



# Le Domaine du Golf



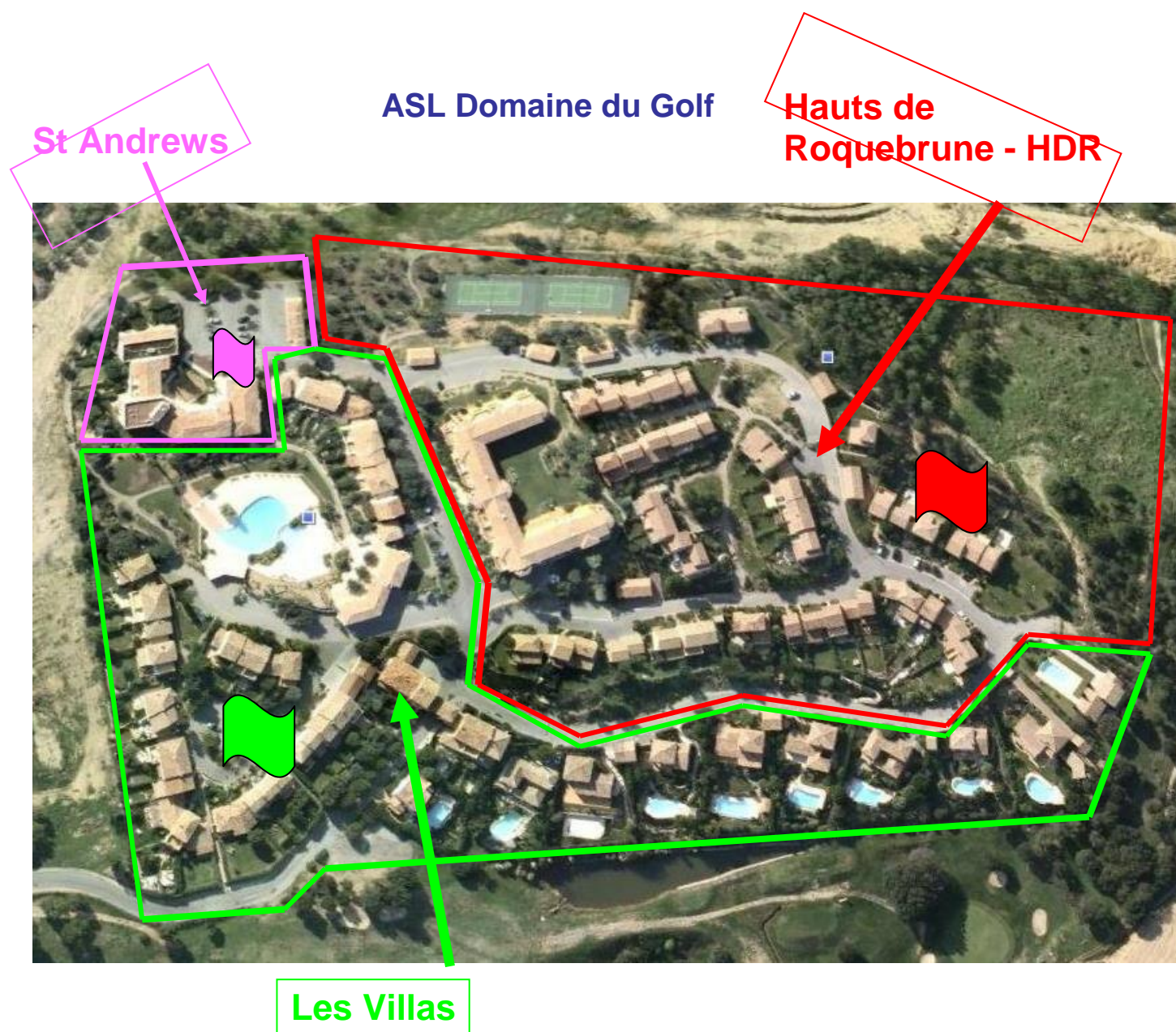


Chart 1.

## I. The Domain du Golf

As you can see on chart 1 our Domain consists of three parts:

- The co-property St Andrews (color pink) that consists of 40 apartments.
- The villas of the "premiere tranche" (green) totaling 55
- The co-property the Hauts de Roquebrune (color red) which consist of the Grande Bastid (44 apartments) and 48 villas.

