

MEMORANDUM DEALING WITH THE PROPOSED AMENDMENTS TO THE CURRENT PVHOA CONSTITUTION

CURRENT CLAUSE	NEW CLAUSE	DETAILS OF AMENDMENT	THE REASONS/EFFECT
	2.1	A new clause with the definition of " <i>Acres Precinct</i> " has been inserted.	The Acres Precinct is defined as being part of the Estate and this ties in with the definition of " <i>Land</i> ".
	2.5	A new clause with the definition of the " <i>Body Corporate</i> " has been inserted.	This definition is referenced throughout the Constitution and in particular clause 16 (Voting).
2.5	2.7	The definition " <i>Club Facilities</i> " has been expanded to include tennis courts, sports facilities, the boma on Watervliet and gymnasium.	Self-explanatory.
2.6	2.8	The words " <i>which shall, for the avoidance of any doubt include, but not be limited to, a juristic person to which it sells its business as developer of the Estate as a going concern</i> " have been deleted with reference to the definition of " <i>Developer</i> ".	The current definition of the Developer is sufficiently wide and includes its successors in title and permitted assignees.

2.8		The definition of the “ <i>Development Period</i> ” has been deleted.	The reservation of certain rights and privileges to and in favour of the Developer up to the end of the Development Period has been eliminated.
	2.9	A new clause with the definition of “ <i>Watervliet</i> ” has been included under the definition Erf.	This is in line with the definition of “ <i>Land</i> ” and the inclusion of this farm as a member of the Association.
2.10	2.11	A new definition of “ <i>Final Date</i> ” has been inserted which distinguishes between the completion dates of dwellings within the Acres Precinct on erven less and those more than 1 hectare in extent, and also in respect of erven that are not within the Acres Precinct.	Different time periods apply for the completion of dwellings which take into account the size of the erven.
	2.15	New definition of “ <i>Golf Course Owner</i> ” is introduced.	This is referenced throughout the Constitution.
	2.16	New definition of “ <i>Hotel Developer</i> ” is introduced.	This is referenced throughout the Constitution.
	2.17	New definition “ <i>Hotel Scheme</i> ” is introduced.	This is referenced throughout the Constitution.
2.13	2.18	1 The paragraph reading “ <i>Land may also include, if required by the Developer for an extension of the Estate</i> ” has been deleted.	The Pearl Valley Estate is thus restricted to Erf 1, Pearl Valley Estate, Watervliet, Farm Kliprug Portions 3, 6 and 11, and the Acres Precinct.

		<p>2 The Acres Precinct has been included in the definition.</p> <p>3 Clause 2.14.4 has been deleted which read “<i>Any other adjacent properties which the Developer may own or acquire from time to time</i>”.</p>	
2.16	2.20	The words “ <i>or its successors in title</i> ” have been inserted.	Self-explanatory.
	2.21	A new clause with the definition of “ <i>Lodges Scheme</i> ” has been inserted.	Reference is made thereto in the Constitution and in particular clauses 16 and 24
	2.24	A new clause with the definition of “ <i>Observer</i> ” has been inserted.	This is with reference to clause 7.9 where the Golf Course Owner is entitled to have its Observer attend meetings of Trustees, but not have the right to vote at such meetings.
	2.27	A new clause with the definition of “ <i>Participating Unit</i> ” has been inserted.	This is with reference to sectional title units in the Hotel Scheme that participate in the Rental Pool. This is for the purposes of distinguishing the voting rights allocated to such units under clause 16 i.e. one vote for every 5 Participating Units to be exercised by the Body Corporate.

2.20	2.28	The “ <i>Private Areas</i> ” have now been detailed in Annexure A.	These areas are listed and provides certainty.
2.21		The definition of “ <i>Recreational Facilities</i> ” has been deleted. Such facilities now fall under the definition of “ <i>Club Facilities</i> ” (Clause 2.7).	Self-explanatory.
	2.29	A new clause with the definition of “ <i>Rental Pool</i> ” has been included. This ties in with the definition of “ <i>Participating Units</i> ” referred to earlier.	Self-explanatory
2.22		The definition of “ <i>Residential Lodges</i> ” has been deleted.	These units would now be covered by the definition of “ <i>Sectional Title Units</i> ”.
	2.30	A new clause with the definition of “ <i>Sectional Titles Act</i> ” has been inserted.	No effect and the only other references to this definition are in clauses 2.31 and 2.32.
	2.31	A new clause with the definition of “ <i>Sectional Title Scheme</i> ” has been inserted.	No effect.
	2.35	A new clause with the definition of “ <i>Watervliet</i> ” has	This ties in with the definition of “ <i>Land</i> ” and there are also

