

# **CONSTITUTION**

## **SILWERSTRAND HOME OWNERS' ASSOCIATION**

A Home Owners Association established in terms of section 29 of the Land Use Planning Ordinance (Ordinance 15 of 1985)

14 JULY 2017

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## 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 alienate any Erf or part thereof and includes alienation 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 resolute condition and Alienation shall have a corresponding meaning.
- 1.2 **Architect** means Richard Straw Architects or their successors.
- 1.3 **Association** means the Silwerstrand Homeowners' Association which is bound by the provisions of this Constitution.
- 1.4 **Auditors** means the Auditors of the Association.
- 1.5 **Caravan Park** means the caravan park situated in the Silwerstrand resort area, to be a subdivided erf, marked "1" on **Annexure "A"** hereto.
- 1.6 **Chairman** means the Chairman of the Trustees.
- 1.7 **Club** means the Robertson Golf Club, its members and invitees.
- 1.8 **Club Course** means the Robertson Golf Course operated by the Club.
- 1.9 **Commercial Erf** means the erf designated as the Caravan Park and the erf designated as the River Lodge and any other erven which may in future be approved for commercial and/or administrative purposes.
- 1.10 **Commercial Member** means an Owner of a Commercial Erf.
- 1.11 **Constitution** means this document with the annexures hereto, drawn in terms of Section 29 of Ordinance No. 15 of 1985.
- 1.12 **Contractor** means an accredited building contractor in terms of this Constitution, read with the Guide and the draft Contractors Agreement, copy available from the Association on written request by a Member, employed by an Owner of an Erf or Commercial Erf for the construction of Improvements.

- 1.13 **Course Member** means an Owner of an Erf on the area marked "1" on **Annexure "B"** hereto.
- 1.14 **Day Visitors Area** means the recreational area within the the Silwerstrand resort area, demarcated for day visitors and forming part of the common property to be transferred to the Home Owners Association marked "2" on **Annexure "A"** hereto.
- 1.15 **Developer** means Silwerstrand Development Company (Pty) Ltd (Reg No 2001/014258/07), a duly registered South African private company, who is also the owner of the Development.
- 1.16 **Development** means certain immovable property being Portion 46, Zand River 106 and Portion 13, Appels Drift 107, district of Robertson, which are to be subdivided into a township to be known as Silwerstrand in accordance with approval obtained from the relevant authority, generally in accordance with the Site Development Plan attached hereto and available in hard copy format from the Developer as well as in electronic format at [www.markbrumer.com](http://www.markbrumer.com), and includes all/any extension(s) of the township approved by the relevant authority.
- 1.17 **Development Period** means the period from the incorporation of the Association until all the erven in the Development have been sold and transferred by the Developer, including all such additional area/s as may be incorporated as further phases into the Development in terms of clause 44 below, or until the date of completion of the services by the Developer in the Development, as certified by the relevant authority, whichever occurs last.
- 1.18 **Erf** means every Erf in the Development which in terms of the subdivision of the Development enjoys single residential use rights.
- 1.19 **Erven** means every Erf in the Development collectively, together with every GR Erf collectively and includes immovable property transferred or to be transferred in accordance with the provisions hereto to the Association.
- 1.20 **GR Erf** means every portion of the Development which enjoys general residential use rights.

- 1.21 **Guide** means the architectural and landscaping guidelines prepared for and applicable to the Development, available in hard copy format from the Developer as well as in electronic format at [www.silwerstrand.co.za/estate](http://www.silwerstrand.co.za/estate) and includes all/any amendments made thereto from time to time.
- 1.22 **Improvements** means any structure of whatever nature constructed or erected or to be constructed or erected on an Erf or GR Erf or Commercial Erf.
- 1.23 **Initial Trustees** means the first Trustees to be appointed and to serve until the first annual general meeting of the Association.
- 1.24 **Levy** means the levy referred to in clause 16 hereof.
- 1.25 **Local Authority** means the local authority having jurisdiction over the Development which, at date of approval of the Development, is the Breede River Winelands Municipality.
- 1.26 **LUPO** means the Land Use Planning Ordinance No 15 of 1985 (as amended) and includes any substituted legislation.
- 1.27 **Managing Agent** means any person or body appointed by the Association as an independent contractor to undertake any of the functions of the Association.
- 1.28 **Member** means every registered Owner of an Erf as well as every registered Owner of a Unit in any sectional title scheme on a GR Erf and, in the event of the subdivision of a GR Erf, including every registered Owner of every Erf comprising such subdivided GR Erf, and includes the Developer as such during the Development Period. If a Member consists of more than one person such persons shall be jointly and severally liable *in solidum* for all obligations in terms of this Constitution.
- 1.29 **Member Trustees** means trustees appointed by the Members and shall include 1 (one) Trustee appointed by the Club.
- 1.30 **Owner** means the registered Owner of an Erf and/or GR Erf and/or Unit and/or Commercial Erf if the context so allows.
- 1.31 **Prime Rate** means a rate of interest per annum which is equal to the published minimum lending rate of interest per annum charged by ABSA Bank, compounded monthly in arrears on the unsecured

- overdrawn current account of its most favoured corporate clients from time to time. In 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 certificate shall be final and binding on the parties.
- 1.32 **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.
- 1.33 **River Lodge** means the river lodge and conference facility situated in the Silwerstrand resort area to be subdivided as a separate erf, marked "3" on **Annexure "A"** hereto.
- 1.34 **Riverside Member** means an Owner of an Erf on the area marked "2" on **Annexure "B"** hereto.
- 1.35 **Rules** means the rules imposed by the Developer or the Trustees from time to time relating to the management of the Development and/or Association and the conduct of Members.
- 1.36 **Site Development Plan** means the finally approved site development plan according to which the development is done.
- 1.37 **Trustee** means the Trustees of the Association, collectively from time to time and includes alternate and co-opted Trustees.
- 1.38 **Unit** means a section (as defined in the Sectional Titles Act No 95 of 1986) in any sectional title scheme in the Development, together with such section's undivided share in the common property of such sectional title scheme.
- 1.39 **Village Member** means an Owner of an Erf on the area marked "3" on **Annexure "B"** hereto.
- 1.40 **Guest Accommodation** means the regularly supply of lodging or board and lodging in any house, flat, apartment, room, guest house, bed and breakfast establishment, self-catering or holiday accommodation unit or similar residential establishment in the Development to members of the public or guests for monetary gain, including but not limited to provide bed & breakfast suite/s or guest house suite/s or self-catering room/s for use by guests

or to rent out a whole house as a single self-catering unit for a period of three months or less, but excluding any residential lease agreement concluded for a lease period in excess of three months.

## **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 for the Development, imposed a condition in terms of section 29(1) of LUPO whereby the Owner of each subdivided portion of the immovable property comprising the Development and all its successors in title shall be members of a home owners 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 LUPPO, will come into existence simultaneously with the first registration of transfer of an Erf from the Developer to an Owner.

## **5. STATUS**

- 5.1 The Association shall be designated as the Silwerstrand Home Owners' Association and shall, subject to the provisions of this Constitution, be responsible for the control, administration and management of the Development for the benefit of all Members and Owners.
- 5.2 The Association shall have legal personality and be capable of suing and being sued in its own name.
- 5.3 The Association shall not operate for profit but for the benefit of the Members.
- 5.4 No Member in his personal capacity, or a sub-structure, 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 on behalf of its Members, according to the objects of the Association.