Our domain is not constructed in one time. The first part (premiere tranche) consisting of the apartments of St Andrews and the villas (green zone) is built and delivered by the company "Nouveaux Constructeurs". It started in 1990 and it was stopped in the middle of the project because the construction company went bankrupt.

In 1999 MGM took over the construction plant of the second part and created the co-property of the HdR. This part was delivered in 2001-2002 and consisted of apartments and villas.

The Domain the Golf is as a result not an uniform entity. This resulted in the past in various conflicts and especially with respect to an ignorance in the meaning of the bylaws and regulation rules of the ASL as a whole and those of the other parties (St Andrews and HdR). The period 2002-2006 was therefore not to be considered as a quite one.

Since 2007 the syndicate of the ASL (**Association Syndicale Libre**) gathered (and still gathers) persons of the different entities of the Domain. They wished to go to a direction of a greater uniformity. This has been done by the new Bylaws and regulations which were voted for in the AG of the ASL in 2011.

Since then all owners of the Domain are members of the ASL with a power of attorney based on the "tantiemes" he or she holds. These "tantiemes" are based in relation to SHON (living space) of the respective good. They are the tantiemes as well who determine the part of charges to be paid in assuming to manage the ASL.

- **What is the role of the ASL.**

A new order of 2004 defines clearly the ASL as a legal person of private law. This accuracy is of great importance because it confirms by a text what before was only deduced by jurisprudence of law articles as of 1865. In order to benefit of the attributes of the legal persons the ASL must be declared as such with the "sous prefecture" of the town planning department.

The legal status gives the board of directors of the ASL a great autonomy in order to realize their objectives. As opposed to the Syndic of the co-property the board of the ASL does not continuously ask the opinion of the Assemblée in order to react. On this point it approaches more near a shareholders company than classical co- propriety (condominium).

There are **three essential points to consider**:

1. The nature of the ASL differs fundamentally compared with the syndic of co-owners. From a legal point of view there is neither confusion possible nor any obligation to operate the ASL as co-propriety even when in practice this distinction is not always applied and the legislator tends to bring them closer to each other.
2. The "Associations Syndicales Libres" are considered **as real estate associations** and not as associations of persons. The owner adheres his good to the association but he does not adhere himself as a person. When he sells his good he will be automatically replaced by the new owner. Also the owner cannot take out his good from the association syndical at his own discretion. If possible anyhow, this can only be done if the statutes foresee this option.
3. The "Associations syndicales Libres" have no relation with the associations of the Law 1901 which are associations of persons. This difference is the result of the foregoing. There is no liberty in adhering and leaving as in the associations of 1901. Conversely there is no question of making conditions to enter an owner to the ASL. **If a piece of ground falls within the perimeter of an ASL its owner is obligatory and legally a member of the "Association Syndicale"**.

The objective and the role of the ASL is to assure the management (maintenance, renovations, ...) of the common areas of the Domain(equipment, roads, sewers, swimming pool, green spaces etc.). This must be in accordance with the statutes and the regulations.

- **How works the ASL Domain de Golf?**

- **General Assembly (AG):** it is the keystone of the ASL. It is the AG who decides and who votes the proposed steps to take. It is also the AG who elects the members of the Syndicate. All the owners of the Domain are statutory members of the ASL and as a result participate at the annual AG.
- **Le Syndicate:** notice at first that the word "syndicate" of an ASL has nothing to do with the word "syndicate de copropriete". The syndicate of an ASL is the governing board of the Syndical association. . It consists of "syndics" who are not to be confused, despite of the same name, with the syndics of co-owners whether they are professionals or volunteers. The syndicate of the ASL is the decision making organ of the Association Syndicale. As it is a decision maker article 9 of the 2004 Ordinance defines the role of the syndicate:  
*"the association syndicale libre is governed by a syndicate who consist of members chosen by the co-owner members of the association or by their representatives under the conditions mentioned in the statutes. The syndicate rules by deliberation the business of the association"* The wording is very clear, the syndicate is **the legal decision making organ of the ASL**. The syndicate must assume this role despite of still widespread bad practices and misconceptions:
  - It is not possible to pass the syndicate and to concentrate all power to a President or director.
  - It is not possible to consider the syndicate as only an advisory organ who assist the president. Its role differs very much with the role of a Conseil syndical of a co-owner property.
  - It seems illegal to arrange statutory or by vote a general or permanent delegation to give full power from the syndicate to the president of the ASL.