		been inserted.	provisions which apply specifically to Watervliet.
4.1.2 & 4.1.3	4.1.2 & 4.1.3	Words have been inserted to the effect that the maintenance is to be carried out by and at the expense of the Association.	This gives certainty as to who carries the costs of the maintenance and is in line with the current status quo.
4.8	4.8	The words at the beginning of the paragraph " <i>On the termination of the Development Period.....</i> " have been deleted.	This is as result of the definition of " <i>Development Period</i> " having been deleted and also the removal of certain rights retained during the Development Period by the Developer, save for those retained in the new Constitution. The process of the handover is in process.
4.14	4.14	Words " <i>or the incorporation of the Association into another association, which decisions will require a special resolution by the Members, subject to the provisions of this Constitution</i> " have been inserted.	This will enable the Association to be incorporated into the Super Estate provided that a special resolution is passed to so incorporate.
4.15	4.15	The words " <i>and infrastructure</i> " has been inserted so as to also make provision for the registration of servitudes in respect of infrastructure, and not only that of access.	This will allow for servitudes required in respect of infrastructure such as cabling, pipes, etc.
5.1	5.1	Clauses 5.1.1 and 5.1.2 have been deleted.	The definition of " <i>Owner</i> " now covers both owners of erven and sectional title units. Hence the deletion of these clauses.

5.3.3	5.3.3	This clause is amended to provide that, where erven are consolidated, the Golf Course Owner may in its discretion, elect to charge membership fees equal to the number of erven prior to the consolidation.	Owners of erven to be consolidated can end up paying the same amount of membership fees as they did prior to the consolidation.
6.1	6.1	The number of Trustees are reduced from 10 to 6 and there will no longer be Trustees appointed by the Developer.	All Trustees are to be elected by members of the Association.
6.2		This clause has been deleted as there is no longer a Development Period, nor Developer Trustees.	Self-explanatory.
	6.2	Two of the 6 Trustees (all of whom are elected by the Members) will serve for a period of 2 years whereas the remainder of the Trustees are elected on an annual basis at the AGM.	This allows for continuity so that are at least 2 Trustees would have been involved in the affairs of the Association for the previous 12 months.
6.4	6.3	The requirement for there to be a Chairperson, Vice Chairperson, Secretary/Treasurer is removed so that only a Chairperson will be elected by Trustees.	Historically these specific positions have not all been allocated to specific Trustees.
6.4A	6.5	The words " <i>and the Observer</i> " have been inserted.	Self-explanatory.

		so that a Trustee vote to be taken by way of round robin will need to be circulated to the Observer appointed on behalf of the Golf Course Owner.	
6.4B.1	6.6.1	Meetings of Trustees to be held every 3 months instead of 6 months.	Self-explanatory.
6.4B.3	6.6.3	The requirement of 1 plus 4 Trustees is being replaced by 1 plus 1 Trustee to be able to call a Trustee meeting.	2 Trustees can thus call a meeting.
6.5	6.7.1	Provision is made for the 2 of the Trustees who served for a period of 2 years, to cease to be Trustees.	Self-explanatory.
6.5.10		This clause has been deleted as no Trustee will be representing the Club.	Instead, the Golf Course Owner can appoint an "Observer" to attend Trustee meetings.
6.6	6.8	This amendment states that Trustees (as opposed to Members) may co-opt Trustees to fill vacancies, and those co-opted will only serve until the next AGM.	This clarifies the position that co-opted Trustees may only serve until the next AGM and also, Trustees may now co-opt Trustees to fill any vacancy which arises before the next AGM.