## **6. OBJECTS AND FUNCTIONS**

The Association shall have as its objects:

- 6.1 The matters referred to in section 29(2)(b) and (c) of LUPPO 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 to oversee, maintain and control the Development;
  - 6.1.2 to ensure the general high standard of the Development;
  - 6.1.3 to ensure that high environmental, building and social standards are maintained within the Development to comply with the provisions of the Operational Environmental Management Plan compiled in terms of paragraph 14.13 of the Record of Decision issued by the Department of Environmental Affairs and Development Planning of the Western Cape, in respect of the Development.  
  
generally to promote, advance and protect the Development and the interests of the Association;
- 6.2 The regulation and control of harmonious development of the Development;
- 6.3 To promote a high standard of Improvements on the Development;
- 6.4 To administer and enforce the Association's and Owners' obligations in terms of this Constitution, the Guide and any Rules created in terms hereof;
- 6.5 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, refuse collection to a central point in 240 litre bins or skips and making it available for collection at the appointed transfer station at the boundary of the Development, for collection by the Local Authority, security fence and private roads;



- 6.6 To control the transfer of Erven and Units in the Development and the conditions imposed by the relevant authority and conditions imposed by the Developer in the Agreement of Sale between the Developer and the first Owner of an Erf;
- 6.7 To manage the river banks in co-operation and by agreement with the relevant authority;
- 6.8 To manage the koppie to the west of the Development in the Riverside Village, as a conservation area;
- 6.9 To ensure compliance with the legal requirements of the Local Authority, including the conditions of establishment and rezoning imposed by any competent authority.
- 6.10 To ensure compliance with the measures stipulated in the Operational Environmental Management Plan as commissioned by the Developer, and to establish safety measures, effective monitoring and early warning procedures and action plans in the event of possible floods;
- 6.11 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;
- 6.12 To establish a fund to defray the expenses of the Association and to determine and collect contributions from Owners and Commercial Members, in order to maintain the fund of the Association;
- 6.13 To create suitable Rules for the management of the Development, including Rules of conduct as the Trustees deem fit,

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

## **7. RELATIONSHIP BETWEEN OWNERS AND THE CLUB**

- 7.1 It is recorded that the Club is a Member of the Association and subject to the Constitution, provided that the Club shall not be liable for levies. The Club shall appoint a representative to represent the Club at meetings of the Association.
- 7.2 Each Owner shall become a member of the Club upon transfer of an Erf to an Owner by the Developer, and shall be liable for the annual Club fees applicable to the different categories of membership as determined by the Club from time to time, i.e. playing and non-playing members, provided that an Owner who is an owner of more than one erf, shall pay the annual club membership fees, in respect of each erf owned by him, provided further that such an Owner shall have the right to nominate a natural person in respect of each additional erf owned by him, to become a member of the Club. The initial entry fee will be payable by the Developer out of the proceeds of the sale, upon transfer of an Erf by the Developer to an Owner. No Course Member shall be entitled to resign as full member of the Club. Riverside Members and Village Members shall be entitled to resign as members of the Club after 1 (one) year of membership.
- 7.3 The Trustees shall designate Course Member Trustees to serve on a management sub-committee formed by the Club, entrusted with the matters of the Association as it affects the Club. The Club and the Association shall have equal representation on this sub-committee and in the event of a deadlock the elected chairman of the sub-committee shall have a casting vote. It is recorded that the Club shall remain autonomous and that the Association shall have no direct representation on the Management Committee of the Club. Members shall, however, be represented via their membership of the Club and their rights in terms of the Constitution of the Club, which rights shall be the same as for all other members.

- 7.4 Except in respect of the provisions of clauses 7.2, 8, 11.12, 15 and 16, relating to conduct/access to the Club Course and use of Club facilities, the Club shall have no authority over the Association and the Club shall have no votes in the matters of the Association.
- 7.5 It is the intention that there shall be an ongoing flow of information between the Club and the Association to promote good co-operation and a pleasant working relationship to the mutual benefit of the Club and the Association.

## **8. USE OF CLUB FACILITIES**

- 8.1 Members shall be allowed use of Club facilities in accordance with the category of membership accepted by them.
- 8.2 Members shall at all times be subject to the constitution, rules and regulations of the Club laid down by the Club for the use of its facilities from time to time and the Club shall be entitled to deny any Member use of the Club facilities should such person transgress or not abide by the provisions of the Constitution and/or rules and regulations of the Club.
- 8.3 Notwithstanding any contrary provision contained elsewhere in this Constitution, this clause 8 shall not be changed or deleted without the prior written approval of the Club.

## **9. MEMBERSHIP**

- 9.1 The Association shall have as its Members:
- 9.1.1 the Local Authority represented by the Developer for as long as the Developer remains an owner of any portion of the Development and, without detracting from the generality of the foregoing, specifically including any Erf or Unit;
- 9.1.2 every Owner upon registration of transfer of an Erf and/or a Unit and/or a Commercial Erf into his name, provided that where an Owner comprises more than one person, such persons shall be deemed jointly to be one Member of the Association, shall be responsible jointly and severally for the obligations of such membership.
- 9.2 An Owner of an Erf and/or a Unit and/or Commercial Erf shall be a member of the Association until he ceases to be the registered owner of such Erf and/or Unit or Commercial Erf.

## **10. PHASES**

- 10.1 The Developer intends to develop and market the Development in phases as the Developer deems fit and, for as long as the Developer is a Member of the Association, the Developer shall enjoy unrestricted rights with regard to the marketing of the Development and, in particular, the right to erect signage within the Development.
- 10.2 The Developer shall, in its absolute discretion, be entitled to apply for and subject to approval by the relevant 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 or the relevant authority arising therefrom. Insofar as the consent of a Member is required for any of the foregoing, the Developer is irrevocably granted a power of attorney to grant any/all such consents on behalf of Members, as may be required.

## **11. MEMBERS' OBLIGATIONS**

- 11.1 Every Member is obliged to comply with:
- 11.1.1 the provisions of this Constitution and all rules or regulations passed by the Association or the Trustees;
  - 11.1.2 the provisions of the Guide annexed hereto;
  - 11.1.3 any agreement concluded by the Association insofar as such agreement may directly or indirectly impose obligations on a Member;
  - 11.1.4 any directive given by the Association and/or the Trustees in enforcing the provisions of this Constitution.
- 11.2 The rights and obligations of a Member are not transferable and every Member shall:
- 11.2.1 to the best of his ability, further the objects and interests of the Association;
  - 11.2.2 observe all directives made or given by the Association and/or the Trustees.
- 11.3 The Members shall be jointly liable for expenditure incurred in connection with the Association as more fully later referred to herein.
- 11.4 A Member shall not be entitled to alienate or transfer an Erf or GR Erf or Unit or Commercial Erf without the written consent of the Developer for as long as the Developer is a Member and, thereafter, by the Trustees which consent shall not be unreasonably withheld provided there has been compliance with the provisions of this Constitution.
- 11.5 A Member shall not consolidate an Erf with one or more erven without the written consent of the Developer for as long as the Developer is a Member and, thereafter, of the Trustees. A member shall remain liable for the payment of levies in respect of each of the erven that form part of the consolidated erf.
- 11.6 A Member shall be obliged to improve his Erf by constructing thereon a dwelling with a total value\* of not less than R350 000,00 (Three Hundred and Fifty Thousand Rand) (which amount will increase annually from the date 4 (four) years from the date on which the Erf was first transferred as a separate erf, by 10% (ten percent) of the total value\* for the previous year), and in extent not less than the square meterage specified in the Architectural Guidelines, within a period of 2 (two) years from the date on which the Erf was first transferred as a separate erf. Should the Member fail to complete the dwelling within the aforesaid period, the Member shall pay municipal rates on the Erf from the date on which the aforesaid period expires, as if a dwelling to the abovementioned value had been constructed on the Erf, over and above the rates payable in respect of the land.
- 11.7 Notwithstanding the provisions of clause 11.6, should the member fail to complete the dwelling within (4) years from the date of which the Erf was first transferred as a separate erf (the original registration date), the Member shall, in addition to the current monthly levy, pay a monthly building penalty equivalent to 1 (one) month's current monthly levy. The building penalty levy will only be removed from the Member's monthly levy account once a Municipal Occupation Certificate is presented to the Silverstrand Home Owners Association, confirming that a dwelling has been erected according to the requirements of the Association as set out in the Guidelines.