**The decisions of the ASL are taken by a majority of the members of the Syndicate**, within the framework of power of attorney attributed to them by the statutes. No decision can be taken by the President on its own (except urgent or particular situations), without receiving a mandate from or being authorized by the syndicate.

- **The president:** the president of the ASL is in principle the legal representative of the Association (the same title as the director of a limited liability company or the general director of an anonymous society company. Still the direction of an ASL is collegiate. In fact the laws of 1865 and in addition the ordinance of 2004 have confirmed the collegial character of the direction of the ASL. The president can only carry out decisions made by the advisory direction, the syndicate, and he is not empowered except in urgent cases, to take decisions by only himself. This rule differs fundamentally with the regime of co-owners where the syndic acts on its own either on decisions made by the assemble or in his function of the legal administrator, applying the co-owners regulations and the conservation of the property. The president of the ASL cannot act as a syndic of a co-property in considering the syndicate as simply a consulting organ. The decisions are commonly made by the advisors of the direction (the syndicate).
- **The director/administrator:** the daily administration (collection charges, financial follow up, invoicing ...) are insured by a Syndic agent, which is now the Agent Benoist. The administration of the ASL however is not the same compared with the syndic of a co property.

### **Conclusive matters for the ASL.**

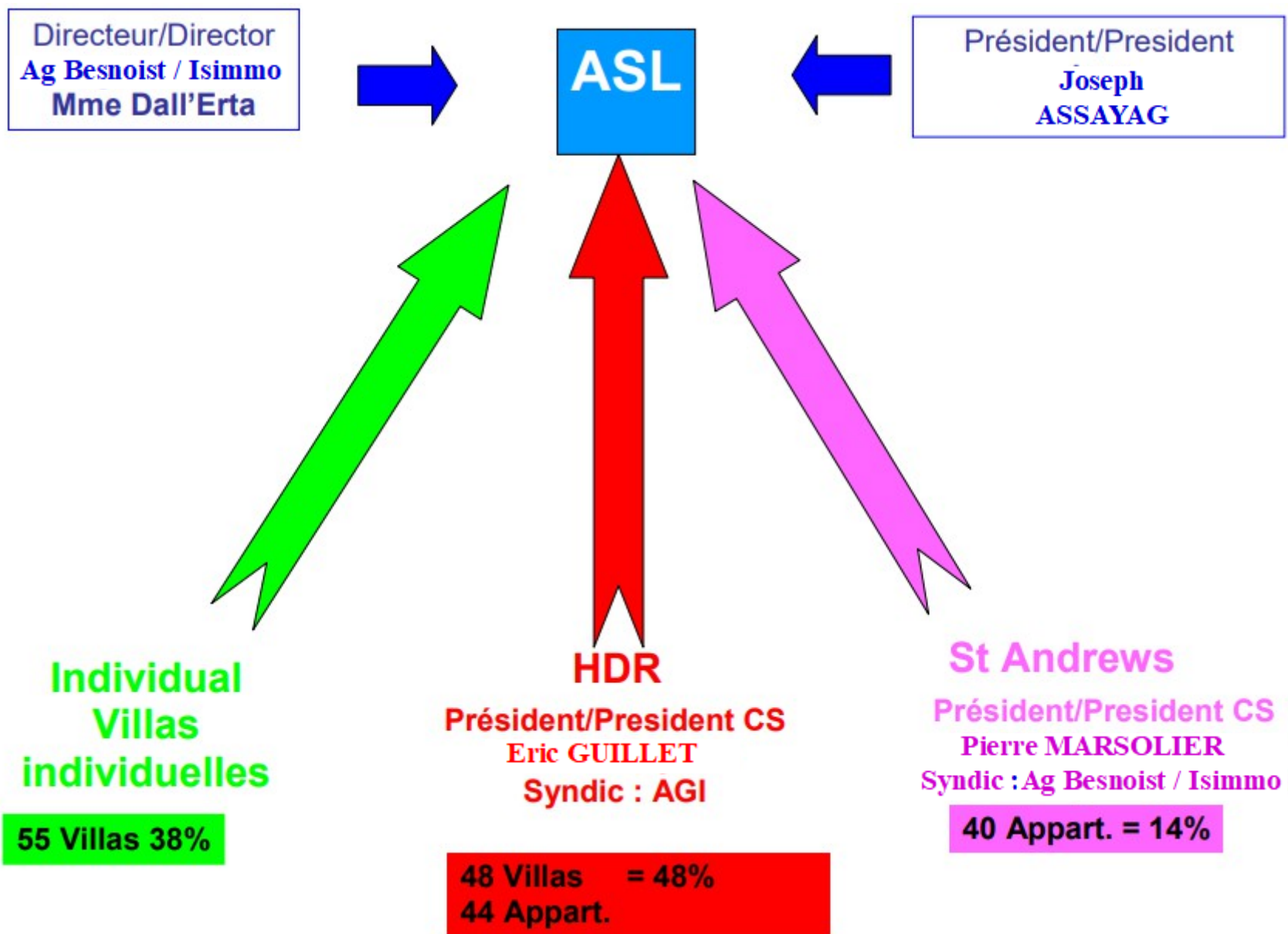
As a co-owner of the HDR you are all members of the ASL. You can assist at the general meetings and you can vote. The impact of your vote depends on your " tantiemes".

