions and decisions of Members related to any decision, act, approval, consent or agreement which may, in the opinion of the Developer have a materially negative impact, effect or consequence on the assets of the Developer in or on the Development, whether movable or immovable, tangible or intangible, VDVI shall, for so long as a Developer entity owns at least 20% of the unsold Erven in the last phase to be incorporated in terms of clause 45.1, have a right of veto against such resolution. If VDVI wishes to exercise its veto right, VDVI must exercise its veto at the meeting where such resolution has been put to a vote, after the results of the vote is declared by the Chairperson. The Chairperson shall not be entitled to close the general meeting until it has given VDVI sufficient time to exercise its veto.
- 33.14 In respect of all resolutions and decisions of Members that relate to the incorporation of the Pearl Valley Estate into the Development or the amendment of the Constitution to allow for such incorporation of the Pearl Valley Estate, the Developer shall, in the event that 50% plus one of the Members who voted on the matter vote in favour of such resolution/s, have an additional number of votes equal to the number of votes required to ensure that the resolution/s in question is/are passed as a special resolution.

34 MINUTES OF MEETINGS OF THE ASSOCIATION

- 34.1 The Trustees shall:
- 34.1.1 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 Chairperson of the meeting;
- 34.1.2 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.

- 34.2 The Trustees shall keep all minute books of meetings of the Association in perpetuity.
- 34.3 On the written application of any Member the Trustees shall make all minutes of the proceedings and/or meetings of the Association available for inspection by such Member.
- 34.4 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.
- 34.5 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 Chairperson of the meeting shall decide.

35 FINANCIAL YEAR

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

36 ACCOUNTS

- 36.1 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:
- 36.1.1 a record of the assets and liabilities of the Association;
 - 36.1.2 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;
 - 36.1.3 a register of Members showing in each case their addresses;
 - 36.1.4 individual ledger accounts in respect of each Member.
- 36.2 On the application of any Member the Trustees shall make all or any of the books of account and records available for inspection by such Member.

- 36.3 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.
- 36.4 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.
- 36.5 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.

37 DEPOSIT AND INVESTMENT OF FUNDS

- 37.1 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.
- 37.2 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% with any financial institution as approved by the Trustees from time to time.
- 37.3 Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

38 AUDIT

- 38.1 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.
- 38.2 The duties of the Auditors shall be regulated in accordance with general practise and applicable professional standards.

39 LIMITATION OF LIABILITY AND INDEMNITY

- 39.1 The Developer shall not be liable to compensate the Association in respect of any claims, losses, expenses, or damages suffered by the Association as a result of any act or omission on the part of the Developer in respect of any civil services installation on the Development or any licence or permit obtained by the Developer in respect of the Development and transferred by the Developer to the Association, except where such claims, losses, expenses, or damages was occasioned by the wilful misconduct, gross fault or neglect of the Developer.
- 39.2 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 Chairperson in his capacity as Chairperson, 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.
- 39.3 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 Chairperson 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.

40 DEFAMATION PRIVILEGE

Every Member of the Association and every Trustee shall be deemed by virtue of his membership or, as the case may be, his holding office as a Trustee, to have waived as against every other Member, the Chairperson, 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, provided that the following are present –

- 40.1 the statement, report, complaint, notice or reference ("**the Relevant Statement**") is made in the performance or exercise of any right, function or duty of the person making the Relevant Statement; and
- 40.2 the Relevant Statement is made at a Trustees' meeting, Members' meeting, disciplinary hearing, litigation proceedings or arbitration proceedings or any other formal proceedings convened in terms of this Constitution or the Estate Rules ("**the Formal Proceedings**") or any other meeting related to the furtherance of such Formal Proceedings.

41 OWN RISK

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

42 TRANSFER OF LAND

The Developer shall, free of consideration, transfer to the Association the private open spaces and private roads indicated on the Combined Cadastral Plan and the risk there-in passes to the Association upon transfer 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. Such transfer will be at the discretion of the Developer, but before completion of the Development.