- 11.8 A Member shall not alienate or transfer an Erf or Unit or Commercial Erf unless:
- 11.8.1 the proposed transferee has irrevocably bound himself to become a member of the Association and to observe the Constitution for the duration of his ownership of the Erf and/or Unit and/or Commercial Erf;
  - 11.8.2 the Association has issued a clearance that all amounts owing to the Association by such Member have been paid and that the Member is not in breach of any of the provisions of this Constitution;
  - 11.8.3 the proposed transferee acknowledges that upon the registration of the Erf and/or Unit and/or Commercial Erf into his name, he shall *ipso facto* become a Member of the Association;
  - 11.8.4 in the case of a Commercial Erf, the transferee has irrevocably undertaken in writing not to utilise the Commercial Erf for any other purpose than the purpose designated for that Commercial Erf in terms of this Constitution.
- 11.9 No Member shall let or otherwise part with the occupation of his Erf or Unit whether temporarily or otherwise unless the proposed occupier has agreed to be bound by this Constitution. The Member shall, nonetheless, remain bound by this Constitution and is required to ensure compliance therewith by such occupier.
- 11.10 A Member may not resign from the Association.
- 11.11 An Owner shall, without compensation, allow electricity, telephone and television cables and/or wires and main and/or other water pipes and the sewerage and drainage, including storm water, of any Erf or Commercial Erf, to be conveyed across his Erf/Commercial Erf if considered necessary by the Association and/or the Developer and/or the Local Authority in such manner and position as may from time to time be reasonably required; this shall include the right of access to such Erf at any reasonable time for the purpose of constructing, altering, removing or inspection of any works connected with the above.
- 11.12 Conduct/Access to the Club Course:
- 11.12.1 Members shall exercise the utmost caution when accessing the Club Course and ensure that right of way/preference is given to golf players at all times.
  - 11.12.2 No pets are allowed on the Club Course.
  - 11.12.3 Members shall not obstruct any movement of players on the Club Course and shall not damage the Club Course in any way.
  - 11.12.4 Greens will be out of bounds to Association Members who are non-golf playing members of the Club.
  - 11.12.5 No social play other than that arranged by or through the Club, will be allowed on the Club Course.
  - 11.12.6 Notwithstanding any contrary provision contained elsewhere in this Constitution, the provisions of clause 11.12 shall not be changed or deleted without the prior written approval of the Club.

## **12. THE GUIDE**

- 12.1 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 Trustees.

- 12.2 All landscaping, plants and all improvements shall be of approved design and of sound construction and shall comply with the provisions of the Guide.
- 12.3 No construction or erection of Improvements on an Erf or Commercial Erf may commence prior to the approval of plans for such Improvements and, in this regard:
  - 12.3.1 a full set of proposed building plans which indicate both construction and design details shall be submitted to the Architect for his approval;
  - 12.3.2 thereafter, the approved plans shall be submitted to the Local Authority for approval;
  - 12.3.3 having obtained the approval of the relevant authority, the Member/Commercial Member shall comply with all conditions and standards imposed by the relevant authority insofar as these may be additional to the requirements of the Guide read with the plans.
  - 12.3.4 The initial scrutiny fee payable to the Architect, as well as a scrutiny fee as agreed upon between the Trustees and the Architect for any amended and/or further plans, will be paid by the Member/Commercial Member prior to approval in terms of clause 12.3.1 above.
- 12.4 The Member/Commercial Member shall not submit building plans for approval by the Local Authority without the prior written approval of the Architect thereto, which approval shall be evidenced by an endorsement by the Architect.; provided that the foregoing shall not be interpreted as detracting from the sole and final responsibility of the Local Authority to approve or reject building plans.
- 12.5 No Member/Commercial Member shall commence any construction or erection of Improvements prior to the Contractor having entered into a Contractors Agreement with the Association.

### **13. CONDUCT AND CONDUCT RULES**

Each Member shall:

- 13.1 maintain his Erf and/or Unit and/or Commercial Erf in accordance with the Guide and the Rules respectively;
- 13.2 maintain in a neat and tidy condition and in a state of good repair all Improvements on his Erf/Commercial Erf;
- 13.3 establish and maintain a garden according to the Guide and a standard acceptable to the Trustees, as well as maintaining the road verge bordering his Erf;
- 13.4 be responsible for the maintenance of external and boundary walling inclusive of regular painting thereof;
- 13.5 not park any commercial type vehicle, boat, caravan, trailer, or any vehicle not in good working order, on any roadway in the Development and such vehicle, boat, caravan, trailer shall be parked on the Member's Erf so as not to be visible from the street forming a boundary of such Erf;
- 13.6 not do or suffer to be done on any Erf or in any Unit anything which, in the opinion of the Trustees, is noisy, 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 or Unit or Commercial Erf in the Development;

- 13.7 not, during construction/erection of Improvements, permit the erection of more than 1 (one) advertising board on an Erf and such permitted board shall not have a surface area exceeding 1 (one) square metre and shall be removed immediately upon conclusion of the building contract for the Improvements;
- 13.8 not erect or permit the erection of any advertising boards on any Erf/Commercial Erf or near any Unit without the written approval of the Developer for as long as the Developer is a Member and, thereafter, of the Trustees;
- 13.9 adequately insure the Improvements on his Erf and/or his Unit and/or his Commercial Erf 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;
- 13.10 where the erection of structures to house animals or birds or the construction/erection of garden/tool shed(s) is permitted, such structures shall be screened from public view and the animals or birds so housed shall not constitute a disturbance or nuisance to Members or their tenants or occupiers and the Trustees shall, in their absolute discretion, be entitled to require the permanent removal from the Development of any animals or birds which, in the opinion of the Trustees, constitute a disturbance or nuisance;
- 13.11 comply with all security procedures implemented from time to time;
- 13.12 generally ensure that gardening and landscaping of his Erf is undertaken so as to be compatible with the gardening and landscaping of adjoining Erven and taking into account the fact that the Development is situated within a farming area and that planting of fruiting trees/plants as described in the Guide, shall not be allowed;
- 13.13 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 Club and that the dog does not cause uncleared fouling of sidewalks and roads within the Development or on the Club Course or on open spaces within the Development;
- 13.14 adhere strictly to the terms of servitudes granting access to Erven and Units;
- 13.15 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;
- 13.16 tolerate access to irrigation pipe lines by owners of these lines;
- 13.17 not erect any structure over the sewerage system ;

#### **14. RESTRICTIONS**

- 14.1 No Member/Commercial Member shall apply to the Local Authority for the rezoning, consent, use, departure or any other relaxation in terms of the approved zoning scheme of his Erf or Unit or Commercial Erf 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 or Commercial Erf for any purpose other than the permitted use applicable upon establishment of the Development, without the prior written consent of the Trustees.
- 14.2 No Member shall conduct any business on an Erf for purposes other than residential purposes unless the Trustees have, subject to 14.1, in writing, approved the use to which the Erf is to be put and the Local Authority has, to the extent that it may be

necessary, granted approval authorising such use in terms of applicable laws and regulations and there has been compliance with the following:

- 14.2.1 any Member wishing to conduct a business on his Erf or who wishes to use his Erf for purposes other than residential, shall 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;
- 14.2.2 an application in terms of the foregoing shall contain a full description of the proposed business or usage, including but not limited to:
  - 14.2.2.1 the type of business;
  - 14.2.2.2 the number of full time and/or part time staff;
  - 14.2.2.3 the times and duration of the business operation, including the number of days per week;
  - 14.2.2.4 the projected growth of the business operation;
  - 14.2.2.5 whether any alteration to the existing Improvements is proposed;
  - 14.2.2.6 in which portion of the Improvements the business activity is to be located;
  - 14.2.2.7 the number and type of vehicles which will be regularly involved in the business operation;
  - 14.2.2.8 the estimated number of visitors per week resulting from the business operation;
  - 14.2.2.9 the estimated number of deliveries necessitated by the business operation;
  - 14.2.2.10 what provision is to be made for parking;
  - 14.2.2.11 the likely impact of the business operation on neighbouring properties and the neighbourhood in general.
- 14.2.3 The Trustees shall not approve any such application unless they are satisfied that the application complies with the following:
  - 14.2.3.1 the business operation will not detrimentally alter the character of the neighbourhood or affect the privacy and rights of neighbours;
  - 14.2.3.2 the number of employees involved in the running of the business operation will not exceed 2 (two);
  - 14.2.3.3 the Member will reside permanently on the Erf in respect whereof the application is made;
  - 14.2.3.4 Members who are affected by the application are in agreement therewith;
  - 14.2.3.5 adequate provision has been made for parking within the Erf and the landscaping of the Erf will be suitable for the type of

business contemplated and that no parking of vehicles off the Erf within the Development will result from the business operation;

14.2.3.6 the granting of the application will not have any significant effect on the density of traffic in the Development;

14.2.3.7 non-residents will not be afforded uncontrolled access into the Development;

14.2.3.8 no signage will be erected;

14.2.3.9 the hours of the business operation will be confined between 08h00 and 18h00 on weekdays and no business will be conducted on Saturdays, Sundays and proclaimed public holidays.