The co property HDR will transfer to the ASL the total of the common parts of the co property. This transfer should have been carried out by our constructor MGM at the time. This was not done and following our deal with MGM in 2014 we will take care of this. However as of 2008 the ASL operates as if this retrocession was effective. During the AG of the HDR in April 2014 we have voted the principle of the retrocession. This means that the maintenance of the common parts of the HDR (roads, green spaces, tennis ...) is managed by the ASL.

**Chart 2 here under re takes the situation of the Domain as it is now in 2015.**

(\*) Partial source : Droit-Immo.Com





## II. The co-property of the Hauts de Roquebrune

The co-property of the HdR consists of two parties, the vertical one The GB with 44 apartments and the horizontal one with 48 villas.

### **Who are the actors of a co-property (Condominium)?**

**The co-owners** of a co-property (that is you) is the total of persons who owns a part within an entity, a part of private spaces and a share of the common parts. The law of July 10, 1965 has fixed the statute of a co property of a building and has foreseen that the quality of the co property is ensured by a collective membership: the syndicate of co-owners.

**The syndicate of co-owners** is a corporation who distinct itself from the individual co-owners. So if a decision is made collectively: the syndicate of co-owners, it is only after the convocation of each of the co-owners to vote in the single organ: the general assemble of co-owners.

**The decisions taken during the general assemble engages the syndicate of co-owners.** These have to be carried out but not by the syndicate of co-owners who are not the representative of the co-owners. The law of July 10, 1965 has stipulated that the administration of the co-property which includes carrying out decisions taken of the syndicate of co-owners is dealt with by another entity: the syndic.

**The professional syndic** is a profession dealt with in the law of January 2, 1970. As a result the professional syndic must have a professional license as real estate manager issued for a period of ten years by the prefect of the place of exercise. The professional syndic is designated by the co-property to carry out its services. This designation is realized based on the co-property regulations, by a decision of the general assemble or by a legal decision. In all cases the designation of the professional syndic is based on a contract, the regulation of the co-property being a convention and the decisions have to be formalized by a contract. The professional syndic and the syndicate of co-owners are as a result connected by a contract which foresee especially in a remuneration of the syndic. The law also stipulates that the duration of the contract with the professional syndic may not exceed three years.

The syndic carries out various tasks:

1. It will carry out the decisions of the general assemble, applies the regulations of the co-property and in general applies the measures of the law number 65-557 of July 10, 1965 fixing the statute of the co-property of buildings and its implanting decree.
2. It will administer the co-property in various current activities:
  - to subscribe on various contracts of supply and maintenance;
  - to engage personnel
  - to administer the financial administration (to issue forecasted charges based on the budget accepted in the General Assemble, to recover the charges of the co-property)
  - paying of suppliers

3. It will represent the syndicate of co-owners in all civil acts and legal matters.
4. It will assure urgent matters (to safeguard in case of danger of the co-property and to provide its well keeping) ; this relates especially to urgent activities.
5. It will prepare and convene the annual general assemble in cooperation with the Conseil syndical.