7	7	The “ <i>Golf Course Owner</i> ” and the “ <i>Hotel Developer</i> ” have been added to the heading of this clause.	This is due to the fact that the sub-clauses deal with the rights of each of these entities separately.
7.1.5		This clause has been deleted whereby the Developer had the sole right to appoint a managing agent during the Development Period.	Self-explanatory.
7.1.4	7.1.4	In the last paragraph the word “ <i>reasonable</i> ” has been inserted so that the access which the Developer requires from any Member has to be reasonable.	Self-explanatory.
	7.3	This is a new clause in which provision is made that, inasmuch as the Developer requires to conduct its business operations, it shall have access to and from the Estate and shall also be entitled to register service servitudes in connection with such development as and when necessary.	By virtue of the fact that the Development Period and all the associated rights of the Developer have been removed, this clause is both necessary and reasonable. Bear in mind that development of the Acres Precinct is yet to be completed.
7.4		This clause has been deleted.	These facilities have already been designated and built.
	7.4	This new clause guarantees the Hotel Owner access to and exit from the Estate, to continue	Clause 8.1 of the current Constitution contains these rights which are reserved in favour of the Developer. However, because the definition of Development Period with reference to the Developer

		construction, to market their opportunities and generally to carry out their business.	has been deleted, a separate clause with the rights of the Hotel Owner has been inserted.
	7.5	This new clause guarantees the Golf Course Owner access to and exit from the Estate, to continue construction, to market their opportunities and generally to carry out their business.	Clause 8.1 of the current Constitution contains these rights which are reserved in favour of the Developer. However, because the definition of Development Period with reference to the Developer has been deleted, a separate clause with the rights of the Golf Course Owner has been inserted.
	7.7	This new clause guarantees that persons wishing to use the Golf Course and the Club facilities will be entitled to have access via Private Areas.	Inasmuch as there will be a hand over of private roads to the Association, access over Private Areas is created and thus reserved.
	7.8	This new clause reserves the right in favour of the Golf Course Owner to register servitudes in respect of civil services for the Golf Course, the Club and/or the Club facilities over the Private Areas and also Erven within the Estate, provided however that such properties are restored after having installed the services.	This in effect repeats what is stated in current clause 8.2 except that it now includes the privately owned Erven.
	7.9	This new clause deals with the appointment of an Observer by the Golf Course Owner who may attend Trustee meetings as previously referred to.	Self-explanatory.

	7.10	This new clause records the rights of the Golf Course Owner to hold Golf Tournaments and events at the Club facilities and on the Golf Course. However, the holding of such tournaments and the entry of guests will be subject to rules and regulations agreed to between the Association and the Golf Course Owner.	Self-explanatory.
	8	This new clause deals with the rights of owners of the Hotel Scheme Sectional Title Units and their guests and provides for the entry of such hotel guests onto the Estate, but once again subject to the rules and regulations that are put in place by the Association.	Self-explanatory
	9	This new clause deals with Watervliet and states that the farm may be divided into 2 portions of which Portion A will be the residential erf, where Portion B will only be used agricultural activities and/or equestrian activities and/or recreational activities. Portion B will not attract a levy whereas Portion A will attract a levy.	Self-explanatory.
8	10	Clause 8.2 has been deleted as this has been dealt hereinbefore (clauses 7.4 to 7.10).	Self-explanatory.

9.4		This clause has been deleted.	An owner whose membership is connected to an erf or sectional title unit (including the Developer) will cease to be a member upon the disposal of such erf or sectional title unit.
10	12.1	The words “ <i>determination and approval</i> ” have been deleted and the word “ <i>consideration</i> ” inserted.	Inasmuch as the levy is determined by the Trustees (and not the Members) and then considered at the AGM, the wording in this particular clause has been amended so as to reflect the current practice.
10.2	12.2	The number 5 is removed, and it now specifies that the majority of the Trustees are required to call a Special General Meeting.	Self-explanatory.
	13.2 to 13.4	These are new clauses with reference to general meetings to be conducted via electronic communication.	This will facilitate wider participation by members not physically able to attend.
12.6	14.6	The word “ <i>approval</i> ” of the levy has been removed so that it reads only consideration of the levy with addition of the words “ <i>subject to clause 24.8</i> ”.	Self-explanatory.
13.2	15.2	This clause has been extended so as to provide that a proxy shall only be valid for a specific meeting or the adjournment thereof and for a maximum period of 12 months after the meeting was first convened.	Self-explanatory.