14.2.4 Should any Member to whom permission has been granted for the conduct of a business, change any aspect of such business then such Member shall submit a fresh application in accordance with the provisions hereof to continue such business.

14.2.5 No Member/Commercial Member to whom approval has been granted shall be entitled to erect any sign or advertisement on his Erf or on any of the common areas in the Development in connection with such business save with the approval of the Association.

14.3 Excluding in respect of a Commercial Erf, no Member shall conduct a business providing Guest Accommodation on an Erf unless the Trustees have, subject to 14.1, in writing, approved the use of that Erf for Guest Accommodation and the Local Authority has, to the extent that it may be necessary, granted approval authorising such use in terms of applicable laws and regulations and there has been compliance with the following:

14.3.1 Any Member wishing to conduct a business providing Guest Accommodation on his/her Erf shall 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 subject to such conditions as the Trustees deem necessary;

14.3.2 The Trustees shall not approve any such application unless they are satisfied that the application complies with the following:

14.3.2.1 the Member has obtained written consent from those Members who own Erven adjacent to that Member's Erf as well as from the Member that owns the Erf located directly opposite the road (where applicable) from the Member making the application; provided that the Trustees shall be entitled to waive this requirement, in part or in full, if in their sole discretion such consent is being unreasonably withheld;

14.3.2.2 the Member has agreed that copies of the Rules and regulations of the Association will be provided in advance to any and all of his/her guests and tenants;

14.3.2.3 the Member has agreed that he/she will be deemed to have explained the contents of the Rules and Regulations of the Association to any and all of his/her guests and tenants,



who will be deemed to have constructive notice of the contents of the Rules and Regulations of the Association;

14.3.2.4 the Member has agreed that any contravention of the Rules and regulations of the Association by any of his/her guests and tenants will be deemed to be contravention by that Member;

14.3.2.5 the Member has agreed that any contravention of the Rules and regulations of the Association by any of his/her guests and tenants may result in the imposition of a fine payable by that Member.

14.3.2.6 non-residents will not be afforded uncontrolled access into the Development;

14.3.2.7 no signage will be erected, save with the approval of the Trustees.

14.3.3 The consent by the Trustees to a Member to provide Guest Accommodation on an Erf may be withdrawn by the Trustees if they, in their sole discretion, determine that the Member and/or guest and tenants are substantially in breach of the provisions of the Rules and regulations of the Association, to an extent reasonable to justify the withdrawing of such consent.

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

## **15. MAINTENANCE OF THE CLUB COURSE**

15.1 Subject to clause 15.4, the Club shall maintain the Club Course, which includes the entire 18 holes, in strict compliance with the guidelines to be supplied by the designer, which will be in accordance with generally accepted standards for this type of development. The Developer or his agent shall act in a supervisory capacity in this regard for a period of 6 (six) months after completion of the alterations and the new 9 holes, which supervision shall be done free of charge. The Club shall be responsible for the cost of the maintenance.

15.2 If the Association is of the opinion that the Club does not fulfill its obligations in terms of clause 15.1, it shall in writing advise the Club accordingly. The Club shall then have a period of 3 (three) months to rectify its alleged breach. If the Association, after 3 (three) months is still of the opinion that the Club has not rectified the situation, the Association and the Club shall agree upon an expert on green keeping to adjudicate on the matter. Such expert shall act as an expert and not an arbitrator.

15.3 Should the parties fail to reach agreement on who to appoint in terms of 15.2 within 7 days, such expert shall be appointed by the chairperson of the PGA of SA.

15.4 Should the expert be of the opinion that the Club is applying incorrect maintenance techniques to rectify the breach, he shall be called upon to give the necessary advice and guidelines to the Club maintenance staff in writing, who shall immediately proceed to apply the advice given and rectify the breach. The expert shall be requested to revisit the Club after 3 (three) months to re-evaluate the

situation. Should the expert thereafter rule that the Club is still in breach, the expert shall be appointed to take over the maintenance of the Club Course to rectify the breach. The Club and the expert shall agree on a time frame for rectifying the breach. The cost of rectification shall be borne by the Club and payment may be effected from the Club Course maintenance fund to which 35% (thirty five percent) of levies is contributed in terms of clause 16.10 below.

15.5 If either party does not agree with the ruling of the expert, the matter will be referred for arbitration, as provided for in the agreement between the Local Authority and the Club.

15.6 The fees of the expert in 15.2 and 15.3 shall be borne by the Association.

## **16. LEVIES**

16.1 The Trustees shall:

16.1.1 establish and maintain a levy fund for the purposes of meeting all expenses of the Association for the control, management, administration and maintenance 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;

16.1.2 estimate, in consultation with the Club, 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;

16.1.3 require Members/Commercial Members whenever necessary to make contributions to such fund for the purposes of satisfying the expenses referred to in clauses 16.1.1 and 16.1.2, equal as nearly as is reasonably practical to such estimated amount.

16.2 The Trustees may, from time to time, make special levies upon Members/Commercial Members effective from the date of passing of the applicable Resolution in respect of such expenses referred to in clause 16.1 (which are not included in any estimate made in terms of clause 16.1.2) and such special levies may be imposed and shall be payable in one sum or by such installments and at such time or times as the Trustees shall deem fit.

16.3 Any amount due by a Member/Commercial Member by way of a levy shall be a debt due by him to the Association payable within such time as determined by the Trustees. The obligation of a Member/Commercial Member to pay a levy shall cease upon his ceasing to be a Member/Commercial Member save that he shall remain liable for all levies calculated up to the date upon which he ceases to be a Member/Commercial Member. No levies paid by a Member/Commercial Member shall be repayable by the Association upon his ceasing to be a Member/Commercial Member. A Member's/Commercial Member's successor in title to an Erf or Unit or Commercial Erf shall be liable as from the date upon which he becomes a Member/Commercial Member pursuant to the transfer of such Erf or Unit or Commercial Erf to pay the levies attributable to that Erf or Unit or Commercial Erf. No Member/Commercial Member shall be entitled to transfer his Erf or Unit or Commercial Erf until the Trustees have certified that the Member/Commercial Member has, at the date of transfer, paid all amounts owing by him to the Association.

16.4 A Member/Commercial Member shall make payment of the annual levies, payable on a monthly basis by virtue of a debit order drawn on the Member's banker and the

Association shall not issue a clearance certificate for the transfer of any Erf or Unit or Commercial Erf, unless the transferee has completed and signed the debit order form provided by the Association. Should a member be in default in respect of the levies due and the account be handed over for collection, the annual levy amount will be handed over for collection and full payment will be required in order to settle the debt.