43 ARBITRATION

43.1 Should any dispute, question or difference arise between Members, Trustees, Residents, the Association or either one of them as the case may be

43.1.1 in regard to:

43.1.1.1 the interpretation of;

43.1.1.2 the effect of;

43.1.1.3 their respective rights or obligations under;

43.1.1.4 a breach of (save for non-payment of Levies or any other amount due by a Member in terms of this Constitution),

this Constitution and / or the Estate Rules; and/or

43.1.2 in relation or incidental to the Association or the Development, or any part thereof, including disputes, questions or differences arising from statements, acts or omissions related to or incidental to the Association or the Development,

43.1.3 enforceability, termination or cancellation or the subject matter of this Constitution including claims in delict (including but not limited to defamation)

such dispute shall be decided by arbitration in the manner set out in this clause 43.

43.2 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 and shall not be precluded from instituting proceedings in any court of competent jurisdiction.

43.3 The arbitration referred to in clause 43.1 shall:

43.3.1 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
- 43.3.2 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
- 43.3.3 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.
- 43.4 The arbitrator shall be a practicing senior counsel or attorney 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 Chairperson of the Cape Bar.
- 43.5 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.
- 43.6 Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings:
- 43.6.1 shall be final and binding on each of them; and
- 43.6.2 shall be carried into effect immediately; and
- 43.6.3 may be made an order of any Court to whose jurisdiction the parties are subject.
- 43.7 Notwithstanding anything to the contrary contained in this clause 43, 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.

44 DOMICILIUM

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

44.1.1 such address shall be the address of the Chairperson or of a resident Trustee nominated by the Trustees or the address of any duly appointed Managing Agent;

44.1.2 the Trustees shall give notice to all Members of any change of such address.

44.2 The *domicilium citandi et executandi* of each Member shall be the street address of the Member's Erf.

44.3 The *domicilium citandi et executandi* of each Resident shall be the street address of the Erf or Unit which such Resident occupies.

44.4 It shall be competent to give notice by email where the Member's or Resident's email address is recorded with the Trustees.

44.5 A Member or Resident who has furnished an electronic address to the Association or 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 or notices of availability of the foregoing which the Association is required to or wishes to serve upon the Member or Resident.

44.6 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.

44.7 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*.

44.8 Any notice to a Member or a Resident:

44.8.1 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 7th day after posting (unless the contrary is proved); or

44.8.2 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; or

44.8.3 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.

45 AMENDMENT

45.1 This clause 45 and clauses 1.13, 1.13.1, 1.50, 6.1.6, 7.1.1, 8, 9.6, 9.7, 9.8, 10, 12, 13.3, 13.4, 14.1, 14.2, 14.7, 14.9, 15.1.17, 15.1.18, 16.1, 16.2, 16.4, 16.6.1, 16.8, 19.6.2, 19.6.4, 19.8, 19.10 to 19.13, 21.1, 23.8, 23.9, 24.3 to 24.6, 30.2.9, 33.13, 33.14, 39.1, 45.1, 52.1, 53.1, 53.4, and 55 will not be added to, amendeded, substituted or repealed without the prior consent in writing of VDVI or its successor body as Developer for as long as VDVI or its successor body as Developer is a Member.

45.2 This clause 45.2 and clause 19.6.5 will not be added to, amended, substituted or repealed without the prior consent in writing of all the Bodies Corporate.

45.3 Subject to the provisions of clause 45.1, clause 45.2 and clause 53, any addition, amendment, substitution, or repeal of any part of this Constitution shall require a special resolution of Members as contemplated in clause 30 and, if applicable, clause 33.14.

46 INCORPORATION OF FURTHER PHASES

- 46.1 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 the adjoining properties owned by the Developer from time to time and as indicated on the Val de Vie Extension Map as further phases of the Development which the Developer shall be entitled to develop as it may deem fit.
- 46.2 Should any further property be incorporated into the Development in terms of clause 46.1 above, the Developer shall be entitled to require that the first and all subsequent Registered 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.