14.1.1	16.1	The 5000 votes of the Developer have been deleted.	The Developer will no longer have a veto right.
	16.1.2	A new clause has been inserted whereby owners of Sectional Title Units <u>other than</u> the Hotel Scheme and the Lodges Scheme will have the number of votes equivalent to the number of full levies paid to the Association by the Body Corporate, and which votes are to be exercised by a representative of the Body Corporate at general meetings.	Self-explanatory.
	16.1.3	A new clause has been inserted whereby owners of Participating Units in the Hotel Scheme will have 1 vote for every 5 participating units which votes are to be exercised by a representative of the Body Corporate at general meetings with no votes allowed to be split.	Self-explanatory.
	16.14	A new clause has been inserted whereby owners of Sectional Title Units within the Hotel Scheme that are <u>not</u> Participating Units will have 1 vote each which they can exercise <u>themselves</u> at a general meeting (as opposed to the Body Corporate).	Self-explanatory.
	16.1.5	A new clause has been inserted whereby owners of Sectional Title Units in the Lodges Scheme shall also have 1 vote for each unit which they can	Self-explanatory.

		exercise <u>themselves</u> at a general meeting (as opposed to the Body Corporate).	
	16.1.6	A new clause has been inserted whereby the Golf Course Owner will not have any vote at a general meeting but shall be entitled to attend such meetings.	Self-explanatory.
14.3	16.3	This clause has now been amended to state that voting at a general meeting will take place by way of a poll only, as opposed to a show of hands.	Voting shall only be conducted by way of a poll in the form of written and / or electronic votes.
14.7	16.7	At a general meeting the Chairperson shall no longer have a casting vote in the event of an equality of votes.	Self-explanatory.
14.9	16.9	This clause has been amended to provide that, where an erf has been subdivided and the owner of such subdivisions pays a levy for each subdivided portion, there will be a separate vote for each subdivided portion. Also, where there has been a consolidation of more than 1 erf and more than 1 levy is subsequently paid, such owner shall have the number of votes equal to the number of levies that is paid.	Self-explanatory.

15.1	17.1	21 days is amended to 28 days so as to be in line with old clause 10.1 (new clause 12.1).	Self-explanatory.
15.4	17.4	An amendment has been made whereby Special Resolutions will, after adoption of the new Constitution, require a two-thirds vote of Members in favour, as opposed to 75%.	For the passing of a Special Resolution the required number of votes in favour will be reduced from 75% to 67% of the Members.
21.1 & 21.2	23	<p>The clause with the protection in favour of the Developer in respect of the amendment of certain of the key clauses of the Constitution during the Development Period has been removed so that any amendments to the Constitution which would affect the Golf Course Owner, the Developer, the owner of Watervliet, the Body Corporate of the Hotel Scheme and the Hotel Developer are listed in Annexure B, and will require their written consent.</p> <p>Generally speaking, these relate to clauses which guarantee access to the Estate for the use of the Hotel and the Golf Course, the ability to register service servitudes and in respect of Watervliet, the use of water extracted from the boreholes of Watervliet.</p> <p>The provisions under clause 21.2 have been re-assigned and incorporated under separate clauses already dealt with.</p>	Self-explanatory.

22.3	24.3.1	The word “ <i>incomplete</i> ” has been inserted for Sectional Title Units of the Developer so that in respect of a unit which is completed, the Developer will be required to pay a levy.	Self-explanatory.
	24.3.2	A new clause has been inserted stating that the Developer does not pay any levies in respect of the Private Areas.	These areas comprise of the private roads, private open spaces, lakes and waterways as recorded in Annexure A. These are in the process of being transferred to the Association.
	24.4	<ol style="list-style-type: none"> 1. The word “<i>Developer</i>” has been replaced with “<i>Golf Course Owner</i>” as the owner of the Golf Course and the Club Facilities and in respect of which no levies are payable. 2. The clause whereby the Developer pays a <i>pro rata</i> share of the rates and taxes as levied by the Municipality in proportion to the extent of the land still held by it has been deleted. 	<p>No effective change.</p> <p>Presumably the Developer receives its own rates and taxes account in respect of land which it owns.</p>
22.3	24.5	A new clause has been inserted stating that the Developer and the Golf Course Owner shall not be liable to contribute towards any expenses of the Association e.g. security costs, <u>and</u> the existing clause which states that the Developer’s contribution towards expenses is limited to the shortfall between the operating costs and the ordinary levies receivable, has been deleted.	Thus, the Golf Course Owner makes no payment towards levies, whereas the Developer only pays levies on erven which have been developed and occupied by a third party, or where a sectional title unit has been completed, and no longer is required to pay any shortfall between operating costs and the ordinary levies receivable.