**The Conseil Syndical** is an deliberative organ consisting of a small number of co-owners who are chosen by the general assemble. Every owner can opt for this function as a volunteer. The Conseil Syndical, an organ from the co-owners, represents the co-owners within the Syndic and ensures the control of the managing the syndicate. Its most important role is to facilitate the relation between the co-owners and the syndic who is the administrator of the co property. To carry out this function the Conseil Syndical has access to all documents relating to managing the co property and can ask copies of it from the syndic.

To insure an efficient relationship the Conseil Syndical is invited to design a president whose role is to emit the opinion of the members of the Conseil syndical to the Syndic. In some co properties the president assumes a representative public role of the co-owners. The task of the Conseil syndical by means of its president is to assist the syndic and to control its management. Theoretical the president has only an advisory role and he has not any power of to make any decision at all.

**The rules of the co-property** consist of two parts; a description of the division in lots of the co property which list and defines the private parts and the common parts and a part which determine the conditions under which these parts must be used. It sets the different categories of charges to which each lot has to contribute in respecting the legal principles of distribution. It presides the rights and obligations of each owner and of the general organization of the co property. As for all contracts it is recommendable to read closely all the provisions and to respect these.

**The General Assemble** is the deliberative organ of the syndicate. The general assemble allows to all owners to take all necessary decisions relating to managing the whole co property such as: maintenance, heating, development, collecting debtors, to choose the syndic etc. The syndicate meets each other in a general assemble at least once a year. The general assemble is the organ of expression of the syndicate of co-owners. It consists of all co-owners without exception. Each co-owner has a quantity of votes in relation to his share of his property. He only has the power to make a decision by his vote. He follows the obligatory rules of the convocation, the quorum, the agenda and the majority. Depending on the issues the majority voting rules are different:

- The majority of the persons being present or being represented in the general assembly (defined by article 24 and article 25b of the law of July 10, 1965)
- The majority of the totals general assemble (defined by article 25 of the law of July 10, 1965).
- A reinforced majority or double majority: a majority of the co-owners being present and at least 2/3 of the voices (article 26 of the law of July 10,1965).
- Some issues requires an unanimity of the votes of the syndicate especially and disposals of common parties. (article 26 of the same law).



## The co property of the HdR in practice:

- **La Grande Bastide**

The vertical party, the Grande Bastide is divided in three parties: the Rocher Rouge, the Carrigue et the Golf. This division has an impact on the charges in relation and depending on the nature of the work and maintenance.

In the general charges of the Grande Bastide which are charged to all co-owners we will find:

- The cleaning of the common parties(entrance hall, corridors, stairs, corridor of the cellars, the central part of the garage) is subcontracted by the co property. In fact the co property has subcontracted these activities to a personnel member of the ASL and the ASL is compensated for these services.
- Maintenance contract of the garage door.
- Contract with SOS Debouche for all the pipelines.
- The lighting of the common parts.
- The maintenance and reparation in the cellars, the garage and the entrance hall.

In the own charges of each part (Rocher Rouge, Golf, Garrigue) and as a result the respective charges to the co-owners of each part we will find:

- The repairs of the corridors, stairs and equipment of each party.
- The maintenance and repair of the ventilation engine of each party.

- **The villas**

The villas of the HdR consist of the horizontal party of the co-property. **It is important to note that they do not represent as a whole as such** but they are the sum of small sub entities (between 1 and 6 houses in accordance with the sheet below). This has an impact on the special charges (we will come back on this).

Each villa has a piece of ground that the owner may use in private usufruct and exclusively In the purchase agreement the number of square meter is mentioned and sometimes a plan is attached. As various lawyers already had mentioned there is not a big difference compared with full ownership it is only theoretical. The difference you can find at the cadaster where you can only see the houses and not the boundaries of the land. These boundaries are defined in a constitution plan of the co-property. The plan detained by the Syndic. This plan may be consulted at any moment with the Syndic but also with the “regisseur” of the Domain.