- 16.5 In calculating levies, the Trustees shall take into account income, if any, earned by the Association and the allocation of voting rights to Members/Commercial Members as recorded herein.
- 16.6 The decision of the Trustees in calculating the levies shall be final and binding on all Members/Commercial Members.
- 16.7 No Member/Commercial 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 in respect of his membership thereof.
- 16.8 All levies are due and payable by Members/Commercial Members on the first day of the month immediately following the month in which such liability arose and, thereafter, on the first day of each and every following month.
- 16.9 Members/Commercial Members shall be liable for payment of interest on outstanding amounts at Prime Rate plus 4%. Interest calculated at the above 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.
- 16.10 If a Member/Commercial Member fails to pay its levies in full to the Association on due date, the Association may institute an action for the recovery thereof in any competent court.
- 16.11 Where any Erf/Commercial Erf is owned by more than one person, all registered Owners of that Erf/Commercial Erf shall be jointly and severally liable for the due performance of any obligation to the Association.
- 16.12 The Trustees may make special levies upon any member / caravan park resident for the purposes of meeting all expenses with regard to the control, management and maintenance of the aquatic activities on the Breede River as well as the control, management and maintenance of the slipway on the property.
- 16.13 The Developer and/or TP Hentiq 6159 (Pty) Ltd (which is purchasing the remainder properties from the Developer) shall not be obliged to pay levies, whether ordinary, special or otherwise, in respect of any portion of the Development, and, without detracting from the generality of the foregoing, specifically including any Erf of Unit or Commercial Erf, for a period from 30 October 2015 to the earlier of 30 October 2021 and the date upon which 70% of the Development owned by TP Hentiq 6159 (Pty) Ltd has been transferred to third parties; provided that TP Hentiq 6159 (Pty) Ltd shall during such time invest an amount of no less than R6 000 000.00 (six million Rand) into improving and upgrading the Development and a further amount of R1 300 000.00 (one million and three hundred thousand Rand) into the marketing of the Development.
- 16.14 Whereas the Club Course forms an integral part of the Development and the value of the Development and the Erven will be affected by the condition of the Club Course, 35% (thirty five percent) of all monthly levies paid by Owners, shall be paid over to the Club by the Association, for maintenance of the Club Course and shall not be used for any other purpose, save as set out in clause 15 hereof.

- 16.15 Payment to the Club in terms of clause 16.11 shall be effected monthly on or before the 7<sup>th</sup> (seventh) day and shall be reflected in the books of the Club in a Maintenance Reserve Account.
- 16.16 The Association shall at all reasonable times have access to the books of the Club to scrutinise the maintenance reserve and maintenance expense accounts.
- 16.17 The Club shall, at its own cost, furnish the Association with audited financial statements within 3 (three) months after the Club's financial year end. Any interim audits requested by the Association shall be at the cost of the Association unless irregularities are found, in which case the Club shall be liable for the cost of such interim audit.
- 16.18 The Club Course maintenance contribution in terms of clause 16.11 shall not be reduced to below 35% (thirty five percent) without the consent of the Club.

**17. PUBLIC ACCESS TO DAY VISITORS AREA**

- 17.1 It is recorded that the Day Visitors Area shall remain accessible to the general public subject to the right of admission being reserved as applicable to public amenities.
- 17.2 In order to ensure accessibility, the initial entrance fee shall be R10.00 per person and R8.00 per vehicle and any increase in these fees shall be commensurate with the average annual increase in municipal rates and service charges.
- 17.3 Immediately upon the first transfer of the first Erf in the Development, a separate trust account shall be established by the Association for the ongoing maintenance (including operational expenditure and future improvements, excluding the declared capital expenditure as indicated by the submission by Developer to the Department of Environmental Affairs and Development Planning in support of the application for rezoning of the Development) of the Day Visitors Area. 1% (one per centum) of the sale price of each Erf or Unit or Commercial Erf (initial sales and re-sales) shall be paid into this fund. The aforementioned percentage may be re-calculated by the Association, but may not be less than 1%. Funds derived from entry fees to the Day Visitors Area must also be paid into the aforementioned trust account.

**18. BREACH**

- 18.1 The Trustees may on behalf of and in the name of the Association institute legal proceedings in accordance with the provisions of this clause 18.
- 18.2 If any Member/Commercial Member 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 calling upon him to remedy such breach within a time specified in such notice and, failing timeous compliance :
  - 18.2.1 enter upon the Erf or Unit (as the case may be) to take such action as may be reasonably required to remedy the breach and the Member/Commercial Member concerned shall be liable to the Association for all costs so incurred, which costs shall be due and payable upon demand;and/or
  - 18.2.2 call upon such Member 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 the opportunity to give directions to the Trustees. The

Resolution of the Association at such meeting shall be binding upon such defaulting Member/Commercial Member and shall be implemented by the Trustees;

and/or

- 18.2.3 institute proceedings in any court of competent jurisdiction for such relief as the Trustees may consider necessary and such Member/Commercial Member shall be liable for and shall pay all costs of such proceedings on the scale as between attorney and own client and all other expenses and charges incurred in obtaining relief.
- 18.3 If any Member/Commercial Member fails to make payment on due date of levies or other amounts payable by such Member/Commercial Member, the Trustees may give notice to such Member/Commercial Member requiring him to remedy such breach within such period as the Trustees may determine and should he fail to timeously remedy his breach, the Trustees may, on behalf of the Association, institute legal proceedings against such Member/Commercial Member without further notice and such Member/Commercial Member will be liable for and shall pay all legal costs on the scale as between attorney and own client together with collection commission and any other expenses and charges incurred by the Association in obtaining recovery.
- 18.4 Nothing in the foregoing 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/Commercial Member arising from any cause of action whatsoever or for any other relief.
- 18.5 In the event of any breach of the terms of this Constitution by the members of any Member's household or his invitees or lessees or the patrons of any Commercial Member, such breach shall be deemed to have been committed by the Member/Commercial Member itself but, without prejudice to the foregoing, 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/Commercial Member.

## **19. TRUSTEES**

- 19.1 The Initial Trustees of the Association shall be 1 (one) Trustee appointed by the Club and 4 (four) Trustees appointed by the Developer, and shall serve as such until the first annual general meeting of the Association whereupon the number of Trustees shall be 9 (nine), comprising 1 (one) Trustee appointed by the Club, 2 (two) Trustees appointed by the Developer, 2 (two) Trustees appointed by the Village Members, 1 (one) Trustee appointed by the Riverside Members and 3 (three) Trustees appointed by the Course Members for as long as the Developer is a Member and upon the Developer ceasing to be a Member, only the Member Trustees (7) shall remain, save that the Association shall in general meeting held after the Developer has ceased to be a Member, be entitled to increase or decrease the number of Trustees.
- 19.2 A Trustee shall be an individual but need not himself be a Member provided that the majority of Member Trustees shall be Members.
- 19.3 A Trustee shall, by accepting his appointment as such, be deemed to have agreed to be bound by the provisions of this Constitution.
- 19.4 The Initial Trustees shall be appointed upon formation of the Association.
- 19.5 Subject to the provisions of clause 19.6, each Member Trustee and the Club Trustee shall continue to hold office until the annual general meeting of the Association

following his appointment, at which meeting each Member Trustee and the Club 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 Trustee appointed by the Developer and upon such removal or upon any Initial Trustee ceasing to hold office for any other reason, by written notice, appoint in their stead another person or persons.

- 19.6 A Trustee shall be deemed to have vacated his office as such upon:
- 19.6.1 his estate being sequestrated, whether provisionally or finally or upon his surrendering his estate;
  - 19.6.2 his making any arrangement or composition with his creditors;
  - 19.6.3 his conviction for any offence involving dishonesty;
  - 19.6.4 his becoming of unsound mind and incompetent of managing his own affairs;
  - 19.6.5 his resigning from such office in writing;
  - 19.6.6 his death;
  - 19.6.7 his being removed from office by a resolution of Trustees;
  - 19.6.8 his being disentitled to exercise a vote in terms of this Constitution provided he is a Member Trustee.
- 19.7 Notwithstanding the fact that a Trustee shall be deemed to have vacated his office as provided in clause 18.6, 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 an Initial Trustee and by the remaining Member Trustees if the vacancy is in respect of a Member Trustee and the person so appointed shall hold office until the next annual general meeting.
- 19.8 Subject to the provisions of clause 43.1.1 below, the Chairman shall be appointed at the annual general meeting by the Trustees and shall hold office until the next annual general meeting, provided that such office shall *ipso facto* be vacated by the Trustee who was appointed Chairman upon his ceasing to be a Trustee for any reason.
- 19.9 Within 30 (thirty) days of the holding of each annual general meeting of the Association the Trustees shall meet and shall elect from their own number the Chairman who shall hold office until the annual general meeting held next after his appointment, provided that the office of Chairman shall *ipso facto* be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. In the event of any vacancy occurring in the aforesaid office, the Trustees shall meet as soon as reasonably possible to appoint one of their number as a replacement in such office.
- 19.10 Save as otherwise provided in this Constitution, the Chairman shall preside at all meetings of the Trustees and all general meetings of the Association and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustees or by Members and shall allow or refuse to permit guests to speak at any such meetings, provided that any such guest shall not be entitled to vote at any meetings and provided further that a Member's spouse shall be entitled to speak at any meeting.