	24.7.3	A new clause has been inserted which provides for the determination of a Sectional Title Levy in respect of costs attributable to a particular Sectional Title Scheme (" <i>Sectional Title Levy</i> "), which will then be allocated on a <i>pro rata</i> basis to each owner within such scheme.	Self-explanatory.
	24.8.1	This new clause states that Participating Units (in the Hotel Scheme) will pay the Sectional Title Levy plus an amount equivalent of 20% of the HOA levy payable by an erf. Non- participating units do not pay a Sectional Title Levy but pay full HOA levy (same as that of an erf).	Self-explanatory. Hence 5 units Participating Units will count for 1 vote at a general meeting of Association.
	24.8.2	This new clause states that sectional title units in the Lodges Scheme will pay the Sectional Title Levy plus a full HOA levy (equivalent to that paid in respect of an erf).	Self-explanatory.
22.6	24.9	A proviso has been inserted stating that an increase in the levy of 25% or more from one year to the next will require a Special Resolution of Members, save that this will not apply to special levies raised by the Association.	Self-explanatory

23.9	25.9	An amendment has been made whereby buildings erected by the Golf Course Owner, the Hotel Developer and the Developer will also have to be approved by the HOA's Architectural Review Committee.	The current Constitution excludes buildings erected by the Developer from having plans approved by the Architectural Review Committee.
25.3.1		This clause has been deleted.	All buildings erected by the Developer requires the plans in respect thereof to be approved by the Architectural Review Committee.
25.5		By virtue of the definition of the " <i>Final Date</i> ", the provisions of this paragraph have been amended and also, provision is made that the Association can extend such Final Date.	Self-explanatory
26.1.4	28.1.4	The words " <i>the keeping of pets</i> " have been inserted at the beginning.	No effect as this clause is wide enough in its current form to allow the Trustees to make rules regarding the keeping of pets.
	28.1.19	The inclusion of the power to make regulations regarding Traffic Control.	Self-explanatory

	28.1.20	The inclusion of the power to accredit and regulate garden service contractors and landscape contractors.	Self-explanatory
26.1.19	28.1.21	The inclusion of the power to place restrictions on sub-letting and short-term letting.	Self-explanatory
26.1.22	28.1.24	The inclusion of the power to accredit and regulate agents for the letting of erven and sectional title units.	Current Constitution only refers to sale of erven and sectional title units.
	28.1.25	The inclusion of the power regarding the accreditation and regulation of building contractors on erven (other than those owned by the Developer, Golf Course Owner or Developer).	Self-explanatory
	28.5	A new clause has been included which allows the Trustees to develop the process to be followed where there has been a breach of the Constitution or the Association rules.	This will enable the Trustees to set forth the process regarding disputes and disciplinary aspects.
26.5		This has been deleted.	Because it is replaced by the new 26.5 which gives the Trustees the power to determine the sanctions to be imposed depending on the breach of a Member.

27.2	29.2	Membership of the Club remains compulsory for all Owners except owners of Participating Units (in the Hotel Scheme).	Self-explanatory.
	29.11	A new clause has been inserted which provides that all Members of the Association are entitled to use the Golf Course and the Club facilities upon such terms as may be prescribed by the Golf Course Owner, unless otherwise provided by the HOA Constitution and/or the Constitution of the Club.	Self-explanatory.
29.3	31.3	An amendment has been made in terms of which a " <i>bed and breakfast or similar business</i> " has been included as a prohibited operation provided that this particular sub-clause shall not apply to the Golf Lodges in the Acres Precinct which operates on an ownership basis.	Self-explanatory.
	32	This new clause records the Associations' duty of care to adhere to applicable legislation and Water Use Licences. It also records that the Golf Course Owner, as the owner of the Water Use Licence, guarantees sufficient irrigation water to the Association. It further reiterates no Member shall be entitled to sink a borehole without prior written approval of the Association.	Self-explanatory.

	35.1	This new clause deals with the handover of the Private Areas, facilities, structures and/or Land to the Association.	Self-explanatory.
	35.2	This new clause limits any claim as against the Developer in respect of civil services installed on the estate and/or any act or omission in respect of permits/licenses obtained by the Developer, unless where occasioned through gross negligence or wilfulness on the part of the Developer.	All services on Pearl Valley have been handed over whereas the services on the Acres would have been signed off by Drakenstein before issuing clearances for the transfers to take place.
32		This clause which dealt with incorporation of further phases has been deleted as it will no longer apply.	Self-explanatory.

Note: This Memorandum does not list all of the consequential amendments which flow from the amendments so listed.