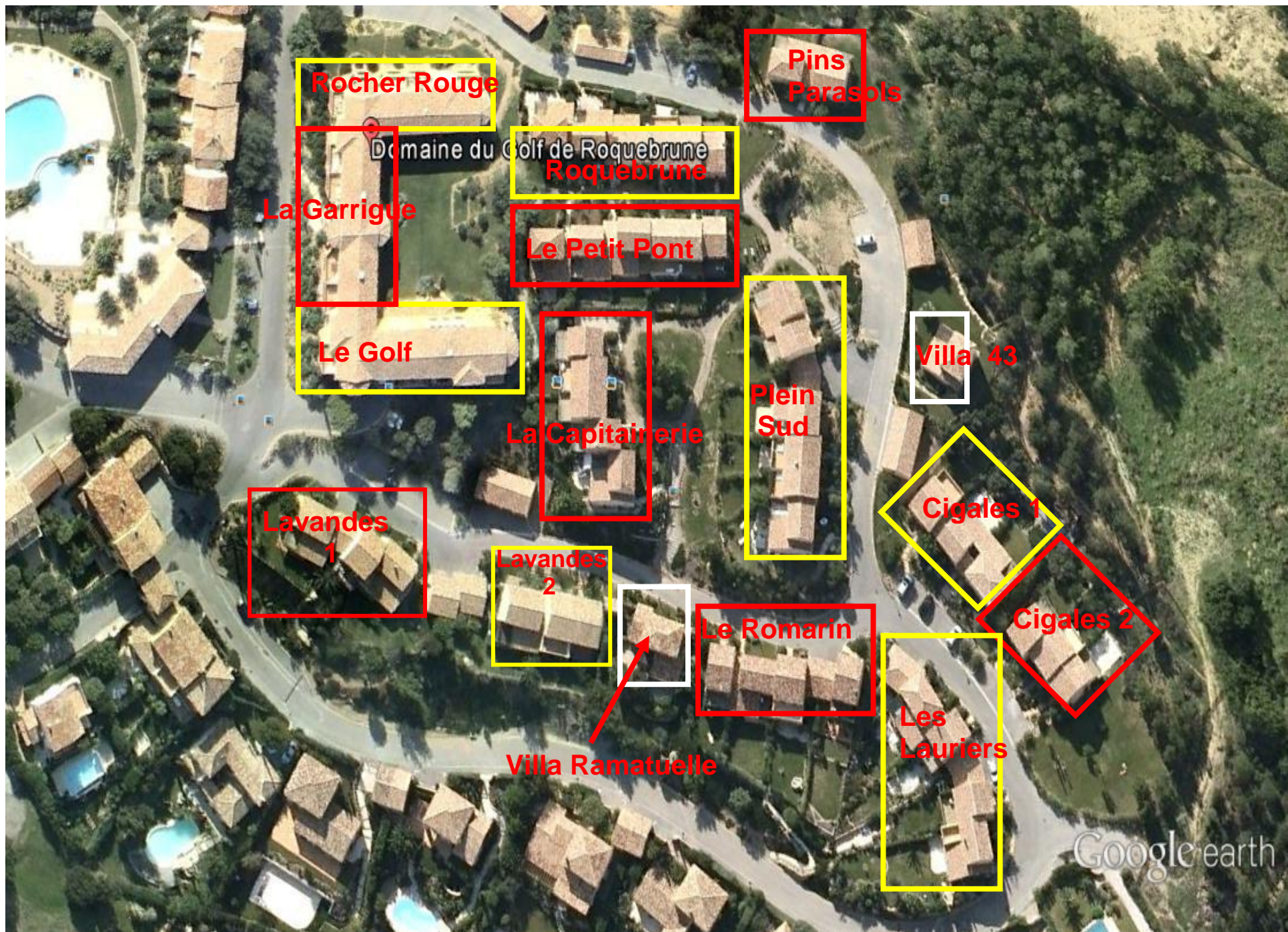
The co-owners are bound to maintain their gardens. They may realize to plant (flowers, bushes, lawn, ...) but trees may not be planted. The plantation of trees is decided by the Co-property with its objective to preserve the view of other owners.

In our co-property it is defined that the outside wall and the roof belong to the co-property. This means that if there is some damage regarding a roof of a house it is the general insurance of the co-property that is in charge regarding the expenses involved. All other common spaces must be transferred to the ASL (this process is running but it requires some prior conditions). As of 2008 **the common parts of the HDR are governed by the ASL** as if the retrocession was already realized.

**Important point as to the special charges: (this concerns articles 44 and 45 of the rules of the co-property).**

The costs with respect to each building (= the sub total of houses excluding Lavande 1 on the plan) are spread over the co-owners of these subtotal. This based on their respective share of tantiemes.