- 19.11 If the Chairman vacates the chair during the course of a meeting or is not present or is, for any other reason, unable to preside at any meeting, the Trustees present at such meeting shall choose another Chairman for such meeting.
- 19.12 If any Chairman vacates his office as Chairman or no longer continues in office for any reason, the Trustees shall elect another Chairman who shall hold office as such for the remainder of the period of office of the first mentioned Chairman.
- 19.13 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.
- 19.14 No contract concluded on behalf of the Trustees shall be valid and binding unless it is signed by the Chairman and one Trustee, the latter specifically appointed as authorised signatory in terms of the Resolution of Trustees whereby the Trustees bind the Association.
- 19.15 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 Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration, fees or salary in respect of the performance of such duties.
- 19.16 Trustees may not make loans on behalf of the Association to Members or to themselves.

## **20. FUNCTIONS, POWERS AND DUTIES OF TRUSTEES**

- 20.1 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.
- 20.2 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.
- 20.3 The Trustees shall have the right to vary, cancel or modify any of their decisions and resolutions from time to time.
- 20.4 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.
- 20.5 The Trustees may, should they so decide, investigate any suspected or alleged breach by any Member or Trustee of this Constitution in such reasonable manner as they shall decide from time to time.

- 20.6 The Trustees may make regulations and rules not inconsistent with this Constitution or any regulations or rules prescribed by the Association in general meeting -
- 20.6.1 as to the resolution of disputes generally;
  - 20.6.2 for the furtherance and promotion of any of the objects of the Association;
  - 20.6.3 for the better management of the affairs of the Association;
  - 20.6.4 for the advancement of the interests of Members
  - 20.6.5 for the conduct of Trustees at meetings of Trustees and meetings of the Association;
  - 20.6.6 for the conduct in respect of boating and aquatic activities and in particular, safety requirements relating to these activities, which includes the right to prohibit the use of any slipway on the development, or to have a boat removed from the river if these requirements are not met
  - 20.6.7 to levy and collect contributions from Members in accordance with clause 16;
  - 20.6.8 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;
  - 20.6.9 to assist it in administering and governing its activities generally.
- 20.7 Without in any way limiting the powers granted, the duties and powers of the Trustees shall further specifically include:
- 20.7.1 the determination of what constitutes appropriate standards for residential living, maintenance, repairs, additions to and Improvements of all Erven and Units 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;
  - 20.7.2 entering into of agreements with third parties on behalf of the Association for any purposes of the Association;
  - 20.7.3 the employment on behalf of the Association of agents, servants and any other party and the payment of such persons;
  - 20.7.4 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, landscaping, maintenance of private roads, refuse facilities, removal of refuse and suchlike, where applicable;
  - 20.7.5 the institution or defence of actions in the name of the Association and to appoint legal representatives for such purpose.

## **21. PROCEEDINGS OF TRUSTEES**

- 21.1 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.



- 21.2 Meetings of the Trustees shall be held at least once every 6 (six) months.
- 21.3 The Chairman always has the right to convene meetings of Trustees.
- 21.4 A Trustee may, provided he has the support in writing of 2 (two) other Trustees, at any time convene a meeting of Trustees by giving to the other Trustees not less than 14 (fourteen) days written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting; provided that in cases of urgency, such shorter notice as is reasonable in the circumstances may be given.
- 21.5 A resolution in writing signed by all the Trustees shall be valid and effectual as if it had been passed at a meeting of Trustees duly called and constituted.
- 21.6 The quorum necessary for the holding of any meeting of Trustees shall be 4 (four) Initial Trustees until the first annual general meeting and 5 (five) Trustees present personally provided that, for as long as the Developer is a Member, no less than 2 (two) non-Member Trustees are present. 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.
- 21.7 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 Chairman shall have a second or casting vote.
- 21.8 A Resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of Trustees duly convened.
- 21.9 The Chairman shall preside as such at all meetings of Trustees provided that, should at any meeting of Trustees the Chairman not be present within 15 (fifteen) minutes after the time appointed for the holding thereof, those present of the Trustees shall vote to appoint a Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 21.10 A Trustee may be represented at a meeting of Trustees by a proxy provided such proxy is a Trustee.
- 21.11 The instrument appointing a proxy shall be in writing and signed by the Trustee concerned but need not be in any particular form. The proxy shall be deposited with the Chairman at any time before the time appointed for the commencement of a meeting and shall be valid only for such meeting or any adjournment thereof.
- 21.12 The Trustees shall:
- 21.12.1 ensure that minutes are taken of every meeting of Trustees, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting;
  - 21.12.2 Each set of minutes are to be approved by all the Trustees before it is signed off by the chairman;
  - 21.12.3 cause such minutes to be kept of all meetings of the Trustees in a minute book of meetings of Trustees kept for that purpose;
  - 21.12.4 keep all books of meetings of Trustees in perpetuity;

- 21.12.5 on the written application of any Member, make all minutes of their proceedings available for inspection by such Member.
- 21.13 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.
- 21.14 Save as otherwise provided in this Constitution, the proceedings at any meeting of Trustees shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

## **22. MANAGING AGENT AND ESTATE MANAGER**

- 22.1 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 and or an Estate Manager 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, and unless the Trustees notify the Managing Agent and or Estate Manager to the contrary, such appointment will be automatically renewed in accordance with the contracts referred to in 22.2.
- 22.2 The Trustees shall ensure that there is included in the contract of appointment of a Managing Agent and or Estate Manager a provision to the effect that if the Managing Agent and or Estate Manager 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 or in terms of statutory law justify the termination of the contract between employer and employee, as the case may be, the Trustees may, without notice, cancel such contract of employment and the Managing Agent/Estate Manager shall have no claim whatsoever against the Trustees and/or the Association as a result of such cancellation.
- 22.3 During the Development Period and for a period of 1 (one) year thereafter, the Developer shall be entitled to appoint the Managing Agent and the Estate Manager.

## **23. GENERAL MEETINGS OF THE ASSOCIATION**

- 23.1 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 4 (four) months of the financial year end of the Association it shall hold second and subsequent annual general meetings.
- 23.2 Such annual general meetings shall be held at such time and place, subject to the foregoing provisions, as the Trustees shall decide from time to time.
- 23.3 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 entitled to vote, 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 24.

## **24. NOTICES OF MEETINGS**

- 24.1 An annual general meeting shall be called by not less than 21 (twenty one) days notice and a general meeting by not less than 14 (fourteen) days notice, as provided in clause 23.3. 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.

24.2 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.

24.4 The non-receipt of notice of a meeting by any person entitled to receive notice shall not invalidate the proceedings of that meeting.

## **25. PROXIES**

25.1 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.

25.2 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.

25.3 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.

25.4 Notwithstanding the foregoing, the Chairman of the meeting may agree to accept a proxy tendered at any time before or during the meeting.

## **26. QUORUM**

26.1 No business shall be transacted at any special 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 25% (twenty five per centum) of the total Members entitled to attend and vote thereat.

26.2 At the Annual general Meeting, if, within 30(thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the Members present shall constitute a quorum.