47 INTELLECTUAL PROPERTY

- 47.1 It is recorded that Val de Vie Intellectual Property (Pty) Ltd (registration number 2015/016697/07) ("**VDV IP**"), a wholly owned subsidiary of the Developer is the registered owner and/or applicant for registration of various trademarks consisting of, or incorporating the name VAL DE VIE.
- 47.2 A non-exclusive licence agreement has been concluded between the Association and VDV IP , authorising the use of the VAL DE VIE trademarks by the Association for no consideration on the terms and conditions as set out in the licence agreement.
- 47.3 The Licence Agreement only grants the right to the Association, to use the VAL DE VIE trademarks, and no rights are granted to the Members individually, or in their personal capacity. No Member will be entitled to use the VAL DE VIE name/trademark without obtaining prior written consent from VDV IP.
- 47.4 The Association and the Developer shall appoint 3 (three) representatives (1 (one) Homeowner Trustee and 2 (two) representatives of the Developer) to serve on a committee ("**the Intellectual Property Committee**"). The Intellectual Property Committee is hereby authorised to enforce a code of conduct, as it relates to the intellectual property of VDV IP, to be promulgated by the Trustees

and approved in writing by the Developer in terms of the Licence Agreement, and which code of conduct shall have as its objective to ensure that the Members, Residents, businesses operating on the Development and any clubs formed by Members and operating on the Development conduct themselves in a manner that does not bring the Val De Vie brand into disrepute and that the Association does not breach the terms of the Licence Agreement through the conduct of its Members, the Residents and any other organisations as aforesaid that operate on the Development. The Intellectual Property Committee may determine their own procedures regarding meetings and decisions taken.

48 WATER

- 48.1 The Association has a duty of care towards the environment and is required to adhere to the applicable Environmental Authorisation (“**EA**”) and Environmental Management Programmes (“**EMPr**”) as approved by the Department of Environmental Affairs & Development Planning (“**DEA&DP**”) in terms of the National Environmental Management Act (Act No. 107 of 1998) (“**NEMA**”) as well as the Water Use License in respect of the Development (“**WUL**”) issued by the Department of Water & Sanitation (“**DWS**”) in terms of the National Water Act (Act No. 36 of 1998) (“**NWA**”).
- 48.2 Members shall adhere to the aforementioned approvals and the Association’s water management plan from time to time insofar as it relates to their Erven or Units and are not allowed to lodge an individual application for uses or activities not authorised in terms of the said approvals. This includes, but is not limited to, an EA application to DEA&DP and/or a WUL application to DWS.
- 48.3 The costs of obtaining and distributing water in terms of the WUL and the water management plan shall be apportioned according to the use thereof.
- 48.4 Any party entitled to water in terms of the WUL and the water management plan, shall be entitled to register at his cost a servitude for the pumping, storage and distribution of such water over other Erven in the Development.
- 48.5 All water from the Berg River will be pumped to the storage dams on the Development, from where it will be distributed to the individual Erven entitled there-to.

- 48.6 No Member or Resident shall be entitled to sink any borehole or well on any Erf except with the written approval of the Association and except in accordance with the WUL and the water management plan.

49 STREETLIGHTS

It is recorded that no streetlights as such will be provided along the minor streets in the Development.

50 RIGHT OF FIRST REFUSAL

Should the Developer decide to sell any non-residential Erf ; the Association shall have a right of first refusal for a period of 60 (sixty) days after receipt by the Association of a written offer to buy such Erf from the Developer. For the avoidance of doubt, this clause will not be applicable should a Developer entity wish to sell such Erf to one of its subsidiaries or to its holding company.

51 CO-OWNERS AND BODIES CORPORATE

- 51.1 Where any Erf or Unit is owned by more than 1 (one) person or in the event of a Body Corporate being a Member, 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.
- 51.2 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.
- 51.3 Notwithstanding the provisions of clause 51.1 above, any notice required to be served upon any Body Corporate shall be deemed to have been properly served if served in terms of clause 44 above at the address given as the domicilium citandi et executandi of that Body Corporate.

- 51.4 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.