**THIS IS IMPORTANT AS OF 2013-2014**, since the end of the ten years guarantee. As the ten years guarantee covered the cost of a sinister that occurred. Thereafter only the general insurance of the co-property plays a role. This insurance compensate a repair of damages caused by a sinister but in certain cases does not compensate the CAUSE OF THE SINISTER. These costs do fall in the special charges to be paid by the co-owners concerned. We have had a first case in the year 2014.





### **III Questions / Answers**

**1. I live in the Grand Bastide, which elements do I have to assure the maintenance of?**

As an owner of the Grande Bastide I have to assure the maintenance of:

- the wooden shutters
- the railings of the terraces
- the evacuation of water discharges
- electric appliances on the wall of the terrace
- my parking space in the garage if applicable.

**2. I live in a house, which elements do I have to assure the maintenance of ?**

As an owner of a house I have to assure the maintenance of:

- the wooden shutters
- the metallic equipment
- the garden in exclusive private usufruct (to clean, to cut, to mow ...)
- the terraces
- my garage, if applicable.

**3. What is not authorised to do in the Grand Bastide?**

It is forbidden to make plantations in the garden which surround the building which are by the way common spaces. In particular it is **forbidden to realize climbing plants** who are causing risks regarding the sealing of the building. This applies to plants in the garden as well as for plants in pots on the balconies.

**It is not authorised to place object in the corridors (plants, furniture, garbage bags, ... ).**

**It is not authorised to pose fabric stuff and similar at the existing separation of terraces.**

**If you place flower box upon the terrace metal rail, it must be in the interior side to avoid that water drip onto the façade.**

**It is not authorised to repaint the walls of the covered terraces without prior authorization.**

**4. What is forbidden to do in a house?**

It is forbidden to realize to plant trees at the private level of the gardens without prior authorization (see point 8). Planting bushes however is allowed without prior consent.

**5. I live in the Grand Bastide and I have to repaint my wooden shutters, which reference of paint do I have to use?**

The required norm of the paint is HAYELAK Satiné STD D 116 with Zolpan Frejus.

**6. I live in the Grand Bastide and I have to repaint the metallic railing, which paint I have to use?**

A black lacquer for metal has to be used.

**7. I live in a house and I like to repaint my house, what is the procedure to follow?**

If the house is paint in the same color no problem and no authorization has to be asked. If I wish another color you must follow the procedure described in point 8.

**8. I live in a house or apartment and I wish to make a material change (change of color of the house, to close a terrace, to change an existing element, to add an element, ...) how to proceed?**

For more details we refer to the protocol of the ASL which was distributed during the AG of the ASL in 2014 and 2015. In short the respective owner presents his project to the syndic by mail or by a letter. The syndic presents this project for a vote to the next General AG. The requests must be introduced no later than one month before the AG is held. When the project is refused it cannot be realized. If it is accepted by the Syndic and the AG the next step is to present it to the ASL via the esthetic committee. This committee gives its advice promptly for small changes without asking an advice from the Syndicate of the ASL and from the AG of the ASL.

If the project requests a change of the structure (closing of terrace, to add an element of construction) the person who requests the change should at the same time ask an authorization at the Town Hall of Roquebrune sur Argens. If this is refused the matter is closed.

**9. The filth and the garbage spaces, to do and not to do.** Think at your neighbors and take care that the garbage space remains clean.

For economic and ecological reasons take care of sorting out the waste. The yellow trash can are for plastics, packing material ... and the green ones are for the household garbage in closed plastic bags.

**No glass, no garden waste and no cumbersome material may be put in the garbage local.**

**The glass bottles and journal papers must be placed in containers outside. These containers are placed outside the Domain at the end of the road alongside the Golf (next to the horse riding center) or further down the road direction round about.**

**The garden waste must be brought to the waste disposal at Puget: waste disposal intercommunale, 590, Chemin de Plaine 83480 Puget sur Argens. Tel: 0494 45 63 09**

**For the more cumbersome materials, you could call the town hall at the green telephone number 0800 83520. It will be taken the next day (during the week). For us, the place to go is outside the Domain at 100 meters before the Bastide (marché paysant).**

They can also take it to the waste disposal at Pujet (no charge till 3 tons per year).