26.3 If, within 30 (thirty) minutes after the time appointed for the commencement of the meeting, a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In all other cases, the meeting shall stand adjourned to the same day in the next week at the same place and time and, if at such adjourned meeting, a quorum is not present, the Members present shall constitute a quorum.

## **27. AGENDA AT MEETINGS**

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:

- 27.1 the consideration of the Chairman's report;
- 27.2 the election of Member Trustees;
- 27.3 the consideration of the financial statements and the report of the Auditors for the last financial year of the Association preceding the date of such meeting;
- 27.4 the appointment of Auditors;
- 27.5 the consideration of the budget as presented by the Trustees and confirmation of levies as currently levied by the Trustees;
- 27.6 any other business pertinent to such meeting, including any Resolutions proposed for adoption by such meeting and the voting upon any such Resolutions.

## **28. PROCEDURE AT MEETINGS**

- 28.1 The Chairman 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 Chairman for the meeting who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 28.2 The Chairman 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 need 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.

## **29. VOTING**

- 29.1 At every annual general meeting or general meeting every Member/Commercial Member in person or by proxy and entitled to vote shall be allocated voting rights as follows:
  - 29.1.1 the registered owner of an Erf: 1 (one) vote per Erf registered in his name, provided that if an Erf is registered in more than one person's name, then they shall jointly have 1 (one) vote;
  - 29.1.2 if a GR Erf has been subdivided for single residential use then the registered owner of each of the subdivided erven shall have 1 (one) vote for each Erf registered in his name provided that if an Erf is registered in more than one person's name then they shall jointly have 1 (one) vote;
  - 29.1.3 the registered owner of each GR Erf which has not been subdivided shall be entitled to vote as under 28.1.1 subject to the condition that, in the event of the registration of a sectional title scheme in respect of a GR Erf then each

registered owner of a Unit shall be entitled to a vote representing the number of votes allocated to the GR Erf divided by the number of Units in the sectional scheme of which such GR Erf forms part, and provided that if a Unit is registered in more than one person's name then they shall jointly have the vote allocated for such Unit.

- 29.1.4 The registered owner of a Commercial Erf: 1 (one) vote per Commercial Erf registered in his name, provided that if a Commercial Erf is registered in more than one person's name, then they shall jointly have 1 (one) vote;
- 29.2 At any meeting of Members a Resolution put to the vote at the meeting shall be decided on a show of hands unless before or on the declaration of the result of the show of hands a poll shall be demanded by any Member/Commercial Member. If a poll is duly demanded it shall be taken in such manner as the Chairman directs and the result of the poll shall be deemed to be the Resolution of the meeting at which the poll was demanded.
- 29.3 Save as expressly provided for in this Constitution, no person other than a Member/Commercial Member duly registered 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 and to vote on any question either personally or by proxy.
- 29.4 At any annual general meeting or general meeting a Resolution put to the vote at the meeting shall be decided on an ordinary majority of votes represented by Members/Commercial Members who are not under suspension and who are entitled to attend and vote thereon present in person or by proxy in accordance with the value of votes recorded in clause 29.1.
- 29.5 Voting on any question of adjournment shall be decided on an ordinary majority of votes represented by Members/Commercial Members entitled to attend and vote thereat, present in person or by proxy.
- 29.6 Every Resolution and every amendment of a Resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall be deemed not to have been proposed.
- 29.7 Unless any Member/Commercial Member present in person or by proxy at a meeting shall, before closure of the meeting, have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted and an entry in the minutes of the Association 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 Resolution so recorded if such entry confirms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

### **30. MINUTES OF MEETINGS OF THE ASSOCIATION**

- 30.1 The Trustees shall:
- 30.1.1 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 circulated to all members who were present at the meeting, to advise corrections within 14 days of distribution. Thereafter the minutes may be certified correct by the Chairman of the meeting;

- 30.1.2 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.
- 30.2 The Trustees shall keep all minute books of meetings of the Association in perpetuity.
- 30.3 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.
- 30.4 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.
- 30.5 Save as otherwise provided in this Constitution, the proceedings at any meeting of the Association shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.

### **31. FINANCIAL YEAR END**

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

### **32. ACCOUNTS**

- 32.1 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:
- 32.1.1 a record of the assets and liabilities of the Association;
  - 32.1.2 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;
  - 32.1.3 a register of Members showing in each case their addresses;
  - 32.1.4 individual ledger accounts in respect of each Member.
- 32.2 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.
- 32.3 The Trustees shall cause all books of account and records to be retained for a period of 6 (six) years after completion of the transactions, acts or operations to which they relate.
- 32.4 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.
- 32.5 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 practice and shall be accompanied by such additional reports as may be necessary at the discretion of the Trustees.

### **33. DEPOSIT AND INVESTMENT OF FUNDS**

- 33.1 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.
- 33.2 Any funds not immediately required for disbursements may be invested in a savings or similar account with any financial institution or any other registered deposit receiving institution approved by the Trustees from time to time.
- 33.3 Interest on moneys invested shall be used by the Association for any lawful purpose in the interest of the Association.

### **34. AUDIT**

- 34.1 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.
- 34.2 The duties of the Auditors shall be regulated in accordance with general practice and applicable professional standards.

### **35. INDEMNITY**

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

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

### **37 RISK**

- 37.1 Any person entering onto the land of or using any of the services or facilities of the Association does so entirely at his own risk.
- 37.2 It is recorded that the Development incorporates an active golf course and construction site, and that the presence anywhere in the Development exposes one to damages caused by flying golf balls, vehicles, construction machinery and equipment, falling trees and other activities normally associated with golfing and building construction. The Association hereby draws the attention of Owners and residents, their families, invitees and those under their care, to these possible dangers. Neither the Association, nor the Developer/golf course designer/Golf Club/individual golfer shall be held liable for any damage to property or bodily injury, accidentally or negligently caused to Owners, residents, their families, invitees or those under their care, and the Association requires them to waive all rights against the Association, the Developer/golf course designer/Golf Club/individual golfer in this regard.
- 37.3 It is further recorded that the Development falls within a productive farming area where farming operations take place, such as the cultivating of fruit trees and vineyards and activities related thereto, including but not limited to planting, spraying with insecticides and pesticides, pruning and harvesting, which could, *inter alia*, result in an increase of dust and allergens in the area.

### **38 TRANSFER OF LAND TO ASSOCIATION**

The Developer shall, at a nominal amount, sell and transfer to the Association the private open spaces and private roads, as well as the Day Visitors Area, indicated on the attached Site Development Plan, the risk wherein passes to the Association upon formation of the Association and in respect whereof the maintenance and upkeep thereof is the responsibility of the Association including the responsibilities for rates and taxes and all charges attaching thereto.

### **39 ARBITRATION**

- 39.1 Should any dispute, question or difference arise between Members or between a Member and Trustees out of or in regard to:
- 39.1.1 the interpretation of;
  - 39.1.2 the effect of;
  - 39.1.3 their respective rights or obligations under;
  - 39.1.4 a breach of (save for non-payment of levies or any other amount due by a Member in terms of this Constitution),
- this Constitution, such dispute shall be decided by arbitration in the manner set out in this clause 39.
- 39.2 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.
- 39.3 The arbitration referred to in clause 39.1 shall:



- 39.3.1 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
  - 39.3.2 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
  - 39.3.3 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.
- 39.4 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 President of the Cape Town Bar or the Chairman of the Law Society of the Cape of Good Hope.
- 39.5 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.
- 39.6 Each of the parties to the arbitration irrevocably agree that the decision of the arbitrator made at such arbitration proceedings:
- 39.6.1 shall be final and binding on each of them; and
  - 39.6.2 shall be carried into effect immediately; and
  - 39.6.3 may be made an order of any Court to whose jurisdiction the parties are subject.
- 39.7 Notwithstanding anything to the contrary contained in this clause 39, 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.