52 ELECTRICAL RETICULATION

- 52.1 The Electrical Reticulation on Val de Vie Phase 1 and on the River Farm Precinct shall be handed over to the Local Authority as an asset to them, and for maintenance, unless agreed otherwise with the Local Authority. Electrical accounts shall be paid directly to the Municipality via a pre-pay system to be installed in the dwelling by the Electrician doing the dwelling Installation on behalf of the Registered Owner. The Electrical Reticulation on Val de Vie Phase 1 and on the River Farm Precinct may be taken over from the Local Authority again, if permitted in law and if the Trustees deems it appropriate and in the interests of the Association following the completion of a technical due diligence in this regard.
- 52.2 The Electrical Reticulation on Val de Vie Phase 2 shall be owned and maintained jointly by VDVI's nominee and the Association as 50/50 partners.
- 52.3 On Val de Vie Phase 2 the electrical 3-phase power point shall be brought to within 1m inside the Erf boundary of each individual Erf, at a corner selected by the Electrical Engineer for the Development. This power shall be in the form of a 3-phase cable, end-capped and sealed, buried at a depth of 450mm below Finished Ground Level, indicated by a draw-wire tied to the cable and a stake in the immediate vicinity of the cable end. The format of the power, per single residential Erf, shall be 3-phase 50Hz, 400V (230V single phase) $\pm$ 10% (ten percent) as per Electricity regulator requirement, 60A per phase Maximum demand.

53 INTERNAL WORKS

- 53.1 All water network, electrical network (except in Val de Vie Phase 2, where the provisions of clause 52.1 applies), 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 owned, managed and maintained by the Association, subject to clause 53.2 below, but shall be transferred by the Developer to the Association, unless otherwise agreed with the Association and subject to the provisions of clause 53.4 below.

- 53.2 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 once at least a 50% interest therein has been transferred by the Developer to the Association.
- 53.3 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.
- 53.4 Subject to the provisions of clause The Association shall take transfer of any internal networks from the Developer, it being recorded that such transfer of ownership shall take place at no consideration and the Association shall then take over the responsibility to maintain and manage the relevant network, but if the Association operates any of the internal networks as a profitable commercial venture or as a venture that amounts to a cost saving operation, VDVI (or its nominee) shall be entitled to become a 50% (fifty percent) partner in such venture on standard commercial partnership terms by giving written notice to the Association of its intention to exercise such right.

54 ERVEN BOUNDING ON WATER BODIES/LAKES

Registered Owners of Erven bounding on water bodies and lakes, will be subject and entitled to the obligations and rights as contained in the Guide. This clause and such rights and obligation may not be amended without the approval of at least 75% of Erven which will be affected by such amendment.

55 SUB-HOMEOWNERS' ASSOCIATIONS

- 55.1 The Developer reserves the right to establish Sub-HOAs for the extensions of the Development.

- 55.2 Each Sub-HOA will be required to pay Levies to the Association in order to contribute on a pro rata basis to the costs of the Association attributable to the use of the Association's property, infrastructure, service providers and the like by the members of the Sub-HOA in question. The Levies payable by each Sub-HOA to the Association will, subject to the provisions of clause 19.6.3 in respect of the determination of Normal Levies (as defined in clause 15.1.18) for Erven in new phases incorporated by the Developer into the Development, be otherwise determined by the Trustees of the Association, whose determination will be final and binding upon each Sub-HOA and each member of each Sub-HOA.
- 55.3 Members of the Sub-HOAs shall be entitled to use the communal facilities of the Association and shall be treated as members of the Association for this purpose. If any Sub-HOA fails to make payment of any amount due by it to the Association, then the Trustees of the Association shall be entitled to suspend the rights of the Sub-HOA in question, and the rights of its members to use the Association's property, infrastructure, service providers and the like until such time as all amounts payable by the Sub-HOA to the Association have been paid in full.
- 55.4 The Trustees and members of each Sub-HOA agree that each of them will be bound by any decisions taken by the Association in General Meeting and / or taken by the Trustees of the Association which affect their rights and obligations and each trustee and member of each Sub-HOA agrees to be bound by and to adhere to such provisions of the Association's Constitution, Estate Rules, Design Guidelines and Building Rules and Regulations which are intended by the Trustees of the Association to apply to them.
- 55.5 Any dispute, question or difference that may arise between any Member or Resident of the Association and any member or resident of any Sub-HOA or between any Trustee of the Association and any trustee of any Sub-HOA or between any Trustee of the Association and any member of any Sub-HOA out of or in regard to:
- 55.5.1 the interpretation of;
- 55.5.2 the effect of;
- 55.5.3 their respective rights or obligations under;