**40 DOMICILIUM**

- 40.1 The Trustees shall from time to time determine the address constituting the *domicilium citandi et executandi* of the Association, subject to the following:
- 40.1.1 such address shall be the address of the Chairman or of a resident Trustee nominated by the Trustees or the address of any duly appointed Managing Agent;
  - 40.1.2 the Trustees shall give notice to all Members of any change of such address.
- 40.2 The *domicilium citandi et executandi* of each Member shall be the street address of the Member's Erf or Unit.

- 40.3 It shall be competent to give notice by telefax or via email where the Member's telefax number and email address is recorded with the Trustees.
- 40.4 A Member 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.
- 40.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Member shall be adequate written notice or communication to such Member notwithstanding that it was not sent to or delivered at his *domicilium citandi et executandi*.
- 40.6 Any notice to a Member:
- 40.6.1 sent to him by prepaid registered post in a correctly addressed envelope at his *domicilium citandi et executandi* shall be deemed to have been received on the 7<sup>th</sup> day after posting (unless the contrary is proved); or
- 40.6.2 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
- 40.6.3 successfully transmitted by telefax to his chosen telefax number or email to this chosen email address shall be deemed to have been received on the 1<sup>st</sup> day after the date of transmission, unless the contrary is proved.

#### **41 AMENDMENT**

- 41.1 No provision hereof shall be added to, amended, substituted or repealed without the prior consent in writing of the Developer, for as long as the Developer is a Member, provided that until such time as the Home Owners' Association is constituted, this document shall be subject to addition, amendment or substitution by the Developer in consultation with the Local Authority and Purchasers shall be alerted to any such addition, amendment or substitution.
- 41.2 Subject to the provisions of clause 41.1, such addition, amendment, substitution, or repeal shall require the approval of at least 51% (fifty one percent) of the total number of votes of Members of the Association given at a general meeting called specifically for such purpose and the notice of such meeting shall, in addition to complying with the requirements for convening a meeting, set out in specific terms the proposed addition, amendment, substitution or matter to be repealed.

#### **42 TRANSFER OF PROPERTY BY OWNERS**

- 42.1 All registrations of transfer in respect of property included in the Silverstrand Golf and River Estate, irrespective of whether it be common property or property owned by any of the Members/Commercial Members individually, shall be attended to by conveyancers appointed by the Association from time to time.
- 42.2 Each Member/Commercial Member shall be obliged to pay 1% (one percentum), or any higher percentage determined from time to time by the Association, of the proceeds of the sale of his property in the Estate, into a trust account nominated by the Association, for the ongoing maintenance of the Day Visitors Area.
- 42.3 The Association shall not issue a clearance certificate in respect of a property unless the provisions of its Constitution, including provisions relating to the payment of levies, have been complied with and the conveyancers have furnished the Association with an acceptable undertaking to pay into the nominated trust account

according to clause 42.2 above, the required percentage of the proceeds of sale on date of registration of transfer.

- 42.4 Until such time as the Member has complied with his obligations to build in terms of clause 11.6 hereof, he shall not be entitled to transfer or alienate the property without the written consent of the Developer first being obtained, which consent is in the absolute and sole discretion of the Developer.

### **43. STATUS OF DEVELOPER**

During the Development Period, the following provisions shall apply in addition to the provisions of and notwithstanding anything to the contrary in this Constitution:

- 43.1 the Developer shall be entitled :
- 43.1.1 to nominate and appoint the Chairperson;
  - 43.1.2 to a number of votes equal to the total number of the votes of all Members and Commercial Members in terms of clause 29 plus 1 (one) vote;
  - 43.1.3 to impose any rules relating to the management of the Development from time to time, as the Developer may deem fit, and to amend amplify, substitute and/or add to any such rules;
  - 43.1.4 to make all such amendments to the Design and Landscaping Guidelines as the Developer may in its sole discretion deem fit, subject always to the conditions for development imposed by any relevant authority;
  - 43.1.5 to require that the Trustees enforce the rights granted to the Developer against any Member/Commercial Member who in the opinion of the Developer is not complying with his obligations as a Member/Commercial Member, by giving such Member/Commercial Member written notice in which his failure to comply with the particular provisions of this Constitution is detailed and calling upon such Member/Commercial Member to remedy such failure within a prescribed period of not more than 30 (thirty) days, failing which, the Developer shall be entitled, at the sole cost of the defaulting Member/Commercial Member, to do all such things as may be required to maintain or remove as the case may be, any building or other Improvements, landscaping and or movables on his Erf/Commercial Erf.
- 43.2 Neither the Trustees nor any Member/Commercial Member shall prevent or hinder in any way the Developer from:
- 43.2.1 gaining access to and egress from the Development;
  - 43.2.2 continuing any building operations at the Development;

provided that, after the expiry of the Development Period, the provisions of this clause 43 shall not be interpreted as allowing the Developer access to any of the Erven/Commercial Erven already transferred to a Member/Commercial Member, unless 48 hours prior written notice has been given to the Member/Commercial Member concerned. The Developer shall make good any subsequent damage to plants, property or improvements thereon to the satisfaction of the Member/Commercial Member. No Member shall be entitled to refuse the Developer access if the required notice has been given;

43.3 upon expiry of the Development Period, but subject to the proviso to clause 43.2 above, the rights of the Developer in terms of the provisions of this clause 43 shall immediately terminate *ipso facto* and no longer be of any force and effect.

#### **44 INCORPORATION OF FURTHER PHASES**

The Developer has a continuing and permanent interest to ensure that certain basic provisions are entrenched in perpetuity to ensure the success of the Development. Accordingly, none of the following provisions may be deleted or varied in any way in terms of clause 41 above, without the prior written consent of the Developer:

44.1 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 additional areas from time to time as further phases of the Development, which the Developer shall be entitled to develop as it may deem fit.

44.2 should any further property be incorporated into the Development, the Developer shall be entitled to require that the first and subsequent owners of erven therein become members of the Association in respect of those properties 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/Commercial Members shall be bound by any such requirement of the Developer.

#### **45 IMPOSITION OF PENALTIES**

45.1 If the conduct of an Owner, an occupier or their visitors, constitutes a nuisance in the opinion of the Trustees, or if an Owner or occupier contravenes, breaches, disobeys or disregards this provisions of this Constitution, its annexures or any Rules, the Trustees may furnish the Owner and occupier (if applicable) with a written notice which may in the discretion of the Trustees be delivered by hand or by registered post. In the notice the particular conduct which constitutes a nuisance must be adequately described or the clause or Rule that has allegedly been contravened must be clearly indicated, and the Owner must be warned that if he or his occupier or visitor persists in such conduct or contravention, a fine will be imposed on him.

45.2 If the Owner, occupier or visitor nevertheless persists in that particular conduct or in the contravention of that particular clause or Rule, the Trustees may convene a meeting of Trustees to discuss the matter and to impose a fine.

45.3 A written notice by which he is informed of the purpose of the meeting and invited to attend, must be sent to the Owner and occupier (if applicable) at least 7 (seven) days before the meeting is held. At the meeting the Owner and occupier (if applicable) must be given the opportunity to present his/their case, orally or by way of submission in writing, but except insofar as may be permitted by the Chairman, he may not participate in the affairs of or voting at the meeting.

45.4 After the Owner/occupier has been given the opportunity to present his case, the Trustees may by way of special resolution (75% of the Trustees present at the meeting with a minimum of 4 Trustees), impose upon the Owner/occupier an *initial penalty* for the first offence and a *subsequent penalty* for every identical offence thereafter.

45.5 Any fine imposed in terms of clause 45.4 may, if it is not paid within 14 (fourteen) days after the Owner has been notified of the imposition of the fine, be added to the monthly levies which the Owner is obliged to pay in terms of this Constitution and claimed by the Association as part of such levies payable by the Owner.

45.6 The Trustees may, from time to time, determine the amount of the *initial* and *subsequent penalties*.

45.7 Notwithstanding the foregoing provisions of this clause 45, in suitable circumstances the Trustees may apply to a Court having jurisdiction, for an order or interdict if an Owner/occupier contravenes, breaches, disobeys or disregards this Constitution, it annexures or any Rules or regulations passed by the Association or the Trustees.