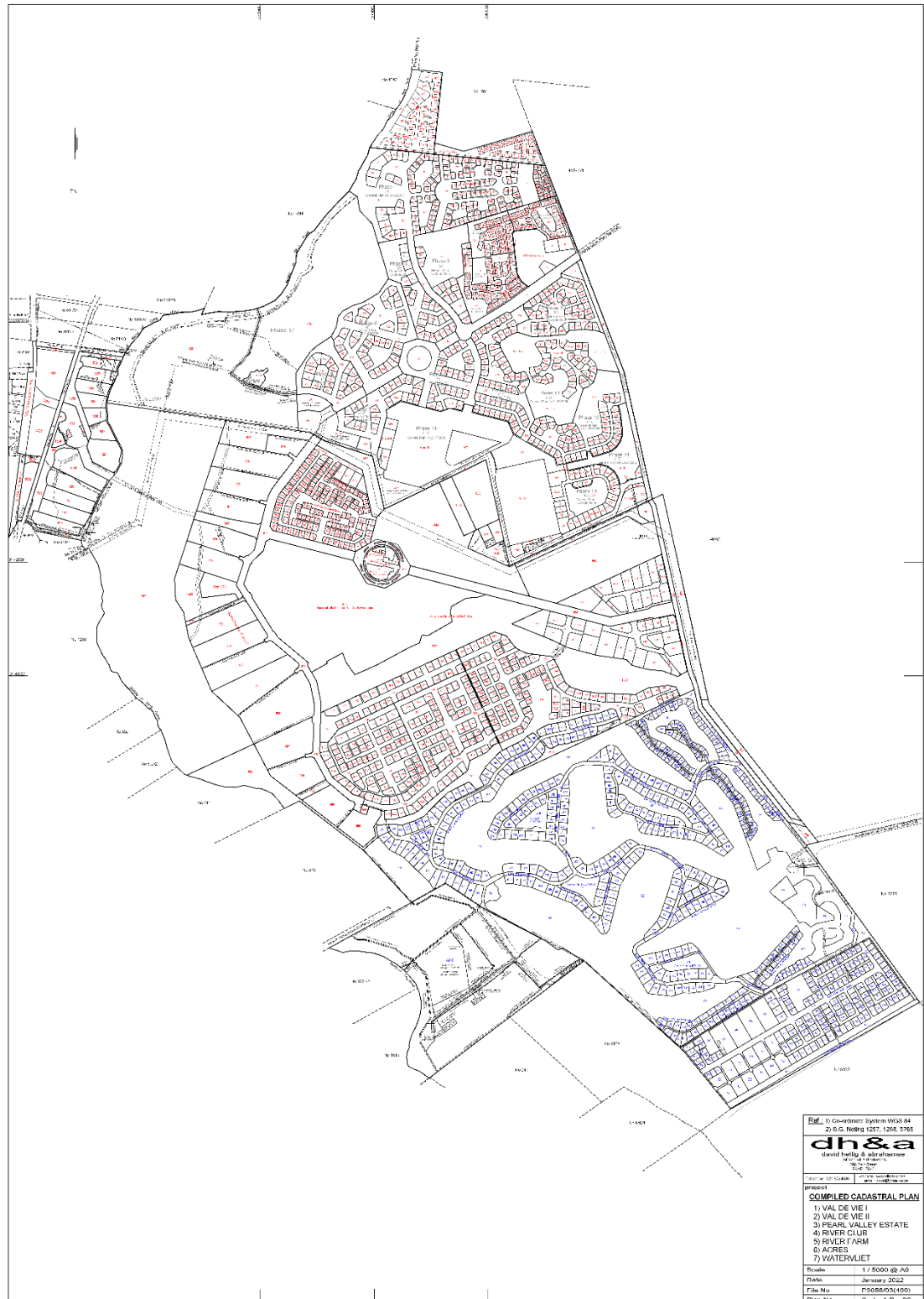
55.5.4 a breach of,

this Constitution or any Rule or Regulation promulgated in terms of this Constitution shall be decided by Arbitration in the manner set out in clause 43 of this Constitution.

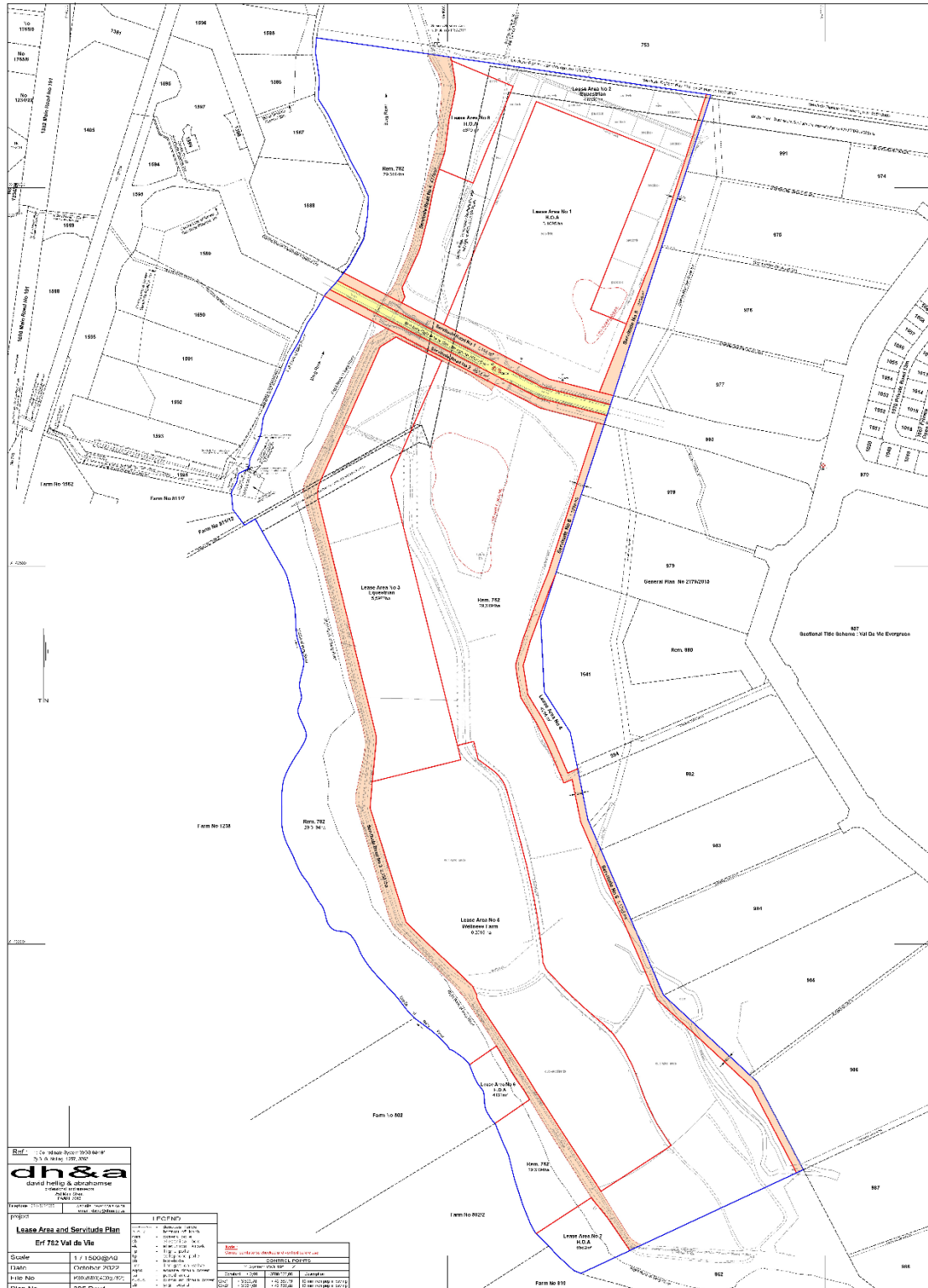
56 DISSOLUTION OF ASSOCIATION

Upon dissolution of the Association for any reason whatsoever, the Association's remaining assets shall be distributed to a similar association of persons which is exempt from income tax under section 10(1)(e) of the Income Tax Act No. 58 of 1962.

COMBINED CADASTRAL PLAN OF THE DEVELOPMENT



ERF 782 DIAGRAM



VAL DE VIE EXTENSION MAP

